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SCHEDULES

SCHEDULE 22 **E+W**

AMENDMENTS OF THE SENTENCING CODE AND RELATED AMENDMENTS OF OTHER LEGISLATION

PROSPECTIVE

PART 4 **E+W**

COMMUNITY SENTENCES

Youth rehabilitation orders with intensive supervision and surveillance

- 11 (1) In section 179 (exercise of power to impose youth rehabilitation order: general considerations), after subsection (4) insert—
- “(4A) Nothing in subsection (2) prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender who fails to comply with an order under section 34A (pre-sentence drug testing).”
- (2) In section 180 (exercise of powers to make orders with intensive supervision and surveillance or fostering), after subsection (4) insert—
- “(5) Nothing in subsection (2) prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender who fails to comply with an order under section 34A (pre-sentence drug testing).”
- (3) In section 186 (youth rehabilitation order: exercise of power to impose particular requirements), after subsection (8) insert—
- “(8A) Nothing in subsection (6) prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender who fails to comply with an order under section 34A (pre-sentence drug testing).”

Youth rehabilitation order for offender previously fined

- 12 (1) In section 179 (exercise of power to impose youth rehabilitation order: general considerations), in subsection (2), at the end insert—
- “This is subject to section 179A (persistent offender previously fined).”
- (2) After section 179 insert—

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“179A Exercise of power to make youth rehabilitation order: persistent offender previously fined

- (1) This section applies where—
- (a) the offender is aged 16 or 17 when convicted of the offence,
 - (b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after reaching the age of 16, and
 - (c) despite the effect of section 65 (effect of previous convictions in determining seriousness), the court would not (apart from this section) regard—
 - (i) the current offence, or
 - (ii) the combination of the current offence and one or more associated offences,
 as being serious enough to warrant a youth rehabilitation order.

Paragraph (b) must be read with section 397A (offenders fined at least three times: interpretation).

- (2) The court may make a youth rehabilitation order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make a youth rehabilitation order.
- (3) Those matters are—
- (a) the nature of the offences to which the previous convictions mentioned in subsection (1)(b) relate and their relevance to the current conviction;
 - (b) the time that has elapsed since the offender's conviction of each of those offences.
- (4) Nothing in this section limits the extent to which a court may, in accordance with section 65, treat any previous convictions of the offender as increasing the seriousness of an offence.”

Availability etc of community order

13 In section 202 (availability of community order)—

- (a) in subsection (1), for paragraph (b) substitute—
 - “(b) the seriousness condition is met.”
- (b) after that subsection insert—
 - “(1A) The seriousness condition is that—
 - (a) the offence is punishable with imprisonment by that court, or
 - (b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after reaching the age of 16.

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(1B) Subsection (1A)(b) must be read with section 397A.”

- 14 (1) In section 204 (exercise of power to impose community order: general considerations), in subsection (2), at the end insert—

“This is subject to section 204A (persistent offender previously fined).”

- (2) After that section insert—

“204A Exercise of power to impose community order: persistent offender previously fined

- (1) Subsection (2) applies (in addition to section 204(2)) where—
- (a) a community order is available to a court dealing with an offender by virtue of section 202(1A)(b) (offender fined at least three times), and
 - (b) the offence is not punishable with imprisonment by that court.
- (2) The court may not make a community order unless it also considers that, having regard to all the circumstances including the matters mentioned in subsection (5), it would be in the interests of justice to make a community order.
- (3) Subsection (4) applies where—
- (a) a community order is available to a court dealing with an offender,
 - (b) the offence is punishable with imprisonment,
 - (c) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after reaching the age of 16, and
 - (d) despite the effect of section 65 (effect of previous convictions in determining seriousness), the court would not (apart from this section) regard—
 - (i) the current offence, or
 - (ii) the combination of the current offence and one or more associated offences,as being serious enough to warrant a community sentence.
- (4) The court may make a community order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (5) it would be in the interests of justice to make a community order.
- (5) The matters referred to in subsections (2) and (4) are—
- (a) the nature of the offences to which the previous convictions mentioned in—
 - (i) section 202(1A)(b), or
 - (ii) as the case may be, subsection (3)(c),relate and their relevance to the current offence, and
 - (b) the time that has elapsed since the offender's conviction of each of those offences.

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- (6) Nothing in this section limits the extent to which a court may, in accordance with section 65, treat any previous convictions of the offender as increasing the seriousness of an offence.”

Youth rehabilitation orders and community sentences: references to previous convictions

15 After section 397 insert—

“397A Offenders fined at least three times: interpretation

- (1) This section applies for the purposes of the following provisions (the “relevant provisions”)—

- (a) section 179A(1)(b) (exercise of power to make youth rehabilitation order: persistent offender previously fined),
- (b) section 202(1A)(b) (availability of community order: seriousness condition), and
- (c) section 204A(3)(c) (exercise of power to impose community order: persistent offender previously fined).

- (2) For those purposes, the following do not form part of an offender's sentence—

- (a) a criminal courts charge order (or an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge));
- (b) a compensation order (or an order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders));
- (c) a service compensation order awarded in service disciplinary proceedings;
- (d) a surcharge under section 42 (or an order under section 161A of the Criminal Justice Act 2003 (surcharge));
- (e) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;
- (f) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015.

- (3) For those purposes, it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine.

[^{F1}(3A) Where the court is dealing with the offender for an offence for which the proceedings were instituted before IP completion day (see section 397(5)), the reference in each of the relevant provisions to conviction by a court in the United Kingdom of an offence includes a reference to conviction by a court in a member State of a relevant offence.]

- (4) In each of the relevant provisions, the reference to conviction by a court in the United Kingdom includes a reference to—

- (a) a conviction in proceedings (whether or not before a court) in respect of—
 - (i) a service offence within the meaning of the Armed Forces Act 2006, or

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- (ii) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), or
 - (b) a finding of guilt in—
 - (i) proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence); or
 - (ii) proceedings before a Standing Civilian Court established under section 6 of the Armed Forces Act 1976.
- (5) For the purposes of the relevant provisions and this section, any reference to conviction or sentence, in the context of proceedings mentioned in subsection (4), includes anything that under section 376(1) to (3) of the Armed Forces Act 2006 is to be treated as a conviction or sentence.”

Textual Amendments

F1 Words in Sch. 22 para. 15 inserted by Sentencing Act 2020 (c. 17), **Sch. 22 para. 19(1A)** (as inserted by 2020 c. 17, **Sch. 22 para. 97A** (as amended by The Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020 (S.I. 2020/1520), regs. 1(1), **5(16)**))

Community orders and youth rehabilitation orders for persistent offenders: amendments relating to offences in other member States

F2¹⁶

Textual Amendments

F2 Sch. 22 paras. 16-18 omitted (31.12.2020) by virtue of Sentencing Act 2020 (c. 17), s. 417(9), **Sch. 22 para. 97** (with **Sch. 27**) (as amended by S.I. 2020/1520, regs. 1(1), **5(15)**)

F2¹⁷

Textual Amendments

F2 Sch. 22 paras. 16-18 omitted (31.12.2020) by virtue of Sentencing Act 2020 (c. 17), s. 417(9), **Sch. 22 para. 97** (with **Sch. 27**) (as amended by S.I. 2020/1520, regs. 1(1), **5(15)**)

F2¹⁸

Textual Amendments

F2 Sch. 22 paras. 16-18 omitted (31.12.2020) by virtue of Sentencing Act 2020 (c. 17), s. 417(9), **Sch. 22 para. 97** (with **Sch. 27**) (as amended by S.I. 2020/1520, regs. 1(1), **5(15)**)

19 (1) Section 397A (offenders fined at least three times: interpretation), inserted by paragraph 15, is amended as follows.

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[^{F3}(1A) After subsection (3) insert—

“(3A) Where the court is dealing with the offender for an offence for which the proceedings were instituted before IP completion day (see section 397(5)), the reference in each of the relevant provisions to conviction by a court in the United Kingdom of an offence includes a reference to conviction by a court in a member State of a relevant offence.”]

(2) In subsection (4)(a)—

- (a) in sub-paragraph (i), omit “within the meaning of the Armed Forces Act 2006”;
- (b) after that sub-paragraph (but before the “or” at the end of it) insert—
 “(ia) a member State service offence.”

(3) In subsection (5), after “subsection (4)” insert “ (other than proceedings for a member State service offence) ”.

(4) After subsection (5) insert—

“(6) For the purposes of the relevant provisions, an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done there at the time of the conviction of the offender for the current offence.

(7) In subsections (4) and (5)—

“member State service offence” means an offence which—

- (a) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
- (b) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the offender for the current offence;

“Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006;

“service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State;

“service offence” has the same meaning as in the Armed Forces Act 2006.”

Textual Amendments

- F3** Sch. 22 para. 19(1A) inserted by Sch. 22 para. 97A of this Act (as inserted by [The Taking Account of Convictions \(EU Exit\) \(Amendment\) Regulations 2020 \(S.I. 2020/1520\)](#), regs. 1(1), **5(16)**)

Consequential amendment of section 77 (basis of opinion provisions)

- 20 (1) In section 77, subsection (5) is amended as follows.
- (2) In paragraph (c), after “179,” insert “ 179A, ”.

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(3) In paragraph (d), for “204” substitute “ 202(1A)(b), 204, 204A ”.

Community orders: powers to imprison offender for wilful or persistent breach

21 (1) Schedule 10 (breach etc of community order) is amended as follows.

(2) In paragraph 10 (powers of magistrates' court on breach)—

(a) in sub-paragraph (5), after paragraph (c) insert—

“(d) where—

(i) the community order was made by a magistrates' court,

[^{F4}(ia) the order does not qualify for special procedures for the purposes of paragraph (ba);]

(ii) the offence in respect of which the order was made was not an offence punishable by imprisonment,

(iii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with the offender, in respect of that offence, by imposing a relevant custodial sentence for a term not exceeding 6 months.”

(b) in sub-paragraph (9), after “custodial sentence” insert “ (where the order was made in respect of an offence punishable with such a sentence) ”;

(c) after that sub-paragraph insert—

“(9A) In sub-paragraph (5)(d), “relevant custodial sentence” means—

(a) in the case of an offender who is aged under 21, a sentence of detention in a young offender institution;

(b) in any other case, a sentence of imprisonment.”;

(d) in sub-paragraph (10), after “(5)(c)” insert “ or (d) ”;

(e) in sub-paragraph (11), after “(5)(c)” insert “ or (d) ”.

(3) In paragraph 11 (powers of Crown Court on breach)—

(a) in sub-paragraph (2), after paragraph (c) insert—

“(d) where—

[^{F5}(ai) the community order does not qualify for special procedures for the purposes of paragraph (ba),]

(i) the offence in respect of which the order was made was not an offence punishable by imprisonment, and

(ii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with the offender, in respect of that offence, by imposing a relevant custodial sentence for a term not exceeding 6 months.”;

(b) in sub-paragraph (6), after “custodial sentence” insert “ (where the order was made in respect of an offence punishable with such a sentence) ”;

(c) after that sub-paragraph insert—

“(6A) In sub-paragraph (2)(d), “relevant custodial sentence” means—

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- (a) in the case of an offender who is aged under 21, a sentence of detention in a young offender institution;
- (b) in any other case, a sentence of imprisonment.”;
- (d) in sub-paragraph (7), after “(2)(c)” insert “ or (d) ”.

Textual Amendments

- F4** Words in Sch. 22 para. 21(2)(a) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(r), **Sch. 14 para. 14(2)(a)**
- F5** Words in Sch. 22 para. 21(3)(a) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(r), **Sch. 14 para. 14(2)(b)**

Exceptions to threshold for custodial sentence where offender fails to express willingness to comply with amended requirement

- 22 (1) In Schedule 9 (community orders and suspended sentence orders: requirements), in paragraph 22(5)(b) (power to impose custodial sentence where offender on review of drug rehabilitation requirement where offender fails to express willingness to comply with amended requirement), after “custodial sentence” insert “ (where the order was made in respect of an offence punishable with such a sentence) ”.
- (2) In Schedule 10 (breach, revocation or amendment of community order), in paragraph 18(9)(b) (power of court to re-sentence offender where offender fails to express willingness to comply with treatment requirement as proposed to be amended), after “custodial sentence” insert “ (where the offence is punishable with such a sentence) ”.

Change of residence: duty of responsible officer to apply to court for amendment of order

- 23 In Schedule 10 (breach, revocation and amendment of community order), in paragraph 16, at the end insert—
- “(3) If the permission is given by the responsible officer—
- (a) the officer must apply to the appropriate court to amend the order to specify the new local justice area, and
 - (b) the court must make that amendment.”

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 34A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 1
- s. 80(3)(f) inserted by 2021 c. 17 s. 54(2)
- s. 179(4A) inserted by 2020 c. 17 Sch. 22 para. 11(1)
- s. 179A inserted by 2020 c. 17 Sch. 22 para. 12(2)
- s. 179A(1)(b)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 16(2)
- s. 180(5) inserted by 2020 c. 17 Sch. 22 para. 11(2)
- s. 186(8A) inserted by 2020 c. 17 Sch. 22 para. 11(3)
- s. 202(1A)(1B) inserted by 2020 c. 17 Sch. 22 para. 13(b)
- s. 202(1A)(b)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 17(2)
- s. 204A inserted by 2020 c. 17 Sch. 22 para. 14(2)
- s. 204A(3)(c)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 18(2)
- s. 215(1A)(1B) inserted by 2022 c. 32 s. 149(2)(a)
- s. 215(2A) inserted by 2022 c. 32 s. 149(2)(c)
- s. 226(2)(ba) and word substituted for s. 226(2)(c)(d) by 2020 c. 17 Sch. 22 para. 43
- s. 230(3A) and words inserted by 2020 c. 17 Sch. 22 para. 2
- s. 234(1)(aa) inserted by 2020 c. 17 Sch. 22 para. 27(1)(b)
- s. 234(1)(aa) omitted by 2020 c. 17 Sch. 22 para. 28(1)
- s. 235(3A) inserted by 2020 c. 17 Sch. 22 para. 27(2)
- s. 236(2A) inserted by 2020 c. 17 Sch. 22 para. 29(3)
- s. 236(2A)(b) word substituted by 2020 c. 17 Sch. 22 para. 47(b)
- s. 301(1A)(1B) inserted by 2022 c. 32 s. 149(3)(a)
- s. 301(2A) inserted by 2022 c. 32 s. 149(3)(c)
- s. 323(2A)-(2C) inserted by 2020 c. 17 Sch. 22 para. 85(3)
- s. 343(4) inserted by 2022 c. 32 s. 178(2)
- s. 348A348B inserted by 2022 c. 32 s. 178(4)
- s. 350(6C)(6D) inserted by 2022 c. 32 s. 178(5)
- s. 387A inserted by 2021 c. 17 s. 54(3)
- s. 397A inserted by 2020 c. 17 Sch. 22 para. 15
- s. 397A(4)(a)(ia) inserted by 2020 c. 17 Sch. 22 para. 19(2)(b)
- s. 397A(4)(a)(i) words omitted by 2020 c. 17 Sch. 22 para. 19(2)(a)
- s. 397A(5) words inserted by 2020 c. 17 Sch. 22 para. 19(3)
- s. 397A(6)(7) inserted by 2020 c. 17 Sch. 22 para. 19(4)
- s. 418(2A) inserted by 2021 c. 11 Sch. 13 para. 43(5)
- Sch. 1 para. 13A inserted by 2020 c. 17 Sch. 22 para. 4(a)
- Sch. 10 para. 10(5)(d) inserted by 2020 c. 17 Sch. 22 para. 21(2)(a)
- Sch. 10 para. 10(9A) inserted by 2020 c. 17 Sch. 22 para. 21(2)(c)
- Sch. 10 para. 11(2)(d) inserted by 2020 c. 17 Sch. 22 para. 21(3)(a)
- Sch. 10 para. 11(6A) inserted by 2020 c. 17 Sch. 22 para. 21(3)(c)
- Sch. 10 para. 10(9A) omitted by 2020 c. 17 Sch. 22 para. 74(1)(b)
- Sch. 10 para. 11(6A) omitted by 2020 c. 17 Sch. 22 para. 75(1)(b)
- Sch. 10 para. 10(5)(d) words substituted by 2020 c. 17 Sch. 22 para. 25(a)
- Sch. 10 para. 10(5)(d) words substituted by 2020 c. 17 Sch. 22 para. 74(1)(a)
- Sch. 10 para. 11(2)(d) words substituted by 2020 c. 17 Sch. 22 para. 26(a)
- Sch. 10 para. 11(2)(d) words substituted by 2020 c. 17 Sch. 22 para. 75(1)(a)

- Sch. 17A para. 24A inserted by 2020 c. 17, Sch. 22 para. 79A (as inserted) by 2021 c. 11 Sch. 13 para. 11(20)(m)
- Sch. 18 para. 26A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 80
- Sch. 19 para. 22A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 84
- Sch. 26 para. 13A inserted by 2021 c. 11 Sch. 13 para. 43(7)(a)
- Sch. 26 para. 15(a)(iii) inserted by 2021 c. 11 Sch. 13 para. 43(7)(c)
- Sch. 26 para. 19(a)(ia) inserted by 2021 c. 11 Sch. 13 para. 43(7)(e)(i)
- Sch. 26 para. 20(c) inserted by 2021 c. 11 Sch. 13 para. 43(7)(f)
- Sch. 26 para. 20A inserted by 2021 c. 11 Sch. 13 para. 43(7)(g)
- Sch. 26 para. 24A inserted by 2021 c. 11 Sch. 13 para. 43(7)(i)
- Sch. 26 para. 20A(za) inserted by 2022 c. 32 s. 129(3)(d)
- Sch. 27 para. 16(2)(a)(b) substituted for words by 2021 c. 11 Sch. 13 para. 43(8)