

## SCHEDULES

### SCHEDULE 1

Section 6

#### SENTENCE AND PAROLE BOARD RELEASE FOR OFFENDERS OF PARTICULAR CONCERN

#### PART 1

#### SENTENCE AND RELEASE

##### *Introduction*

- 1 The Criminal Justice Act 2003 is amended as follows.

##### *Sentence*

- 2 After Chapter 5 of Part 12 (sentencing) insert—

#### “CHAPTER 5A

#### OTHER OFFENDERS OF PARTICULAR CONCERN

#### **236A Special custodial sentence for certain offenders of particular concern**

- (1) Subsection (2) applies where—
- (a) a person is convicted of an offence listed in Schedule 18A (whether the offence was committed before or after this section comes into force),
  - (b) the person was aged 18 or over when the offence was committed, and
  - (c) the court does not impose one of the following for the offence—
    - (i) a sentence of imprisonment for life, or
    - (ii) an extended sentence under section 226A.
- (2) If the court imposes a sentence of imprisonment for the offence, the term of the sentence must be equal to the aggregate of—
- (a) the appropriate custodial term, and
  - (b) a further period of 1 year for which the offender is to be subject to a licence.
- (3) The “appropriate custodial term” is the term that, in the opinion of the court, ensures that the sentence is appropriate.
- (4) The term of a sentence of imprisonment imposed under this section for an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.

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- (5) The references in subsections (1)(c) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.
- (6) The Secretary of State may by order amend Schedule 18A by—
- (a) adding offences, or
  - (b) varying or omitting offences listed in the Schedule.
- (7) An order under subsection (6) may, in particular, make provision that applies in relation to the sentencing of a person for an offence committed before the provision comes into force.”
- 3 In section 330(5)(a) (orders subject to affirmative procedure), at the appropriate place insert—
- “section 236A(6),”.

*Offences of particular concern*

- 4 After Schedule 18 insert—

“SCHEDULE  
18A

Section 236A

SENTENCE UNDER SECTION 236A: OFFENCES

**Terrorism offences**

- 1 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder) that has a terrorist connection.
- 2 An offence under section 28 of that Act (causing bodily injury by explosives) that has a terrorist connection.
- 3 An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm) that has a terrorist connection.
- 4 An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property) that has a terrorist connection.
- 5 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) that has a terrorist connection.
- 6 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) that has a terrorist connection.
- 7 An offence under section 54 of the Terrorism Act 2000 (weapons training).
- 8 An offence under section 56 of that Act (directing terrorist organisation).
- 9 An offence under section 57 of that Act (possession of article for terrorist purposes).
- 10 An offence under section 59 of that Act (inciting terrorism overseas).

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- 11 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 12 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 13 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 14 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
- 15 An offence under section 6 of that Act (training for terrorism).
- 16 An offence under section 9 of that Act (making or possession of radioactive device or material).
- 17 An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).
- 18 An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).

#### **Sexual offences**

- 19 An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13).
- 20 An offence under section 6 of that Act (assault of a child under 13 by penetration).

#### **Accessories and inchoate offences**

- 21 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Schedule (a “relevant offence”).
  - (2) An attempt to commit a relevant offence.
  - (3) Conspiracy to commit a relevant offence.
  - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a relevant offence is the offence (or one of the offences) which the person intended or believed would be committed.
- 22 An offence in the following list that has a terrorist connection—
  - (a) an attempt to commit murder,
  - (b) conspiracy to commit murder, and
  - (c) an offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.

#### **Abolished offences**

- 23 An offence that—
  - (a) was abolished before the coming into force of section 236A, and

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- (b) if committed on the day on which the offender was convicted of the offence, would have constituted an offence specified in the preceding paragraphs of this Schedule.

**Meaning of “terrorist connection”**

- 24 For the purposes of this Schedule, an offence has a terrorist connection if a court has determined under section 30 of the Counter-Terrorism Act 2008 that the offence has such a connection.”

*Release on licence to be directed by Parole Board*

- 5 In section 244(1) (duty to release prisoners), after “243A” insert “, 244A”.
- 6 After section 244 insert—

**“244A Release on licence of prisoners serving sentence under section 236A**

- (1) This section applies to a prisoner (“P”) who is serving a sentence imposed under section 236A.
- (2) The Secretary of State must refer P’s case to the Board—
- (a) as soon as P has served the requisite custodial period, and
  - (b) where there has been a previous reference of P’s case to the Board under this subsection and the Board did not direct P’s release, not later than the second anniversary of the disposal of that reference.
- (3) It is the duty of the Secretary of State to release P on licence under this section as soon as—
- (a) P has served the requisite custodial period, and
  - (b) the Board has directed P’s release under this section.
- (4) The Board must not give a direction under subsection (3) unless—
- (a) the Secretary of State has referred P’s case to the Board, and
  - (b) the Board is satisfied that it is not necessary for the protection of the public that P should be confined.
- (5) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by sections 255A to 255C).
- (6) For the purposes of this section—
- “the appropriate custodial term” means the term determined as such by the court under section 236A;
- “the requisite custodial period” means—
- (a) in relation to a person serving one sentence, one-half of the appropriate custodial term, and
  - (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).”

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- 7 (1) Section 246 (power to release prisoners on licence before required to do so) is amended as follows.
- (2) In subsection (4)(a) (disapplication of power), for “or 228” substitute “, 228 or 236A”.
- (3) In subsection (6), in the definition of “term of imprisonment” for “or 228” substitute “, 228 or 236A”.

## PART 2

### OFFENDERS CONVICTED OF SERVICE OFFENCES

#### *Armed Forces Act 2006 (c. 52)*

- 8 In the Armed Forces Act 2006, after section 224 insert—

#### **“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 Schedule 18A to the 2003 Act,
  - (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 for life, or
    - (ii) an extended sentence of imprisonment under section 226A of the 2003 Act (as applied by section 219A of this Act).
- (2) If the court imposes a sentence of imprisonment for the offence, section 236A(2) to (4) of the 2003 Act apply in relation to the term of the sentence.
- (3) The references in subsections (1)(d) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.
- (4) In Schedule 18A to the 2003 Act, as applied by this section, the reference in paragraph 24 to section 30 of the Counter-Terrorism Act 2008 is to be read as a reference to section 32 of that Act.”

### PART 3

#### TRANSITIONAL AND TRANSITORY PROVISION

##### *Application of new provisions about special custodial sentences*

- 9 (1) Section 236A of the Criminal Justice Act 2003, inserted by paragraph 2 of this Schedule, applies in relation to the sentencing of a person for an offence after that paragraph comes into force, whether the person was convicted of the offence before or after it comes into force.
- (2) Section 224A of the Armed Forces Act 2006, inserted by paragraph 8 of this Schedule, applies in relation to the sentencing of a person for an offence after that paragraph comes into force, whether the person was convicted of the offence before or after it comes into force.

##### *Detention in a young offender institution*

- 10 (1) This paragraph applies in relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution).
- (2) Section 236A of the Criminal Justice Act 2003 applies as if at the end there were inserted—
- “(8) In the case of a person aged under 21, this section applies as if the references to imprisonment were to detention in a young offender institution.”
- (3) Section 224A of the Armed Forces Act 2006 applies as if at the end there were inserted—
- “(5) In the case of a person aged under 21, this section applies as if the references to imprisonment were to detention in a young offender institution.”

### PART 4

#### CONSEQUENTIAL PROVISION

##### *Road Traffic Offenders Act 1988 (c. 53)*

- 11 (1) Section 35A(4) of the Road Traffic Offenders Act 1988 (extension of disqualification where custodial sentence also imposed) is amended as follows.
- (2) In paragraph (e), for “that Act” (in the first place) substitute “the Criminal Justice Act 2003”.
- (3) After paragraph (f) insert—
- “(fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2)(a) of that Act;”.

*Crime (Sentences) Act 1997 (c. 43)*

- 12 (1) Schedule 1 to the Crime (Sentences) Act 1997 (transfer of prisoners within the British Islands) is amended as follows.
- (2) In paragraph 8(2)(a) (restricted transfers from England and Wales to Scotland), after “244” insert “, 244A”.
- (3) In paragraph 9(2)(a) (restricted transfers from England and Wales to Northern Ireland), after “244” insert “, 244A”.

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

- 13 (1) Section 147A(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (extension of disqualification where custodial sentence also imposed) is amended as follows.
- (2) In paragraph (e), for “that Act” (in the first place) substitute “the Criminal Justice Act 2003”.
- (3) After paragraph (f) insert—
- “(fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2) (a) of that Act;”.

*Criminal Justice Act 2003 (c. 44)*

- 14 The Criminal Justice Act 2003 is amended as follows.
- 15 (1) Section 237 (meaning of “fixed-term prisoner”) is amended as follows.
- (2) In subsection (1)(b), for “or 228” substitute “, 228 or 236A”.
- (3) In subsection (1B)—
- (a) omit “and” at the end of paragraph (c), and
- (b) at the end insert “, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.”
- (4) In subsection (3), for “or 227” substitute “, 227 or 236A”.
- 16 In section 240ZA(11) (time remanded in custody to count as time served), for “or 228” substitute “, 228 or 236A”.
- 17 (1) Section 250 (licence conditions) is amended as follows.
- (2) In subsection (4)—
- (a) for “or 227” substitute “, 227 or 236A”, and
- (b) for “or 228” substitute “, 228 or 236A”.
- (3) In subsection (5A) (inserted by section 15 of this Act)—
- (a) for “to a prisoner” substitute “to—
- (a) a prisoner”, and
- (b) at the end insert “, or
- (b) a prisoner serving a sentence imposed under section 236A.”

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- 18 In section 256AA(1) (supervision after end of sentence of prisoners serving less than 2 years), after paragraph (b) (but before “or”) insert—  
“(ba) the sentence was imposed under section 236A.”.
- 19 In section 258(3A) (early release of fine defaulters and contemnors), for “or 228” substitute “, 228 or 236A”.
- 20 (1) Section 260 (early removal of prisoners liable to removal from United Kingdom) is amended as follows.  
(2) In subsection (2A), after “226B” insert “or a sentence under section 236A”.  
(3) In subsection (5), after “244” insert “, 244A”.
- 21 In section 261(5)(b) (re-entry into United Kingdom of offender removed from prison early), after “244” insert “, 244A”.
- 22 In section 263(4) (concurrent terms), for “or 228” substitute “, 228 or 236A”.
- 23 (1) Section 264 (consecutive terms) is amended as follows.  
(2) For subsection (6) substitute—  
“(6) In this section “custodial period” means—  
(a) in relation to an extended sentence imposed under section 226A or 226B, two-thirds of the appropriate custodial term determined by the court under that section,  
(b) in relation to an extended sentence imposed under section 227 or 228, one-half of the appropriate custodial term determined by the court under that section,  
(c) in relation to a sentence imposed under section 236A, one-half of the appropriate custodial term determined by the court under that section, and  
(d) in relation to any other sentence, one-half of the sentence.”  
(3) In subsection (7), for “or 228” substitute “, 228 or 236A”.
- 24 In section 265(2) (restriction on consecutive sentences for released prisoners), for “or 228” substitute “, 228 or 236A”.

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

- 25 (1) Section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (power to change test for release on licence of certain prisoners) is amended as follows.  
(2) In subsection (2), after paragraph (b) (but before “or”) insert—  
“(ba) a section 236A prisoner.”.  
(3) In subsection (3), before paragraph (b) insert—  
“(ab) amend section 244A of the Criminal Justice Act 2003 (release on licence of section 236A prisoners).”  
(4) In subsection (6), at the end insert—  
““section 236A prisoner” means a prisoner who is serving a sentence under section 236A of the Criminal Justice Act 2003 (including one imposed as a result of section 224A of the Armed Forces Act 2006).”