

SCHEDULE 2

Article 206

Transitory provisions

Definitions

1. In this Schedule—

“the 2005 Order” means the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005(1);

“CJA 2003” means the Criminal Justice Act 2003(2);

“CJCSA 2000” means the Criminal Justice and Court Services Act 2000(3);

“PCC(S)A 2000” means the Powers of Criminal Courts (Sentencing) Act 2000(4).

Punishments available to Service Civilian Court

2.—(1) Until the coming into force of the repeal by CJA 2003 of section 78 of PCC(S)A 2000 (limits on magistrates’ courts’ sentencing powers), section 283 of AFA 2006 (punishments available to Service Civilian Court) has effect as if—

(a) in subsection (1), the reference to 12 months were to 6 months;

(b) in subsection (2), the reference to 65 weeks were to 12 months.

(2) The modifications of section 189 of CJA 2003 made by sub-paragraphs (a) and (b) of article 2(2) of the 2005 Order shall each have effect as if the reference to a magistrates’ court included the Service Civilian Court.

Powers of Crown Court in relation to orders made by Service Civilian Court

3. Until the coming into force of the repeal by CJA 2003 of section 78 of PCC(S)A 2000, each of the following provisions has effect as if the reference in it to 12 months were to 6 months—

(a) paragraph 8(3)(b)(i) of Schedule 5 to AFA 2006;

(b) the subsection (3C)(b)(i) treated as inserted in section 211 of CJA 2003 by section 179(2) of AFA 2006;

(c) the subsection (4A)(b)(i) treated as inserted in section 211 of CJA 2003 by section 203(3) of AFA 2006;

(d) the sub-paragraph (5A)(b)(i) treated as inserted in paragraph 15 of Schedule 12 to CJA 2003 by section 205(2) of AFA 2006.

Testing for alcohol and drugs

4. In relation to an offence committed before the coming into force of section 281(5) of CJA 2003, sections 305(5) and 306(5) of AFA 2006 have effect as if the references to 51 weeks were to 6 months.

(1) S.I. 2005/643.

(2) 2003 c. 44.

(3) 2000 c. 43.

(4) 2000 c. 6.

Age at which imprisonment available

5. Until the coming into force of section 61 of CJCSA 2000 (abolition of certain sentences for offenders aged between 18 and 21), “21” shall be treated as substituted for “18” in each of the following provisions of AFA 2006—

- (a) section 208 (prohibition on imposing imprisonment on persons under 18);
- (b) section 209(2)(a) and (6);
- (c) the reference in section 211(1)(a) to an offence punishable with imprisonment in the case of a person aged 18 or over;
- (d) section 212(1)(b) and (2)(c);
- (e) section 222(3)(d).

Mandatory custody for life

6.—(1) This paragraph applies until the coming into force of section 61 of CJCSA 2000, where—

- (a) section 217 of AFA 2006 (conviction of offence for which sentence fixed by law as life imprisonment) applies;
- (b) the offender is aged under 21 on conviction; and
- (c) section 218(1) of that Act (detention at Her Majesty’s pleasure) does not apply.

(2) Where this paragraph applies, the Court Martial must pass on the offender a sentence of custody for life under section 93 of PCC(S)A 2000.

Discretionary custody for life

7.—(1) This paragraph applies until the coming into force of section 61 of CJCSA 2000, 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) for which a person aged 21 or over would be liable to imprisonment for life.

(2) Where this paragraph applies the court shall, if it considers that a sentence for life would be appropriate, pass a sentence of custody for life under section 94 of PCC(S)A 2000 (but this is subject to sections 260 and 261 of AFA 2006, unless paragraph 8 applies).

Custody for life where custodial sentence would have been required by SDAs

8.—(1) This paragraph applies until the coming into force of section 61 of CJCSA 2000, where—

- (a) article 89 (sentences required by SDAs) applies; and
- (b) the offender is aged under 21 on conviction.

(2) Where this paragraph applies, the references in article 89(2) and (4) to a sentence of life imprisonment are to be read as to a sentence of custody for life under section 94 of PCC(S)A 2000.

Power to impose detention in a young offender institution

9.—(1) This paragraph applies until the coming into force of section 61 of CJCSA 2000, where—

- (a) a person aged at least 18 but under 21 is convicted by the Court Martial or the Service Civilian Court of an offence punishable with imprisonment; and
- (b) the court is not required to pass a sentence of custody for life or of detention during Her Majesty’s pleasure.

(2) Where this paragraph applies the court may, subject to section 260 of AFA 2006, pass a sentence of detention in a young offender institution under section 96 of PCC(S)A 2000 (and section 97(1) and (2) of that Act apply).

(3) In section 283 of AFA 2006 (limits on term of imprisonment available to Service Civilian Court), references to imprisonment include detention in a young offender institution.

Interaction of detention in a young offender institution with detention and training order

10. In section 106(1) of PCC(S)A 2000 (sentence of detention in a young offender institution passed on offender subject to detention and training order)—

- (a) “court” includes a relevant service court within the meaning given by section 196(2) of AFA 2006; and
- (b) references to a detention and training order include an order under section 211 of that Act.

Consecutive sentences

11.—(1) A determinate sentence of detention in a young offender institution is a “qualifying custodial sentence” for the purposes of section 188 of AFA 2006 (consecutive sentences).

(2) In subsection (4) of that section—

- (a) the reference in paragraph (a) to imprisonment includes detention in a young offender institution; and
- (b) the sentences referred to in paragraph (a) are to be taken to include a custodial order under section 71AA of AA 1955 or AFA 1955 or section 43AA of NDA 1957 or paragraph 10 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

Restriction on imposing custodial sentence on unrepresented offender

12. Until the coming into force of section 61 of CJCSA 2000, section 263 of AFA 2006 (restriction on imposing custodial sentence on unrepresented offender) has effect as if the actions mentioned in subsection (3)(a) included passing any custodial sentence (within the meaning of AFA 2006 as modified by this Schedule) on an offender who is aged under 21 on conviction.

Crediting of time in service custody

13. Until the coming into force of section 61 of CJCSA 2000, section 246 of AFA 2006 (crediting of time in service custody) has effect as if the sentences mentioned in paragraphs (a) and (b) of subsection (6) included a determinate sentence of detention in a young offender institution.

Re-sentencing powers

14.—(1) This paragraph applies until the coming into force of section 61 of CJCSA 2000.

(2) Until that time—

- (a) each of the provisions mentioned in sub-paragraph (3) has effect as if any reference in it to imprisonment included detention in a young offender institution; and
- (b) paragraph 8(4) of Schedule 5 to AFA 2006 is to be treated as omitted.

(3) Those provisions are—

- (a) paragraph 8(3) of Schedule 5 to AFA 2006 (breach etc of community punishments);
- (b) the subsections (3B) and (3C) treated as inserted in section 211 of CJA 2003 by section 179(2) of AFA 2006 (periodic review of drug rehabilitation requirement);

- (c) the subsection (4A) treated as inserted in section 211 of CJA 2003 by section 203(3)(c) of AFA 2006 (review of suspended sentence order with community requirements);
- (d) the sub-paragraph (5A) treated as inserted in paragraph 15 of Schedule 12 to CJA 2003 by section 205(2)(b) of AFA 2006 (amendment of suspended sentence order with community requirements).

Sentences passed by civilian courts

15. In section 304(1) of AFA 2006 (which excludes civilian sentences of imprisonment from the sentences to which Part 12 of the Act applies), the reference to a sentence of imprisonment passed by a civilian court in respect of a service offence includes any sentence passed by a civilian court in respect of such an offence.

Meaning of “custodial sentence”

16. The sentences mentioned in the definition of “custodial sentence” in section 374 of AFA 2006 are to be taken to include—

- (a) a sentence of custody for life under section 93 or 94 of PCC(S)A 2000 (including a sentence of custody for life passed under section 225 of CJA 2003 as a result of section 219 of AFA 2006);
- (b) a sentence of detention in a young offender institution under section 96 of PCC(S)A 2000;
- (c) a sentence of detention in a young offender institution passed under section 225 of CJA 2003 as a result of section 219 of AFA 2006;
- (d) a sentence of detention in a young offender institution passed under section 227 of CJA 2003 as a result of section 220 of AFA 2006.

Notification requirements under Counter-Terrorism Act 2008

17. In each of the following provisions of Schedule 6 to the Counter-Terrorism Act 2008⁽⁵⁾ (application of notification requirements to service offences), the reference to imprisonment includes detention in a young offender institution—

- (a) paragraph 5(1)(a)(ii);
- (b) paragraph 7(2)(b) and (3).

The Supreme Court

18.—(1) In relation to any time before the coming into force of section 23 of the Constitutional Reform Act 2005⁽⁶⁾—

- (a) references to the Supreme Court in AFA 2006 and article 92 are to be read as to the House of Lords; and
- (b) references to the Supreme Court inserted by AFA 2006 in any other enactment are to be read as to the House of Lords.

(2) In relation to any time before the coming into force of section 59(2) of the Constitutional Reform Act 2005, references in AFA 2006 to the Court of Judicature of Northern Ireland are to be read as to the Supreme Court of Judicature of Northern Ireland.

(5) 2008 c. 28.

(6) 2005 c. 4.

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