

## **EXPLANATORY MEMORANDUM TO**

### **THE CRIMINAL JUSTICE ACT 1988 (REVIEWS OF SENTENCING) (AMENDMENT) ORDER 2019**

**2019 No. 1397**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

#### **2. Purpose of the instrument**

- 2.1 The instrument specifies fourteen further triable either way offences in respect of which the Attorney General can refer a case to the Court of Appeal where he considers the sentence imposed was unduly lenient.

#### **3. Matters of special interest to Parliament**

- 3.1 None.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 This instrument applies to England and Wales.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

#### **6. Legislative Context**

- 6.1 Part 4 of the Criminal Justice Act 1988 gives the Attorney General the power to refer cases of a specified description, indictable only offences and specified triable either way offences heard in the Crown Court, for review by the Court of Appeal where he considers the sentence imposed was unduly lenient. The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (“the Reviews of Sentencing Order”) specifies the categories of triable either way offences to which the ULS scheme applies.
- 6.2 This Order amends the Reviews of Sentencing Order by adding in nine further sexual offences set out in the Sexual Offences Act 2003, two offences concerning indecent photographs of children, two offences concerning harassment and stalking, and the offence of coercive and controlling behaviour in an intimate or family relationship. This Order also brings within the ULS Scheme attempts to commit these offences, and the incitement, encouragement or assistance in the commission of these offences.
- 6.3 This Order also rectifies two previous oversights. It adds in the attempt to commit, and the incitement, encouragement or assistance in the commission of, the two modern slavery offences to paragraph 2 of Schedule 1 via the Modern Slavery Act 2015 (Consequential Amendments) Regulations 2015. This Order also clarifies that the offence of causing racially or religiously aggravated harassment, alarm or distress

under section 31(1)(c) of the Crime and Disorder Act 1998 is not in scope of the scheme, as it is a summary-only offence.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The ULS scheme exists so that anyone can ask the Attorney General to consider referring sentences for certain offences which he believes to be unduly lenient to the Court of Appeal for review. The Act sets out the terms by which the Attorney General will exercise discretion regarding individual cases and test whether a sentence is unduly lenient. For example, if the sentence falls outside the range of sentences which the judge, applying their mind to all the relevant factors, could reasonably consider appropriate; or where the judge may have erred in law as to their sentencing powers or failed to impose a sentence required, such as imposing a minimum sentence for firearms offences.
- 7.2 The cross-Government Victims' Strategy published on 10 September 2018 contained a commitment to keep under review and consider extending the scheme to additional offences related to stalking and harassment; indecent images of children and sexual offences. The proposed change will fulfil this commitment by amending the Reviews of Sentencing Order to include the further fourteen serious sexual and violent offences.
- 7.3 The inclusion of these offences relating to sexual offending, intimidation and abuse within the ULS scheme is intended to reflect the serious and long-lasting damage they have on victims and survivors. This also rectifies a discrepancy whereby a large number of sexual offences committed against children were included in the scheme, but offences committed by people in positions of authority, and offences committed against people with a mental disorder impeding choice, were not.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This Order does not seek to consolidate or revoke any existing Orders. The present amendment is the eighth (for England and Wales) to be made to the Reviews of Sentencing Order, which itself consolidated previous changes.

## **10. Consultation outcome**

- 10.1 No public consultation was undertaken. The change was discussed within government, including with the Attorney General who operates the scheme, but as it is simply an extension of an established policy it was not considered that external consultation was needed.

## **11. Guidance**

- 11.1 No guidance is necessary.

## **12. Impact**

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has therefore not been prepared for this instrument.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The operation of the Unduly Lenient Sentence Scheme is kept under constant review by the Attorney General's Office. Statistics on numbers of cases referred under the scheme are published annually.

## **15. Contact**

- 15.1 Ollie Simpson at the Ministry of Justice (telephone: 07870 167433 or email: [ollie.simpson@justice.gov.uk](mailto:ollie.simpson@justice.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Claire Fielder, Deputy Director for Bail, Sentencing and Release Policy, at the Ministry of Justice can confirm that this explanatory memorandum meets the required standard.
- 15.3 Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, can confirm that this explanatory memorandum meets the required standard.