EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 1988 (REVIEWS OF SENTENCING) (AMENDMENT) ORDER 2012

2012 No. 1833

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

2. Description

2.1 This instrument amends the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 so as to extend the circumstances in which the Attorney General can refer a case to the Court of Appeal where he considers that the sentencing has been unduly lenient.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part IV of the Criminal Justice Act 1988 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 ('the Unduly Lenient Sentence Scheme'). The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 lists the categories of case or offence in respect of which such a reference may be made.

4.2 This instrument amends the 2006 Order in order to bring the following categories of case or offence within the Unduly Lenient Sentence Scheme.

4.3 First, serious or complex fraud cases where a notice has been issued under section 51B of the Crime and Disorder Act 1998. Section 51B notices result in the sending of the case to the Crown Court. They are the equivalent, in areas where Schedule 3 to the Criminal Justice Act 2003 is in force, of notices of transfer under section 4 of the Criminal Justice Act 1987, which are already covered by the 2006 Order.

4.4 Second, offences involving trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, including attempts to commit these offences and inciting, encouraging and assisting the commission of these offences.

4.5 Third, offences under sections 44 or 45 of the Serious Crime Act 2007 of 'encouraging or assisting' the commission of certain offences covered elsewhere by the Order. The common law offence of inciting the commission of such an offence is already included. That offence is abolished by the

Serious Crime Act 2007. The reference to incitement is not, however, omitted from the 2006 Order because of the possibility that there may still be historic instances of sentences for this offence.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 A notice under section 51B of the Crime and Disorder Act 1998 replaces, in areas where Schedule 3 to the Criminal Justice Act 2003 has been brought into force, a notice of transfer given under section 4 of the Criminal Justice Act 1987, which is covered by the 2006 Order.

7.2 Offences involving trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are analogous with the offences of trafficking for sexual exploitation under sections 57, 58 and 59 of the Sexual Offences Act 2003, which are already listed in the 2006 Order. It is desirable that they should also fall within the Unduly Lenient Sentence Scheme.

7.3 A reference to certain offences of 'encouraging or assisting' the commission of an offence ought to have been added to the existing reference to incitement when the relevant part of the Serious Crime Act 2007 came into force. This instrument puts right that omission.

- ***Consolidation***

7.4 The present amendments are (for England and Wales) the first to be made to the 2006 Order, which itself consolidated previous changes.

8. Consultation outcome

8.1 No public consultation was necessary.

9. Guidance

9.1 No guidance is necessary.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The operation of the Unduly Lenient Sentence Scheme is kept under review by the Attorney General's Office.

13. Contact

13.1 Richard Chown at the Ministry of Justice [Tel: 020 3334 6077 or email: richard.chown@justice.gsi.gov.uk] can answer any queries regarding the instrument.