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SCHEDULES

SCHEDULE 17 E+W

Section 144

TREATMENT OF CONVICTIONS IN OTHER MEMBER STATES ETC

Evidence of bad character

- 1 (1) The Criminal Justice Act 2003 (c. 44) is amended as follows.
- (2) In section 103 (matter in issue between the defendant and the prosecution), after subsection (6) add—
 - “(7) Where—
 - (a) a defendant has been convicted of an offence under the law of any country outside England and Wales (“the previous offence”), and
 - (b) the previous offence would constitute an offence under the law of England and Wales (“the corresponding offence”) if it were done in England and Wales at the time of the trial for the offence with which the defendant is now charged (“the current offence”),subsection (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.
 - (8) For the purposes of subsection (2)—
 - (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description, as set out in subsection (4)(a);
 - (b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).
 - (9) For the purposes of subsection (10) “foreign service offence” means an offence which—
 - (a) was the subject of proceedings under the service law of a country outside the United Kingdom, and
 - (b) would constitute an offence under the law of England and Wales or a service offence (“the corresponding domestic offence”) if it were done in England and Wales by a member of Her Majesty's forces at the time of the trial for the offence with which the defendant is now charged (“the current offence”).
 - (10) Where a defendant has been found guilty of a foreign service offence (“the previous service offence”), for the purposes of subsection (2)—
 - (a) the previous service offence is an offence of the same description as the current offence if the corresponding domestic offence is of that same description, as set out in subsection (4)(a);

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- (b) the previous service offence is an offence of the same category as the current offence if the current offence and the corresponding domestic offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).

(11) In this section—

“Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006;

“service law”, in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country.”

- (3) In section 108 (offences committed by defendant when a child), after subsection (2) insert—

“(2A) Subsection (2B) applies where—

- (a) the defendant has been convicted of an offence under the law of any country outside England and Wales (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of England and Wales (“the corresponding offence”) if it were done in England and Wales at the time of the proceedings for the offence with which the defendant is now charged.

(2B) For the purposes of subsection (2), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable.”

Commencement Information

II Sch. 17 para. 1 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(i)

- 2 (1) The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)) is amended as follows.

- (2) In Article 8 (matter in issue between the defendant and the prosecution), after paragraph (6) add—

“(7) Where—

- (a) a defendant has been convicted of an offence under the law of any country outside Northern Ireland (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Northern Ireland (“the corresponding offence”) if it were done in Northern Ireland at the time of the trial for the offence with which the defendant is now charged (“the current offence”),

paragraph (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(8) For the purposes of paragraph (2)—

- (a) the previous offence is of the same description as the current offence, if the corresponding offence is of that same description, as set out in paragraph (4)(a);
- (b) the previous offence is of the same category as the current offence, if the current offence and the corresponding offence belong to the

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same category of offences prescribed as mentioned in paragraph (4) (b).”

- (3) In Article 13 (offences committed by a defendant when a child), after paragraph (1) insert—

“(1A) Paragraph (1B) applies where—

- (a) the defendant has been convicted of an offence under the law of any country outside Northern Ireland (“the previous offence”), and
- (b) the previous offence would constitute an offence under the law of Northern Ireland (“the corresponding offence”) if it were done in Northern Ireland at the time of the proceedings for the offence with which the defendant is now charged.

(1B) For the purposes of paragraph (1), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable.”

Commencement Information

I2 Sch. 17 para. 2 in force at 18.4.2011 for N.I. by S.R. 2011/182, art. 2(d)(i)

Bail

- 3 (1) Section 25 of the Criminal Justice and Public Order Act 1994 (c. 33) (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences) is amended as follows.

- (2) For subsection (3) substitute—

“(3) This section applies in the circumstances described in subsection (3A) or (3B) only.

(3A) This section applies where—

- (a) the person has been previously convicted by or before a court in any part of the United Kingdom of any offence within subsection (2) or of culpable homicide, and
- (b) if that previous conviction is one of manslaughter or culpable homicide—
 - (i) the person was then a child or young person, and was sentenced to long-term detention under any of the relevant enactments, or
 - (ii) the person was not then a child or young person, and was sentenced to imprisonment or detention.

(3B) This section applies where—

- (a) the person has been previously convicted by or before a court in another member State of any relevant foreign offence corresponding to an offence within subsection (2) or to culpable homicide, and
- (b) if the previous conviction is of a relevant foreign offence corresponding to the offence of manslaughter or culpable homicide—
 - (i) the person was then a child or young person, and was sentenced to detention for a period in excess of 2 years, or

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(ii) the person was not then a child or young person, and was sentenced to detention.”

(3) In subsection (5), omit “and” at the end of the definition of “conviction”, and at the end insert—

““relevant foreign offence”, in relation to a member State other than the United Kingdom, means an offence under the law in force in that member State.”

(4) After that subsection insert—

“(5A) For the purposes of subsection (3B), a relevant foreign offence corresponds to another offence if the relevant foreign offence would have constituted that other offence if it had been done in any part of the United Kingdom at the time when the relevant foreign offence was committed.”

Commencement Information

I3 Sch. 17 para. 3 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(ii)

Decision as to allocation

4 (1) Section 19 of the Magistrates' Courts Act 1980 (c. 43) (decision as to allocation) (as substituted by Schedule 3 to the Criminal Justice Act 2003 (c. 44)) is amended as follows.

(2) In subsection (5), omit “or” at the end of paragraph (a) and insert—

“(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State; or”.

(3) After that subsection insert—

“(5A) For the purposes of subsection (5)(aa) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time when the allocation decision is made.”

Commencement Information

I4 Sch. 17 para. 4 in force at 28.5.2013 by S.I. 2013/1104, art. 2(b)

5 (1) Paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (procedure where persons are sent for trial under section 51 of the Crime and Disorder Act 1998) (as amended by Schedule 3 to the Criminal Justice Act 2003) is amended as follows.

(2) In sub-paragraph (5), omit “or” at the end of paragraph (a) and insert—

“(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State, or”.

(3) After that sub-paragraph, insert—

“(5A) For the purposes of sub-paragraph (5)(aa) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United

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Kingdom if it were done in that part at the time when the allocation decision is made.”

Commencement Information

I5 Sch. 17 para. 5 in force at 28.5.2013 by S.I. 2013/1104, art. 2(b)

Seriousness

^{F16}

Textual Amendments

F1 Sch. 17 para. 6 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 28 (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

7 (1) Section 238 of the Armed Forces Act 2006 (c. 52) (deciding the seriousness of an offence) is amended as follows.

(2) In subsection (3)—

- (a) omit “or” at the end of paragraph (a), and
- (b) at the end of paragraph (b), insert—

- “(c) a previous conviction by a court in a member State other than the United Kingdom of a relevant offence under the law of that State, or
- (d) a finding of guilt in respect of a member State service offence.”

(3) For subsection (4) substitute—

“(4) Nothing in this section prevents the court or officer from treating—

- (a) a previous conviction by a court outside both the British Islands and any member State, or
- (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence or a member State service offence,

as an aggravating factor in any case where the court or officer considers it appropriate to do so.

(5) For the purposes of this section—

- (a) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction in respect of the current offence,
- (b) “member State service offence” means an offence which—
 - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
 - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's

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- forces, at the time of the conviction of the defendant for the current offence, and
- (c) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”

Commencement Information
I6 Sch. 17 para. 7 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(iii)

PROSPECTIVE

Availability of community orders

F28

Textual Amendments
F2 Sch. 17 para. 8 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 28 (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

F39

Textual Amendments
F3 Sch. 17 para. 9 repealed (2.4.2012) by Armed Forces Act 2011 (c. 18), s. 32(3), Sch. 5; S.I. 2012/669, art. 4(f)(i)

Required custodial sentences for certain offences

F410

Textual Amendments
F4 Sch. 17 para. 10 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 28 (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Restriction on imposing custodial sentence or service detention

- 11 In section 263 of the Armed Forces Act 2006 (c. 52) (restriction on imposing custodial sentence or service detention on unrepresented offender)—
- (a) at the end of subsection (2)(b) insert “, or sentenced to detention by a court in any other member State or for a member State service offence”, and
 - (b) at the end of subsection (6)(b) insert—
 - “(c) member State service offence” means an offence which—

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- (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
- (ii) at the time it was done, would have constituted an offence in any part of the United Kingdom, or a service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces;
- (d) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.”

Commencement Information

I7 Sch. 17 para. 11 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(v)

Young offenders: referral conditions

^{F5}12

Textual Amendments

F5 Sch. 17 para. 12 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 28 (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Proving of foreign convictions before courts in England and Wales

- 13 (1) Section 73 of the Police and Criminal Evidence Act 1984 (c. 60) (proof of convictions and acquittals) is amended as follows.
- (2) In subsection (1), after “Kingdom” insert “ or any other member State ”.
- (3) In subsection (2), after paragraph (b) insert “; and
- (c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;”.
- (4) In subsection (3)—
- (a) in paragraph (b), after “other court” insert “ in the United Kingdom ”, and
 - (b) after that paragraph add “, and
 - “(c) in relation to any court in another member State (“the EU court”), a person who would be the proper officer of the EU court if that court were in the United Kingdom.”

Commencement Information

I8 Sch. 17 para. 13 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(vii)

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- 14 (1) Section 74 of that Act (conviction as evidence of commission of offence) is amended as follows.
- (2) In subsection (1), after “Kingdom” (in first place it occurs) insert “ or any other member State ”.
- (3) In subsection (2), after “Kingdom” (in first place it occurs) insert “ or any other member State ”.
- (4) In subsection (3)(a) after “Kingdom” insert “ or any other member State ”.

Commencement Information

I9 Sch. 17 para. 14 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(vii)

- 15 In section 75 of that Act (provisions supplementary to section 74), for subsection (1) (b) substitute—
- “(b) the contents of—
- (i) the information, complaint, indictment or charge-sheet on which the person in question was convicted, or
- (ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in sub-paragraph (i).”

Commencement Information

I10 Sch. 17 para. 15 in force at 15.8.2010 by S.I. 2010/1858, art. 3(d)(vii)

Proving of foreign convictions before courts in Northern Ireland

- 16 (1) Article 71 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (proof of convictions and acquittals) is amended as follows.
- (2) After paragraph (1) insert—
- “(1A) Where in any criminal proceedings the fact that a person has in a member State been convicted or acquitted of an offence is admissible in evidence, it may be proved by—
- (a) producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and
- (b) proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.”
- (3) In paragraph (2), after sub-paragraph (b) insert “; and
- “(c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;”

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Commencement Information

I11 Sch. 17 para. 16 in force at 18.4.2011 for N.I. by S.R. 2011/182, art. 2(d)(ii)

- 17 (1) Article 72 of that Order (conviction as evidence of commission of offence) is amended as follows.
- (2) In paragraph (1), after “Kingdom” (in first place it occurs) insert “ or any other member State ”.
- (3) In paragraph (2), after “Kingdom” (in first place it occurs) insert “ or any other member State ”.
- (4) In paragraph (3)(a), after “Kingdom” insert “ or any other member State ”.

Commencement Information

I12 Sch. 17 para. 17 in force at 18.4.2011 for N.I. by S.R. 2011/182, art. 2(d)(ii)

- 18 In Article 73 of that Order (provisions supplementary to Article 72), for paragraph (1)(b) substitute—
- “(b) the contents of—
- (i) the complaint, information, indictment or charge-sheet on which the person in question was convicted, or
- (ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in paragraph (i).”.

Commencement Information

I13 Sch. 17 para. 18 in force at 18.4.2011 for N.I. by S.R. 2011/182, art. 2(d)(ii)

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Changes and effects yet to be applied to :

- Sch. 17 para. 8 omitted by [S.I. 2019/780 reg. 27](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)

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):

- s. 47(2)(kb) inserted by [2024 c. 21 s. 40](#)