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## SCHEDULES

### SCHEDULE 25

#### AMENDMENTS TO THE ARMED FORCES ACT 2006

#### PART 5

##### AMENDMENTS TO CHAPTER 6 OF PART 8: SENTENCES FOR CERTAIN OFFENCES

36 Chapter 6 of Part 8 of the Armed Forces Act 2006 is amended as follows.

##### Commencement Information

**11** Sch. 25 para. 36 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

37 In section 217 (mandatory life imprisonment), for subsection (2) substitute—

- “(2) Where on conviction the offender is 21 or over, the court must sentence the offender to imprisonment for life.
- (3) Where on conviction the offender is aged under 21, the court must pass on the offender a sentence of custody for life under section 275 of the Sentencing Code.
- (4) Subsection (3) does not apply where the offender is liable to be detained under section 218 (detention at Her Majesty's pleasure for offender under 18).”

##### Commencement Information

**12** Sch. 25 para. 37 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

38 (1) Section 218A (life sentence for second listed offence) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (b), for “Part 1 of Schedule 15B to the 2003 Act” substitute “Part 1 of Schedule 15 to the Sentencing Code”;
- (b) in paragraph (c), for “after this section comes into force” substitute “on or after the relevant date”.

(3) After subsection (1) insert—

“(1A) In subsection (1)(c), “relevant date”, in relation to an offence, means the date specified for the corresponding offence (as mentioned in subsection (1)(b)) in Part 1 of Schedule 15 to the Sentencing Code.

(1B) Where the offender is under 21 when convicted of the offence under section 42, section 273(3) of the Sentencing Code (duty of court to impose

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custody for life except in exceptional circumstances) applies in relation to the offender.”

- (4) In subsection (2), for “Section 224A(2) of the 2003 Act” substitute “ Where the offender is 21 or over when convicted of the offence under section 42, section 283(3) of the Sentencing Code (duty of court to impose imprisonment for life except in exceptional circumstances) ”.
- (5) In subsection (3)—
- (a) in the opening words—
    - (i) for “section 224A(2)(a) of that Act” substitute “ sections 273(3)(a) and 283(3)(a) of that Code ”;
    - (ii) for “subsection (2)” substitute “ subsections (1B) and (2) ”;
  - (b) in paragraph (a), for “ “the offence” ” substitute “ “the index offence” ”;
  - (c) in paragraph (b), for “subsection (4)” substitute “ subsection (5) ”.
- (6) In subsection (4)—
- (a) after “more,” insert “ or, in the case of an offender aged under 21 on conviction, a sentence of detention in a young offender institution for 10 years or more, ”;
  - (b) for “section 226A of the 2003 Act” substitute “ section 266 or 279 of the Sentencing Code ”.
- (7) In subsection (5)(a), for “Schedule 15B to the 2003 Act” substitute “ Schedule 15 to the Sentencing Code ”.
- (8) After subsection (5) insert—
- “(5A) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the offence under section 42 was committed.”
- (9) In subsection (6), for “section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section)” substitute “ section 273(5)(b) of the Sentencing Code (see subsections (7) to (12) of that section) or section 283(5)(b) of that Code (see subsections (7) to (12) of that section) ”.
- (10) In subsection (7), for “section 224A(2) of that Act” substitute “ section 273(3) or 283(3) of the Sentencing Code ”.
- (11) In subsection (8), for “and (5)(a)” substitute “ , (5)(a) and (5A) ”.

**Commencement Information**

**I3** Sch. 25 para. 38 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

- 39 (1) Section 219 (life sentence for certain dangerous offenders aged 18 or over) is amended as follows.
- (2) In subsection (1)(b), for “serious offence” substitute “ Schedule 19 offence within the meaning of Part 10 of the Sentencing Code (see section 307 of that Code) ”.
- (3) After subsection (1) insert—

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“(1A) Where the offender is under 21 when convicted of the offence under section 42, section 274(3) of the Sentencing Code (duty to impose custody for life) applies in relation to the offender.”

(4) In subsection (2) for “Section 225(2) of the 2003 Act” substitute “ Where the offender is 21 or over when convicted of the offence under section 42, section 285(3) of the Sentencing Code (duty to impose imprisonment for life) ”.

(5) In subsection (3) for “section 225(2) of the 2003 Act (as applied by subsection (2))” substitute “ sections 274(3) and 285(3) of the Sentencing Code (as applied by subsections (1A) and (2)) ”.

(6) Omit subsection (4).

(7) In subsection (5), for “section 225 of the 2003 Act” substitute “ section 274 or 285 of the Sentencing Code ”.

#### Commencement Information

**I4** Sch. 25 para. 39 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

40 (1) Section 219A (extended sentences for certain violent, sexual or terrorism offenders aged 18 or over) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), at the end insert “ within the meaning of the Sentencing Code (see section 306 of that Code) ”;

(b) for paragraph (d) (but not the “and” following it) substitute—

“(d) the court is not required—

(i) by section 273(3) of the Sentencing Code (as applied by section 218A(1B) of this Act) to impose a sentence of custody for life;

(ii) by section 283(3) of the Sentencing Code (as applied by section 218A(2) of this Act) to impose a sentence of imprisonment for life;

(iii) by section 274(3) of the Sentencing Code (as applied by section 219(1A) of this Act) to impose a sentence of custody for life;

(iv) by section 285(3) of the Sentencing Code (as applied by section 219(2) of this Act) to impose a sentence of imprisonment for life;”.

(3) In subsection (2), for “Schedule 15B to the 2003 Act” substitute “ Schedule 14 to the Sentencing Code ”.

(4) In subsection (3), for “extended sentence of imprisonment under section 226A of the 2003 Act” substitute “ extended sentence of detention in a young offender institution or an extended sentence of imprisonment ”.

(5) For subsections (4) to (6) substitute—

“(4) Where the offender is under 21 when convicted of the offence under section 42, an extended sentence of detention in a young offender institution

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under section 266 of the Sentencing Code is available in respect of the offence.

- (5) Subsections (2) to (5) of section 268 of the Sentencing Code apply where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of detention in a young offender institution under section 266 of the Sentencing Code by virtue of this section.
- (6) In their application to an offender by virtue of subsection (5), subsections (2) to (5) of section 268 of the Sentencing Code are modified as follows—
- (a) subsection (2) has effect as if, for “section 231(2)” there were substituted “ section 261(2) of the Armed Forces Act 2006 ”;
  - (b) subsection (3) has effect as if, after “offences” there were inserted “ or further acts or omissions that would be specified offences if committed in England and Wales ”;
  - (c) in subsection (4)(b), sub-paragraphs (i) and (ii) both have effect as if for “in the case of” there were substituted “ if the offence under section 42 was one for which the corresponding offence under the law of England and Wales was ”.
- (7) Where the offender is 21 or over when convicted of the offence under section 42, an extended sentence of imprisonment under section 279 of the Sentencing Code is available in respect of the offence.
- (8) Subsections (2) to (5) of section 281 of the Sentencing Code apply where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of imprisonment under section 279 of the Sentencing Code by virtue of this section.
- (9) In their application to an offender by virtue of subsection (8), subsections (2) to (5) of section 281 of the Sentencing Code are modified as follows—
- (a) subsection (2) has effect as if, for “section 231(2)” there were substituted “ section 261(2) of the Armed Forces Act 2006 ”;
  - (b) subsection (3) has effect as if, after “offences” there were inserted “ or further acts or omissions that would be specified offences if committed in England and Wales ”;
  - (c) in subsection (4)(b), sub-paragraphs (i) and (ii) both have effect as if for “in the case of” there were substituted “ if the offence under section 42 was one for which the corresponding offence under the law of England and Wales was ”.

**Commencement Information**

**15** Sch. 25 para. 40 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

41 (1) Section 221 (life sentence for certain dangerous offenders aged under 18) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “conduct)” insert “ which was committed on or after 4 April 2005 ”;

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- (b) in paragraph (b), for “serious offence” substitute “ Schedule 19 offence within the meaning of Part 10 of the Sentencing Code (see section 307 of that Code) ”;
- (c) after paragraph (b) (but before the word “and” following it) insert—
  - “(ba) the court considers that the seriousness of—
    - (i) the offence under section 42, or
    - (ii) that offence and one or more offences associated with it,is such as to justify the imposition of a sentence of detention for life.”.
- (3) In subsection (2), for “Section 226(2) of the 2003 Act” substitute “ Section 258(2) of the Sentencing Code (duty to impose detention for life) ”.
- (4) For subsection (3) substitute—
  - “(3) In section 258(2) of the Sentencing Code (as applied by subsection (2)), the reference to section 250 of that Code is to be read as a reference to section 209 of this Act.”
- (5) Omit subsection (5).
- (6) In subsection (6), for “section 226 of the 2003 Act” substitute “ section 258(2) of the Sentencing Code ”.

#### Commencement Information

**16** Sch. 25 para. 41 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 42 (1) Section 221A (extended sentence for certain violent, sexual or terrorism offenders aged under 18) is amended as follows.
- (2) In subsection (1)—
    - (a) in paragraph (b), at the end insert “ within the meaning of the Sentencing Code (see section 306 of that Code) ”;
    - (b) in paragraph (d), for “section 226(2) of the 2003 Act” substitute “ section 258(2) of the Sentencing Code ”;
    - (c) in paragraph (e), omit “under section 226B of the 2003 Act”.
  - (3) For subsections (2) to (4) substitute—
    - “(2) An extended sentence of detention under section 254 of the Sentencing Code is available in respect of the offence.
    - (3) Subsections (2) to (5) of section 256 of the Sentencing Code apply where a court is determining—
      - (a) the appropriate custodial term, and
      - (b) the extension period,of an extended sentence of detention to be imposed on an offender under section 254 of the Sentencing Code by virtue of this section.
    - (4) In their application to an offender by virtue of subsection (3), subsections (2) to (5) of section 256 of the Sentencing Code are modified as follows—

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- (a) subsection (2) has effect as if, for “section 231(2)” there were substituted “ section 261(2) of the Armed Forces Act 2006 ”;
- (b) subsection (3) has effect as if, after “offences” there were inserted “ or further acts or omissions that would be specified offences if committed in England and Wales ”;
- (c) in subsection (4)(b), sub-paragraphs (i) and (ii) both have effect as if for “in the case of” there were substituted “ if the offence under section 42 was one for which the corresponding offence under the law of England and Wales was ”.

**Commencement Information**

**17** Sch. 25 para. 42 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

- 43 (1) Section 223 (the “required opinion” for the purposes of sections 219 to 221A) is amended as follows.
- (2) In subsection (2)—
- (a) for “section 229(2) and (2A) of the 2003 Act” substitute “ subsections (2) and (3) of section 308 of the Sentencing Code ”;
  - (b) for “section 229(1) of that Act” substitute “ subsection (1) of that section ”.
- (3) For subsection (3) substitute—
- “(3) In section 308(2)(a) of the Sentencing Code as applied by this section, the reference to the offence is to be read as a reference to the offence under section 42 of this Act.”
- (4) In subsection (4), in the definition of “serious harm”, for “section 224 of the 2003 Act” substitute “ section 306 of the Sentencing Code ”.

**Commencement Information**

**18** Sch. 25 para. 43 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

- 44 For section 224 (place of detention under certain sentences), substitute—

**“224 Place of detention for extended sentences for offenders aged under 18**

Section 261 of the Sentencing Code (detention in pursuance of extended sentence) applies to detention imposed by virtue of section 221A of this Act as it applies to detention under section 254 of that Code.”

**Commencement Information**

**19** Sch. 25 para. 44 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

- 45 (1) Section 224A (special custodial sentence for certain offenders of particular concern) is amended as follows.
- (2) In subsection (1)—

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- (a) in paragraph (b), for “Schedule 18A to the 2003 Act” substitute “Schedule 13 to the Sentencing Code”;
  - (b) in paragraph (d)—
    - (i) in sub-paragraph (i), after “imprisonment” insert “ or custody ”;
    - (ii) in sub-paragraph (ii), for “imprisonment under section 226A of the 2003 Act” substitute “ detention or imprisonment under section 266 or 279 of the Sentencing Code ”.
- (3) For subsection (2) substitute—
- “(2) If—
- (a) the court imposes a sentence of detention in a young offender institution for the offence, and
  - (b) the offender is aged under 21 when convicted of the offence,
- subsections (2) and (3) of section 265 of the Sentencing Code (term of special sentence) apply in relation to the term of the sentence.
- (2A) If—
- (a) the court imposes a sentence of imprisonment for the offence, and
  - (b) the offender is aged 21 or over when convicted of the offence,
- subsections (2) and (3) of section 278 of the Sentencing Code (term of special sentence) apply in relation to the term of the sentence.”
- (4) In subsection (3), for “and (2)” substitute “ , (2) and (2A) ”.
- (5) For subsection (4) substitute—
- “(4) In Schedule 13 to the Sentencing Code, as applied by subsection (1)(b), the reference in paragraph 10 to section 69 of that Code is to be read as a reference to that section as applied by section 238(6) of this Act.”

**Commencement Information**

**I10** Sch. 25 para. 45 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 46 In section 225 (third drug trafficking offence)—
- (a) in subsection (1)(b), for “section 110 of the Sentencing Act” substitute “ section 313 of the Sentencing Code ”;
  - (b) in subsection (2), for “section 110(2) of that Act” substitute “ section 313(2) of that Code ”.

**Commencement Information**

**I11** Sch. 25 para. 46 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 47 In section 226 (third domestic burglary)—
- (a) in subsection (1)(b), for “section 111 of the Sentencing Act” substitute “ section 314 of the Sentencing Code ”;
  - (b) in subsection (2), for “section 111(2) of that Act” substitute “ section 314(2) of that Code ”.

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**I12** Sch. 25 para. 47 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 48 (1) Section 227 (firearms offences) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (a) (but before the “and”) insert—
- “(aa) the corresponding offence under the law of England and Wales is an offence listed in any of paragraphs 1 to 4 of Schedule 20 to the Sentencing Code;”;
- (b) in paragraph (b), for “the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c.27)” substitute “ that corresponding offence, section 311 of the Sentencing Code ”.
- (3) In subsection (2), for “section 51A(2) of that Act” substitute “ section 311(2) of the Sentencing Code ”.
- (4) In subsection (3)—
- (a) for “section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2))” substitute “ section 311(3)(a) of that Code ”;
- (b) for “section 91 of the Sentencing Act” substitute “ section 250 of that Code ”.

**Commencement Information**

**I13** Sch. 25 para. 48 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 49 (1) Section 227A (offences of threatening with a weapon on public or on school premises) is amended as follows.
- (2) After subsection (1), insert—
- “(1A) Where the offender is aged under 21 at the time of conviction, the court must impose a sentence of detention in a young offender institution for a term of at least 6 months unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.”
- (3) In subsection (2), at the beginning insert “ Where the offender is aged 21 or over at the time of conviction, ”.
- (4) Omit subsection (3).

**Commencement Information**

**I14** Sch. 25 para. 49 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

- 50 (1) Section 228 (appeals where previous convictions set aside) is amended as follows.
- (2) In subsection (1B)(a), for “section 224A of the 2003 Act (as applied by section 218A of this Act)” substitute “ section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) as applied by section 218A of this Act ”.



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- (3) In subsection (1D)(a), for “section 226A of the 2003 Act (as applied by section 219A of this Act)” substitute “ section 266 or 279 of the Sentencing Code (extended sentence for certain violent, sexual or terrorism offenders aged 18 or over) as applied by section 219A of this Act ”.
- (4) In subsection (3A)(a), for “section 224A of the 2003 Act (as applied by section 218A of this Act)” substitute “ section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) as applied by section 218A of this Act ”.

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**Commencement Information**

**I15** Sch. 25 para. 50 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

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