

Status: Point in time view as at 13/04/2015.

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SCHEDULES

SCHEDULE 22

Section 127

DANGEROUS OFFENDERS SUBJECT TO SERVICE LAW ETC

PART 1

SENTENCES FOR DANGEROUS OFFENDERS SUBJECT TO SERVICE LAW ETC

Armed Forces Act 2006 (c. 52)

- 1 The Armed Forces Act 2006 is amended as follows.
- 2 After section 218 and the italic heading “Required or discretionary sentences for particular offences” insert—

“218A Life sentence for second listed offence

- (1) This section applies where—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - (b) the corresponding offence under the law of England and Wales is an offence listed in Part 1 of Schedule 15B to the 2003 Act;
 - (c) the offence was committed after this section comes into force; and
 - (d) the sentence condition and the previous offence condition are met.
- (2) Section 224A(2) of the 2003 Act applies in relation to the offender.
- (3) In section 224A(2)(a) of that Act as applied by subsection (2)—
- (a) the reference to “the offence” is to be read as a reference to the offence under section 42; and
 - (b) the reference to “the previous offence referred to in subsection (4)” is to be read as a reference to the previous offence referred to in subsection (5) of this section.
- (4) The sentence condition is that, but for this section, the Court Martial would, in compliance with sections 260(2) and 261(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A of the 2003 Act as applied by section 219A of this Act.
- (5) The previous offence condition is that—
- (a) at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act (“the previous offence”); and

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- (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section).
- (7) A sentence required to be imposed by section 224A(2) of that Act as a result of this section is not to be regarded as a sentence fixed by law.”
- 3 (1) Section 219 (dangerous offenders aged 18 or over) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Section 225(2) of the 2003 Act applies in relation to the offender.”
- (3) In subsection (3), omit “and (3A)”.

Commencement Information

I1 Sch. 22 para. 3 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

- 4 In the heading of that section for “Dangerous” substitute “ Life sentence for certain dangerous ”.

Commencement Information

I2 Sch. 22 para. 4 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

- 5 After that section insert—

“219A Extended sentence for certain violent or sexual offenders aged 18 or over

- (1) This section applies where—
- a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
 - the corresponding offence under the law of England and Wales is a specified offence;
 - the court is of the required opinion (defined by section 223);
 - the court is not required to impose a sentence of imprisonment for life by section 224A(2) of the 2003 Act (as applied by section 218A of this Act) or section 225(2) of that Act (as applied by section 219 of this Act); and
 - condition A or B is met.
- (2) Condition A is that, at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act.
- (3) Condition B is that, if the court were to impose an extended sentence of imprisonment under section 226A of the 2003 Act as a result of this section,

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the term that it would specify as the appropriate custodial term would be at least 4 years.

(4) Subsections (4) to (9) of section 226A of the 2003 Act apply in relation to the offender.

(5) In section 226A(4) to (9) of the 2003 Act as applied by this section—

- (a) the reference in subsection (6) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
- (b) the reference in subsection (7) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
- (c) the reference in subsection (8)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
- (d) the reference in subsection (8)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.

(6) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.”

6 Omit section 220 (certain violent or sexual offenders aged 18 or over).

Commencement Information

I3 Sch. 22 para. 6 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

7 In section 221 (dangerous offenders aged under 18) for subsection (2) substitute—
“(2) Section 226(2) of the 2003 Act applies in relation to the offender.”

Commencement Information

I4 Sch. 22 para. 7 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

8 In the heading of that section for “Dangerous” substitute “ Life sentence for certain dangerous ”.

Commencement Information

I5 Sch. 22 para. 8 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

9 After that section insert—

“221A Extended sentence for certain violent or sexual offenders aged under 18

(1) This section applies where—

- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);

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- (b) the corresponding offence under the law of England and Wales is a specified offence;
 - (c) the court is of the required opinion (defined by section 223);
 - (d) the court is not required by section 226(2) of the 2003 Act (as applied by section 221 of this Act) to impose a sentence of detention for life under section 209 of this Act; and
 - (e) if the court were to impose an extended sentence of detention under section 226B of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) Subsections (2) to (7) of section 226B of the 2003 Act apply in relation to the offender.
- (3) In section 226B(2) to (7) of the 2003 Act as applied by this section—
- (a) the reference in subsection (4) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
 - (b) the reference in subsection (5) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
 - (c) the reference in subsection (6)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
 - (d) the reference in subsection (6)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (4) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.”
- 10 Omit section 222 (offenders aged under 18: certain violent or sexual offences).

Commencement Information

I6 Sch. 22 para. 10 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

PART 2

CONSEQUENTIAL PROVISION

Juries Act 1974 (c. 23)

- 11 In Part 2 of Schedule 1 to the Juries Act 1974 (persons disqualified from jury service), in paragraph 6(d), after “2003” insert “ (including such a sentence imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006) ”.

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Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))

- 12 In article 6(1) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (sentences excluded from rehabilitation under the Order), in sub-paragraph (g)(iii), after “section” insert “ 226A, 226B,”.

Criminal Justice Act 1982 (c. 48)

- 13 In section 32 of the Criminal Justice Act 1982 (early release of prisoners), in subsection (1A)—
- (a) before “227” insert “ 226A or”, and
 - (b) after “219” insert “, 219A”.

Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

- 14 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 15 In section 99 (conversion of sentence of detention to sentence of imprisonment), in subsection (6)—
- (a) after “226” insert “, 226B”, and
 - (b) after “221” insert “, 221A”.
- 16 In section 106A(1) (interaction with sentence of detention), in the definition of “sentence of detention”—
- (a) before “228”, in the second place it appears, insert “ 226B or”, and
 - (b) before “222” insert “ 221A or”.

Criminal Justice and Court Services Act 2000 (c. 43)

- 17 The Criminal Justice and Court Services Act 2000 is amended as follows.
- 18 In section 62 (release on licence etc: conditions as to monitoring), in subsection (5) (f), after “221” insert “, 221A”.
- 19 In section 64 (release on licence etc: drug testing requirements), in subsection (5) (f), after “221” insert “, 221A”.

Sexual Offences Act 2003 (c. 42)

- 20 In section 131 of the Sexual Offences Act 2003 (young offenders: application), in paragraph (l), before “222” insert “ 221A or”.

Criminal Justice Act 2003 (c. 44)

- 21 In section 237 of the Criminal Justice Act 2003 (meaning of fixed term prisoner etc), in subsection (1B), after paragraph (b) insert—
- “(ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
 - (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;”.

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Armed Forces Act 2006 (c. 52)

- 22 The Armed Forces Act 2006 is amended as follows.
- 23 (1) Section 188 (consecutive custodial sentences) is amended as follows.
- (2) In subsection (2), in paragraph (c)—
- (a) for “228” substitute “ 226B ”, and
- (b) for “222” substitute “ 221A ”.
- (3) In subsection (4), in paragraph (c)—
- (a) before “228” insert “ 226B or ”, and
- (b) before “222” insert “ 221A or ”.
- 24 In section 209 (offenders aged under 18 convicted of certain serious offences: power to detain for specified period), in subsection (7)—
- (a) for “section 226(2)” substitute “ sections 224A and 226(2) ”, and
- (b) for “section 221(2)” substitute “ sections 218A and 221(2) ”.
- 25 In section 211 (offenders aged under 18: detention and training orders), in subsection (4)—
- (a) after “218,” insert “ 218A, ”, and
- (b) for “222” substitute “ 221A ”.
- 26 In section 221(3) (dangerous offenders aged under 18), after “as applied” insert “ by ”.
- 27 In section 223 (the “required opinion” for the purposes of sections 219 to 222), in subsection (1)—
- (a) for “220(1)” substitute “ 219A(1) ”, and
- (b) for “222(1)” substitute “ 221A(1) ”.
- 28 In the heading of that section for “222” substitute “ 221A ”.
- 29 For section 224 (place of detention under certain sentences) substitute—

“224 Place of detention under certain sentences

Section 235 of the 2003 Act (detention under sections 226, 226B and 228) applies to a person sentenced to be detained under section 226(3), 226B or 228 of that Act as applied by section 221, 221A or 222 of this Act.”

- 30 (1) Section 228 (appeals where previous convictions set aside) is amended as follows.
- (2) For subsection (1) substitute—
- “(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).
- (1B) The first case is where—
- (a) a sentence has been imposed on any person under section 224A of the 2003 Act (as applied by section 218A of this Act);
- (b) a previous conviction of that person has been subsequently set aside on appeal; and
- (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (1C) The second case is where—

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- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);
- (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
- (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.

(1D) The third case is where—

- (a) a sentence has been imposed on any person under section 226A of the 2003 Act (as applied by section 219A of this Act);
- (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
- (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.

(1E) The fourth case is where—

- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
- (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
- (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.”

(3) In subsection (2)—

- (a) for “Subsection (3) also applies” substitute “ The fifth case is ”; and
- (b) in paragraph (a) after “226” insert “ of this Act ”.

(4) After subsection (3) insert—

“(3A) Subsection (3B) applies where—

- (a) a sentence has been imposed on a person under section 224A of the 2003 Act (as applied by section 218A of this Act);
- (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
- (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.

(3B) An application for leave to appeal against the sentence mentioned in subsection (3A)(a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.”

(5) In subsection (4), for “Subsection (3) has” substitute “ Subsections (3) and (3B) have ”.

31 In section 237 (duty to have regard to the purposes of sentencing etc), in subsection (3)(b)—

- (a) after “sections” insert “ 218A, ”, and
- (b) before “225(2)” insert “ 224A, ”.

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- 32 In section 246 (crediting of time in service custody: terms of imprisonment and detention), in subsection (6)(b)—
- (a) before “228” insert “ 226B or ”, and
 - (b) before “222” insert “ 221A or ”.
- 33 (1) Section 256 (pre-sentence reports) is amended as follows.
- (2) In subsection (1)(c)—
 - (a) for “220(1)” substitute “ 219A(1) ”, and
 - (b) for “222(1)” substitute “ 221A(1) ”.
 - (3) After subsection (9) insert—

“(10) The reference in subsection (1)(a) to a court forming any such opinion as is mentioned in section 260(2) or 261(2) includes a court forming such an opinion for the purposes of section 218A(4).”
- 34 (1) Section 260 (discretionary custodial sentences: general restrictions) is amended as follows.
- (2) In subsection (1)(b)—
 - (a) before “225(2)” insert “ 224A, ”, and
 - (b) before “219(2)” insert “ 218A, ”.
 - (3) After subsection (4) insert—

“(4A) The reference in subsection (4) to a court forming any such opinion as is mentioned in subsection (2) or section 261(2) includes a court forming such an opinion for the purposes of section 218A(4).

(4B) The reference in subsection (4) to a court forming any such opinion as is mentioned in section 261(2) also includes a court forming such an opinion for the purposes of section 226A(6) or 226B(4) of the 2003 Act (as applied by section 219A or 221A of this Act).”
- 35 (1) Section 261 (length of discretionary custodial sentences: general provision) is amended as follows.
- (2) In subsection (1)—
 - (a) before “225” insert “ 224A, ”, and
 - (b) before “219(2)” insert “ 218A, ”.
 - (3) In subsection (3), for “220, 222” substitute “ 219A, 221A ”.
- 36 In section 273 (review of unduly lenient sentence by Court Martial Appeal Court), in subsection (6)(b)—
- (a) before “225(2)” insert “ 224A, ”, and
 - (b) before “219(2)” insert “ 218A, ”.
- 37 In section 374 (definitions applying for purposes of the whole Act), in the definition of “custodial sentence”, after paragraph (e) (but before the “or” at the end of that paragraph) insert—
- “(ea) a sentence of detention under section 226B of that Act passed as a result of section 221A of this Act;”.

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Counter-Terrorism Act 2008 (c. 28)

- 38 In Schedule 6 to the Counter-Terrorism Act 2008 (notification requirements: application to service offences), in paragraph 5(1)(a), after sub-paragraph (vi) (but before the “or” at the end of that sub-paragraph) insert—
- “(via) detention under section 226B of that Act (extended sentence of detention for certain dangerous offenders aged under 18);”.

PART 3

TRANSITORY PROVISION

- 39 (1) In relation to any time before the repeal of section 30 of the Criminal Justice and Court Services Act 2000 (protection of children: supplemental) by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006, that section has effect with the modification in sub-paragraph (2).
- (2) In subsection (1), in paragraph (dd) of the definition of “qualifying sentence”, after “2003” insert “ (including such a sentence imposed as a result of section 221, 221A or 222 of the Armed Forces Act 2006) ”.

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