

SCHEDULES

SCHEDULE 27

Section 412

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

CONTINUITY OF THE LAW

Continuity of the law: general

- 1 The substitution of the Sentencing Code for the provisions repealed by this Act does not affect the continuity of the law.

Subordinate legislation etc

- 2 Any subordinate legislation, code of practice, guidance, accreditation, arrangement, notice or notification that—
- (a) is made, issued or given, or has effect as if made, issued or given, under a provision repealed by this Act, and
 - (b) is in force or effective immediately before the commencement date,
- has effect on and after that date, so far as it relates (by reason of paragraph 4 or an amendment made by this Act) to an offence of which the offender is convicted on or after that date, as if made, issued or given under the corresponding provision of the Sentencing Code.

References to provisions of the Sentencing Code

- 3 (1) A reference (express or implied) to a provision of the Sentencing Code, if contained in—
- (a) a document, or
 - (b) a statutory provision that is amended by a specified paragraph of Schedule 24 (see sub-paragraph (2)),
- is to be read (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that corresponding provision.
- (2) The specified paragraphs of Schedule 24 are paragraphs 1, 2, 5, 15(4), 20 to 22, 24, 25, 31(3), 32(5)(a) to (e), 35, 60, 62, 65 to 67, 70(b), 72, 75, 77, 85, 88, 105(3), 108, 109, 111, 114(3), 115, 118 to 121, 128, 132 to 134, 141, 142, 149, 154, 155(2), (4)(a) and (6), 159, 161 to 163, 172(a), 177, 180, 194, 197, 200, 204, 211, 212, 216, 217, 219(3), 222, 243, 250, 259, 261, 262, 268, 279 to 281, 283, 285 to 287, 289(3), 303 to 306, 308, 310, 315, 319, 320, 324, 337, 343 to 345, 347 to 349, 358, 367, 371, 382 to 384, 385(3), 388, 389, 400, 402, 409, 412, 417, 421, 423, 426 and 428.

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References to provisions repealed by this Act

- 4 A reference (express or implied) to a provision repealed by this Act, if contained in—
- (a) a document, or
 - (b) a statutory provision that is not amended by this Act,
- is to be read (so far as the context permits), as respects an offence of which the offender is convicted on or after the commencement date, as being or (according to the context) including a reference to the corresponding provision of the Sentencing Code.

Relationship with Interpretation Act 1978

- 5 Paragraphs 1 to 4 have effect instead of section 17(2) of the Interpretation Act 1978 (but do not affect the application of any other provision of that Act).

Interpretation

- 6 In this Part—
- “document” means any document whenever made, served or issued;
 - “enactment” includes an enactment contained in subordinate legislation;
 - “repeal” includes revoke (where the context permits);
 - “statutory provision” means a provision of an enactment;
 - “subordinate legislation” means orders, regulations or rules.

PART 2

REFERRAL ORDERS

- 7 (1) This paragraph applies where—
- (a) a court makes a referral order in respect of an offence (the “Code offence”), and
 - (b) the offender has been convicted before the commencement date of another offence (the “pre-Code offence”) for which he or she is to be dealt with at the same time.

In this paragraph “referral order” has the meaning given by section 83(1).

- (2) In subsections (2) to (4) of section 89 (making of referral order: effect on court’s other sentencing powers) a reference to an order under the Sentencing Code is to be read, in relation to the pre-Code offence, as a reference to the corresponding order applicable to that offence.
- (3) In subsections (3) to (5) of section 19 of the Powers of Criminal Courts (Sentencing) Act 2000 (making of orders under section 16 of that Act: effect on court’s other sentencing powers) a reference to a way of dealing with the offender is to be read, in relation to the Code offence, as a reference to the corresponding way of dealing with the offender under the Sentencing Code.
- (4) If the court makes an order under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000 (duty and power to refer certain young offenders to youth offender panels) in respect of the pre-Code offence—
 - (a) the order is to be treated as if it were a referral order, and

- (b) accordingly, section 88 (making of referral order: connected offences) applies in relation to the order.

PART 3

YOUTH REHABILITATION ORDERS

Requirements

- 8 In relation to an offence committed before 3 December 2012, paragraph 18 of Schedule 6 (youth rehabilitation orders: requirements) is to be read as if—
- (a) in sub-paragraph (4)(b), the reference to 16 hours were to 12 hours, and
 - (b) in sub-paragraph (5), the reference to 12 months were to 6 months.

Restriction on imposing local authority residence or fostering requirement without legal representation

- 9 In relation to a pre-commencement case (within the meaning of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534)), the references to representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in—
- (a) paragraph C of paragraph 25 of Schedule 6 (restrictions on including local authority residence requirement in youth rehabilitation order), or
 - (b) paragraph D of paragraph 27 of that Schedule (restrictions on including fostering requirement in youth rehabilitation order),
- include representation referred to in paragraph 19(2)(a) of Schedule 1 to the Criminal Justice and Immigration Act 2008 as it had effect immediately before 13 April 2013 (representation funded by the Legal Services Commission as part of the Criminal Defence Service).

Associated offences: offender convicted before and on or after commencement date

- 10 (1) This paragraph applies where—
- (a) a court imposes a youth rehabilitation order on an offender, and
 - (b) at the same time the court imposes an order under section 1 of the Criminal Justice and Immigration Act 2008 (a “2008 Act order”), in respect of an offence of which the offender was convicted before the commencement date.

In this paragraph “youth rehabilitation order” has the meaning given by section 173.

- (2) In section 183—
- (a) a reference to a youth rehabilitation order includes a reference to a 2008 Act order;
 - (b) a reference to a particular kind of youth rehabilitation order includes a reference to the corresponding kind of 2008 Act order;
 - (c) a reference to a particular kind of requirement of a youth rehabilitation order includes a reference to the corresponding kind of requirement of a 2008 Act order.

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PART 4

CUSTODIAL SENTENCES

Detention for breaching DTO supervision requirement

- 11 (1) Section 104B (interaction of orders under section 104(3)(a) with other orders) of the Powers of Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”) (as it applies, despite its repeal by this Act, where a court is dealing with an offender in respect of an offence of which he or she was convicted before the commencement date) has effect as follows.
- (2) In subsection (1), a reference to a period of detention under section 104(3)(a) of the 2000 Act includes a reference to a period of detention under paragraph 3(2)(a) of Schedule 12 to the Sentencing Code.
- (3) In subsection (2)—
- (a) a reference to a detention and training order includes a reference to a detention and training order under section 233 of the Sentencing Code;
 - (b) a reference to section 102(2), (3), (4) or (5) of the 2000 Act includes a reference to section 241(2), (3), (4) or (5) of the Sentencing Code.

Restriction on making community order etc and suspended sentence order

- 12 (1) In section 203 (restriction on making community order and suspended sentence order)—
- (a) a reference to an offence in paragraph (b) or (c) includes a reference to an offence of which the offender was convicted before the commencement date;
 - (b) in relation to such an offence, the reference to a suspended sentence order is to be read as a reference to an order under section 189(1) of the Criminal Justice Act 2003.
- (2) In section 181(6) (restriction on making youth rehabilitation order and suspended sentence order), the reference to a suspended sentence order includes a reference to an order under section 189(1) of the Criminal Justice Act 2003.
- (3) A court may not impose a community sentence, within the meaning given by section 147(1) of the Criminal Justice Act 2003, in respect of an offence if it makes a suspended sentence order in respect of—
- (a) any other offence of which the offender is convicted by or before it, or
 - (b) any other offence for which it deals with the offender.

In this sub-paragraph “suspended sentence order” has the meaning given by section 286(1).

Making detention and training order where offender subject to other order

- 13 (1) In section 237 (making detention and training order where offender subject to other order etc), the second reference in subsection (2) to a detention and training order includes a reference to a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000.

- (2) In section 101 of that Act (detention and training order: consecutive terms etc), the second reference in subsection (3) to a detention and training order includes a reference to a detention and training order under section 233 of the Sentencing Code.

Period on remand etc: effect on term of detention and training order

- 14 In section 239 (period on remand etc: effect on term of detention and training order), the reference in subsection (3) to two or more offences includes a reference to—
- (a) one or more offences of which the offender was convicted before the commencement date, and
 - (b) one or more offences of which the offender was convicted on or after that date.

Accordingly, a reference in that subsection to a detention and training order includes a reference to a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000.

Special custodial sentences for offenders of particular concern

- 15 (1) This paragraph applies where—
- (a) a court is dealing with an offender for two or more associated offences, within the meaning given by section 400,
 - (b) the offences include one that is listed in Schedule 13 (or Schedule 18A to the Criminal Justice Act 2003) (a “listed offence”), and
 - (c) the offender was convicted of at least one of the offences before the commencement date and convicted of at least one of them on or after that date.
- (2) Where the offender was convicted of the listed offence on or after the commencement date—
- (a) the reference in section 265(1)(c)(i) to an extended sentence under section 266 includes a reference to an extended sentence under section 226A of the Criminal Justice Act 2003;
 - (b) the reference in section 265(1)(c)(ii) to a sentence of custody for life includes a reference to a sentence under section 94 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (c) the reference in section 278(1)(c)(i) to an extended sentence under section 279 includes a reference to an extended sentence under section 226A of the Criminal Justice Act 2003.
- (3) Where the offender was convicted of the listed offence before the commencement date, the reference in section 236A(1)(c)(ii) of the Criminal Justice Act 2003 (read with section 236A(5) of that Act) to an extended sentence under section 226A of that Act includes a reference to an extended sentence under section 266 or 279 of the Sentencing Code.

Special custodial sentences for offenders of particular concern: armed forces

- 16 (1) This paragraph applies where—
- (a) the Court Martial is dealing with an offender for two or more associated offences, within the meaning given by section 400,

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- (b) the offences include one that corresponds to an offence that is listed in Schedule 13 (or Schedule 18A to the Criminal Justice Act 2003) (a “listed offence”), and
 - (c) the offender was convicted of at least one of the offences before the commencement date and convicted of at least one of them on or after that date.
- (2) Where the offender was convicted of the listed offence on or after the commencement date, the reference in section 224A(1)(d)(ii) of the Armed Forces Act 2006 to an extended sentence under section 266 or 279 of the Sentencing Code includes a reference to an extended sentence under section 226A of the Criminal Justice Act 2003.
- (3) Where the offender was convicted of the listed offence before the commencement date, the reference in section 224A(1)(d)(ii) of the Armed Forces Act 2006 to an extended sentence under section 226A of the 2003 Act includes a reference to an extended sentence under section 266 or 279 of the Sentencing Code.

Certificates

- 17 A certificate given in accordance with subsection (1), (1A), (2) or (2A) of section 113 of the Powers of Criminal Courts (Sentencing) Act 2000 (certificates of conviction) is evidence, for the purposes of section 313 or 314, of the facts certified by it.
- 18 A certificate by a court under section 232A of the Criminal Justice Act 2003 that a person was convicted in England and Wales of an offence listed in Schedule 15B to that Act is evidence, for the purposes of section 267, 273, 279 or 283, of the fact certified by it.

Restriction on imposing custodial sentence without legal representation

- 19 In relation to a pre-commencement case (within the meaning of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534)), the reference in section 226(7) to representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 includes representation referred to in section 83(3)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 as it had effect immediately before 1 April 2013 (representation funded by the Legal Services Commission as part of the Criminal Defence Service).

PART 5

MISCELLANEOUS

Validity of provision deriving from secondary legislation

- 20 Any question as to the validity of paragraph 30 of Schedule 25, which derives from paragraphs 7 and 9 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), is to be determined as if that paragraph were contained in a statutory instrument made under the powers under which that order was made.

Powers to make consequential etc provision

- 21 On and after the commencement date, any power (however expressed) that was exercisable immediately before that date—
- (a) to make consequential, supplementary or incidental provision in relation to a provision that is restated in the Sentencing Code (a “restated provision”), or
 - (b) to make transitional, transitory or saving provision in relation to a restated provision,
- is exercisable instead in relation to the corresponding provision of the Code.

Exercise of powers in relation to pre-commencement offences

- 22 (1) The following powers may, despite section 2, be exercised in relation to an offence of which the offender is convicted before the commencement date (a “pre-commencement offence”) as well as in relation to an offence of which the offender is convicted on or after that day—
- (a) the power in section 91(5) (to make regulations specifying requirements for persons appointed as members of a youth offender panel);
 - (b) the power in section 194 (to make regulations about court reviews of youth rehabilitation orders);
 - (c) the power in section 217 (to make regulations about court reviews of community orders);
 - (d) the power in section 248(1)(f) (to make regulations specifying accommodation as “youth detention accommodation”);
 - (e) the power in section 394 (to make rules relating to community orders and suspended sentence orders);
 - (f) the power in section 395 (to issue a code of practice about the processing of data from electronic monitoring).
- (2) Anything done under a power referred to in a paragraph of sub-paragraph (1) in relation to a pre-commencement offence has effect as if done under the provision repealed by this Act that corresponds to the provision mentioned in that paragraph.

Exercise of powers to amend amounts

- 23 (1) A reference in sub-paragraph (4) of paragraph 5 or 7 of Schedule 23 to regulations previously made under that paragraph includes a reference to an order previously made under the corresponding provision of section 143 of the Magistrates’ Courts Act 1980.
- (2) Sub-paragraph (3) applies to regulations under paragraph 5, 6, 7, 10, 14 or 17 of Schedule 23 to amend an amount specified in a provision of the Sentencing Code so as to specify a different amount that, immediately before the commencement date, is specified in the corresponding provision repealed by this Act by virtue of an order made under a provision repealed by this Act.
- (3) The regulations are to be treated for the purposes of that paragraph of Schedule 23 as being made and coming into force on the dates on which the order was made and came into force.

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Saving for list of offences applied for other purposes

- 24 The repeal by Schedule 28 of section 224 of the Criminal Justice Act 2003 does not affect Schedule 15 to that Act (certain specified offences) so far as it continues to apply for any purpose on and after the commencement date.

Enforcement of High Court and Court of Appeal fines

- 25 Anything done before the commencement date under a provision of sections 139 and 140 of the Powers of Criminal Courts (Sentencing) Act 2000 as they apply by virtue of subsection (3) of section 140 of the Senior Courts Act 1981 (enforcement of fines and forfeited recognizances) has effect on and after that date as if done under a provision of sections 130 to 132 of the Sentencing Code as they apply by virtue of that subsection.

Breach of restraining order made on acquittal

- 26 In relation to an offence under section 5A of the Protection from Harassment Act 1997 committed before 12 March 2015, the reference to a fine in paragraph (b) of subsection (2E) of that section (inserted by paragraph 144 of Schedule 24) is to be read as a reference to a fine not exceeding the statutory maximum.

Commencement and alteration of Crown Court sentence: legal aid

- 27 (1) In paragraph (b) of the definition of “sentence” in sections 384(4) and 385(8), the reference to an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 includes, in relation to an old case, a reference to an order under section 17(2) of the Access to Justice Act 1999.
- (2) For this purpose “old case” means a pre-commencement case within the meaning of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534) (see regulation 2 of those regulations).