



Armed Forces Act 2006

2006 CHAPTER 52

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

Modifications etc. (not altering text)

- C1** Pt. 8 applied (with modifications) (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(2\)](#)

CHAPTER 1

DEFINITION ETC OF CERTAIN SENTENCES

Service supervision and punishment orders

173 Service supervision and punishment orders

- (1) A service supervision and punishment order is an order that—
 - (a) imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe; and
 - (b) provides that one-sixth of his gross pay for that period is forfeit.
- (2) The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made.
- (3) The requirements that regulations under this section may prescribe include, in particular—
 - (a) requirements to perform activities of a prescribed description;
 - (b) requirements not to use entitlement to leave;and the descriptions of activities that may be prescribed include extra work and drill.

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- (4) A requirement included in regulations under this section may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may—
- (a) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when;
 - (b) provide for the delegation by the commanding officer of any of his functions under the regulations.
- (5) Regulations under this section may prescribe different requirements for different parts of the period of the order.
- (6) In this section “prescribed” means prescribed by regulations under this section.

Commencement Information

- I1** S. 173 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I2** S. 173 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

174 Review of service supervision and punishment orders

- (1) The commanding officer of a person subject to a service supervision and punishment order must, at times prescribed by regulations made by the Defence Council, consider whether the order should continue in force.
- (2) If on a review under subsection (1) the commanding officer decides that the order should not continue in force, he must order that it shall immediately cease to have effect.
- (3) Regulations made by the Defence Council may—
- (a) prescribe criteria to be applied by a commanding officer in deciding whether an order should continue in force;
 - (b) make provision about procedure in relation to orders under subsection (2).
- (4) Where a commanding officer makes an order under subsection (2), there remains forfeit one-sixth of the offender's gross pay for the period—
- (a) beginning with the day the service supervision and punishment order is made; and
 - (b) ending with the day before the date of the commanding officer's order.

Commencement Information

- I3** S. 174 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 174 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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Service compensation orders

175 Service compensation orders

- (1) A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from—
 - (a) the offence of which he has been convicted; or
 - (b) where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration.
 - (2) A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor.
 - (3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of this section as having resulted from the offence, however and by whomever the damage was caused.
 - (4) No service compensation order may be made in respect of—
 - (a) bereavement;
 - (b) funeral expenses; or
 - (c) loss of any other kind suffered by the dependants of a person in consequence of his death.
 - (5) No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless—
 - (a) it is in respect of damage treated by subsection (3) as resulting from an offence of unlawfully obtaining any property; or
 - (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party.
 - (6) Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.
 - (7) For the purposes of subsection (5) a person is not uninsured in relation to the use of a vehicle if—
 - (a) the vehicle is in the public service of the Crown; or
 - (b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 (c. 52) or Article 90(2) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).
- [^{F1}(7A) The court must consider making a service compensation order in any case where it has power to do so.]
- (8) The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so.

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- (9) References in this section to “the court” are references to the court or officer sentencing the offender.

Textual Amendments

- F1** S. 175(7A) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), **ss. 63(2)**, 151(1); [S.I. 2012/2906](#), **art. 2(a)**

Commencement Information

- I5** S. 175 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 175 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

176 Service compensation orders: appeals etc

- (1) A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (2) Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made.
- (3) Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Commencement Information

- I7** S. 176 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I8** S. 176 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

177 Review of service compensation orders

- (1) The appropriate court may, on the application of the person against whom a service compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) and (3).
- (2) The appropriate court may exercise a power conferred by subsection (1) only at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (3) The appropriate court may exercise a power conferred by subsection (1) only if it appears to the court—

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- (a) that the injury, loss or damage in respect of which the service compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order;
 - (b) in the case of a service compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
 - (c) that the person against whom the service compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.
- (4) In this section “the appropriate court” means—
- (a) if the service compensation order was awarded by an officer and subsection (5) applies, the commanding officer of the person against whom the service compensation order was made;
 - (b) in any other case, the Court Martial.
- (5) This subsection applies if the person against whom the service compensation order was made is for the time being—
- (a) subject to service law;
 - (b) a member of a volunteer reserve force; or
 - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

Commencement Information

- I9** S. 177 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 177 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F2}177A Effect of service compensation order on subsequent award of damages in civil proceedings

- (1) This section has effect where—
- (a) a service compensation order has been made in favour of any person in respect of any injury, loss or damage, and
 - (b) a claim by the person in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be decided by a court in England and Wales.
- (2) The damages in the civil proceedings must be assessed without regard to the order.
- (3) But the claimant may recover only an amount equal to the aggregate of—
- (a) any amount by which the damages assessed exceed the compensation, and
 - (b) a sum equal to any portion of the compensation which the person fails to recover (“unrecovered compensation”).
- (4) The claimant may not enforce the judgment, so far as it relates to unrecovered compensation, without the leave of the court.]

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Textual Amendments

- F2** S. 177A inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 2](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

f³Deprivation orders

Textual Amendments

- F3** [Ss. 177B-177F](#) and cross-heading inserted (1.5.2022 for specified purposes, 22.11.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 14\(4\), 24\(1\)](#); S.I. 2022/471, [reg. 2\(f\)](#); S.I. 2023/1102, [reg. 3](#)

177B Deprivation orders: interpretation

- (1) A deprivation order is an order made under this Act which—
 - (a) is made in respect of an offender for an offence, and
 - (b) deprives the offender of any rights in the property to which the order relates.
- (2) In sections 177C and 177E “the decision maker”, in relation to an offender, means—
 - (a) the court by which the person is convicted, or
 - (b) the commanding officer who records a finding that the charge has been proved.
- (3) Nothing in subsection (2) prevents section 376 from applying in relation to this section and sections 177C to 177F.

177C Deprivation order: availability

- (1) Where an offender is convicted of a service offence, the decision maker may make a deprivation order relating to any property to which subsection (2) applies.
- (2) This subsection applies to property which—
 - (a) has been lawfully seized from the offender, or
 - (b) was in the offender’s possession or under the offender’s control when the offender was apprehended for, or charged with, the offence,
 if subsection (3) or (5) applies.
- (3) This subsection applies if the decision maker is satisfied that the property—
 - (a) has been used for the purpose of committing, or facilitating the commission of, a service offence, or
 - (b) was intended by the offender to be used for that purpose.
- (4) For the purposes of subsection (3), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of—
 - (a) disposing of any property to which the offence relates, or
 - (b) avoiding apprehension or detection.
- (5) This subsection applies if—
 - (a) the offence mentioned in subsection (1), or

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- (b) an offence which is taken into consideration by the decision maker in determining the offender's sentence, consists of unlawful possession of the property.
- (6) Where a deprivation order is made, the property to which it relates is to be taken into the possession of an appropriate authority (if it is not already in the possession of such an authority).
- (7) In subsection (6) “appropriate authority” means—
 - (a) a member of a service police force, or
 - (b) if no relevant body has been involved in the matter, the offender's commanding officer.
- (8) In subsection (7) “relevant body” means a service police force or the tri-service serious crime unit.

177D Vehicle to be treated as used for purposes of certain offences

- (1) This section applies where a person—
 - (a) commits an offence to which subsection (2) applies by driving, attempting to drive, or being in charge of a vehicle, or
 - (b) as the driver of a vehicle, commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 170(4) of the Road Traffic Act 1988 (duty to stop, report accident and give information or documents).
- (2) This subsection applies to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
 - (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment,
 - (b) an offence of manslaughter, or
 - (c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).
- (3) The vehicle is to be regarded for the purposes of [section 177C\(3\)](#) (and section 94A(3)(b)(ii)) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).

177E Exercise of power to make deprivation order

- (1) In considering whether to make a deprivation order in respect of any property, the decision maker must have regard to—
 - (a) the value of the property, and
 - (b) the likely financial and other effects on the offender of making the order (taken together with any other order that the decision maker contemplates making).
- (2) Where a deprivation order is available for an offence, the decision maker may make such an order whether or not it deals with the offender in any other way for the offence.

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177F Application of proceeds of property subject to deprivation order

- (1) This section applies where the Court Martial or the Service Civilian Court makes a deprivation order in relation to any property and—
 - (a) the offence was one which resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence.
- (2) The court may also make an order that any proceeds which—
 - (a) arise out of the disposal of the property, and
 - (b) do not exceed a sum specified by the court,
 are to be paid to the person.
- (3) A court may make an order under this section only if satisfied that, but for the inadequacy of the offender's means, it would have made a service compensation order under which the offender would have been required to pay compensation of an amount not less than the amount specified under subsection (2)(b).
- (4) An order under this section has no effect—
 - (a) before the end of the 6 month period mentioned in section [94A\(3\)\(a\)](#), or
 - (b) if a successful claim by a person claiming to be the owner of the property has been made by virtue of section [94\(2\)\(a\)](#).]

[^{F4}Driving disqualification orders

Textual Amendments

- F4** [Ss. 177G-177M](#) and cross-heading inserted (1.5.2022 for specified purposes, 1.4.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 15\(3\)](#), [24\(1\)](#); [S.I. 2022/471](#), [reg. 2\(f\)](#); [S.I. 2023/158](#), [reg. 3](#)

177G Driving disqualification orders

A driving disqualification order is an order made under this Act in respect of an offender that the offender is disqualified, for the period specified in the order, for holding or obtaining—

- (a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988, and
- (b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988).

177H Driving disqualification: availability

Where a driving disqualification order is available to a court, the court may make a driving disqualification order whether or not it also deals with the offender for the offence in any other way.

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177I Disqualification period

- (1) Where a court makes a driving disqualification order in respect of an offender for an offence, the disqualification period must be such period as the court considers appropriate. But this is subject to sections 177J and 177K.
- (2) The disqualification period, in relation to a driving disqualification order made in respect of an offender, is the period specified in the order as the period for which the offender is disqualified for holding or obtaining a driving licence.

177J Extension of disqualification where custodial sentence or service detention also imposed

- (1) This section applies where a court—
 - (a) imposes a custodial sentence or a sentence of service detention on an offender for an offence, and
 - (b) makes a driving disqualification order in respect of the offender for the same offence.
- (2) But this section does not apply where the custodial sentence or sentence of service detention (as the case may be) is—
 - (a) a suspended sentence of imprisonment,
 - (b) a suspended sentence of service detention, or
 - (c) a life sentence in relation to which the court makes a whole life order under section 321(3) of the Sentencing Code (life sentence: minimum term order or whole life order) by virtue of section 261A of this Act (life sentences: further provision).
- (3) The disqualification period must be—
 - (a) the discretionary disqualification period, and
 - (b) the appropriate extension period.
- (4) The discretionary disqualification period is the period which the court would, in the absence of this section, have specified in the driving disqualification order.
- (5) The appropriate extension period for a sentence specified in column 2 is equal to the period calculated in accordance with column 3—

<i>Row</i>	<i>Sentence</i>	<i>Length of appropriate extension period</i>
1	a detention and training order under section 211 (offenders under 18: detention and training orders)	half the term of the detention and training order
2	a sentence of detention under section 224B (special sentence of detention for terrorist offenders of particular concern)	two-thirds of the term imposed pursuant to section 252A(5) of the Sentencing Code by virtue of section 224B(4) of this Act (the appropriate custodial term)

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<i>Row</i>	<i>Sentence</i>	<i>Length of appropriate extension period</i>
3	an extended sentence of detention under section 254 of the Sentencing Code by virtue of section 221A of this Act (extended sentence for certain violent, sexual or terrorism offenders aged under 18)	two-thirds of the term imposed pursuant to section 254(a) of the Sentencing Code (the appropriate custodial term)
4	a sentence of detention in a young offender institution to which subsections (2) and (3) of section 265 of the Sentencing Code apply by virtue of section 224A of this Act (special custodial sentence for certain offenders of particular concern)	two-thirds of the term imposed pursuant to section 265(2)(a) of the Sentencing Code (the appropriate custodial term)
5	an extended sentence of detention in a young offender institution under section 266 of the Sentencing Code by virtue of section 219A of this Act (extended sentence for certain violent, sexual or terrorism offenders aged 18 or over)	two-thirds of the term imposed pursuant to section 266(a) of the Sentencing Code (the appropriate custodial term)
6	a serious terrorism sentence of detention in a young offender institution under section 268A of the Sentencing Code by virtue of section 219ZA of this Act (serious terrorism sentences)	the term imposed pursuant to section 268C(2) of the Sentencing Code (the appropriate custodial term)
7	a sentence of imprisonment to which subsections (2) and (3) of section 278 of the Sentencing Code apply by virtue of section 224A of this Act (special custodial sentence for certain offenders of particular concern)	two-thirds of the term imposed pursuant to section 278(2)(a) of the Sentencing Code (the appropriate custodial term)
8	an extended sentence of imprisonment under section 279 of the Sentencing Code by virtue of section 219A of this Act (extended sentence for certain	two-thirds of the term imposed pursuant to section 279(a) of the Sentencing Code (the appropriate custodial term)

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Row	Sentence	Length of appropriate extension period
9	violent, sexual or terrorism offenders aged 18 or over) a serious terrorism sentence of imprisonment under section 282A of the Sentencing Code by virtue of section 219ZA of this Act (serious terrorism sentences)	the term imposed pursuant to section 282C(2) of the Sentencing Code (the appropriate custodial term)
10	a custodial sentence in respect of which section 244ZA of the Criminal Justice Act 2003 applies to the offender	two-thirds of the sentence
11	a custodial sentence not within any of the preceding entries in respect of which section 247A of the Criminal Justice Act 2003 applies to the offender	two-thirds of the sentence
12	a life sentence in relation to which a minimum term order is made under section 321 of the Sentencing Code by virtue of section 261A of this Act (life sentences: further provision)	the term specified in the minimum term order
13	service detention	half the term of detention imposed
14	any other case	half the custodial sentence imposed.

(6) In the case of a sentence specified in entry 3, 5 or 8 of column 2 in the table which is within section 247A(2A) of the Criminal Justice Act 2003, the corresponding entry in column 3 of the table is to be read with the omission of “two-thirds of”.

(7) Any period determined under subsection (5) which includes a fraction of a day must be rounded up to the nearest number of whole days.

(8) Where—

- (a) an order (“the amending order”) is made under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence), and
- (b) the amending order provides that the proportion of a custodial sentence for the time being referred to in section 243A(3)(a) or 244(3)(a) of that Act (release of prisoners in certain circumstances) is to be read as a reference to another proportion (the “new proportion”),

the Secretary of State may by regulations provide that the table in subsection (5) is to be read as if, in relation to such a sentence, entry 14 specified the new proportion.

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177K Effect of custodial sentence or service detention in other cases

- (1) This section applies where a court makes a driving disqualification order in respect of an offender for an offence, and—
 - (a) it imposes a custodial sentence or a sentence of service detention (other than a suspended sentence) on the offender for another offence, or
 - (b) a custodial sentence or a sentence of service detention previously imposed on the offender has not expired.
- (2) In determining the disqualification period, the court must, so far as it is appropriate to do so, have regard to the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence or a sentence of service detention.
- (3) But the court may not take into account for this purpose any custodial sentence or sentence of service detention that it imposes on the offender for the offence.

177L Requirement to produce licences where driving disqualification order made

A court which makes a driving disqualification order in respect of an offender must require the offender to produce any (and, if more than one, all) of the following held by the offender—

- (a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;
- (b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988);
- (c) a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988).

177M Driving disqualification: power to make equivalent provision to Road Traffic Offenders Act 1988

- (1) The Secretary of State may by regulations make provision in relation to driving disqualification orders which is equivalent to that made by a relevant provision, subject to such modifications as the Secretary of State considers appropriate.
- (2) In this section, “relevant provision” means any of the following provisions of the Road Traffic Offenders Act 1988—
 - (a) section 37 (effect of order of disqualification);
 - (b) section 39 (suspension of disqualification pending appeal);
 - (c) section 40 (power of appellate courts to suspend disqualification);
 - (d) section 42 (removal of disqualification);
 - (e) section 43 (rule for determining end of period of disqualification);
 - (f) section 47 (supplementary provisions);
 - (g) section 48 (exemption from disqualification in certain cases).]

Service community orders (civilians and dismissed servicemen only)

178 Service community orders

- (1) A service community order is an order—

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- (a) imposing on the offender one or more of the requirements [^{F5}listed in column 1 of the community order requirements table in section 201 of the Sentencing Code]; and
- (b) specifying the local justice area in England and Wales, [^{F6}or the locality in Scotland where the offender resides or will reside, or that the offender resides or will reside in Northern Ireland].

[^{F7}(2) The following provisions of the Sentencing Code apply in relation to a service community order under this Act—

- (a) section 203 (restriction on making both community order and suspended sentence order);
- (b) sections 206 and 207 (community order: available requirements);
- (c) section 208(2) and Schedule 9 (requirements relating to community orders), other than paragraph 17(2)(c) of that Schedule (condition for mental health treatment requirement) (see also the modifications to Schedule 9 made by section 179 of this Act);
- (d) section 208(10) to (14) (further requirements);
- (e) section 209 (end date);
- (f) section 210 (specification of local justice area);
- (g) section 217 (power to provide for court review);
- (h) section 212(1) to (3) and (5) (provision of copies);
- (i) sections 213 to 216 (obligations of responsible officer and offender);
- (j) section 218 and Schedule 10 (breach, revocation or amendment of community order) (see also the modifications to Schedule 10 made by section 181 of this Act);
- (k) section 219 and Schedule 11 (transfer of community order to Scotland or Northern Ireland) (see also the modifications to Schedule 11 made by section 180 of this Act);
- (l) section 220 (when order ceases to be in force);
- (m) section 394 (rules relating to community orders);
- (n) section 395 (data from electronic monitoring code).

(3) In the application of those provisions, other than Schedule 10, references to a community order include a service community order.

See section 181(1) of this Act as regards references to a community order in Schedule 10.

(4) In the application of those provisions, other than in Schedules 10 and 11, references to a court include a relevant service court.

See section 180 of this Act as regards references to a court in Schedule 11.]

^{F8}(5)

(6) For the purposes of this section each of the following is a relevant service court—

- (a) the Court Martial;
- (b) the Service Civilian Court;
- (c) the Court Martial Appeal Court;
- (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

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Textual Amendments

- F5** Words in s. 178(1)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 3\(2\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F6** Words in s. 178(1)(b) substituted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), s. 5(2)(3), [Sch. 2 para. 123\(2\)](#) (with s. 5(9)); [S.I. 2012/1236](#), reg. 2
- F7** S. 178(2)-(4) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 3\(3\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F8** S. 178(5) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 3\(4\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I11** S. 178 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I12** S. 178 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F9}179 Review of service community order imposing drug rehabilitation requirement

- (1) In their application to a service community order, paragraphs 21 and 22 of Schedule 9 to the Sentencing Code are modified as follows.
- (2) Paragraph 21 (court review of drug rehabilitation requirement) has effect as if for paragraphs (4) to (6) there were substituted—
- “(4) In this paragraph “the responsible court”, in relation to a service community order imposing a drug rehabilitation requirement, means the Crown Court.”
- (3) Paragraph 22 (periodic review of drug rehabilitation requirement) has effect as if after sub-paragraph (5) there were inserted—
- “(5A) In a case where the order was made by the Service Civilian Court, a term of imprisonment or detention in a young offender institution or fine imposed under sub-paragraph (4)(b) must not exceed—
- (a) in the case of a term of imprisonment or detention in a young offender institution, 6 months;
- (b) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980.
- (5B) Where a sentence is passed under sub-paragraph (4)(b), section 9 of the Criminal Appeal Act 1968 (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.”]

Textual Amendments

- F9** S. 179 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 4](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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Modifications etc. (not altering text)

- C2** S. 179(3) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

[^{F10}180 Transfer of service community order to Scotland or Northern Ireland

- (1) In its application to service community orders, Schedule 11 to the Sentencing Code (transfer of community orders to Scotland or Northern Ireland) applies with the following modifications.
- (2) In paragraphs 1, 3, 5, 6, 7, 9, 11, 12, 13, 15 and 17 the references to a court are to be read as including a relevant service court.
- (3) In paragraph 14, the reference to a court in England and Wales is to be read as including a relevant service court.
- (4) In paragraph 15(d), the reference to the powers of the court making or amending the community order is to be read as a reference to the powers of the Crown Court.
- (5) In paragraph 21(6) to (8), the references to the court which made the order are to be read as including a relevant service court.
- (6) In paragraph 22(1), the reference to the court which made the order or which last amended the order in England and Wales is to be read as a reference to the Crown Court.
- (7) In paragraphs 23 to 26, the references to a court in England and Wales are to be read as references to the Crown Court.
- (8) In this section “relevant service court” has the same meaning as in section 178.]

Textual Amendments

- F10** S. 180 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 5](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

[^{F11}181 Breach, revocation or amendment of service community order

- (1) Schedule 10 to the Sentencing Code (breach, revocation or amendment of community order) applies to a service community order as it applies to a Crown Court community order (within the meaning of that Schedule) with the following modifications.
- (2) Paragraph 1(1) has effect as if, for the definition of “appropriate court” there were substituted—

““appropriate court” means the Crown Court;”.
- (3) Part 1 has effect as if, after paragraph 5, the following paragraph were inserted—

“Re-sentencing powers

- 5A (1) Sub-paragraphs (2) and (3) apply where—

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- (a) this Schedule provides the court with a power to re-sentence an offender for the offence in respect of which a service community order was made, and
 - (b) the service community order was made by the Service Civilian Court.
- (2) A term of imprisonment or detention in a young offender institution imposed under the power to re-sentence the offender must not exceed 6 months.
- (3) A fine imposed under the power to re-sentence the offender must not exceed the prescribed sum (within the meaning of section 32 of the Magistrates' Courts Act 1980).
- (4) Where a sentence is passed by virtue of a power in this Schedule for a court to re-sentence an offender, section 9 of the Criminal Appeal Act 1968 (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.”
- (4) Paragraph 11 has effect as if sub-paragraph (3) were omitted.
- (5) Paragraph 27 has effect as if sub-paragraphs (3)(b), (5) and (6) were omitted.]

Textual Amendments

F11 S. 181 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 6](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

C3 [S. 181\(3\)](#) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); [S.I. 2012/1236](#), reg. 2

Overseas community orders (civilians only)

182 Overseas community orders

- (1) An overseas community order is an order—
- (a) imposing on the offender one or more of the requirements ^{F12}listed in column 1 of the community order requirements table in section 201 of the Sentencing Code^{F13}(but see subsection (1A) below)]; and
 - (b) not specifying anywhere as an area where the offender resides or will reside.
- ^{F14}(1A) The order may not include ^{F15}any of the following—
- (a) a foreign travel prohibition requirement;
 - (b) an alcohol abstinence and monitoring requirement;
 - (c) an electronic compliance monitoring requirement;
 - (d) an electronic whereabouts monitoring requirement.]]
- (2) The order may include a particular requirement ^{F16}... only if the court is satisfied—
- (a) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and

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- (b) that arrangements will be made for the supervision of his compliance with the requirement.

[^{F17}(3) The following provisions of the Sentencing Code apply in relation to an overseas community order under this Act—

- (a) section 203 (restriction on making both community order and suspended sentence order);
 - (b) sections 206 and 207(3) (community order: available requirements);
 - (c) section 208(2) and Schedule 9 (requirements relating to community orders), other than the following provisions of that Schedule—
 - (i) paragraph 3(1)(b) (unpaid work requirement: availability of arrangements);
 - (ii) paragraph 10(3) (requirement to impose electronic monitoring requirement when imposing curfew requirement);
 - (iii) paragraph 12 (requirement to impose electronic monitoring requirement when imposing exclusion requirement);
 - (iv) paragraph 15 (foreign travel prohibition requirement);
 - (v) paragraph 17(2)(c) (condition for mental health treatment requirement);
 - (vi) paragraphs 21 and 22 (periodic review of drug rehabilitation requirement);
 - (vii) paragraphs 25 and 26 (alcohol abstinence and monitoring requirement);
 - (viii) paragraph 28(a) (availability of attendance centre);
 - (ix) paragraphs 29 to 35 (electronic monitoring);
 - (d) section 208(10) to (14) (further requirements) (see also the modifications to section 208(11) made by section 183(2) of this Act);
 - (e) section 209 (end date);
 - (f) section 212(1) to (3) and (5) (provision of copies) (see also the modifications made to section 212 by section 183(3) of this Act);
 - (g) sections 213 to 216 (obligations of responsible officer and offender) (see also the modifications made to sections 214 and 216 by section 183(4) and (5) of this Act);
 - (h) section 218 and Schedule 10 (breach, revocation or amendment of community order) (see also the modifications to Schedule 10 made by Schedule 6A to this Act);
 - (i) section 220 (when order ceases to be in force);
 - (j) section 394 (rules relating to community orders).
- (4) In the application of those provisions to an overseas community order, references to a community order include an overseas community order.
- (5) In the application of those provisions to an overseas community order, other than in Schedule 10, references to a court include a relevant service court.

See Schedule 6A to this Act as regards references to a court in Schedule 10.]

- (6) For the purposes of this section each of the following is a relevant service court—
- (a) the Court Martial;
 - (b) the Service Civilian Court;
 - (c) the Court Martial Appeal Court;

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(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

Textual Amendments

- F12** Words in s. 182(1)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 7\(2\)](#) (with [s. 416\(7\)](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F13** Words in s. 182(1)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(2\)](#), [151\(1\)](#); [S.I. 2012/2906](#), art. 2(a)
- F14** S. 182(1A) inserted (3.12.2012 for specified purposes) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(3\)](#), [151\(1\)](#); [S.I. 2012/2906](#), art. 2(a)
- F15** S. 182(1A)(a)-(d) substituted (1.12.2020) for words by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 7\(3\)](#) (with [s. 416\(7\)](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F16** Words in s. 182(2) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 7\(4\)](#) (with [s. 416\(7\)](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F17** S. 182(3)-(5) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 7\(5\)](#) (with [s. 416\(7\)](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

- C4** S. 182(2) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with [s. 5\(9\)](#)); [S.I. 2012/1236](#), reg. 2

Commencement Information

- I13** S. 182 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I14** S. 182 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F18}183 Overseas community orders: modifications of the Sentencing Code

- (1) The provisions of the Sentencing Code mentioned in section 182(3) apply in relation to an overseas community order with the modifications set out in subsections (2) to (5).
- (2) Section 208(11) has effect as if, before paragraph (a) there were inserted—
 - “(za) the offender is aged under 18 when convicted of the offence in respect of which the order is made;”.
- (3) Section 212 (provision of copies of community order and related documents) has effect as if, in subsection (2), for paragraphs (a) to (d) there were substituted—
 - “(a) to the offender,
 - (b) to the offender's commanding officer,
 - (c) if the offender is aged under 14, to the offender's parent or guardian,
 - (d) if the order imposes an education requirement under Schedule 6 to the Armed Forces Act 2006, to Service Children's Education,
 - (e) to the responsible officer, and
 - (f) to an officer of a provider of probation services that is a public sector provider who is acting at the court.”
- (4) Section 214 (obligations of responsible officer) has effect as if, at the end of subsection (2) there were inserted
 - (c) where appropriate, to take steps to enforce those requirements.”

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- (5) Section 216 (duty of offender to obtain permission before changing residence) has effect as if, in subsection (4), for the words from “has the same meaning” to the end, there were substituted “ means the court that made the order ”.
- (6) Schedule 6 makes provision about the application of the provisions of the Sentencing Code mentioned in section 182(3) where an overseas community order relates to a young offender.]

Textual Amendments

- F18** S. 183 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 8](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

184 Breach, revocation or amendment of overseas community order

[^{F19}Schedule 6A (application of Schedule 10 to the Sentencing Code] to overseas community orders) has effect.

Textual Amendments

- F19** Words in s. 184 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 9](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I15** S. 184 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I16** S. 184 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Conditional or absolute discharge (civilians only)

185 Conditional or absolute discharge

- (1) A conditional discharge is an order discharging the offender subject to the condition that he commits no service offence during a period specified in the order.
- (2) The period specified in the order (“the period of conditional discharge”) must—
 - (a) begin with the date of the order; and
 - (b) not exceed the maximum period for the time being specified in [^{F20}section 80(5) of the Sentencing Code] (maximum period of civilian conditional discharge).
- (3) An absolute discharge is an order discharging the offender absolutely.
- (4) Where by virtue of Schedule 3 a court sentences an offender by conditionally or absolutely discharging him, the sentence must not include any other punishment except a service compensation order [^{F21}, deprivation order or driving disqualification order].

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Textual Amendments

- F20** Words in s. 185(2)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 13](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F21** Words in s. 185(4) inserted (1.5.2022 for specified purposes, 1.4.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), s. 24(1), [Sch. 6 para. 9](#); [S.I. 2022/471](#), reg. 2(f); [S.I. 2023/158](#), reg. 3

Commencement Information

- I17** S. 185 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I18** S. 185 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

186 Commission of further offence by person conditionally discharged

- (1) This section applies where a person who has been conditionally discharged by virtue of Schedule 3 is convicted by the Court Martial or the Service Civilian Court (“the convicting court”) of an offence committed during the period of conditional discharge.
- (2) If the convicting court is the Court Martial, it may deal with him for the offence for which he was conditionally discharged in any way in which the court that conditionally discharged him could deal with him if it had just convicted him of that offence.
- (3) If the convicting court is the Service Civilian Court, it may deal with him for the offence for which he was conditionally discharged in any way in which it could deal with him if it had just convicted him of that offence.
- (4) If a person conditionally discharged is subsequently dealt with under this section for the offence in respect of which the order conditionally discharging him was made, that order ceases to have effect.
- (5) A person who—
 - (a) is sentenced by a court under subsection (2) or (3) for an offence for which he was conditionally discharged, and
 - (b) was not convicted of that offence by that court,
 is to be treated, for the purpose of enabling him to appeal against the sentence under section 285 below or the Court Martial Appeals Act 1968 (c. 20), as if he had been so convicted.
- (6) Where subsection (3) applies and the offence for which the person was conditionally discharged is not one that the Service Civilian Court would have jurisdiction to try, it shall be assumed for the purposes of that subsection that it could have convicted him of the offence.

Commencement Information

- I19** S. 186 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I20** S. 186 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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187 Effect of discharge

- (1) A conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 186.
- (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently dealt with under section 186 for that offence, subsection (1) ceases to apply to the conviction.
- (3) Without prejudice to subsections (1) and (2), a conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made is in any event to be disregarded for the purposes of any enactment or instrument which—
 - (a) imposes any disqualification or disability on convicted persons; or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) In subsection (3)—

“enactment” includes an enactment contained in an Act of the Scottish Parliament, in Northern Ireland legislation or in a local Act;

“instrument” means an instrument having effect by virtue of an Act or Northern Ireland legislation (and “Act” here includes an Act of the Scottish Parliament).
- (5) Subsections (1) to (4) do not affect—
 - (a) any appeal, whether against conviction or otherwise;
 - (b) any right of the offender to rely on his conviction in bar of any subsequent proceedings for the same offence; or
 - (c) the restoration of any property in consequence of the conviction.

Modifications etc. (not altering text)

- C5** S. 187 excluded (31.12.2020) by [European Union \(Future Relationship\) Act 2020 \(c. 29\)](#), [ss. 6\(2\)\(e\)](#), [40\(7\)](#); [S.I. 2020/1662](#), [reg. 2\(f\)](#)
- C6** S. 187 excluded (21.7.2022) by [2003 c. 39](#), [s. 85F\(6\)\(c\)](#) (as inserted by [Domestic Abuse Act 2021 \(c. 17\)](#), [ss. 66](#), [90\(6\)](#); [S.I. 2022/840](#), [regs. 1\(2\)](#), [2\(b\)](#) (with [reg. 3](#)))
- C7** S. 187 excluded (21.7.2022) by [1984 c. 42](#), [s. 31R\(6\)\(c\)](#) (as inserted by [Domestic Abuse Act 2021 \(c. 17\)](#), [ss. 65](#), [90\(6\)](#); [S.I. 2022/840](#), [regs. 1\(2\)](#), [2\(a\)](#) (with [reg. 3](#)))
- C8** S. 187(1) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 158\(3\)\(d\)](#), [182\(5\)](#) (with [s. 180](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 11](#)

Commencement Information

- I21** S. 187 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I22** S. 187 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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CHAPTER 2

CONSECUTIVE SENTENCES

188 Consecutive custodial sentences

- (1) This section applies where a court passes a qualifying custodial sentence on a person in respect of a service offence.
- (2) In this section “qualifying custodial sentence” means—
 - (a) a determinate sentence of imprisonment;
 - [^{F22}(aa) a determinate sentence of detention in a young offender institution;]
 - (b) a determinate sentence of detention under section 209; or
 - (c) a sentence of detention under [^{F23}section 254 of the Sentencing Code] passed as a result of section [^{F24}221A] of this Act.
- (3) The court may direct—
 - (a) that the sentence shall take effect from the end of any other qualifying custodial sentence that the court passes on the person on the same occasion;
 - (b) that the sentence shall take effect from the end of any sentence to which this paragraph applies that was passed on the person on a previous occasion; or
 - (c) that the sentence shall take effect from the date when the person is (or but for the direction would be) released from custody under any sentence to which this paragraph applies that was passed on him on a previous occasion.
- (4) Subsection (3)(b) applies to any of the following sentences, other than one from which the person has already been released early under Chapter 6 of Part 12 of the 2003 Act [^{F25}or under Part 2 of the Criminal Justice Act 1991]—
 - (a) a determinate sentence of imprisonment passed in respect of a service offence or by a civilian court in England and Wales;
 - [^{F26}(aa) a determinate sentence of detention in a young offender institution passed in respect of a service offence or by a civilian court in England and Wales;]
 - (b) a determinate sentence of detention under section 209 of this Act or [^{F27}section 250 [^{F28}or 252A] of the Sentencing Code];
 - [^{F29}(ba) a sentence of detention under section 254 of the Sentencing Code (whether or not passed as a result of section 221A of this Act);]
 - (c) a sentence of detention under section ^{F30}... 228 of the 2003 Act (whether or not passed as a result of section ^{F31}... 222 of this Act).
- [^{F32}(4A) The sentences referred to in subsection (4)(a) and (aa) are to be taken to include a custodial order under—
 - (a) section 71AA of the Army Act 1955 or the Air Force Act 1955 or section 43AA of the Naval Discipline Act 1957, or
 - (b) paragraph 10 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or paragraph 10 of Schedule 4A to the Naval Discipline Act 1957.]
- (5) Subsection (3)(c) applies to any of the following sentences (wherever passed)—
 - (a) a determinate sentence of imprisonment [^{F33}or detention in a young offender institution not falling within paragraph (a) or (aa)] of subsection (4);
 - (b) a sentence not falling within paragraph (b) [^{F34}, (ba)] or (c) of subsection (4) but corresponding to a sentence so falling.

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(6) In subsection (1) “court” does not include a civilian court.

Textual Amendments

- F22** S. 188(2)(aa) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(2)(a)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F23** Words in s. 188(2)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(2)(b)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F24** Word in s. 188(2)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 22 para. 23(2)(b)**; [S.I. 2012/2906](#), art. 2(t)
- F25** Words in s. 188(4) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 25 para. 11**; [S.I. 2009/1028](#), art. 2(b)
- F26** S. 188(4)(aa) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(3)(a)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F27** Words in s. 188(4)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(3)(b)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F28** Words in s. 188(4)(b) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), **Sch. 13 para. 23(2)**
- F29** S. 188(4)(ba) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(3)(c)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F30** Words in s. 188(4)(c) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(3)(d)(i)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F31** Words in s. 188(4)(c) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(3)(d)(ii)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F32** S. 188(4A) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(4)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F33** Words in s. 188(5)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(5)(a)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F34** Word in s. 188(5)(b) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 15(5)(b)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

- C9** S. 188(4)(c) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), **ss. 1, 5(2)(3)** (with s. 5(9)); [S.I. 2012/1236](#), reg. 2

Commencement Information

- I23** S. 188 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I24** S. 188 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

189 Consecutive sentences of service detention

- (1) A court which passes a sentence of service detention on a person may direct that the sentence shall take effect from the end of any other sentence of service detention—
- that has been passed on him on a previous occasion; or
 - that the court passes on him on the same occasion.
- (2) In subsection (1) “court” does not include the Summary Appeal Court.

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- (3) Where an officer or the Summary Appeal Court awards a person a term of service detention, the officer or court may direct that the award shall take effect from the end of any other sentence of service detention that has been passed on him on a previous occasion.
- (4) This section is subject to section 244 (limit on combined term of sentences of service detention).

Commencement Information

- I25** S. 189 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I26** S. 189 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

CHAPTER 3

SUSPENDED SENTENCE OF SERVICE DETENTION

190 Suspension of sentence of service detention

- (1) A court which, or officer who, passes a sentence of service detention may order that the sentence shall not have effect unless—
- (a) during a period specified in the order (“the operational period”) the offender commits another service offence or [^{F35}an offence under the law of any part of the British Islands]; and
 - (b) a court or officer orders under section 191 or 193 that the sentence shall take effect.
- [^{F36}(2) The operational period must be a period of not less than 3 months beginning with the date of the order made under this section.
- (2A) The maximum length of the operational period is—
- (a) where subsection (2B) applies, 24 months; and
 - (b) otherwise, 12 months.
- (2B) This subsection applies where the order under this section is made by—
- (a) the Court Martial,
 - (b) the Court Martial Appeal Court, or
 - (c) the Supreme Court on an appeal brought from the Court Martial Appeal Court, except where the order is made in circumstances in which Schedule 3A applies (sentencing powers in cases involving election under section 129 for trial by Court Martial) or on an appeal arising out of a case in which that Schedule applied.]
- (3) In this Act “suspended sentence of service detention” means a sentence to which an order under this section relates.

Textual Amendments

- F35** Words in s. 190(1)(a) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 14; S.I. 2012/669, art. 4\(d\)](#)

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F36 S. 190(2)-(2B) substituted for s. 190(2) (1.7.2019) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 6(1), 19(1)** (with s. 6(2)(3)); [S.I. 2019/961](#), reg. 2(2)

Commencement Information

I27 S. 190 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

I28 S. 190 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

191 Activation by Court Martial of suspended sentence of service detention

- (1) The Court Martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of service detention passed on him.
- (2) The Court Martial may also make an order under subsection (3) if—
 - (a) the Court Martial has passed a suspended sentence of service detention on a person;
 - (b) the person has been convicted of another service offence, or [^{F37}an offence under the law of any part of the British Islands], committed during the operational period of the suspended sentence; and
 - (c) the person appears or is brought before the Court Martial following the issue of a summons or warrant under subsection (6).
- (3) An order under this subsection is an order—
 - (a) that the suspended sentence shall take effect with the original term unaltered; or
 - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
 - (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.
- (5) Where—
 - (a) by virtue of subsection (2) the Court Martial orders that a suspended sentence shall take effect, and
 - (b) the conviction mentioned in subsection (2)(b) is a conviction by an officer or the Summary Appeal Court,any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.
- (6) If it appears to the Court Martial—
 - (a) that subsection (2)(a) and (b) apply, and
 - (b) that the offender has not been dealt with in respect of the suspended sentence, the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.
- (7) In subsection (2)(a) the reference to the Court Martial includes—

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- (a) the Court Martial Appeal Court; and
 - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court.
- (8) This section is subject to section 244 (limit on combined term of sentences of service detention).

Textual Amendments

F37 Words in s. 191(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 14](#); [S.I. 2012/669](#), art. 4(d)

Commencement Information

I29 S. 191 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

I30 S. 191 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

192 Activation by Court Martial: appeals

- (1) This section applies where an order under section 191 is made.
- (2) For the purposes of the Court Martial Appeals Act 1968 (c. 20)—
 - (a) the order is to be treated as a sentence passed on the offender by the Court Martial for the offence for which the suspended sentence was passed; and
 - (b) if the offender was not convicted of that offence by the Court Martial, he is to be treated for the purpose of enabling him to appeal against the order as if he had been so convicted.
- (3) For the purposes of any appeal against the order references in section 16A of that Act to passing a sentence include making an order.
- (4) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

Commencement Information

I31 S. 192 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

I32 S. 192 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

193 Activation by CO of suspended sentence of service detention

- (1) This section applies in relation to a suspended sentence of service detention passed on an offender by an officer or the Summary Appeal Court.
- (2) If—
 - (a) an officer records a finding that a charge against the offender in respect of an offence committed during the operational period of the suspended sentence is proved, or
 - (b) the offender is convicted of [^{F38}an offence under the law of any part of the British Islands] which was committed during that operational period, and subsequently appears before his commanding officer,

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the officer may (subject to section 194) make an order under subsection (3).

- (3) An order under this subsection is an order—
- (a) that the suspended sentence shall take effect with the original term unaltered; or
 - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
- (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the offender on a previous occasion or which the officer passes on the offender on the same occasion as he makes the order.
- (5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to section 292 (postponement of commencement of suspended sentence on activation by CO).

Textual Amendments

F38 Words in s. 193(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 14; S.I. 2012/669, art. 4\(d\)](#)

Commencement Information

I33 S. 193 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

I34 S. 193 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

194 Activation by CO: maximum term

- (1) The term of a suspended sentence as it takes effect by virtue of an order under section 193 must not exceed 28 days unless the officer has extended powers for the purposes of this section.
- (2) If—
- (a) section 193(2)(a) applies and the officer awards a term of service detention in respect of the offence mentioned there (“the new sentence”), and
 - (b) the officer makes an order under section 193 and the order provides for the suspended sentence to take effect from the end of the new sentence,
- the aggregate of the terms of the two sentences must not exceed 28 days or, if the officer has extended powers for the purposes of this section, 90 days.
- (3) Nothing in subsection (2) affects section 133 (which determines the maximum length etc of the new sentence).
- (4) An officer has extended powers for the purposes of this section if he has, [^{F39}within the relevant time (defined by section 194A)] —
- (a) applied to higher authority for extended powers for the purposes of this section; and
 - (b) been notified by higher authority that his application has been granted.

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(5) An officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

^{F40}(6)

(7) Section 193 is subject to section 244 (limit on combined term of sentences of service detention).

Textual Amendments

F39 Words in s. 194(4) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 15\(2\)](#); [S.I. 2012/669](#), art. 4(d)

F40 S. 194(6) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 15\(3\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)

Commencement Information

I35 S. 194 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

I36 S. 194 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F41}194A Extended powers of activation: time for obtaining

- (1) In section 194(4) “within the relevant time” means—
- (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
 - (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.
- (2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the hearing—
- (a) a charge is amended under section 123(2)(a);
 - (b) a charge is substituted for another charge under section 123(2)(b); or
 - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
 - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of section 194(4) as made within the relevant time.]

Textual Amendments

F41 S. 194A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 16](#); [S.I. 2012/669](#), art. 4(d)

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195 Suspended sentences: powers of SAC

- (1) For the purposes of Chapters 2 and 3 of Part 6 (appeals and reviews), an order under section 193 is to be treated as a punishment awarded for the offence for which the suspended sentence was awarded.
- (2) Where an order under section 193 was made by virtue of a finding within section 193(2)(a)—
 - (a) any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of it is for the purposes of Chapter 2 of Part 6 to be treated as also being an appeal or application for leave to appeal against the order;
 - (b) any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment.
- (3) Subsections (4) to (7) apply on an appeal to the Summary Appeal Court in a case in which section 193(2)(a) applied (power of CO to activate suspended sentence following finding of guilt).
- (4) If the officer made an order under section 193, the Summary Appeal Court may (as an alternative to confirming the order)—
 - (a) quash the order; or
 - (b) make, in substitution for the order, any order under that section that the officer could have made.
- (5) If the officer did not make an order under that section, the Summary Appeal Court may make any order under that section that the officer could have made.
- (6) Section 147(3) has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if paragraph (b)(ii) were omitted.
- (7) But the court may not exercise its powers under section 147(3) or subsection (4) or (5) above in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer.
- (8) On an appeal against an order under section 193 made by virtue of section 193(2)(b), the Summary Appeal Court may (as an alternative to confirming the order)—
 - (a) quash the order; or
 - (b) make, in substitution for the order, any order under section 193 that—
 - (i) the officer could have made; and
 - (ii) is no more severe than the order appealed against.
- (9) In determining in any case—
 - (a) whether to substitute an order under section 193, or
 - (b) the terms of any such substituted order,the Summary Appeal Court must take account of any period of the suspended sentence that the appellant served.

Commencement Information

I37 S. 195 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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I38 S. 195 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

CHAPTER 4

IMPRISONMENT FOR TERM OF [^{F42}TWO YEARS OR LESS]

Textual Amendments

F42 Words in Pt. 8 Ch. 4 heading substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 17](#) (with [s. 416\(7\), Sch. 27](#)); [S.I. 2020/1236, reg. 2](#)

F43
...

Textual Amendments

F43 S. 196 cross-heading omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 18](#) (with [s. 416\(7\), Sch. 27](#)); [S.I. 2020/1236, reg. 2](#)

^{F44}**196 Term of sentence etc**

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Textual Amendments

F44 S. 196 omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 18](#) (with [s. 416\(7\), Sch. 27](#)); [S.I. 2020/1236, reg. 2](#)

Imprisonment with or without “custody plus” order

^{F45}**197 Imprisonment with or without a custody plus order**

.....

Textual Amendments

F45 Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 10 para. 41\(3\)](#); [S.I. 2012/2906, art. 2\(h\)](#)

^{F45}**198 Transfer to Scotland or Northern Ireland of custody plus order**

.....

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Textual Amendments

F45 Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); S.I. 2012/2906, art. 2(h)

^{F45}199 Revocation and amendment of custody plus orders

.....

Textual Amendments

F45 Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); S.I. 2012/2906, art. 2(h)

Suspended sentences of imprisonment

[^{F46}200 Suspended sentence orders

(1) In the following provisions of the Sentencing Code, “court” includes a relevant service court—

- (a) section 264 (suspended sentence order for offender under 21: availability);
- (b) section 277 (suspended sentence order for person aged 21 or over: availability);
- (c) in Chapter 5 of Part 10 (suspended sentences)—
 - (i) section 286 (suspended sentence order);
 - (ii) section 292 (power to impose requirements);
 - (iii) section 298 (provision of copies of order etc);
 - (iv) section 302 (duty to obtain permission before changing residence);
- (d) Schedule 9 (community requirements), other than paragraphs 21 and 22 (review of drug rehabilitation requirement);
- (e) in Schedule 17 (transfer of suspended sentence orders to Scotland and Northern Ireland)—
 - (i) paragraph 1 (restriction on making relevant suspended sentence order where offender resides in Scotland);
 - (ii) paragraph 4 (restriction on making relevant suspended sentence order where offender resides in Northern Ireland);
 - (iii) Part 3 (making of orders);

and the provisions of the Sentencing Code relating to suspended sentence orders apply accordingly to suspended sentence orders made by a relevant service court.

(2) In their application to a suspended sentence order made by a relevant service court, the provisions of the Sentencing Code relating to suspended sentence orders are modified as set out in—

- (a) sections 200A to 204, and
- (b) Schedule 7 (modifications of Schedule 16 to the Sentencing Code (breach or amendment of suspended sentence order and effect of further conviction)).

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Textual Amendments

F46 Ss. 200, 200A substituted (1.12.2020) for s. 200

by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 19](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

200A Modifications of section 286 of the Sentencing Code

Section 286 of the Sentencing Code has effect in relation to a suspended sentence order made by a relevant service court as if—

(a) after subsection (2) there were inserted—

“(2A) But a court may not specify a requirement to be complied with outside the United Kingdom.”;

(b) in subsection (3), for paragraph (a) (but not the “or” after it) there were substituted—

“(a) commits during the operational period—

(i) another service offence (within the meaning of the Armed Forces Act 2006), or

(ii) an offence under the law of any part of the British Islands,”].

Textual Amendments

F46 Ss. 200, 200A substituted (1.12.2020) for s. 200

by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 19](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

^{F47}201 Order without community requirements: provisions not applying

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Textual Amendments

F47 S. 201 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 16](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

202 Order with community requirements: disapplication of certain provisions

The following provisions of [^{F48}the Sentencing Code] do not apply in relation to a suspended sentence order with community requirements made by a relevant service court—

[^{F49}paragraph 17(2)(c) of Schedule] (condition for mental health treatment requirement);

[^{F50}section 298(4)] (requirement to give copy of order to magistrates' court).

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Textual Amendments

- F48** Words in s. 202 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 20\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F49** Words in s. 202 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 20\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F50** Words in s. 202 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 20\(c\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I39** S. 202 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I40** S. 202 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F51}203 Review of order with community requirements

- (1) Section 293 of the Sentencing Code (power to provide for review of suspended sentence order) has effect in relation to a suspended sentence order made by a relevant service court as if for subsections (4) to (6) there were substituted—

“(4) In this section “the responsible court” in relation to a suspended sentence order means the Crown Court.”

- (2) In their application to a suspended sentence order made by a relevant service court, paragraphs 21 and 22 of Schedule 9 to the Sentencing Code are modified as follows.
- (3) Paragraph 21 (court review of drug rehabilitation requirement) has effect as if for sub-paragraphs (4) to (6) there were substituted—

“(4) In this paragraph “the responsible court”, in relation to a suspended sentence order made by a relevant service court imposing a drug rehabilitation requirement, means the Crown Court.”

- (4) Paragraph 22 (periodic review of drug rehabilitation requirement) has effect as if after sub-paragraph (5) there were inserted—

“(5A) In a case where the order was made by the Service Civilian Court, a term of imprisonment or detention in a young offender institution or fine imposed under sub-paragraph (4)(b) must not exceed—

- (a) in the case of a term of imprisonment or detention in a young offender institution, 6 months;
- (b) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980.

(5B) Where a sentence is passed under sub-paragraph (4)(b), section 9 of the Criminal Appeal Act 1968 (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.”.]

Textual Amendments

- F51** S. 203 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 21](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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Modifications etc. (not altering text)

- C10** S. 203(4) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

[^{F52}204 Transfer to Scotland or Northern Ireland of order with community requirements

Schedule 17 to the Sentencing Code (transfer of suspended sentence orders to Scotland or Northern Ireland) has effect in relation to a suspended sentence order made by a relevant service court as if—

- (a) in paragraph 23, sub-paragraph (1)(b) and (c) were omitted;
- (b) in paragraph 25, sub-paragraphs (b) and (c) were omitted;
- (c) in paragraph 38, sub-paragraph (3)(b) were omitted;
- (d) in paragraph 41(1), for the definition of “original court” there were substituted—

““original court”, in relation to an SSSO or an NISSO, means the Crown Court;”.]

Textual Amendments

- F52** S. 204 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 22](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

[^{F53}205 Amendment of order with community requirements

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Textual Amendments

- F53** S. 205 omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 23](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

[^{F54}206 Suspended sentence: further conviction or breach of community requirement

.....

Textual Amendments

- F54** S. 206 omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 24](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Supplementary

[^{F55}207 Definitions for purposes of Chapter

In this Chapter—

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“relevant service court” means any of the following—

- (a) the Court Martial;
- (b) the Service Civilian Court;
- (c) the Court Martial Appeal Court;
- (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court;

“suspended sentence order” has the same meaning as in the Sentencing Code (see section 286(6) of that Code);

“suspended sentence order with community requirements” means a suspended sentence order that specifies one or more community requirements (see section 286(2) of that Code.)]

Textual Amendments

- F55** S. 207 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 25](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

CHAPTER 5

YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS

Prohibition on imposing imprisonment on persons under 18

208 Prohibition on imposing imprisonment on persons under ^[F56]21

A person who is aged under ^[F57]21 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

Textual Amendments

- F56** Word in [s. 208 heading](#) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 28\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F57** Word in [s. 208](#) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 28\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I41** S. 208 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I42** S. 208 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Detention for certain serious offences

209 Offenders under 18 convicted of certain serious offences: ^[F58]detention for specified period

- (1) Subsection (5) (power to pass sentence of detention) applies where—

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- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) the case is within any of subsections (2) to (4).
- (2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—
- (a) an offence punishable in the case of an offender aged [^{F59}21] or over with imprisonment for 14 years or more; and
 - (b) not an offence the sentence for which is fixed by law;
- [^{F60}and the case does not fall within section 221 or 227 (see subsections (4), (5B) and (5C)).]
- (3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—
- (a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);
 - (b) section 13 of that Act (child sex offences committed by children or young persons);
 - (c) section 25 of that Act (sexual activity with a child family member); or
 - (d) section 26 of that Act (inciting a child family member to engage in sexual activity);
- [^{F61}and the case does not fall within section 221 (see subsection (5B)).]
- (4) The case is within this subsection if [^{F62}—
- (a) it falls within section 227(1) (certain firearms offences), and
 - (b) the court is of the opinion mentioned in section 227(2) (exceptional circumstances justifying not imposing the required sentence).]

(5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.

[^{F63}(5A) Subsection (5D) (duty to pass sentence of detention) applies where—

 - (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) the case is within subsection (5B) or (5C).

(5B) The case is within this subsection if it falls within section 221 (life sentence for certain dangerous offenders aged under 18).

(5C) The case is within this subsection if—

 - (a) it falls within section 227(1) (certain firearms offences), and
 - (b) the Court Martial is not of the opinion mentioned in section 227(2) (exceptional circumstances justifying not imposing the required sentence).

(5D) Where this subsection applies, the court must pass a sentence of detention under this section.]

(6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged [^{F64}21] or over) as may be specified in the sentence.

(7) Subsections (5) [^{F65}, (5D)] and (6) are subject to (in particular)—

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F66
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sections 260 and 261 (general restrictions on custodial sentences).

Textual Amendments

- F58** Word in s. 209 heading substituted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(a\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F59** Word in s. 209(2)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 29\(2\)](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F60** Words in s. 209(2) inserted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(b\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F61** Words in s. 209(3) inserted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(c\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F62** S. 209(4)(a)(b) substituted for words (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(d\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F63** S. 209(5A)-(5D) inserted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(e\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F64** Word in s. 209(6) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 29\(3\)](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F65** Word in s. 209(7) inserted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(f\)\(i\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2
- F66** Words in s. 209(7) omitted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by virtue of [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\), s. 5\(2\)\(3\), Sch. 2 para. 123\(3\)\(f\)\(ii\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

Commencement Information

- I43** S. 209 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I44** S. 209 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

210 Detention under section 209: place of detention etc

- (1) A person sentenced to be detained under section 209 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

Modifications etc. (not altering text)

- C11** S. 210 modified (E.W.) (1.12.2020) by [Sentencing Act 2020 \(c. 17\), ss. 245\(1\)\(2\)\(d\)\(4\), 416\(1\)](#) (with ss. 2, 245(3), 398(1), 406, Sch. 27); S.I. 2020/1236, reg. 2

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Commencement Information

- I45** S. 210 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I46** S. 210 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

[^{F67} **210A Offenders under 21: offences other than murder; discretionary custody for life**

- (1) This section applies where a person aged at least 18 but under 21 is convicted by the Court Martial of an offence—
 - (a) for which the sentence is not fixed by law, but
 - (b) which is punishable in the case of a person aged 21 or over with imprisonment for life.
- (2) If the court considers that a sentence for life would be appropriate, it is to sentence the offender to custody for life under section 272(2)(a) of the Sentencing Code.
- (3) Sections 260 (threshold for imposing discretionary custodial sentence) and 261 (length of discretionary custodial sentence: general provision), in particular, apply for the purposes of subsection (2).

Textual Amendments

- F67** Ss. 210A, 210B inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 30** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

- C12** [S. 210A](#) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), **ss. 1, 5(2)(3)** (with s. 5(9)); [S.I. 2012/1236](#), reg. 2

210B Offenders under 21: power to impose detention in a young offender institution

- (1) A sentence of detention in a young offender institution is available to the Court Martial or the Service Civilian Court dealing with an offender for an offence where—
 - (a) the offender is aged at least 18 but under 21 when convicted,
 - (b) the offence is punishable with imprisonment in the case of a person aged 21 or over, and
 - (c) the court is not required to pass a sentence of—
 - (i) detention at Her Majesty's pleasure, or
 - (ii) custody for life.
- (2) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for the offence in the case of a person aged 21 or over.
- (3) The minimum term of a sentence of detention in a young offender institution is 21 days.]

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Textual Amendments

F67 Ss. 210A, 210B inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 30** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

C13 [S. 210B](#) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), **ss. 1, 5(2)(3)** (with s. 5(9)); S.I. 2012/1236, reg. 2

Detention and training orders

211 Offenders under 18: detention and training orders

(1) Where—

- (a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged [^{F68}21 or over], and
- (b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),

the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

(2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.

(3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—

- (a) it is of the opinion mentioned in subsection (2);
- (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
- (c) the offence was committed [^{F69}after paragraph (aa) of section 234(1) of the Sentencing Code comes into force (see paragraph 27(1)(b) of Schedule 22 to the Sentencing Act 2020).]

(4) Subsection (1) is also subject to sections 209, 218, ^{F70}... 221, [^{F71}221A] and 227 (other custodial sentences that may or must be imposed in particular cases).

Textual Amendments

F68 Words in s. 211(1)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 31(a)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

F69 Words in s. 211(3)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 31(b)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

F70 Word in s. 211(4) omitted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by virtue of [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), s. 5(2)(3), **Sch. 2 para. 123(4)** (with s. 5(9)); S.I. 2012/1236, reg. 2

F71 Word in s. 211(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 22 para. 25(b)**; S.I. 2012/2906, art. 2(t)

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Commencement Information

- I47** S. 211 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I48** S. 211 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

212 Term of detention and training order: general

- (1) The term of an order made under section 211 in respect of an offence—
- (a) shall be 4, 6, 8, 10, 12, 18 or 24 months; and
 - (b) may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged [^{F72}21] or over.
- (2) Where—
- (a) the offence is an offence under section 42 (criminal conduct),
 - (b) the corresponding offence under the law of England and Wales is under that law a summary offence, and
 - (c) the maximum term of imprisonment with which that offence is punishable in the case of a person aged [^{F73}21] or over is 51 weeks,
- the term of the order may not exceed 6 months.

[^{F74}(3) An order under section 211 takes effect at the beginning of the day on which it is made, unless the court [^{F75}orders otherwise under section 237 of the Sentencing Code] (as applied by section 213 of this Act).]

Textual Amendments

- F72** Word in s. 212(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 32(2)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F73** Word in s. 212(2)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 32(2)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F74** S. 212(3) inserted (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), s. 5(2)(3), **Sch. 2 para. 123(5)** (with s. 5(9)); [S.I. 2012/1236](#), reg. 2
- F75** Words in s. 212(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 32(3)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I49** S. 212 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I50** S. 212(1) in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

213 Application of provisions relating to civilian detention and training orders

- [^{F76}(1) In the following provisions of the Sentencing Code, references to a detention and training order include an order under section 211 of this Act—
- (a) sections 237 to 248;
 - (b) Schedule 12.
- (2) In the following provisions of the Sentencing Code, “court” includes a relevant service court—

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- (a) [^{F77}sections 237 and 238];
- (b) section 246;
- (c) sections 253 and 257;
- (d) section 270.

^{F78}(3)

(3A) In its application to a relevant service court, section 253 of the Sentencing Code has effect as if the references to a sentence of detention under section 250 [^{F79}or 252A] were references to a sentence of detention under 209 of this Act.

(3B) In its application to a relevant service court, section 257 of the Sentencing Code has effect as if the references to an extended sentence of detention under section 254 were references to an extended sentence of detention under that section imposed as a result of section 221A of this Act.]

[^{F80}(4) Subsection (5) applies where an order under [^{F81}paragraph 3(2)(a) of Schedule 12 to the Sentencing Code (further period of detention)] is made against an offender for breach of supervision requirements—

- (a) during a period of supervision under an order under section 211 of this Act,
- (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
- (c) during one of a series of further periods of supervision—
 - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
 - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).

[^{F82}(5) Paragraph 5(2) of Schedule 12 to the Sentencing Code has effect as if, in the closing words, after “Schedule” there were inserted “ and section 214 of the Armed Forces Act 2006 ”.]

(6) In subsection (4)—

“further period of supervision” means a period of supervision imposed under [^{F83}paragraph 3(2)(b) of Schedule 12 to the Sentencing Code];

[^{F84}“supervision requirement” has the meaning given in paragraph 1 of Schedule 12 to the Sentencing Code].

^{F85}(7)

[^{F86}(8) In this section, “relevant service court” has the same meaning as in Chapter 4 of Part 8 (see section 207).]

Textual Amendments

- F76** S. 213(1)-(3B) substituted (1.12.2020) for s. 213(1)-(3) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 33\(2\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F77** Words in s. 213(2)(a) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(s), [Sch. 16 para. 15\(a\)](#)
- F78** S. 213(3) omitted (28.6.2022) by virtue of [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(s), [Sch. 16 para. 15\(b\)](#)

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- F79** Words in s. 213(3A) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 23(3)**
- F80** S. 213(4)-(7) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), **ss. 80(9)(b), 151(1)** (with s. 80(10)(11)); S.I. 2012/2906, art. 2(a)
- F81** Words in s. 213(4) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(3)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F82** S. 213(5) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(4)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F83** Words in s. 213(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(5)(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F84** Words in s. 213(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(5)(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F85** S. 213(7) omitted (1.12.2020) by virtue of Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(6)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F86** S. 213(8) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 33(7)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

- I51** S. 213 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I52** S. 213 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

[^{F87}213A] Period in service custody: effect on term of detention and training order

- (1) Subsection (2) applies where—
- (a) the Court Martial or the Service Civilian Court proposes to make an order under section 211 in respect of an offence, and
 - (b) the offender has been kept in service custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.
- (2) In determining the term of the order under section 211, the court must take account of the period for which the offender was kept in service custody.
- (3) If the court proposes to make two or more orders under section 211 in respect of two or more offences—
- (a) subsection (2) does not apply, but
 - (b) in determining the total term of those orders, the court must take account of the total period for which the offender has been kept in service custody in connection with—
 - (i) any of those offences, or
 - (ii) any other offence the charge for which was founded on the same facts or evidence.
- (4) A period of service custody may be taken account of under this section only once.

Textual Amendments

- F87** Ss. 213A, 213B inserted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(s), **Sch. 16 para. 16**

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213B Period of custody awaiting extradition: effect on term of detention and training order

- (1) This section applies where—
 - (a) the Court Martial or the Service Civilian Court proposes to make an order under section 211 in respect of an offence,
 - (b) the offender was tried for the offence, or is to be sentenced—
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (c) the offender was kept in custody for any period while awaiting extradition to the United Kingdom.
- (2) The court must—
 - (a) specify in open court the number of days for which the offender was kept in custody while awaiting extradition, and
 - (b) take account of those days in determining the term of the order.]

Textual Amendments

F87 Ss. 213A, 213B inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(s), [Sch. 16 para. 16](#)

214 Offences during currency of detention and training order

- (1) This section applies to a person in respect of whom an order under section 211 has been made if—
 - (a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) (“the new offence”); and
 - (b) whether before or after that date, he is convicted of the new offence.

^{F88}(1A) This section also applies to a person [in respect of whom a service FSO has been made if—

- (a) before the date on which the period of further supervision under the service FSO ends, he commits an offence within subsection (2) (“the new offence”); and
 - (b) whether before or after that date, he is convicted of the new offence.
- (1B) A service FSO is an order under paragraph 3(2)(b) of Schedule 12 to the Sentencing Code subjecting the offender to a further period of supervision as a result of breach of supervision requirements—
- (a) during a period of supervision under an order under section 211 of this Act,
 - (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
 - (c) during one of a series of further periods of supervision—
 - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
 - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).

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Terms used in this subsection have the same meaning as in section 213(4) (see section 213(6)).]

- (2) An offence is within this subsection if it is—
- (a) a service offence which is punishable with imprisonment; or
 - (b) [^{F89}an offence under the law of any part of the British Islands] which is so punishable.
- (3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such [^{F90}youth detention accommodation] as the Secretary of State may determine for the whole or any part of the period which—
- (a) begins with the date of the court's order; and
 - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) [^{F91}or (1A) (as the case may be)].
- (4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).
- (5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).
- (6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—
- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
 - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) If it appears to the Court Martial—
- (a) that this section applies to a person,
 - (b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and
 - (c) that no order under subsection (3) or under [^{F92}paragraph 7 of Schedule 12 to the Sentencing Code] has been made in respect of the new offence,
- the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.
- (8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

Textual Amendments

- F88** S. 214(1A)(1B) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 34\(2\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F89** Words in s. 214(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 19](#); [S.I. 2012/669](#), art. 4(d)
- F90** Words in s. 214(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), s. 41(1), [Sch. 3 para. 17\(2\)](#); [S.I. 2007/3001](#), art. 2(1)(r)

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- F91** Words in s. 214(3)(b) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 34(3)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F92** Words in s. 214(7)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 34(4)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C14** S. 214 modified (E.W.) (1.12.2020) by Sentencing Act 2020 (c. 17), **ss. 245(1)(2)(e)(4)**, 416(1) (with ss. 2, 245(3), 398(1), 406, Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

- I53** S. 214 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I54** S. 214 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

215 Section 214: definitions etc

- (1) [^{F93}Section 238(3) of the Sentencing Code] (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.
- (2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.
- (3) In section 214 [^{F94}“youth detention accommodation”] has the meaning given by [^{F95}section 248 of the Sentencing Code].

Textual Amendments

- F93** Words in s. 215(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 35(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F94** Words in s. 215(3) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 3 para. 17(3)**; S.I. 2007/3001, art. 2(1)(r)
- F95** Words in s. 215(3) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 35(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

- I55** S. 215 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I56** S. 215 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

216 Appeals against orders under section 214

- (1) This section applies where an order under section 214 (“the relevant order”) is made.
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
 - (a) the relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and

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- (b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.
- (3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.

Commencement Information

- I57** S. 216 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I58** S. 216 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

CHAPTER 6

MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

Mandatory sentences

217 Mandatory life imprisonment

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
- (a) murder; or
 - (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- [^{F96}(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).]

Textual Amendments

- F96** S. 217(2)-(4) substituted for s. 217(2) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 37](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I59** S. 217 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I60** S. 217 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

- (1) This section applies if—
- (a) a person 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 under that law—
 - (i) murder; or
 - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
 - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.
- (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

Commencement Information

- I61** S. 218 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I62** S. 218 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F97}Required or discretionary sentences for particular offences]

Textual Amendments

- F97** S. 219 cross-heading substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 13\(4\)](#); [S.I. 2009/1028](#), [art. 2\(b\)](#)

^{F98}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 ^{F99}Part 1 of Schedule 15 to the Sentencing Code];
 - (c) the offence was committed ^{F100}on or after the relevant date]; and
 - (d) the sentence condition and the previous offence condition are met.

^{F101}(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.

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- (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 custody for life except in exceptional circumstances) applies in relation to the offender.]
- (2) [F¹⁰²Where 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)] applies in relation to the offender.
- (3) In [F¹⁰³sections 273(3)(a) and 283(3)(a) of that Code] as applied by [F¹⁰⁴subsections (1B) and (2)]—
- (a) the reference to [F¹⁰⁵“the index 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 [F¹⁰⁶subsection (5)]” 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, [F¹⁰⁷or, 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.] disregarding any extension period imposed under [F¹⁰⁸section 266 or 279 of the Sentencing Code] 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 [F¹⁰⁹Schedule 15 to the Sentencing Code] (“the previous offence”); and
 - (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.
- [For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include F¹¹⁰(5A) any offence for which the date specified in that Part is after the date on which the offence under section 42 was committed.]
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of [F¹¹¹section 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)].
- (7) A sentence required to be imposed by [F¹¹²section 273(3) or 283(3) of the Sentencing Code] as a result of this section is not to be regarded as a sentence fixed by law.
- [Where an offence is found to have been committed over a period of two or more days, F¹¹³(8) or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(c) [F¹¹⁴, (5)(a) and (5A)] to have been committed on the last of those days.]]

Textual Amendments

- F98** S. 218A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 2](#); S.I. 2012/2906, art. 2(t)
- F99** Words in s. 218A(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 38\(2\)\(a\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

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- F100** Words in s. 218A(1)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(2)(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F101** S. 218A(1A)(1B) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(3)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F102** Words in s. 218A(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(4)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F103** Words in s. 218A(3) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(5)(a)(i)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F104** Words in s. 218A(3) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(5)(a)(ii)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F105** Words in s. 218A(3)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(5)(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F106** Words in s. 218A(3)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(5)(c)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F107** Words in s. 218A(4) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(6)(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F108** Words in s. 218A(4) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(6)(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F109** Words in s. 218A(5)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(7)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F110** S. 218A(5A) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(8)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F111** Words in s. 218A(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(9)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F112** Words in s. 218A(7) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(10)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F113** S. 218A(8) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 5(3)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 5
- F114** Words in s. 218A(8) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 38(11)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C15** S. 218A modified by S.I. 2009/1059, Sch. 2 para. 9A(2) (as inserted (E.W.) (3.12.2012) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential and Saving Provisions) Regulations 2012 (S.I. 2012/2824), regs. 1, **5(2)**)
- C16** S. 218A modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9), **ss. 1, 5(2)(3)** (with s. 5(9)); S.I. 2012/1236, reg. 2

219 [F115 Life sentence for certain dangerous] offenders aged 18 or over

- (1) This section applies where [F116—
- (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 a [F117 Schedule 19 offence within the meaning of Part 10 of the Sentencing Code (see section 307 of that Code)], and
 - (c) the court is of the required opinion (defined by section 223).]

[F118(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.]

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- [^{F119}(2) [^{F120}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)] applies in relation to the offender.]
- (3) In [^{F121}sections 274(3) and 285(3) of the Sentencing Code (as applied by subsections (1A) and (2))], references to “the offence” are to be read as references to the offence under section 42 of this Act.
- ^{F122}(4)
- (5) A sentence under [^{F123}section 274 or 285 of the Sentencing Code] passed as a result of this section is not to be regarded as a sentence fixed by law.

Textual Amendments

- F115** Words in s. 219 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 4](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F116** Words in s. 219(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 13\(2\)](#); S.I. 2009/1028, art. 2(b)
- F117** Words in s. 219(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(2\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F118** S. 219(1A) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F119** S. 219(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 3\(2\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F120** Words in s. 219(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(4\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F121** Words in s. 219(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(5\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F122** S. 219(4) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(6\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F123** Words in s. 219(5) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 39\(7\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C17** S. 219 modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2) (3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9), [Sch. 1 para. 26](#)); S.I. 2012/1236, reg. 2

Commencement Information

- I63** S. 219 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I64** S. 219 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F124}219A] **Extended sentence for certain violent [^{F125}, sexual or terrorism] offenders aged 18 or over**

- (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) (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 [^{F126}within the meaning of the Sentencing Code (see section 306 of that Code)];
 - (c) the court is of the required opinion (defined by section 223);
 - [^{F127}(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;] and
 - (e) 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 [^{F128}Schedule 14 to the Sentencing Code].
- (3) Condition B is that, if the court were to impose an [^{F129}extended sentence of detention in a young offender institution or an extended sentence of imprisonment] as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- [^{F130}(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 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,

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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”.]]

Textual Amendments

- F124** S. 219A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 5](#); S.I. 2012/2906, art. 2(t)
- F125** Words in s. 219A heading substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 11\(2\)\(a\)](#) (with s. 25(3)(4))
- F126** Words in s. 219A(1)(b) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 40\(2\)\(a\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F127** S. 219A(1)(d) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 40\(2\)\(b\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F128** Words in s. 219A(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 40\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F129** Words in s. 219A(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 40\(4\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F130** S. 219A(4)-(9) substituted (1.12.2020) for s. 219A(4)-(6) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 40\(5\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C18** S. 219A modified by S.I. 2009/1059, Sch. 2 para. 9A(3) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(2\)](#))
- C19** S. 219A modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

^{F131}220 **Certain violent or sexual offences: offenders aged 18 or over**

Textual Amendments

- F131** S. 220 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 6](#); S.I. 2012/2906, art. 2(t) (with art. 6)

221 [^{F132}Life sentence for certain dangerous] offenders aged under 18

- (1) This section applies where [^{F133}—

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- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) [^{F134}which was committed on or after 4 April 2005],
 - (b) the corresponding offence under the law of England and Wales is a [^{F135}Schedule 19 offence within the meaning of Part 10 of the Sentencing Code (see section 307 of that Code)],
 - [^{F136}(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,] and
 - (c) the court is of the required opinion (defined by section 223).]
- [^{F137}(2) [^{F138}Section 258(2) of the Sentencing Code (duty to impose detention for life)] applies in relation to the offender.]
- [^{F139}(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.]
- ^{F140}(4)
- ^{F141}(5)
- (6) A sentence under [^{F142}section 258(2) of the Sentencing Code] passed as a result of this section is not to be regarded as a sentence fixed by law.

Textual Amendments

- F132** Words in s. 221 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 22 para. 8**; S.I. 2012/2906, art. 2(t) (with art. 6)
- F133** Words in s. 221(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 25 para. 15(2)**; S.I. 2009/1028, art. 2(b)
- F134** Words in s. 221(1)(a) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(2)(a)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F135** Words in s. 221(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(2)(b)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F136** S. 221(1)(ba) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(2)(c)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F137** S. 221(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 22 para. 7**; S.I. 2012/2906, art. 2(t) (with art. 6)
- F138** Words in s. 221(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(3)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F139** S. 221(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(4)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F140** S. 221(4) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(5\)](#), **Sch. 28 Pt. 2**; S.I. 2009/1028, art. 2(b)
- F141** S. 221(5) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(5)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F142** Words in s. 221(6) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 41(6)** (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Commencement Information

- I65** S. 221 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)

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I66 S. 221 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

[^{F143}221A] Extended sentence for certain violent [^{F144}, sexual or terrorism] 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);
- (b) the corresponding offence under the law of England and Wales is a specified offence [^{F145} within the meaning of the Sentencing Code (see section 306 of that Code)];
- (c) the court is of the required opinion (defined by section 223);
- (d) the court is not required by [^{F146} section 258(2) of the Sentencing Code] (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 ^{F147}... as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.

[^{F148}(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—

- (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 ”.]]

Textual Amendments

F143 S. 221A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 9](#); [S.I. 2012/2906](#), art. 2(t)

F144 Words in s. 221A heading substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 11\(3\)\(a\)](#) (with s. 25(3)(4))

F145 Words in s. 221A(1)(b) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 42\(2\)\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

F146 Words in s. 221A(1)(d) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 42\(2\)\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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F147 Words in s. 221A(1)(e) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 42\(2\)\(c\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

F148 S. 221A(2)-(4) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 42\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

C20 S. 221A(1)(e) modified (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

F149 **222 Offenders aged under 18: certain violent or sexual offences**

.....

Textual Amendments

F149 S. 222 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 10](#); S.I. 2012/2906, art. 2(t) (with art. 6)

223 “The required opinion” for purposes of sections 219 to [F150 221A]

- (1) “The required opinion” for the purposes of sections [F151 219(1), [F152 219A(1)], 221(1)] and [F153 221A(1)] is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
- (a) further specified offences; or
 - (b) further acts or omissions that would be specified offences if committed in England or Wales.

- (2) For the purposes of the court’s decision whether it is of that opinion, [F154 subsections (2) and (3) of section 308 of the Sentencing Code] apply as they apply for the purposes of the assessment referred to in [F155 subsection (1) of that section].

[F156 (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 this section—
- “serious harm” has the meaning given by [F157 section 306 of the Sentencing Code];
 - “specified offence” has the meaning given by that section.

Textual Amendments

F150 Word in s. 223 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 28](#); S.I. 2012/2906, art. 2(t)

F151 Words in s. 223(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 17\(2\)](#); S.I. 2009/1028, art. 2(b)

F152 Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 27\(a\)](#); S.I. 2012/2906, art. 2(t)

F153 Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 27\(b\)](#); S.I. 2012/2906, art. 2(t)

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- F154** Words in s. 223(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 43\(2\)\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F155** Words in s. 223(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 43\(2\)\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F156** S. 223(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 43\(3\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F157** Words in s. 223(4) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 43\(4\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

- I67** S. 223 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I68** S. 223 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

^{F158}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.]

Textual Amendments

- F158** S. 224 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 44](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

^{F159}224A Special custodial sentence for certain offenders of particular concern

- (1) This section applies where—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after this section comes into force),
 - (b) the corresponding offence under the law of England and Wales is an offence listed in ^{F160}[Schedule 13 to the Sentencing Code],
 - (c) the person was aged 18 or over when the offence was committed, and
 - (d) the court does not impose one of the following for the offence—
 - (i) a sentence of imprisonment ^{F161}[or custody] for life, or
 - (ii) an extended sentence of ^{F162}[detention or imprisonment under section 266 or 279 of the Sentencing Code] (as applied by section 219A of this Act).

^{F163}(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,

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subsections (2) and (3) of section 278 of the Sentencing Code (term of special sentence) apply in relation to the term of the sentence.]

(3) The references in subsections (1)(d) [^{F164}, (2) and (2A)] to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.

[^{F165}(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.]]

Textual Amendments

- F159** S. 224A inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 1 para. 8](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 72](#)
- F160** Words in s. 224A(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(2\)\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F161** Words in s. 224A(1)(d)(i) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(2\)\(b\)\(i\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F162** Words in s. 224A(1)(d)(ii) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(2\)\(b\)\(ii\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F163** S. 224A(2)(2A) substituted for s. 224A(2) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(3\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F164** Words in s. 224A(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(4\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F165** S. 224A(4) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 45\(5\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

- C21** S. 224A modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); [S.I. 2012/1236](#), reg. 2
- C22** S. 224A(1)(d)(ii) modified (E.W.) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 27 para. 16\(2\)\(3\)](#); [S.I. 2020/1236](#), reg. 2

225 Third drug trafficking offence

- (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); and
 - if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, [^{F166}section 313 of the Sentencing Code] (third class A drug trafficking offence) would apply.
- (2) The Court Martial must impose the sentence required by [^{F167}[^{F168}section 313(2A)] of that Code], unless it is of the opinion that there are [^{F169}exceptional circumstances] which—
- relate to any of the offences or to the offender; and
 - [^{F170}(b) justify not doing so.]

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Textual Amendments

- F166** Words in s. 225(1)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 46(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F167** Words in s. 225(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 46(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F168** Words in s. 225(2) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 3(a)** (with s. 124(11)(12))
- F169** Words in s. 225(2) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 3(b)** (with s. 124(11)(12))
- F170** S. 225(2)(b) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 3(c)** (with s. 124(11)(12))

Commencement Information

- I69** S. 225 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I70** S. 225 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

226 Third domestic burglary

- (1) This section applies where—
- (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, [^{F171}section 314 of the Sentencing Code] (third domestic burglary) would apply.
- (2) The Court Martial must impose the sentence required by [^{F172}[^{F173}section 314(2A)]] of that Code], unless it is of the opinion that there are [^{F174}exceptional circumstances] which—
- (a) relate to any of the offences or to the offender; and
 - [^{F175}(b) justify not doing so.]

Textual Amendments

- F171** Words in s. 226(1)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 47(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F172** Words in s. 226(2) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 47(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F173** Words in s. 226(2) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 4(a)** (with s. 124(11)(12))
- F174** Words in s. 226(2) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 4(b)** (with s. 124(11)(12))
- F175** S. 226(2)(b) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 4(c)** (with s. 124(11)(12))

Commencement Information

- I71** S. 226 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I72** S. 226 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

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227 Firearms offences

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - ^[F176](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;] and
 - (b) if his conviction had been by a civilian court in England and Wales of ^[F177]that corresponding offence, section 311 of the Sentencing Code] (minimum sentences for certain firearms offences) would apply.
- (2) The Court Martial must impose the sentence required by ^[F178]section 311(2) of the Sentencing Code] (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- (3) In ^[F179]section 311(3)(a) of that Code], as applied by this section, the reference to a sentence of detention under ^[F180]section 250 ^[F181]or 252A] of that Code] is to be read as a reference to a sentence of detention under section 209 of this Act.

Textual Amendments

- F176** S. 227(1)(aa) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 48(2)(a)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F177** Words in s. 227(1)(b) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 48(2)(b)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F178** Words in s. 227(2) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 48(3)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F179** Words in s. 227(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 48(4)(a)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F180** Words in s. 227(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 48(4)(b)** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F181** Words in s. 227(3) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), **Sch. 13 para. 23(4)**

Commencement Information

- I73** S. 227 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I74** S. 227 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

^[F182]227A Offences of threatening with a weapon in public or on school premises

- (1) This section applies if—
- (a) a person aged 18 or over is convicted by a court of an offence under section 42 (criminal conduct); and
 - (b) the corresponding offence under the law of England and Wales is an offence under section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon in public or on school premises).

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- [Where the offender is aged under 21 at the time of conviction, the court must impose
- ^{F183}(1A) 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 [^{F184}exceptional circumstances] which—
- (a) relate to the offence or to the offender, and
- [^{F185}(b) justify not doing so.]
- (2) [^{F186}Where the offender is aged 21 or over at the time of conviction,] the court must impose a sentence of imprisonment for a term of at least 6 months unless the court is of the opinion that there are [^{F187}exceptional circumstances] which—
- (a) relate to the offence or to the offender, and
- [^{F188}(b) justify not doing so.]
- ^{F189}(3)]

Textual Amendments

- F182** S. 227A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 26 para. 24](#); S.I. 2012/2770, art. 2(f)
- F183** S. 227A(1A) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 49\(2\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F184** Words in s. 227A(1A) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 5\(2\)\(a\)\(3\)](#) (with s. 124(11)(12))
- F185** S. 227A(1A)(b) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 5\(2\)\(b\)\(3\)](#) (with s. 124(11)(12))
- F186** Words in s. 227A(2) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 49\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F187** Words in s. 227A(2) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 5\(4\)\(a\)](#) (with s. 124(11)(12))
- F188** S. 227A(2)(b) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 5\(4\)\(b\)](#) (with s. 124(11)(12))
- F189** S. 227A(3) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 49\(4\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

Modifications etc. (not altering text)

- C23** S. 227A modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); S.I. 2012/1236, reg. 2

228 Appeals where previous convictions set aside

[^{F190}(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 [^{F191}section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) 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.

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- (1C) The second case is where—
- (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 [^{F192}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];
 - (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.]
- (2) [^{F193}The fifth case is] where—
- (a) a sentence has been imposed on any person by virtue of section 225 or 226 [^{F194}of this Act]; and
 - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.
- (3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.
- [^{F195}(3A) Subsection (3B) applies where—
- (a) a sentence has been imposed on a person under [^{F196}section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) 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.]
- (4) [^{F197}Subsections (3) and (3B) have] effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

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Textual Amendments

- F190** S. 228(1A)-(1E) substituted for s. 228(1) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(2\)](#); S.I. 2012/2906, art. 2(t)
- F191** Words in s. 228(1B)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 50\(2\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F192** Words in s. 228(1D)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 50\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F193** Words in s. 228(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F194** Words in s. 228(2)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F195** S. 228(3A)(3B) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(4\)](#); S.I. 2012/2906, art. 2(t)
- F196** Words in s. 228(3A)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 50\(4\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F197** Words in s. 228(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(5\)](#); S.I. 2012/2906, art. 2(t)

Commencement Information

- I75** S. 228 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I76** S. 228 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

CHAPTER 7

COURT ORDERS OTHER THAN SENTENCES

Service restraining orders

229 Service restraining orders

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
 - (a) it convicts or acquits a person (“the defendant”) of an offence; and
 - (b) the defendant is subject to service law or is a civilian subject to service discipline.
- (2) An order under this section—
 - (a) prohibits the defendant from doing anything described in the order; and
 - (b) has effect for a fixed period specified in the order or until further order.
- (3) An order under this section may be made, and a prohibition may be included in the order, only for the purpose of protecting a person mentioned in the order from conduct which amounts to harassment.
- (4) A person subject to service law or a civilian subject to service discipline commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an order under this section.

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- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
- (6) In proceedings for an order under this section, the Director of Service Prosecutions and the defence may lead (as further evidence) any evidence which would be admissible in proceedings in the High Court in England and Wales for an injunction under section 3 of the Protection from Harassment Act 1997 (c. 40).

Commencement Information

- I77** S. 229 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I78** S. 229 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

230 Service restraining orders: supplementary

- (1) Section 7 (interpretation) of the Protection from Harassment Act 1997 (c. 40) (“the 1997 Act”) applies for the purposes of section 229 of this Act as it applies for the purposes of sections 5 and 5A of that Act.
- (2) Section 12 of the 1997 Act (national security etc) applies for the purposes of section 229 of this Act as if—
 - (a) the reference in subsection (1)(c) to serious crime were a reference to serious service offences or serious crime (committed anywhere);
 - (b) the reference in subsection (1) to the 1997 Act were a reference to section 229 of this Act.
- (3) Where the Court Martial Appeal Court allows an appeal against conviction it may remit the case to the Court Martial for that court to consider whether to proceed under section 229.
- (4) Section 229 applies in relation to a case remitted under subsection (3) as if subsection (1)(a) were omitted.

Commencement Information

- I79** S. 230 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I80** S. 230 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

231 Service restraining orders: appeals

- (1) This section applies where a court makes an order under section 229—
 - (a) after it has acquitted the defendant of an offence; or
 - (b) in respect of a case remitted to it under section 230(3).
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
 - (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and

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- (b) the defendant is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court.
- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

Commencement Information

- I81** S. 231 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I82** S. 231 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

232 Service restraining orders: variation and revocation

- (1) The Court Martial may vary or revoke an order under section 229 on an application made by—
 - (a) the Director of Service Prosecutions;
 - (b) the defendant; or
 - (c) any other person mentioned in the order.
- (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).
- (3) Where a person is convicted of an offence under section 229, the court that convicts him may vary or revoke the order to which the offence relates.

Commencement Information

- I83** S. 232 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I84** S. 232 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

^{F198}Service sexual offences prevention orders etc

Textual Amendments

- F198** Ss. 232A-232G and cross-heading inserted (8.3.2012 for specified purposes) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 17\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 3\(d\)](#)

232A Service sexual offences prevention orders

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
 - (a) it deals with a person within subsection (2) (“the defendant”) in respect of—
 - (i) a qualifying section 42 offence of which the defendant has been convicted; or
 - (ii) a relevant finding in relation to a qualifying section 42 offence; and

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- (b) it is satisfied that it is necessary to make an order under this section for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
 - (b) a member of the reserve forces (whether or not for the time being subject to service law);
 - (c) a civilian subject to service discipline;
 - (d) a person who the court is satisfied is intending to become, or likely to become, a civilian subject to service discipline.
- (3) An order under this section—
- (a) prohibits the defendant from doing anything described in the order; and
 - (b) has effect for a fixed period, of at least five years, specified in the order or until further order.
- (4) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (5) Where—
- (a) a court makes an order under this section, and
 - (b) the defendant is already subject to such an order (whether made by that court or another),
- the earlier order ceases to have effect.
- (6) In this section and sections 232B to 232E—
- (a) “protecting the service community outside the United Kingdom from serious sexual harm” from a person means protecting the service community outside the United Kingdom, or particular members of that community, from serious physical or psychological harm, caused by the person committing one or more offences under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 to SOA 2003;
 - (b) “qualifying section 42 offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 or 5 to SOA 2003;
 - (c) “relevant finding”, in relation to an offence, means—
 - (i) a finding that a person is not guilty of the offence by reason of insanity; or
 - (ii) a finding that a person is unfit to stand trial and has done the act charged;
 - (d) “service community” means persons subject to service law and civilians subject to service discipline;
 - (e) “SOA 2003” means the Sexual Offences Act 2003.
- (7) In construing subsection (6)(a) or (b), any condition subject to which an offence is listed in Schedule 3 to SOA 2003 that relates—
- (a) to the way in which a person is dealt with in respect of the offence or a relevant finding, or
 - (b) to the age of any person,

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is to be disregarded.

232B Service SOPOs: appeals

- (1) This section applies where the Court Martial makes an order under section 232A in respect of a relevant finding in relation to a qualifying section 42 offence.
- (2) For the purposes of the Court Martial Appeals Act 1968—
 - (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and
 - (b) the defendant is to be treated for the purpose of enabling the defendant to appeal against the order as if the defendant had been convicted of the offence by the court.
- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

232C Service SOPOs etc: variation and revocation

- (1) The Court Martial may vary or revoke an order under section 232A on an application made by—
 - (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (2) If subsection (3) applies, the Court Martial may vary or revoke an order under section 104 of SOA 2003 (sexual offences prevention order) on an application made by—
 - (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (3) This subsection applies if the person subject to the order under section 104 of SOA 2003 (“the SOA order”) is also subject to an associated order under section 232A and either—
 - (a) the person is subject to service law or a civilian subject to service discipline; or
 - (b) the application is made together with an application for the variation or revocation of the associated order under section 232A.
- (4) An order may be varied under this section so as to extend the period for which it has effect, or so as to impose additional prohibitions, only if—
 - (a) in the case of an order under section 232A, the court is satisfied that the variation is necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the person subject to the order (in which case section 232A(4) applies accordingly);
 - (b) in the case of an order under section 104 of SOA 2003, the requirements of section 108(5) of that Act are met (protection of public in United Kingdom from serious sexual harm).
- (5) The Court Martial must not before the end of the relevant period revoke an order under section 232A, or an order under section 104 of SOA 2003, without the consent of—
 - (a) the person subject to the order; and
 - (b) a Provost Marshal.

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- (6) In subsection (5) “the relevant period” means the period of five years beginning with the day on which the order was made.
- (7) For the purposes of this section an order under section 104 of SOA 2003 and an order under section 232A are “associated” if they were made by the Court Martial or the Service Civilian Court in dealing with the same offence or relevant finding.
- (8) This section is without prejudice to section 108 of SOA 2003 (application to civilian court for variation etc of a sexual offences prevention order).

232D Variation or revocation: appeals

- (1) A person may appeal to the Court Martial Appeal Court against—
 - (a) the variation under section 232C of an order to which the person is subject; or
 - (b) a decision by the Court Martial not to vary or revoke such an order on an application under that section.
- (2) On an appeal under subsection (1), the Court Martial Appeal Court may make—
 - (a) such orders as may be necessary to give effect to its determination of the appeal; and
 - (b) such incidental or consequential orders as appear to it to be just.

232E Extended prohibitions orders

- (1) On an application made by a Provost Marshal, the Court Martial must make an order under this section in respect of a person within subsection (2) if the relevant requirements are met.
- (2) The following are persons within this subsection—
 - (a) a member of the regular forces;
 - (b) a member of the reserve forces (whether or not for the time being subject to service law);
 - (c) a civilian subject to service discipline.
- (3) The relevant requirements are met if the Court Martial is satisfied—
 - (a) that the person is subject to an order under section 104 or 105 of SOA 2003 (“the principal order”); and
 - (b) that there are members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal order.
- (4) For the purposes of subsection (3)(b) a person (“P”) is “protected” by the principal order if one or more of the prohibitions included in the order are for the purposes of the protection of P, or of persons of a description within which P falls.
- (5) An order under this section—
 - (a) prohibits the person subject to the order from doing anything described in the order; and
 - (b) has effect—
 - (i) until the expiry of the principal order; or
 - (ii) if earlier, until the principal order is varied, renewed or discharged under section 108 of SOA 2003.

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- (6) Only corresponding prohibitions may be included in an order under this section.
- (7) For the purposes of subsection (6) a “corresponding prohibition” is a prohibition in substantially the same terms as a prohibition in the principal order (“the principal prohibition”), subject to such modifications as are necessary to secure that the prohibition is for the purposes of the protection of members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal prohibition.
- (8) In subsection (7) “protected” is to be construed in accordance with subsection (4).

232F Extended prohibitions orders: appeals

- (1) A person may appeal to the Judge Advocate General against the making of an order under section 232E in respect of the person.
- (2) The Secretary of State may by rules make provision about appeals under this section, and the rules may in particular make provision—
 - (a) specifying the grounds on which an appeal may be brought;
 - (b) with respect to the procedure which is to apply in connection with an appeal;
 - (c) with respect to the powers of the Judge Advocate General in relation to an appeal.

232G Offence: breach of order under section 232A or 232E

- (1) A person within subsection (2) (“P”) commits an offence if, without reasonable excuse, P does anything which P is prohibited from doing by an order under section 232A or 232E.
- (2) The following are persons within this subsection—
 - (a) a person subject to service law;
 - (b) a civilian subject to service discipline.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
- (4) Where a person is convicted of an offence under this section, the court that convicts him may vary or revoke the order to which the offence relates.]

Order for parent or guardian to enter into recognizance

233 Order for service parent or service guardian to enter into recognizance

- (1) Where—
 - (a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court,
 - (b) he is a civilian subject to service discipline, and
 - (c) he has a service parent or service guardian,
 the court may, and in the circumstances mentioned in subsection (3) must, exercise the powers conferred by this section.

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- (2) The powers conferred by this section are as follows—
 - (a) with the consent of the offender's service parent or service guardian, to order that parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him; and
 - (b) if the service parent or service guardian refuses consent and the court considers the refusal unreasonable, to order that parent or guardian to pay a fine not exceeding level 3 on the standard scale.
- (3) The circumstances referred to in subsection (1) as those in which the court must exercise the powers conferred by this section are—
 - (a) that the offender is under 16 when convicted; and
 - (b) that the court is satisfied, having regard to the circumstances of the case, that the exercise of those powers would be desirable in the interests of preventing the commission by him of further offences.
- (4) Where the powers conferred by this section are not exercised in a case where subsection (1) applies and the offender is under 16 when convicted, the court must state in open court that it is not satisfied as mentioned in subsection (3)(b) and why it is not so satisfied.
- (5) A parent or guardian is a “service parent” or “service guardian” for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.
- (6) For the purposes of this section, taking “care” of a person includes giving him protection and guidance and “control” includes discipline.

Commencement Information

- 185** S. 233 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- 186** S. 233 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

234 Recognizances and fines under section 233: further provision

- (1) An order under section 233 must not require the parent or guardian to enter into a recognizance for an amount exceeding level 3 on the standard scale.
- (2) Such an order must not require the parent or guardian to enter into a recognizance—
 - (a) for a period exceeding three years; or
 - (b) where the offender will reach the age of 18 in a period shorter than three years, for a period exceeding that shorter period.
- (3) In fixing the amount of a recognizance under that section, the court must take into account (among other things) the means of the parent or guardian so far as they appear or are known to the court, and this applies whether taking those means into account has the effect of increasing or reducing the amount of the recognizance.
- (4) A recognizance under section 233 may, where the court has passed an overseas community order on the offender, include a provision that the service parent or service guardian ensure that the offender complies with the requirements of that order.

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- (5) A court imposing a fine under section 233(2)(b) may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.

Commencement Information

- 187** S. 234 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- 188** S. 234 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

235 Recognizances: appeals, variation and revocation

- (1) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
- (a) an order under section 233 is to be treated as a sentence passed on the parent or guardian for the offence; and
 - (b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.
- (2) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (3) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.
- (4) The Court Martial may vary or revoke an order under section 233 if on the application of the parent or guardian it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

Commencement Information

- 189** S. 235 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- 190** S. 235 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

236 Forfeiture of recognizance

- (1) Where—
- (a) a recognizance under section 233 has been entered into, and
 - (b) the offender commits a service offence during the period of the recognizance,
- the Court Martial or the Service Civilian Court may on convicting the offender of that offence (and subject to subsection (2)) declare the recognizance to be forfeited.
- (2) The court may not make such a declaration where the parent or guardian is neither a person subject to service law nor a civilian subject to service discipline.
- (3) If a court declares under this section that a recognizance is to be forfeited it must—
- (a) adjudge the parent or guardian to pay the sum in which he is bound;
 - (b) adjudge him to pay part of that sum; or

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- (c) remit that sum.
- (4) A court declaring under this section that a recognizance is to be forfeited may make an order under section 251 (power to allow payment by instalments); and in relation to a forfeiture under this section, section 251(2) to (7) have effect as if references to the fine or service compensation order were to the forfeiture.

Commencement Information

- I91** S. 236 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I92** S. 236 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

^{F199}Disqualification of offenders for holding elective office etc

Textual Amendments

- F199** Ss. 236A, 236B and cross-heading inserted (1.11.2023) by [Elections Act 2022 \(c. 37\)](#), s. 67(1), [Sch. 10 para. 8\(2\)](#) (with s. 66(5)); [S.I. 2023/1145](#), [reg. 3\(k\)](#) (with [Sch. paras. 9\(3\)\(4\)](#))

236A Disqualification orders

- (1) This section applies where—
- a person (“the offender”) is convicted of a qualifying section 42 offence by a court,
 - the offender was aged 18 or over when the offence was committed, and
 - the court is satisfied beyond reasonable doubt that the offence is aggravated by hostility related to persons falling within any of sections 32 to 34 of the Elections Act 2022.
- (2) The court must, when dealing with the offender for the offence, also make an order (a “disqualification order”) that the offender is disqualified, for the period of 5 years beginning with the date on which the order is made—
- for being nominated for election to a relevant elective office, and
 - for being elected to or holding a relevant elective office.
- (3) Subsection (2) does not apply where the court considers that there are particular circumstances relating to the offence or to the offender which would make it unjust in all the circumstances to make the order; and in such a case the court must state in open court the reasons for not making the order.
- (4) For the purposes of this section an offence is aggravated by hostility related to persons falling within any of sections 32 to 34 of the Elections Act 2022 if—
- at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on the victim being (or being presumed to be) a person falling within any of those sections, or
 - the offence was motivated (wholly or partly) by hostility towards persons falling within any of those sections in their capacity as such.

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- (5) For the purposes of subsection (4) it is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that subsection.
- (6) For the purpose of deciding whether to make a disqualification order the court may consider evidence led by the parties to the proceedings.
- (7) It is immaterial whether evidence led in pursuance of subsection (6) would have been admissible in the proceedings in which the offender was convicted.
- (8) Where a qualifying section 42 offence is found to have been committed—
- (a) over a period of 2 or more days, or
 - (b) at some time during a period of 2 or more days,
- it is to be taken for the purposes of subsection (1)(b) to have been committed on the last of those days.
- (9) For the purposes of any appeal against a disqualification order—
- (a) references in section 141 to a finding or punishment include the making of a disqualification order;
 - (b) references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making a disqualification order.
- (10) In this section—
- “court” means the court or officer sentencing the offender;
 - “presumed” means presumed by the offender;
 - “qualifying section 42 offence” means an offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 9 to the Elections Act 2022;
 - “relevant elective office” has the same meaning as in Part 5 of the Elections Act 2022 (see section 37 of that Act).

236B Effect of disqualification order

References (however expressed) in any enactment to an order under section 30 of the Elections Act 2022 include references to an order under section 236A.]

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- s. 208 heading word substituted by [2020 c. 17 Sch. 26 para. 6\(b\)](#)
- s. 210 heading words inserted by [2021 c. 11 Sch. 13 para. 41\(4\)](#)
- s. 224A heading words inserted by [2021 c. 11 Sch. 8 para. 8\(2\)](#)
- specified provision(s) transitional provisions for effects of commencing SI 2009/812 by [S.I. 2009/1059 Order](#)

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):

- Pt. 12A inserted by [2016 c. 21 s. 7](#)
- Pt. 16B inserted by [2023 c. 48 s. 1](#)
- s. 50(2)(ca) inserted by [2011 c. 18 Sch. 4 para. 3\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 3(3) repealed (8.3.2015) without ever being in force by [2014 c. 12, Sch. 11 para. 82\(2\)](#); [S.I. 2015/373, art. 2\(g\)\(ii\)](#))
- s. 209(8) inserted by [2021 c. 11 Sch. 13 para. 41\(3\)](#)
- s. 213(3A) words inserted by [2021 c. 11 Sch. 13 para. 41\(6\)](#)
- s. 218A(6A) inserted by Sch. 26 para. 12(1)(db) (as inserted) by [S.I. 2020/1520 reg. 6\(2\)\(b\)](#)
- s. 218A(6A) words omitted by virtue of [2020 c. 17, Sch. 26 para. 12\(1\)\(dc\)](#) (as inserted) by [S.I. 2020/1520 reg. 6\(2\)\(b\)](#)
- s. 219A(1)(d)(i) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(i\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(1)(d)(iii) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(i\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(1)(da) inserted by [2021 c. 11 Sch. 13 para. 41\(7\)](#)
- s. 219A(1)(da)(i) omitted by virtue of [2020 c. 17, Sch. 26 para. 14\(a\)\(ii\)](#) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(b\)](#)
- s. 219A(2A) inserted by [2020 c. 17, Sch. 26 para. 14\(bb\)](#) (as inserted) by [S.I. 2020/1520 reg. 6\(3\)](#)
- s. 219ZA inserted by [2021 c. 11 Sch. 8 para. 2](#)
- s. 219ZA(1)(e) words omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(a\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 219ZA(4)-(6) omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(b\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 219ZA(7) words omitted by virtue of [2020 c. 17, Sch. 26 para. 13A\(c\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(a\)](#)
- s. 223(1A) inserted by [2021 c. 11 Sch. 13 para. 41\(8\)\(a\)](#)
- s. 224A(1)(d)(iii) and word inserted by [2021 c. 11 Sch. 13 para. 41\(9\)\(a\)\(ii\)](#)
- s. 224A(1)(d)(iii) words substituted by [2020 c. 17, Sch. 26 para. 15\(a\)\(iii\)](#) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(c\)](#)
- s. 224A(1A) inserted by [2021 c. 11 Sch. 8 para. 8\(4\)](#)
- s. 224A(3A) inserted by [2021 c. 11 Sch. 13 para. 41\(9\)\(b\)](#)
- s. 224B inserted by [2021 c. 11 Sch. 8 para. 9](#)
- s. 225(1A) inserted by [2020 c. 17, Sch. 26 para. 15A](#) (as inserted) by [S.I. 2020/1520 reg. 6\(4\)](#)
- s. 226(1A) inserted by [2020 c. 17, Sch. 26 para. 15B](#) (as inserted) by [S.I. 2020/1520 reg. 6\(4\)](#)
- s. 227(3)(a)(b) substituted for words by [2021 c. 11 Sch. 13 para. 41\(10\)](#)

- s. 238(6)(a) word omitted by [2021 c. 11 Sch. 13 para. 41\(11\)\(a\)](#)
- s. 238(6)(b) word substituted by [2021 c. 11 Sch. 13 para. 41\(11\)\(c\)](#)
- s. 238(6)(aa) inserted by [2021 c. 11 Sch. 13 para. 41\(11\)\(b\)](#)
- s. 239(3A)(3B) inserted by [2021 c. 11 Sch. 8 para. 3](#)
- s. 239(3A) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(a)(i) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(d\)](#)
- s. 239(3A) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(a)(ii) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(d\)](#)
- s. 239(3B) words omitted by virtue of 2020 c. 17, Sch 26 para. 18(b) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(d\)](#)
- s. 260(1)(ca) inserted by [2021 c. 11 Sch. 13 para. 41\(14\)\(a\)\(ii\)](#)
- s. 260(1)(ca) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(a)(iia) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(e\)\(i\)](#)
- s. 260(4B)(a) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(b)(ii) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(e\)\(ii\)](#)
- s. 260(4B)(za) inserted by [2021 c. 11 Sch. 13 para. 41\(14\)\(b\)](#)
- s. 260(4B)(za) words omitted by virtue of 2020 c. 17, Sch. 26 para. 19(b)(i) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(e\)\(ii\)](#)
- s. 261(1)(ba) inserted by [2021 c. 11 Sch. 13 para. 41\(15\)](#)
- s. 261(1)(ba) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20(c) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(f\)](#)
- s. 261A(3)(a) words in s. 261A(3) renumbered as s. 261A(3)(a) by [2021 c. 11 Sch. 8 para. 4\(a\)](#)
- s. 261A(3)(b)(c) inserted by [2021 c. 11 Sch. 8 para. 4\(b\)](#)
- s. 261A(3)(b) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20A(a) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(g\)](#)
- s. 261A(3)(c)(i) words omitted by virtue of 2020 c. 17, Sch. 26 para. 20A(b) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(g\)](#)
- s. 262A(2A) inserted by [2021 c. 11 Sch. 13 para. 41\(16\)\(a\)](#)
- s. 262A(2A)(b) omitted by virtue of 2020 c. 17, Sch. 26 para. 21(a) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(h\)](#)
- s. 262A(3A) inserted by [2021 c. 11 Sch. 13 para. 41\(16\)\(b\)](#)
- s. 262A(3A) omitted by virtue of 2020 c. 17, Sch. 26 para. 21(b) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(h\)](#)
- s. 262A(4) words inserted by [2021 c. 11 Sch. 13 para. 41\(16\)\(c\)\(i\)](#)
- s. 262A(4) words inserted by [2021 c. 11 Sch. 13 para. 41\(16\)\(c\)\(ii\)](#)
- s. 262A(4) words omitted by virtue of 2020 c. 17, Sch. 26 para. 21(c) (as substituted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(h\)](#)
- s. 270A270B inserted by [2008 c. 4 Sch. 25 para. 27](#) (This amendment not applied to legislation.gov.uk. Sch. 25 para. 26(3)(4) repealed (2.4.2012) by 2011 c. 18, Sch. 3 para. 20(3), Sch. 5; S.I. 2012/669, art. 4(d)(f) (with art. 13))
- s. 270B(6)(aa) inserted by [2009 c. 25 Sch. 17 para. 9\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10) word repealed by [2009 c. 25 Sch. 23 Pt. 5](#)
- s. 270B(10)(a) words inserted by [2009 c. 25 Sch. 17 para. 9\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10)(b) words substituted by [2009 c. 25 Sch. 17 para. 9\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 270B(10)(c)-(e) inserted by [2009 c. 25 Sch. 17 para. 9\(3\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 17 para. 9 repealed (2.4.2012) without ever being in force by 2011 c. 18, Sch. 5; S.I. 2012/669, art. 4(f))
- s. 304B inserted by [2016 c. 21 s. 8](#)
- s. 304C inserted by [2016 c. 21 s. 9](#)
- s. 304C(5A) inserted by [2021 c. 11 Sch. 8 para. 5](#)

- s. 304C(5A) words omitted by virtue of 2020 c. 17, Sch. 26 para. 24A(a) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(i\)](#)
- s. 304C(5A) words substituted by 2020 c. 17, Sch. 26 para. 24A(b) (as inserted) by [2021 c. 11 Sch. 13 para. 43\(7\)\(i\)](#)
- s. 304D inserted by [2016 c. 21 s. 10](#)
- s. 304E inserted by [2016 c. 21 s. 11](#)
- s. 304F-304H inserted by [2016 c. 21 s. 12](#)
- s. 377(8) inserted by 2020 c. 17, Sch. 26 para. 26 (as inserted) by [S.I. 2020/1520 reg. 6\(5\)](#)
- Sch. 7 para. 9(A1) inserted by [2020 c. 9 Sch. 2 para. 123\(8\)\(a\)](#) (This pre-consolidation amendment comes into force immediately before the consolidation date on 1.12.2020 (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416) to facilitate the sentencing consolidation and then is repealed immediately afterwards on 1.12.2020 by the Sentencing Act 2020 (c. 17), Sch. 28; S.I. 2020/1236, reg. 2)