

EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 1988 (REVIEWS OF SENTENCING) (AMENDMENT No. 2) ORDER 2017

2017 No. 1328

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 This Order specifies additional terrorism-related offences in respect of which the Attorney General can refer a case to the Court of Appeal where he considers that the sentencing imposed by the Crown Court has been unduly lenient. This is normally referred to as the Unduly Lenient Sentence scheme (“the ULS scheme”).
- 2.2 This Order adds nine offences to the list of those which can be considered under the ULS scheme. The first four of these offences relate to failure to disclose information about offences relating to terrorist property. There are three additional offences of breaching terrorism-related orders and notification requirements and two offences in relation to dangerous articles and making threats which are not normally terrorist offences, but will be included in the scheme if they have found by a court to have a terrorist connection. The offences are listed at paragraph 4.5 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 4 of the Criminal Justice Act 1988 (“the 1988 Act”) makes provision for the Attorney General to refer a case to the Court of Appeal where he considers that the sentencing has been unduly lenient.
- 4.2 The Unduly Lenient Sentence scheme applies to sentences passed by the Crown Court on a person for an “indictable only” offence (that is, an offence which must be tried in the Crown Court) or an “either way” offence which the Secretary of State has specified in an Order made by statutory instrument; that is, an offence which can be tried either in a magistrates’ court or the Crown Court and which Parliament has decided should be in scope of the unduly lenient sentencing scheme when they have been tried in the Crown Court.

- 4.3 The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (“the 2006 Order”) specifies the categories of either way offences in respect of which a reference may be made by the Attorney General to the Court of Appeal.
- 4.4 This Order amends the 2006 Order to include within the ULS Scheme several terrorism related offences set out in the Terrorism Act 2000, the Counter-Terrorism Act 2008, the Terrorism Prevention and Investigation Measures Act 2011 and the Counter-Terrorism and Security Act 2015. This Order also brings into the scheme two triable-either-way offences listed in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered), meaning that all offences in this Schedule are now within the ULS scheme if the court makes a determination that the offence has a “terrorist connection”.
- 4.5 The offences included are:
- Section 19 of the Terrorism Act 2000 - disclosure of information: duty
 - Section 21A of the Terrorism Act 2000 - failure to disclose: regulated sector
 - Section 21D of the Terrorism Act 2000 – tipping off: regulated sector
 - Section 39 of the Terrorism Act 2000 – disclosure of information
 - Section.54 of the Counter-Terrorism Act 2008 – offences relating to notification
 - Section 23 of the Terrorism Prevention and Investigation Measures Act 2011 - offence of contravening a terrorism prevention and investigation measure (TPIM) notice
 - Section 10 of the Counter-Terrorism and Security Act 2015 - offences of contravening a Temporary Exclusion Order (TEO) or not complying with a restriction after return
 - Section 4 of the Aviation Security Act 1982 - offences in relation to certain dangerous articles – where there is a terrorist connection
 - Section 114 of the Anti-Terrorism, Crime and Security Act 2001 - hoaxes involving noxious substances or things – where there is a terrorist connection

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The policy objective of Part 4 of the 1988 Act, which creates the ULS scheme, is to enable the Attorney General to refer to the Court of Appeal sentences imposed in the Crown Court in respect of serious offences (i.e. indictable only and specified either

way offences) which he considers to be unduly lenient. The Court of Appeal is then able to review the sentence and, if appropriate, increase the sentence.

- 7.2 The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2017, laid in July 2017, extended the scheme to a number of serious terrorism offences all of which trigger terrorism notification requirements under Part 4 of the Counter-Terrorism Act 2008 (that is the duty on the person dealt with under a terrorism or terrorism related offence to provide and update certain information about themselves, their address and any information about an intention to travel).
- 7.3 However, following the terrorist attacks in London and Manchester earlier this year, the government has carried out a review of counter-terrorism powers. This review has recommended that, to ensure the Attorney General can refer, if necessary, to the Court of Appeal a comprehensive range of serious terrorism offences, nine additional terrorism-related offences should be added to the scheme. This expanded list of offences under the ULS scheme will ensure a process exists whereby a sentence for a terrorism offence, which may be of significant public interest, can be reviewed by the Court of Appeal.
- 7.4 This order adds those nine additional terrorism-related offences to the ULS scheme. The first four of these offences relate to failure to disclose information about offences relating to terrorist property. There are three additional offences of breaching terrorism-related orders and notification requirements and two offences in relation to dangerous articles and making threats which are not normally terrorist offences, but would be included in the scheme if they have a terrorist connection. This expanded list also ensures that the changing nature of the terrorism threat is reflected in the offences covered by the ULS scheme.

Consolidation

- 7.5 The present amendments are (for England and Wales) the sixth to be made to the 2006 Order, which itself consolidated previous changes. When the first 2017 Order was made in July this year, the Government indicated that a further order may be needed following the counter-terrorism powers review. This review has indicated the need to add offences to ensure a more comprehensive coverage of terrorism offences within the ULS scheme.

8. Consultation outcome

- 8.1 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.

9. Guidance

- 9.1 No guidance is necessary as giving effect to the extended scheme is for the Attorney General.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is expected to be minimal as the number of these offences sentenced each year is under small, some 15 in 2016/17, and of this number,

an even smaller number (if any) may be considered for a referral under the scheme as unduly lenient sentences.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 The operation of the ULS scheme is kept under constant review by the Attorney General's Office. Statistics on numbers of cases referred under the scheme are published weekly.

13. Contact

13.1 Neil Stevenson at the Ministry of Justice (telephone: 07972 318792) or email: neil.stevenson@justice.gov.uk can answer any queries regarding the instrument.