

EXPLANATORY MEMORANDUM TO

THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022 (CONSEQUENTIAL PROVISION) (ENGLAND AND WALES) REGULATIONS 2023

2023 No. 250

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by command of His Majesty.

2. Purpose of the instrument

- 2.1 The Police, Crime, Sentencing and Courts Act 2022 (“the 2022 Act”) included provisions to amend section 14 of the Sexual Offences Act 2003. These Regulations make consequential amendments following the amendment of section 14.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 46(2) of the Police, Crime, Sentencing and Courts Act 2022 (“the 2022 Act”) amended section 14(1) of the Sexual Offences Act 2003 (“the 2003 Act”) so that it now covers acts relating to arranging or facilitating an offence under sections 5 to 8 of the 2003 Act, in addition to the offences under sections 9 to 13 of that Act.
- 6.2 The amendments were brought into force on 28 June 2022 by regulation 5(d) of the Police, Crime, Sentencing and Courts Act 2022 (Commencement No. 1 and Transitional Provision) Regulations 2022 (S.I. 2022/520).
- 6.3 These Regulations make consequential amendments to the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 to amend the references to the sections which the offence under section 14(1) now applies to following amendment by section 46(2).
- 6.4 These Regulations also make consequential amendments to the Criminal Justice Act 2003 (Categories of Offences) Order 2004 following the amendment of section 14(1).

7. Policy background

What is being done and why?

- 7.1 Section 14(1) of the 2003 Act provides for the preparatory offence of arranging or facilitating the commission of a child sexual offence. Prior to its amendment by the 2022 Act, it criminalised acts preparatory to the substantive offences provided in sections 9 to 13 of the 2003 Act (including the offences of sexual activity with a child and inciting a child to engage in such activity). Subsection (2) of section 46 of the 2022 Act extended the section 14(1) offence so that it now covers acts preparatory to the offences in sections 5 to 13 of the 2003 Act, namely rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13 and causing or inciting a child under 13 to engage in sexual activity.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 As section 14(1) of the 2003 Act has been amended by section 46(2) of the 2022 Act to include the preparatory acts under further offences, any secondary legislation which referred to the specific offences in relation to which the preparatory acts might be committed requires amendment to include these additional offences.

What will it now do?

- 7.3 These Regulations will make consequential amendments to the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 and the Criminal Justice Act 2003 (Categories of Offences) Order 2004 to reflect the amendments made by section 46 of the Police, Crime, Sentencing and Courts Act 2022.
- 7.4 Regulation 2 amends Schedule 2 to the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 to amend the references to the sections of the 2003 Act to which the offence under section 14 of that Act now applies. This enables a person who is convicted of an offence under section 14 in respect of acts preparatory to the offences under sections 5 to 8 of the 2003 Act to be presumed to have been convicted by a final judgment of a particularly serious crime so constituting a danger to the community of the United Kingdom. This amendment enables that person to be considered for removal from the United Kingdom even though the person is a refugee under the United Nations 1951 Convention on the Status of Refugees.
- 7.5 Regulation 3 amends paragraph 25 of the Schedule to the Criminal Justice Act 2003 (Categories of Offences) Order 2004 so that its reference to section 14 of the 2003 Act reflects the amendments made by section 46 of the 2022 Act. Section 103(2)(b) of the Criminal Justice Act 2003 provides that a defendant's propensity to commit offences of the kind with which the defendant is charged may be established by evidence that the defendant has been convicted of an offence of the same category as the one with which the defendant is charged. Section 103(4)(b) provides that two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of that section by an order made by the Secretary of State.

8. European Union Withdrawal and Future Relationship

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 Whilst this instrument does amend a pre-existing instrument, a consolidation was not completed due to the size and nature of the instrument.

10. Consultation outcome

10.1 No consultation took place as these are consequential changes following enactment of primary legislation.

11. Guidance

11.1 No guidance is being issued.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no additional impact on business, charities or voluntary bodies or on the public sector.

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 approach to monitoring of this legislation is that no plans to monitor or review the SI are required as this SI is consequential on changes made by primary legislation.

14.2 The instrument does not include a statutory review clause as it is a minor technical amendment and therefore not warranted. The instrument is not considered to be a regulatory provision.

15. Contact

15.1 Sophie Furniss at the Home Office, Telephone: 07557244577 or email: sophie.furniss@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Christian Papaleontiou, Deputy Director for the Tackling Child Sexual Abuse Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Safeguarding Minister, Sarah Dines MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.