

## SCHEDULES

### SCHEDULE 8

Section 25

#### CORRESPONDING PROVISION ABOUT SENTENCING UNDER SERVICE LAW

#### PART 1

##### SERIOUS TERRORISM SENTENCES ETC

1 The Armed Forces Act 2006 is amended as follows.

##### *Serious terrorism sentence for services offences*

2 After section 219 insert—

##### **“219ZA Serious terrorism sentence: offenders aged 18 or over**

- (1) This section applies where—
  - (a) a person is convicted by the Court Martial of a serious terrorism offence (see subsection (11));
  - (b) the offence was committed on or after the day on which paragraph 2 of Schedule 8 to the Counter-Terrorism and Sentencing Act 2021 came into force;
  - (c) the offender was aged 18 or over when the offence was committed;
  - (d) the court is of the required opinion (see section 223(1A));
  - (e) the court does not impose a sentence of custody for life or (as the case may be) a sentence of imprisonment for life; and
  - (f) the risk of multiple deaths condition is met.
- (2) The risk of multiple deaths condition is that the court is of the opinion that—
  - (a) either—
    - (i) the serious terrorism offence, or
    - (ii) the combination of the offence and one or more offences associated with it,  
was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people as a result of an act of terrorism (within the meaning of section 1 of the Terrorism Act 2000), and
  - (b) the offender was, or ought to have been, aware of that likelihood.
- (3) It is irrelevant for the purposes of determining whether the risk of multiple deaths condition is met whether or not any deaths actually occurred.
- (4) Where the offender is aged under 21 when convicted of the serious terrorism offence, section 268B(2) of the Sentencing Code (duty to impose

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- a serious terrorism sentence of detention in young offender institution under section 268A) applies in relation to the offender.
- (5) Section 268C of the Sentencing Code applies where a court is required to impose a serious terrorism sentence under section 268A by virtue of this section.
- (6) In its application to an offender by virtue of subsection (5)—
- (a) section 268C(2)(b) of the Sentencing Code has effect as if—
    - (i) for “section 231(2)” there were substituted “section 261(2) of the Armed Forces Act 2006”, and
    - (ii) after “section 265” there were inserted “passed as a result of section 224A of that Act”, and
  - (b) section 268C(3) of the Code has effect as if after “other specified offences” there were inserted “or further acts or omissions that would be serious terrorism offences or other specified offences if committed in England and Wales”.
- (7) Where the offender is aged 21 or over when convicted of the serious terrorism offence, section 282B(2) of the Sentencing Code (duty to impose serious terrorism sentence of imprisonment under section 282A) applies in relation to the offender.
- (8) Section 282C of the Sentencing Code applies where a court is required to impose a serious terrorism sentence under section 282A by virtue of this section.
- (9) In its application to an offender by virtue of subsection (8)—
- (a) section 282C(2)(b) of the Sentencing Code has effect as if—
    - (i) for “section 231(2)” there were substituted “section 261(2) of the Armed Forces Act 2006”, and
    - (ii) after “section 278” there were inserted “passed as a result of section 224A of that Act”, and
  - (b) section 282C(3) of the Code has effect as if, after “other specified offences” there were inserted “or further acts or omissions that would be serious terrorism offences or other specified offences if committed in England and Wales”.
- (10) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the last of those days.
- (11) In this section “serious terrorism offence” means—
- (a) an offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is specified in Part 1 of Schedule 17A to the Sentencing Code, or
  - (b) an offence under that section—
    - (i) as respects which the corresponding offence under the law of England and Wales is specified in Part 2 of that Schedule, and

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- (ii) which has been determined to have a terrorist connection under section 69 of the Code as applied by section 238(6) of this Act.”

*Reduction in appropriate custodial term for guilty plea*

- 3 In section 239 (reduction in sentence for guilty plea), after subsection (3) insert—
- “(3A) Subsection (3B) applies in the case of an offence the sentence for which, as a result of section 219ZA(4) or (7) of this Act (serious terrorism sentences) falls to be imposed under section 268A or 282A of the Sentencing Code.
  - (3B) Nothing in section 268C(2) or, as the case may be, 282C(2) of the Sentencing Code prevents the court, after taking into account any matter referred to in subsection (2) above, from imposing as the appropriate custodial term a term of any length which is not less than 80% of the term which would otherwise be required.”

*Minimum term orders for serious terrorism offenders in cases of service offences*

- 4 In section 261A (life sentences: further provision), in subsection (3)—
- (a) the words from “subsection (2)(c)(i)” to the end become paragraph (a),
  - (b) at the end insert—
    - “(b) subsection (4) has effect as if, after “by section 268B(2) or 282B(2)” there were inserted “as a result of section 219ZA of the Armed Forces Act 2006”;
    - (c) subsection (6)(b) has effect as if—
      - (i) after “section 268B(2) or 282B(2)” there were inserted “as a result of section 219ZA of the Armed Forces Act 2006”;
      - (ii) for sub-paragraphs (i) and (ii) there were substituted—
        - “(i) section 239 of that Act,  
and
        - (ii) section 304C of that Act””

*Reduction in appropriate custodial term for assistance to prosecution*

- 5 In section 304C (to be inserted by the Armed Forces Act 2016) (reduction in sentence), after subsection (5) insert—
- “(5A) The power of a court to act under subsection (2) is not affected by section 268C(2) or 282C(2) of the Sentencing Code as applied by section 219ZA(5) or (8) of this Act (minimum appropriate custodial term for serious terrorism sentences) so far as the power relates to determining the appropriate custodial term.”

## PART 2

### OFFENCES ATTRACTING SPECIAL CUSTODIAL SENTENCE

- 6 In section 224A of the Armed Forces Act 2006 (special custodial sentence for offenders of particular concern)—
- (a) in subsection (1)—
- (i) in paragraph (a), omit “under section 42 (criminal conduct)”;
- (ii) for paragraph (b) substitute—
- “(b) the offence—
- (i) is an offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is listed in Schedule 13 to the Sentencing Code (except in paragraph 9 of that Schedule), or
- (ii) is an offence, other than one for which the sentence is fixed by law as life imprisonment, that is determined to have a terrorist connection under section 69 of the Sentencing Code (as applied by section 238(6)),”;
- (b) omit subsection (4).

## PART 3

### SPECIAL CUSTODIAL SENTENCE FOR TERRORIST OFFENDERS OF PARTICULAR CONCERN AGED UNDER 18 AT TIME OF OFFENCE

- 7 The Armed Forces Act 2006 is amended as follows.
- 8 (1) Section 224A (special custodial sentence for offenders of particular concern) is amended as follows.
- (2) In the heading, at the end insert “aged 18 or over”.
- (3) In subsection (1)—
- (a) in paragraph (a), after “person” insert “aged 18 or over”;
- (b) omit paragraph (c) (but not the final “and”).
- (4) After subsection (1) insert—
- “(1A) But this section does not apply if—
- (a) the offender was aged under 18 when the offence was committed, and
- (b) the offence—
- (i) was committed before the day on which paragraph 8 of Schedule 8 to the Counter-Terrorism and Sentencing Act 2021 came into force, or
- (ii) is an offence under section 42 as respects which the corresponding offence under the law of England and Wales

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is listed in Part 2 of Schedule 13 to the Sentencing Code (sexual offences).”

9 After section 224A insert—

**“224B Special sentence of detention for terrorist offenders of particular concern aged under 18**

- (1) Subsections (3) and (4) apply where—
- (a) a person aged under 18 is convicted by the Court Martial of an offence committed on or after day on which paragraph 9 of Schedule 8 to the Counter-Terrorism and Sentencing Act 2021 comes into force,
  - (b) the offence—
    - (i) is an offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is listed in Part 1 of Schedule 13 to the Sentencing Code (except in paragraph 9 of that Schedule) (terrorism offences), or
    - (ii) is an offence, other than one for which the sentence is fixed by law as life imprisonment, that is determined to have a terrorist connection under section 69 of the Sentencing Code (as applied by section 238(6)),
  - (c) the court does not impose either of the following for the offence (or for an offence associated with it)—
    - (i) a sentence of detention for life under section 209, or
    - (ii) an extended sentence of detention under section 254 of the Sentencing Code (as applied by section 221A of this Act), and
  - (d) the court would, apart from this section, impose a custodial sentence (see, in particular, section 260(2)).
- (2) In determining for the purposes of subsection (1)(d) whether it would impose a custodial sentence, the court must disregard any restriction on its power to impose such a sentence by reference to the age of the offender.
- (3) The court must impose a sentence of detention under this section.
- (4) Subsections (4) and (5) of section 252A of the Sentencing Code apply in relation to the term of the sentence.
- (5) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the last of those days.”