



TITLE	CRIMINAL JUSTICE AND IMMIGRATION ACT 2008 (PROVISIONS COMMENCING IN JULY 2008)
Issue date	7 July 2008
For more information Contact Telephone Email	See Annex at the end of this Circular
This circular is addressed to	Lord Chief Justice, Deputy Chief Justice, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, Lords of Appeal in Ordinary, Queen's Bench Division, Crown Court Judges, Circuit Judges, Administrators and Group Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Chief Officers of Police in England and Wales, HM Prison Service Director-General, Director of Public Prosecutions, Chief Crown Prosecutors, Chief Probation Officers, Court Managers Crown Courts, HMCS Director of Criminal Operations, HMCS Area Directors, Clerks to the Justices, Judicial Studies Board, Youth Offending Team Managers
Copies are being sent to	Council of Circuit Judges, Head of the Criminal Justice Delivery Unit, Magistrates' Association, Bar Council, Criminal Bar Association, Law Society, Justices Clerks Society, Victim Support
Broad Subject	Criminal Justice
Sub Category	Criminal Justice and Immigration Act 2008

Dear Colleague

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008 (COMMENCEMENT NO 2 AND TRANSITIONAL AND SAVING PROVISIONS) ORDER 2008 (SI 2008/1586)

1. This circular provides details of some of the provisions in the Criminal Justice and Immigration Act which come into force on 14 July 2008. A copy of the Commencement Order is available at www.opsi.gov.uk/si/si200815

Section 10: Restriction on imposing community sentences

2. Section 10 makes it clear that it is open to the courts to impose a fine, even where the law allows a community order to be imposed because the offence is serious enough to warrant such a sentence. A fine may therefore be imposed even though the community threshold has been passed. The section also sets out that where courts can restrict liberty under a community order, for example by imposing a curfew requirement, they are not required to do so. The section does not change the law governing the imposition of community sentences, or fines, but clarifies existing provisions.

Section 11(1): Restriction on power to make a community order

3. Section 11(1) adds a new section 150A to the Criminal Justice Act 2003 providing that the community order is available to the courts as a sentencing option only for imprisonable offences. The subsection makes it clear that where an offence is triable either way it is to be regarded as punishable with imprisonment only where the sentencing court can impose custody. It also provides for the availability of a community order for persistent offenders under section 151 of the 2003 Act, but this may be disregarded for the present as section 151 has not yet been commenced.
4. The aim of section 11(1) is to ensure that limited probation resources are directed where they can have most effect. This should help the Probation Service concentrate on offenders who really need intensive supervision, either because they are dangerous or because of their high risk of re-offending. Committal to prison for wilful refusal or culpable neglect to pay a fine is unaffected and is still available.
5. The remaining subsections of section 11 have not yet been commenced.

Section 12: Pre-sentence reports

6. Section 12 inserts a new subsection (1A) and (1B) into section 158 of the Criminal Justice Act 2003 – which defines what a pre-sentence report is. New subsection (1A) makes it clear that subject to any rules made by the Secretary of State under section (1)(b) of section 158, the court may accept an oral pre-sentence report. However, where a pre-sentence report relates to an offender under 18 years of age and the court is required to obtain and consider a pre-sentence report before the court forms an opinion under section 156(3)(a) – relating to discretionary custodial sentences – new subsection (1B) provides that such a pre-sentence report must be in writing.
7. This means that a pre-sentence report for a young person aged under 18 must be made in writing where the court is considering custody as an appropriate sentence for the offence(s).

Section 13 to 18 and Section 25: Public protection sentences

8. Sections 13 to 18, and 25 contain a package of reforms to the public protection sentencing legislation set out in the Criminal Justice Act 2003, Part 12, Chapter 5. The reforms make changes to sentences of imprisonment and detention for public protection (also known as IPPs/DPPs/indeterminate sentences) and extended sentences for public protection (EPPs).
9. The Act makes changes to public protection sentences for both adults and juveniles.

10. The date for commencement is 14 July. These changes will apply to **all offenders who fall to be sentenced on or after the date of commencement** (and whose offence was committed on or after 4 April 2005, the date on which the 2003 Act provisions came into force). The changes will not be retrospective so there will be no impact on prisoners who are already serving a public protection sentence.
11. The purpose of these changes is to provide greater judicial discretion in dealing with offenders, and to ensure that the public protection sentences are focused on the most dangerous offenders where they can have the most value.
12. The changes are:
 - A. **The imposition of a seriousness threshold** which the immediate offence being sentenced must reach, before a public protection sentence can be imposed. This will apply to both indeterminate sentences and extended sentences. The threshold is that the offence must merit at least two years of actual custodial time. (This is expressed in different ways for indeterminate and extended sentences: 2 year tariff for the former and 4 years determinate for the latter – to allow for release at the half way point. In both cases the requirement is for the offence to be serious enough to justify a determinate term of at least 4 years or a tariff of at least 2 years.)
 - B. **The removal of the rebuttable presumption of risk** i.e. of the current statutory requirement for the court to conclude that the offender is dangerous (unless it is unreasonable to do so in the circumstances) where there is a previous conviction for a violent or sexual crime.
 - C. **Allowing courts greater discretion** so that where all the conditions for an IPP are met (offender has committed a sexual/violent offence which carries a penalty of 10 years or more; the risk test is met; the seriousness threshold or Schedule 15A criterion – see para E below – is met) the court may impose an IPP, extended sentence or other sentence as it finds most appropriate in the case. Where the conditions for an EPP but not an IPP are met (offender has committed a sexual/violent offence which carries a penalty of less than 10 years; the risk test is met; the seriousness threshold or Schedule 15A criterion – see para E below – is met) the court may impose an EPP or other sentence. That is to say, the public protection sentences are no longer mandatory when the relevant conditions are fulfilled, but are simply available to judges to use at their discretion. (In the case of juveniles the court is already able to give extended sentences where an adult would require an IPP – but this new discretion goes wider and allows courts not only to apply IPPs or extended sentences where the IPP conditions are met, but also to give standard sentences, for both adults and juveniles.)
 - D. **A change to the structure of EPPs** so that offenders will be automatically released on licence halfway through the custodial part, rather than halfway release being at the Parole Board's discretion as currently.

- E. **An exception to the seriousness threshold where offenders have previous convictions for certain very serious offences.** The list of offences that qualify the offender is based, with some updating, on the 'two strikes' or 'automatic life' provision of the Powers of the Criminal Courts (Sentencing) Act 2000 (repealed by the dangerous offenders legislation) and includes offences such as soliciting etc murder; manslaughter; Section 18 GBH; rape; rape of a child; robbery with firearm; possession of firearm with criminal intent. The list also includes a number of other sexual offences of particular seriousness which were introduced in the Sexual Offences Act 2003.

Section 20: Consecutive terms of imprisonment

13. Sections 20(4) and 20(5) amend section 265 of the Criminal Justice Act 2003 – restriction on consecutive sentences for released prisoners. They clarify the position on imposing consecutive sentences on different occasions. The amendment ensures that a sentence subject to the release arrangements of either the Criminal Justice Act 2003, or the Criminal Justice Act 1991, cannot be imposed consecutively to any term of imprisonment from which release has already taken place. Because the amendment ensures the restriction applies in all cases where release has taken place from the earlier sentence, the saving of section 84 of the Powers of Criminal Courts (Sentencing) Act 2000 is no longer required.
14. New section 265(1B) (inserted by section 20(4)(b)) specifies that release for the intermittent licence periods during an intermittent custody sentence are not regarded as release from the sentence for the purposes of the restriction of imposing consecutive sentences.

Section 27: Application of section 35(1) of the Criminal Justice Act 1991 to prisoners liable to be removed from the UK

15. Section 27(1) provides that section 46(1) and part of section 50(2) of the Criminal Justice Act 1991 are to cease to have effect. The practical effect of that provision is that foreign national prisoners liable to removal from the United Kingdom and sentenced under the provisions of the Criminal Justice Act 1991 to sentences of 4 years and over will no longer be ineligible, at the halfway point of sentence, to have their cases considered by the Parole Board for early release on licence under section 35(1) of the same Act. The provisions only apply to offenders whose offences were committed before 4 April 2005. Under the existing provisions of the Criminal Justice Act 1991 such prisoners' applications for early release can only be determined by the Secretary of State. This provision is made to address the fact that existing provisions were the subject of a declaration of incompatibility as regards Article 14 (when read with Article 5) of the ECHR in the case of *R (Hindawi and Headley) v Secretary of State for the Home Department* [2006] UKHL 54.

Section 28: Release of fine defaulters and contemnors under Criminal Justice Act 1991

16. Section 28 concerns the release arrangements for fine defaulters and those in contempt of court who are serving custodial penalties under the provisions of the Criminal Justice Act 1991 and who are released early on compassionate grounds. As a result of this section, the release arrangements for this group of prisoners replicate those for similar prisoners sentenced under the Criminal Justice Act 2003.

17. Under the Criminal Justice Act 1991 fine defaulters are released unconditionally at the halfway point for those serving less than 12 months and the two thirds point for those serving 12 months or longer. If released earlier by the Secretary of State on compassionate grounds they are currently placed under licence conditions and are liable to be recalled during the period they would otherwise have spent in custody. However, under the provisions of the Criminal Justice Act 2003, those prisoners serving a custodial penalty for fine default and who are given early compassionate release are released unconditionally.
18. This section has the effect of removing the requirement to make release on compassionate grounds conditional for Criminal Justice Act 1991 offenders. Instead they will be treated the same as Criminal Justice Act 2003 offenders and released unconditionally.

Section 29: Release of prisoners after recall save insofar as subsection (2) inserts subsections (9) and (10) of section 255A of the 2003 Act.

19. Section 29 introduces new recall provisions for determinate sentence prisoners. The provisions are designed to focus prison and Parole Board resources on those offenders who present a risk of serious harm.
20. The provisions define three groups of determinate sentence prisoners for whom different re-release procedures following recall must apply.
21. The first group are those offenders who are serving a determinate sentence for offences which are neither violent nor of a sexual nature (as set out in Schedule 15 to the Criminal Justice Act 2003) and have been assessed as not presenting a risk of serious harm to the public. As such they are recalled for a fixed period of up to 28 days, at which point they must be automatically re-released.
22. Although for this group of recalled prisoners there is no automatic review of detention by the Parole Board, they have the right to make representations to the Board to challenge the recall.
23. Recall is not designed to be punitive. It is intended to be preventative, in other words to protect the public. The purpose of the fixed term recall is to remove offenders from often rapidly deteriorating situations and place them in a secure environment. The period of imprisonment gives the Probation Service the opportunity to review supervision arrangements and if need be apply for additional restrictions. The enforcement of the licence through recall underlines to the offender the importance of future compliance.
24. If once an offender is re-released from a fixed term recall his behaviour gives further cause for concern, he can again be returned to custody, potentially until the end of the sentence.
25. The second group are also determinate sentence prisoners, who are either serving a sentence for crimes of a sexual or violent nature, or who have been assessed as unsuitable for automatic re-release because they present a risk of serious harm or who have already served one fixed term recall and as a result are no longer eligible for automatic re-release under this provision.
26. This group of prisoners can be re-released through two routes. The first gives the Secretary of State discretion to re-release the offender as long as he is satisfied that it is safe to do so. This decision is taken having very careful regard to the up to date risk assessments provided by Probation staff.

27. If the Secretary of State is not so satisfied, the second route is through the Parole Board. Any recalled prisoner who remains in custody for 28 days must have their case referred to the Parole Board.
28. If neither the Secretary of State nor the Parole Board are satisfied that it is safe to re-release the prisoner, he must remain in custody potentially until the end of the sentence.
29. The third and final category is sexual and violent offenders who are serving an extended sentence. Such prisoners will only be re-released if recommended by the Parole Board. Once again, if the Board does not consider them safe to be re-released they can potentially be held until the end of their sentence.
30. These provisions are intended to provide a sensible and proportionate response to breaches of licence conditions. Those who fail to comply with their licence conditions can expect to be recalled to prison. Those who present a risk of serious harm or who have been recalled for a second time may find that they spend the remainder of their sentence in prison.

Section 30: Further review and release of prisoners after recall

31. Section 30 amends existing powers within the Criminal Justice Act 2003 pertaining to the further review and re-release from recall of determinate sentence prisoners.
32. The substantive change is that the Parole Board no longer specifies the date of the next review of a recalled prisoner's detention in those cases where it does not recommend release. The Secretary of State will continue to be required to refer recalled prisoners to the Parole Board at least once every 12 months.

Section 31: Recall of life prisoners: abolition of requirement for recommendation by Parole Board

33. Section 31 amends section 32 of the Crime (Sentences) Act 1997 specifically to remove the requirement for a Parole Board recommendation before the Secretary of State decides whether to recall a life sentence prisoner or a prisoner serving an indeterminate sentence for public protection.
34. Prior to this section coming into effect the Secretary of State was required to consult with the Parole Board before recalling a life/indeterminate sentence prisoner. The Secretary of State could make an executive decision to recall without prior consultation of the Board only where it was 'expedient' to the public interest to do so.
35. In practice virtually all recalls were instigated under the 'expedient' process. Life and indeterminate sentence prisoners can only be recalled to prison if their behaviour suggests they present an increased risk to life and limb. Inevitably, in cases where recall was considered necessary, public protection required that the recall should be given immediate effect.
36. The removal of the requirement to consult is therefore in line with operational practice.
37. All recalled prisoners are entitled to make representations to the Parole Board against the decision to recall them. If the Board recommends the prisoner be re-released the Secretary of State is obliged to give effect to the recommendation.

Section 32: Release of prisoners recalled following release under Criminal Justice Act 1991

38. Section 32 has the practical effect that all prisoners sentenced under the provisions of the Criminal Justice Act 1991 and who are recalled to prison will, when re-released, remain on licence until their sentence expiry date and be liable to recall should their behaviour give cause for concern. It applies to those prisoners recalled on or after 14 July.

Section 38: Imposition of unpaid work requirement for breach of community order

39. Section 38 reduces from 40 to 20 hours the minimum period of unpaid work which may be imposed for breach of a community order. It amends Schedule 8 to the Criminal Justice Act 2003, which governs the way in which the courts deal with offenders who breach their community orders. One of the ways in which a court deals with such an offender is by amending the terms of the community order so as to impose more onerous requirements. Where the court deals with an offender in this way, section 38 reduces the minimum period of unpaid work that may be imposed for breach from 40 to 20 hours, where the community order does not already contain an unpaid work requirement.

Section 40: Power to impose attendance centre requirement on fine defaulter

40. Section 40 re-enacts, with modifications to make it applicable to the sentencing framework in the Criminal Justice Act 2003, one of the fine default provisions in section 60 of the Powers of Criminal Courts (Sentencing) Act 2000. That provision gave a court with the power to commit a fine defaulter aged under 25 to prison, an alternative power to send him or her to an attendance centre instead. Section 40 adds this power to section 300 of the Criminal Justice Act 2003, which provides similar powers to impose unpaid work or curfew on fine defaulters as an alternative to committal to prison. Under section 300, an order imposing an unpaid work requirement, a curfew requirement and now an attendance centre requirement is called a 'default order'.

41. Paragraph 2(4) of Schedule 26 amends Schedule 31 to the Criminal Justice Act 2003, which, for the purposes of default orders, modifies the provisions governing the length of the unpaid work and curfew requirements of community orders set out in the Criminal Justice Act 2003. Schedule 31 of the Criminal Justice Act 2003 already sets out in tabular form the maximum periods of unpaid work or curfew which may be imposed corresponding to the amount of the sum in default. Under Schedule 26 it now makes similar provision for default orders with attendance centre requirements. The attendance centre requirement of a community order is governed by section 214 of the Criminal Justice Act 2003. That provision is modified so that the minimum number of hours at an attendance centre to which an offender may be made subject under a default order remains at 12, and the maximum at 36, but a table sets the maximum number of hours corresponding to the sum in default.

Section 42: Power to dismiss certain appeals following references by the CCRC

Section 43: Power to dismiss certain appeals following references by the CCRC: Northern Ireland

42. Section 42 inserts a new section, section 16C, into the Criminal Appeal Act 1968. This applies only in cases where the Court of Appeal is determining an appeal referred to it by the Criminal Cases Review Commission and the only ground for allowing the appeal is that there has been a development in the law since the date of conviction. In such cases it is open to the Court to dismiss the appeal if they would have refused a direct application by an applicant for extension of time in which to seek leave to appeal. Section 43 makes equivalent provision for Northern Ireland.

Section 44: Determination of prosecution appeals: England and Wales

Section 45: Determination of prosecution appeals: Northern Ireland

43. Section 44 alters the test for ordering a retrial in England and Wales (or that the trial should resume) where the Court of Appeal allow a prosecution appeal against a terminating ruling. Section 45 makes similar provision for Northern Ireland.

Section 47: Further amendments relating to appeals in criminal cases and Schedule 8: Appeals in criminal cases

44. Section 47 (and Schedule 8) make alterations to eight aspects of the procedure governing criminal appeals. The changes are mainly amendments to the Criminal Appeal Act 1968 with corresponding amendments to the Criminal Appeal (Northern Ireland) Act 1980. The changes resolve anomalies and minor difficulties in the existing provisions relating to the functioning of the Court of Appeal Criminal Division. Details of the transitory arrangements governing these provisions may be found in the Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008 (SI 2008 no. 1587).

Section 52 and Schedule 12: Bail for summary offences and certain other offences to be tried summarily

45. Section 52 and Schedule 12 amend the Bail Act 1976 to restrict the grounds on which a person charged with an imprisonable summary offence (or a relevant low-level criminal damage offence) may be refused bail. The restrictive grounds for refusing bail that have previously applied only to non-imprisonable offences are applied to imprisonable summary offences in a new Part 1A of Schedule 1 to the Bail Act 1976, along with three further grounds covering the perceived risk of offending on bail resulting in injury, insufficient information being available to the court to make the bail decision, and exceptions applicable to drug users in certain areas.

46. The grounds for refusing bail that are set out in Schedule 1 to the Bail Act 1976 currently distinguish between imprisonable offences (Part 1 of the Schedule) and non-imprisonable offences (Part II). Schedule 12 to the Criminal Justice and Immigration Act 2008 creates a new Part 1A which sets out more restrictive grounds for withholding bail for imprisonable but summary-only offences. These grounds consist of those in Part II, together with three further exceptions. This new Part 1A will also apply to cases involving criminal damage where the court is clear that the value involved is less than £5000, which are treated as if they were summary only.

47. The new Part 1A therefore replicates the restrictive grounds for withholding bail set out in Part II and has, in addition, these further grounds for withholding bail for this group of offences:

- if it appears to the court that if released on bail, the defendant would commit an offence resulting in physical or mental injury to any person, or that it will put any person in fear of such injury,
- if the court does not have sufficient information to make the remand decision, or
- if the exceptions applicable to drug users in certain areas applies (as set out in paragraphs 6A to 6C of Schedule 1 to the Bail Act 1976).

48. Considerations regarding the imposing of bail conditions are not affected by this amendment.

Exceptions for drug users in certain areas

49. Paragraphs 6A to 6C of Part 1 of Schedule 1 to the Bail Act 1976, which set out the exceptions to bail for drug users under particular circumstances and in certain geographical areas, continue to apply to imprisonable summary only offences.

Criminal Damage offences

50. Section 22 of the Magistrates' Courts Act 1980 requires the court to determine, in the mode of trial hearing for defendants aged 18 years and above, whether the value of the offence of criminal damage exceeds £5,000. If the value is determined as less than £5,000 the case is to be tried summarily; such cases fall under the new Part 1A of the Bail Act.

51. Defendants aged 17 years are subject to the Bail Act 1976 but are not covered by the mode of trial provisions, so in order to enable the court to determine if the bail decision on a 17 year old defendant charged with an offence of criminal damage is brought within the provisions of the new Part 1A, the court is required (by a new section 9A of the Bail Act) to consider (for the purposes of bail only) whether the value of any offence of criminal damage is less than £5,000.

Police bail

52. Bail decisions taken by the police under the Police and Criminal Evidence Act 1994 are not affected by section 52.

Commencement

53. Section 52 and Schedule 12 come fully into effect on 14 July 2008. Bail should be considered under the new terms set out in the amended Schedule 1 to the Bail Act 1976 at any hearing on or after this date.

Section 54: Trial or sentencing in absence of accused in magistrates' courts

54. Section 54 creates a rebuttable presumption that, if defendants fail to attend for trial without good cause, the magistrates' court shall proceed in their absence, unless it appears to the court to be contrary to the interests of justice to do so. Magistrates' courts are also given the power to impose a custodial sentence (or disqualification without first adjourning as was previously the case) in the offender's absence, provided he or she has been bailed to appear on a certain date, and thus told of the date in person, rather than given notice by summons or a requisition.

55. Where an offender is sentenced to imprisonment in his absence, he must be brought before the court before being taken to prison to start his sentence.

Section 55: Extension of powers of non-legal staff

56. Section 7A of the Prosecution of Offences Act 1985 as amended by section 55 extends the range of hearings and proceedings in magistrates' courts where the Crown Prosecution Service (CPS) may be represented by a non-lawyer.

57. A non-lawyer designated by the Director of Public Prosecutions under section 7A of the Prosecution of Offences Act 1985 is known as an Associate Prosecutor (formally Designated Caseworker).

58. In addition to their existing powers, and subject to statutory Instructions issued by the Director of Public Prosecutions under section 7A(3) and (4) of the Prosecution of Offences Act 1985, the amended section will enable an Associate Prosecutor to conduct:

- trials of summary only non-imprisonable offences in magistrates' courts (The Prosecution of Offences Act 1985 as amended allows the restriction on conducting proceedings in respect of imprisonable summary offences to be lifted by order, subject to affirmative procedure). Powers in relation to contested trials will not be exercised on commencement of the section and will initially be limited by Director's Instructions to pathfinder Areas only;
- proceedings in magistrates' courts in relation to certain offences triable only on indictment and associated hearings including bail and the sending of cases to the Crown Court;
- committal proceedings under Section 6 of the Magistrates' Courts Act 1980 (confined through Directors Instructions to non-contested committal proceedings under section 6(2) Magistrates' Courts Act 1980);
- an offence in respect of which a Notice of Transfer has been given under Section 4 of the Criminal Justice Act 1987, or Section 53 of the Criminal Justice Act 1991;
- applications or other proceedings relating to specified 'preventative civil orders'. The section is confined to the following orders: Anti Social Behaviour Orders; Football Banning Orders; Drinking Banning Orders; Parenting Orders and Restraining Orders);
- certain proceedings assigned to the Director of Public Prosecutions by the Attorney General under section 3(2)(g) of the Prosecution of Offences Act 1985 (confined through Director's Instructions to section 2 of the Dogs Act 1871); and
- binding over proceedings in the magistrates' court.

59. The CPS proposes to take a phased approach to the introduction of the extended powers conferred by the section. In order to manage the process the CPS has issued revised Director's Instructions under section 7A(3) and (4) of the Prosecution of Offences Act 1985.

60. Associate Prosecutors may only exercise their designated powers within the remit prescribed by Directors Instructions and associated guidance. Associate Prosecutors summary trial powers will be the subject of further Directors Instructions in due course and the exercise of such powers will, initially, be confined to defined pathfinder Areas only.
61. The revision to Director's Instructions and associated guidance will be available on the CPS website from 14 July 2008: www.cps.gov.uk
62. Other amendments made by the new Act to section 7A of the Prosecution of Offences Act 1985 include the removal of the exemption under the Legal Services Act 2007 that currently exempts CPS Associate Prosecutors from statutory regulation. The Institute of Legal Executives (ILEX) is the regulator of choice and the CPS is currently working with the Institute to introduce a voluntary regulation scheme in preparation for statutory regulation from 1 May 2011, the prescribed date defined by the Act.

Section 72: Offences committed outside the United Kingdom

63. Section 72 amends section 72 of the Sexual Offences Act 2003, which allows for the prosecution of sexual offences against children committed abroad.
64. The existing law allows for the prosecution of a British national or resident of the UK for sexual offences against children under the age of 16 committed overseas, provided that the offence constituted an offence under the law in force in that country, and was considered a sexual offence in England and Wales or in Northern Ireland. Currently these provisions only extend to offences against children under 16, even where the UK offence applies to victims under 18.
65. Following commencement of section 72 it will be possible to prosecute a British national or a resident of the UK who travels abroad to commit sexual offences against children, regardless of whether their actions amount to a criminal offence in the country concerned. In addition, the new offence will apply to sexual offences committed against anyone under 18. The exception to this would be those age-specific offences where the victim must be under 16 or under 13 in order for the offence to be committed.

Section 73 and Schedule 15: Grooming

66. Section 73 and Schedule 15 amend section 15 of the Sexual Offences Act 2003. The current law makes it an offence for a person aged 18 or over to meet intentionally, or to travel with the intention of meeting, a child under the age of 16 in any part of the world, if he has met or communicated with that child on a least two prior occasions, and intends to commit a sexual offence against that child either at the time of the meeting or on a subsequent occasion.
67. Following commencement of section 73 and Schedule 15, an offence will also be committed if an adult has arranged a meeting with a child following two earlier communications and the child travels to meet the offender rather than vice versa. This amendment gives further protection to children from those who attempt to gain a child's trust and confidence in order to arrange to meet the child with the intention of committing a sexual offence against that child.

Section 76: Reasonable force for purposes of self-defence etc.

68. Section 76 establishes a statutory framework for determining what is 'reasonable force' for the purposes of the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which relate to the use of force in the prevention of crime or making an arrest. It does not change the current test that allows the use of reasonable force.
69. Whether the defendant used 'reasonable force' for the purposes of the above defences is to be decided by reference to the circumstances as the person charged with the offence ('D') genuinely believed them to be. The reasonableness of D's belief as to the circumstances is relevant as to whether D genuinely held the belief. If D genuinely did hold that belief, D can rely on it whether or not it was mistaken.
70. The degree of force used cannot be disproportionate, but in deciding whether the degree of force was reasonable, the fact that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action must be considered. Evidence that D only did what he or she honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken for that purpose.

Section 140: Disclosure of information about convictions etc. of child sex offenders to members of the public

Schedule 24: Section 327A of the Criminal Justice Act 2003: meaning of 'child sex offence'

71. Section 140 amends the Criminal Justice Act 2003 by inserting new sections 327A and 327B into this Act (and Schedule 24 introduces a new Schedule 34A to the Criminal Justice Act 2003). These new sections place a statutory duty on MAPPA responsible authorities to consider, in every case, disclosure to members of the public of information in its possession relating to the convictions of any child sex offender being managed by it. This implements Action 3 of the Government's Review of the Protection of Children from Sex Offenders.
72. The consideration of disclosure should be conducted as part of MAPPA responsible authorities' normal statutory functions already established by the Criminal Justice Act 2003. This does not affect authorities' existing statutory powers to disclose information. Disclosure will still need to be made in accordance with their existing common law or prerogative powers to disclose.
73. Decisions to disclose or not should be made in accordance with existing statutory guidance – MAPPA Guidance 2007 Version 2.0 – and take account of the relevant factors highlighted in this guidance which can be found at www.probation.justice.gov.uk/files/pdf/MAPPA%20Guidance%202007%20v2.0.pdf. (This guidance is the latest guidance at the time of publication of this circular – please ensure that subsequent guidance has not been issued before referring to it).
74. In addition to the matters highlighted in the guidance, MAPPA responsible authorities need to be aware that under new sections 327A(2) and (3) of the Criminal Justice Act 2003 there will be a presumption that information will be disclosed where the MAPPA responsible authority has reasonable cause to believe that a child sex offender poses a risk of serious harm to any particular child or children or to children of any particular description, and the disclosure of information to a particular member of the public is necessary for the purpose of protecting the particular child or children, or the children of that description, from serious harm caused by that offender.

75. A child is a person under 18. A child sex offender includes a person convicted or cautioned of an offence listed in new Schedule 34A of the Criminal Justice Act 2003, or an equivalent offence abroad, whether spent or not. 'Serious harm' includes serious physical or psychological harm caused by committing any offence listed in Schedule 34A.
76. Section 327A(4) of the Criminal Justice Act 2003 makes clear that the presumption to disclose is not dependent on a request from the public.
77. Section 327A(5) of the Criminal Justice Act 2003 allows responsible authorities the discretion, when making a disclosure under this section, to disclose such information about the offender's convictions as it considers appropriate. Statutory guidance highlights the factors that should be considered by a responsible authority when considering disclosing information, including the likelihood of a recipient disseminating information. Section 327(5) of the Criminal Justice Act 2003 allows the responsible authority to impose conditions preventing the recipient of the information from disclosing it to others.
78. Section 327A(6) of the Criminal Justice Act 2003 obliges responsible authorities to ensure that, having made a decision that information should be disclosed, it should disclose this information as soon as is reasonably practicable.
79. Section 327A(7) and (8) of the Criminal Justice Act 2003 require that any decision to disclose information or not, and the reasons for such a decision, must be recorded by the MAPPAs responsible authority. Any conditions attached to the disclosure should also be recorded. Statutory guidance provides further information on the procedures to be followed when recording decisions.
80. Section 327A(9) of the Criminal Justice Act 2003 makes it clear that a disclosure should not be made under this section which contravenes the Data Protection Act 1998.
81. Similarly, MAPPAs responsible authorities will need to ensure that any disclosure complies with the Human Rights Act 1998.

Section 141: Sexual offences prevention orders: relevant sexual offences

82. Section 141 amends section 106 of the Sexual Offences Act 2003 in relation to the criteria necessary for a Sexual Offences Prevention Order (SOPO) to be made. It means that the age and sentence criteria found in Schedule 3 to the Sexual Offences Act 2003 are no longer relevant for the purposes of making a SOPO, allowing the police to apply for a SOPO in a wider set of circumstances than previously.
83. A SOPO can be made against anyone convicted of, or cautioned for, one of the offences listed in either Schedule 3 or Schedule 5 to the Sexual Offences Act 2003. Some offences listed in Schedule 3, which lists sexual offences, contain thresholds or conditions in terms of sentence length and type, the age of the offender and victim.
84. However, section 106(14) of the Sexual Offences Act 2003 (as inserted by section 141) provides for those thresholds to be disregarded for the purposes of making a SOPO. The effect of this is that the conditions listed in Schedule 3 to the Sexual Offences Act 2003 in relation to the victim's age, the age of the offender and sentence length will not need to be met for a SOPO to be made; it will be sufficient that an offender has been convicted of or cautioned for one of the sexual offences specified in Schedule 3 to the Sexual Offences Act 2003.

85. The thresholds relating to sentence length or type and the age of the offender or victim set out in Schedule 3 to the Sexual Offences Act 2003 will continue to apply for the purposes of determining whether an offender is subject to the notification requirements.

86. Section 141 applies to England and Wales and Northern Ireland.

Section 142: Notification requirements: prescribed information

87. This section amends the Sexual Offences Act 2003 to allow the Secretary of State to amend, through secondary legislation, the notification requirements placed on those subject to the sex offender notification requirements. This implements Action 13 of the Review of the Protection of Children from Sex Offenders.

88. Currently the information that a relevant offender must notify comprises the offender's date of birth, national insurance number, his name and aliases, his home address and the address of any other premises at which he regularly resides or stays. Section 142 amends sections 83 and 84 of the Sexual Offences Act 2003 to allow the Secretary of State to add to these requirements by making regulations. Section 142 also allows the Secretary of State to amend the frequency with which relevant offenders without a sole or main residence in the United Kingdom are required to notify their details to the police.

89. Further information will be circulated when any changes are made to the notification requirements by regulations made under these provisions.

Schedule 26: Minor and consequential amendments

90. The following paragraphs in Schedule 26 give effect to amendments relating to the Racial and Religious Hatred Act 2006:

91. Paragraph 26 amends the Football Spectators Act 1989 by adding the offences in Part 3A of the Public Order Act 1986 to the list of trigger offences for football banning orders contained in Schedule 1 to the Football Spectators Act 1989.

92. Paragraph 28 amends section 167 of the Broadcasting Act 1990 which confers a power on a justice of the peace, where a relevant offence is suspected, to issue an order requiring the production of a recording of a programme for the purposes of making a copy. When the offence relates to racial hatred, the power does not apply where a warrant could be granted under section 24 of the Public Order Act 1986, and this paragraph 28(3) applies this provision to the equivalent religious hatred offence.

Measures which come into force automatically after two months

93. The following provisions come into effect automatically on 8 July 2008.

Section 69: Indecent photographs of children: England and Wales

94. Section 69 amends section 7 of the Protection of Children Act 1978 to extend the definition of 'photograph' to include derivatives of photographs, such as tracings or other forms of data. As a result, reference to a photograph in the Protection of Children Act 1978 will include tracings or other images, whether made by electronic or other means, that are not in themselves photographs or pseudo-photographs (as defined in the Protection of Children Act 1978) but which are derived from the whole or part of a photograph or pseudo-photograph, or a combination of either or both. This amendment will mean that an offence under section 1 (indecent photographs of children) of the Protection of Children Act 1978 will cover derivatives of indecent photographs or pseudo-photographs, alongside indecent photographs and pseudo-photographs themselves. These derivatives include line-traced and computer traced images, for example, pencil traced images using tracing paper, computer traced images of photographs taken on a mobile phone or images manipulated from photographs using computer software. In such cases the prosecution will have to show that the image or tracing has been derived from an indecent photograph or pseudo-photograph of a child or a combination of both.

95. The definition in section 7 of the Protection of Children Act 1978 also extends to the offence in section 160 of the Criminal Justice Act 1988 relating to possession of indecent photographs or pseudo-photographs of a child.

96. These amendments to the Protection of Children Act 1978 and Criminal Justice Act 1988 bring these images under our forfeiture provisions at section 39 of and Schedule 11 to the Police and Justice Act 2006.

Section 70: Indecent photographs of children: Northern Ireland

97. Section 70 amends the Protection of Children (Northern Ireland) Order 1978. The effect is to make the same changes to corresponding Northern Ireland legislation as section 69 does to the legislation in England and Wales.

Schedule 15 (introduced by section 73): Adoption

98. Paragraphs 5 and 6 of Schedule 15 extend the application of the existing offence of sex with an adult relative (in the Sexual Offences Act 2003) to create an offence where an adoptive parent has consensual sex with their adopted child when he or she is aged 18 or over. The offence does not apply to other adoptive relatives.

99. Where a child has not been adopted, the offence of sex with an adult relative is capable of being committed by the child once he/she reaches the age of 16; where a child has been adopted, the child does not commit the offence unless he/she has reached the age of 18.

100. Paragraphs 3, 4 and 7 of the Schedule make technical amendments to remove discrepancies in the interaction of adoption legislation and sexual offences legislation

Section 79: Abolition of common law offences of blasphemy and blasphemous libel

101. Section 79 abolishes the common law offences of blasphemy and blasphemous libel in England and Wales.

Further information

102. Section 26 of the Act came into force on 27 May 2008. A copy of the Commencement Order, The Criminal Justice and Immigration Act 2008 (Commencement No. 1 and Transitional Provisions) Order 2008 (SI 2008/1466) is available at www.opsi.gov.uk/si/si200814

103. Copies of the Act and Explanatory Notes are available at www.opsi.gov.uk/acts/acts2008a

104. Details of contact points are set out in the annex below.

Yours sincerely

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