

SCHEDULE 2

Articles 2 and 4

TRANSITIONAL AND SAVING PROVISIONS

Interpretation

1. In this Schedule—

“the 1991 Act” means the Criminal Justice Act 1991;

“the 1997 Act” means the Crime (Sentences) Act 1997;

Pre commencement offences

Savings relating to Parts 2, 5 and 9 of the 2003 Act

2. The coming into force of the provisions referred to in paragraphs 2, 43(a) and 44(2) of Schedule 1 to this Order is of no effect in relation to alleged offences into which a criminal investigation within the meaning of section 1(4) of the Criminal Procedure and Investigation Act 1996(1) has begun before 4th April 2005.

3.—(1) In the case of any criminal proceedings falling under paragraph (2)—

- (a) the coming into force of sections 18, 57 to 61, 67 to 72 and 74 of the 2003 Act confers no additional prosecution right of appeal;
- (b) the coming into force of sections 309 and 310 of the 2003 Act confers no additional power to order a preparatory hearing on a judge of the Crown Court; and
- (c) the coming into force of section 311 of the 2003 Act does not alter the jurisdiction in which reporting restrictions may apply in those proceedings.

(2) The criminal proceedings to which this paragraph applies are those in which one of the following occurred before 4th April 2005—

- (a) the defendant was committed for trial;
- (b) the proceedings were transferred to the Crown Court under section 53 of the Criminal Justice Act 1991(2) or section 4 of the Criminal Justice Act 1987(3);
- (c) an order was made by a magistrates court that the accused be sent for trial for an indictable only offence under section 51 of the Crime and Disorder Act 1998(4); or
- (d) a bill of indictment was preferred by the direction or with the consent of a judge of the High Court.

Transitional Provisions relating to Chapter 1 of Part 12

4. Where a court is dealing with an offender in relation to an offence committed before 4th April 2005, section 156 of the 2003 Act shall be treated as if—

- (a) the references in subsection (1) to section 148(1), (2)(b) or (3)(b), section 152(2) and 153(2) of that Act were references to section 35(1) and (3)(b), 79(2)(a) and 80(2)(a) of the Sentencing Act;

(1) 1996 c. 25.

(2) 1991 c. 53.

(3) 1987 c. 38.

(4) 1998 c. 37.

Status: This is the original version (as it was originally made).

- (b) the references in subsection (2) to section 148(2)(a) and (3)(a) of that Act were to section 35(3)(a) of the Sentencing Act;
- (c) the references in subsection (3)(a) to section 152(2), 153(2), 225(1)(b), 226(1)(b), 227(1)(b), 228(1)(b)(i) were references to sections 79(2), or 80(2) of the Sentencing Act; and
- (d) the references in subsection (3)(b) to sections 148(1), (2)(b) and (3)(b) of that Act were to sections 35(1) and (3)(b) of the Sentencing Act.

Saving Provisions relating to Chapters 1 to 5 of Part 12

5.—(1) The coming into force of the provisions mentioned in paragraph (2) is of no effect in relation to an offence committed before 4th April 2005.

(2) The provisions to which this paragraph applies are—

- (a) sections 146 to 150, 152, 153, 166, 177, 179, 180, and 189 to 194 of and Schedules 8, 9, 12, 13 and 14 to the 2003 Act;
- (b) in Schedule 32 (amendments relating to sentencing), paragraphs 2, 5 and 6(a), 8 and 9, 12(4) and (5), 13 to 15, 18(1) and (3), 20 to 23, 26, 31, 32, 35, 36, 38, 47, 54, 59 to 61, 64, 67, 68(1), (3) and (4), 69 to 81, 88, 89, 91, 92, 94 to 97(2) and (3), 98, 99, 100(2) and (3), 101, 102(1) and (2)(a), 103, 104(2) and (3), 105, 106(2), 107, 110, 122, 123, and 125 to 129, 130 to 132, 134, 135, 138, 141, and 144;
- (c) in Part 7 of Schedule 37 (repeals)—
 - (i) the entry relating to section 18 of the Crime and Disorder Act 1998**(5)**;
 - (ii) the entry relating to section 104(1) of the Criminal Justice Act 1967**(6)**;
 - (iii) the entry relating to section 11(4) of the Criminal Appeal Act 1968**(7)**;
 - (iv) the entry relating to the Social Work (Scotland) Act 1968**(8)**;
 - (v) the entry relating to the Bail Act 1976**(9)**;
 - (vi) the entry relating to Schedule 6A of the Magistrates' Courts Act 1980**(10)**;
 - (vii) the entry relating to the Road Traffic Offenders Act 1988**(11)**;
 - (viii) the entry relating to section 7(9) of the Football Spectators Act 1989**(12)**;
 - (ix) the entry relating to the Children Act 1989**(13)**;
 - (x) the entry relating to the Criminal Justice and Public Order Act 1994**(14)**;
 - (xi) the entry relating to the Criminal Procedure (Scotland) Act 1995**(15)**;
 - (xii) the entry relating to sections 34 to 36A, 36B, 37(9), 40A(4) and (9), 41 to 59, 62, 79 and 80, 85, 109, 118 to 125, 151 to 153, 158 to 161(2) to (4) and 163 of and Schedules 2, 4, 7 and 8 to the Sentencing Act;
 - (xiii) the entry relating to section 47 to 51, 53 to 55, 63 and 78(1) of and Schedule 7 to the Criminal Justice and Court Services Act 2000**(16)**.

(5) 1998 c. 37.
(6) 1967 c. 80.
(7) 1968 c. 19.
(8) 1968 c. 49.
(9) 1976 c. 63.
(10) 1980 c. 43.
(11) 1988 c. 53.
(12) 1989 c. 37.
(13) 1989 c. 41.
(14) 1994 c. 33.
(15) 1995 c. 46.
(16) 2000 c. 43

(3) Where an offence 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 paragraph (1) to have been committed on the last of those days.

6. The coming into force of—

(a) paragraphs 37, 38, 46, 93, 117, 120 and 124 of Schedule 32 to the 2003 Act; and

(b) Part 7 of Schedule 37 to the 2003 Act in so far as it relates to—

(i) section 37(1B) of the Mental Health Act 1983;

(ii) sections 112 to 115, and 127 of the Sentencing Act,

is of no effect in a case in which a court is dealing with a person whose sentence falls to be imposed under section 109 of the Sentencing Act.

Community sentences

Transitional provisions

7. Until the coming into force of sections 177 and 179 to 180 (community orders) of the 2003 Act in accordance with article 2(2) of this Order, the transitional provisions in paragraphs 8 to 10 shall have effect.

8. Sections 41 to 58 of and Schedules 2 and 4 to the Sentencing Act shall continue to have effect (subject to any necessary modifications) where a person aged 16 or 17 is convicted of an offence as if—

(a) for “sections 34 to 36 above” in sections 41(1), 46(1), 51(1) and 52(1) there were substituted “sections 148, 150 and 156 of the Criminal Justice Act 2003”;

(b) sections 41(4), (7) and (9)(a); 42(2)(b) to (3); 46(5)(a), (10), 11(a); 47(3A) to (4); and 52(6) were omitted;

(c) paragraphs 2(2)(a)(i) and 3(2)(a) of Schedule 2 were omitted; and

(d) paragraphs 1(3)(a) and 2(3)(a) of Schedule 4, in so far as they relate to paragraph 2(2)(a)(i) of Schedule 2 to the Sentencing Act, were omitted.

9. Notwithstanding the substitution of section 33 (community orders) and the amendment to section 165 (interpretation) of the Sentencing Act by Schedule 32 to the 2003 Act, orders made under sections 41 to 58 of the Sentencing Act (community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders and drug treating and testing orders) shall continue to be regarded as community orders and community sentences for the purposes of the Sentencing Act.

10. Notwithstanding sections 147 (meaning of community sentence), 177 (community orders) and 305 (interpretation) of the 2003 Act, orders made under sections 41 to 58 of the Sentencing Act shall also be regarded as community orders and community sentences for the purposes of the provisions specified in paragraphs (a) and (b)—

(a) sections 148 to 150, 152, 156, 166 and 174 of the 2003 Act; and

(b) the amendments made by paragraphs 8, 12(4) and 5, 13(2) and (3), 18(3), 21(3), 31, 38, 73, 89, 123(4), 131, 132 and 134(a) of Schedule 32 to the 2003 Act.

11. Until the coming into force of paragraph 125 (substitution of Schedule 3 to the Sentencing Act) of Schedule 32 to the 2003 Act in accordance with article 4 of this Order, Schedule 3 to the Sentencing Act shall continue to have effect (subject to any necessary modifications) as if—

(a) the reference in paragraphs 5(2) and 21(6)(b) to “section 79(2) of this Act” were to “section 152(3) of the Criminal Justice Act 2003”; and

- (b) the reference in paragraphs 7(5) and 8(3) to “sections 35 and 36 of this Act” were to “sections 148 and 156 of the Criminal Justice Act 2003”.

Savings

12. Until the coming into force of sections 177 and 179 to 180 of the 2003 Act in accordance with article 2(2) of this Order, the provisions of the 2003 Act specified in paragraph 13 shall have no effect where a person aged 16 or 17 is convicted of an offence or in relation to orders made under sections 41 to 58 of the Sentencing Act by virtue of paragraph 8.

13. The provisions referred to paragraph 12 are—

- (a) section 303(d)(i) (repeal of Chapter 3 of Part 4 of the Sentencing Act);
- (b) in Schedule 32, the amendments made by paragraphs 5, 14, 32, 36, 64, 69 to 72, 78(3), 96, 97(2)(a) and (3), 98, 100(2)(a) in so far as it substitutes “16” for “21”, (2) (c) and (3), 101, 102(2)(a) and (4), 104(3) and 106(2);
- (c) In Schedule 37, the entries relating to—
 - (i) section 94(1) of the Social Work (Scotland) Act 1968 (c. 49);
 - (ii) sections 35(2), 36B, 37(9) and 41 to 58 of and Schedules 2 and 4 to the Sentencing Act.

Saving and Transitional Provisions relating to Chapter 6 of Part 12

Saving for prisoners serving sentences of imprisonment of less than 12 months

14. The coming into force of sections 244 to 268 of, and paragraph 30 of Schedule 32 to the 2003 Act, and the repeal of sections 33 to 51 of the 1991 Act, is of no effect in relation to any sentence of imprisonment of less than twelve months (whether or not such a sentence is imposed to run concurrently or consecutively with another such sentence).

Power of court to recommend licence conditions for certain prisoners

15. The coming into force of section 238 of the 2003 Act (power of court to recommend licence conditions) is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4th April 2005.

The Parole Board

16. Where the Parole Board is—

- (a) by virtue of paragraph 14 of this Schedule, dealing with a prisoner serving a sentence of less than 12 months; or
- (b) by virtue of paragraph 19 of this Schedule, dealing with a prisoner serving a term of imprisonment in respect of an offence committed before 4th April 2005,

any reference in section 239 of the 2003 Act to Chapter 6 of that Act shall be treated as a reference to Part 2 of the 1991 Act.

Remand Time

17. The coming into force of section 243 of the 2003 Act (persons extradited to the United Kingdom) is of no effect in the case of an extradited prisoner where the offence referred to in subsection (1) of section 243 was committed before 4th April 2005.

18. The coming into force of paragraph 10 of Schedule 32 to the 2003 Act is of no effect in a case where a court has imposed a sentence on conviction on retrial in respect of an offence committed before 4th April 2005.

Savings for prisoners convicted of offences committed before 4th April 2005

19. The coming into force of—

- (a) sections 244 (duty to release prisoners), 246 (power to release prisoners before required to do so), 248 (power to release on compassionate grounds), 249 (duration of licence) and 250 (licence conditions);
- (b) paragraph 8(2)(b) of Schedule 32 (Criminal Appeal Act 1968⁽¹⁷⁾);
- (c) the repeal of sections 33, 33A to 38A, 40A to 44, and 46 to 47 and 51 of the 1991 Act; and
- (d) the repeal of sections 59 and 60, 99 and 100, 101, 103 to 105 and 121 of the Crime and Disorder Act 1998,

is of no effect in relation to a prisoner serving a sentence of imprisonment imposed in respect of an offence committed before 4th April 2005.

20. The coming into force of the repeal of sections 49 and 50 of the 1991 Act does not affect the power of the Secretary of State to make orders under those provisions relating to prisoners serving sentences of imprisonment in respect of offences committed before 4th April 2005.

21. The coming into force of the repeal of section 38 of the Crime and Disorder Act 1998 is of no effect in relation to a child or young person whose post-release supervision relates to a sentence in respect of an offence committed before 4th April 2005.

22. Until the repeal of section 34A of the 1991 Act comes fully into force, subsection (2)(g) of that section shall be treated as if at the end there were added the words “or section 254 of the Criminal Justice Act 2003”.

Transitional arrangements for recall after release

23.—(1) Subject to sub-paragraphs (2) and (3), in relation to a prisoner who falls to be released under the provisions of Part 2 of the 1991 Act after 4th April 2005—

- (a) the reference to release on licence in section 254(1) of the 2003 Act (recall of prisoners while on licence) shall be taken to include release on licence under those provisions; and
- (b) the reference in sections 37(1) and 44(3) and (4) of the 1991 Act to revocation under section 39 of that Act shall be treated as a reference to revocation under section 254 of the 2003 Act.

(2) Paragraph 12(1) and (2) of Schedule 9 to the Crime and Disorder Act 1988 shall continue to apply to the recall of prisoners whose sentence was committed before the commencement of section 103 of that Act.

(3) The repeal of section 39 of the 1991 Act is of no effect in a case in which the Secretary of State has received a request for the recall of an offender from an officer of a local Probation Board before 4th April 2005.

(17) 1968 c. 18.

Fine defaulters and contemnors

24. The coming into force of section 258 of the 2003 Act, and the repeal of section 45 of the 1991 Act (early release of fine defaulters and contemnors) is of no effect in relation to a person committed to prison in the circumstances set out in subsection (1)(a) or (b) of section 258 before 4th April 2005.

Consecutive or concurrent terms

25. The coming into force of—

- (a) sections 263 and 264 of the 2003 Act (consecutive or concurrent terms);
- (b) paragraphs 4 and 6(b) of Schedule 32 (Criminal Justice Act 1967⁽¹⁸⁾);
- (c) in Schedule 37, the entry relating to section 104(2) of the Criminal Justice Act 1967,

does not affect the date on which the Secretary of State is required to release an offender from a sentence of imprisonment passed in respect of an offence committed before 4th April 2005, whether or not that sentence of imprisonment is to run concurrently or consecutively with one passed in respect of an offence committed after that date.

Repatriation of Prisoners Act 1984

26. The coming into force of paragraphs 40, 41 and 43 of Schedule 32 to the 2003 Act is of no effect in relation to a prisoner who is the subject of arrangements made under section 1 of the Repatriation of Prisoners Act 1984⁽¹⁹⁾, if the sentence of imprisonment that is to be served under those arrangements is in respect of an offence committed before 4th April 2005.

Crime (Sentences) Act 1997

27. The coming into force of paragraph 85 of Schedule 32 to the 2003 Act is of no effect in the case of a person who falls under Part 1 of Schedule 1 to the 1997 Act where the remand in custody or sentence of imprisonment referred to in that Part is in respect of an offence committed before 4th April 2005.

28. The coming into force of paragraph 86 of Schedule 32 to the 2003 Act and the entry in Part 7 of Schedule 37 to that Act relating to Schedule 2 of the 1997 Act does not affect the continuing application of paragraphs 2 and 3 to Schedule 2 to the 1997 Act to persons to whom they applied immediately before 4th April 2005.

Powers of Criminal Courts (Sentencing) Act 2000

29. The coming into force of paragraph 116 of Schedule 32 to the 2003 Act and the repeal of sections 6(4)(d), 116 and 117 of the Sentencing Act is of no effect in relation to a person in a case in which the sentence of imprisonment referred to in section 116(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000—

- (a) is imposed in respect of an offence committed before 4th April 2005; or
- (b) is for a term of less than twelve months.

30. The coming into force of the repeal of section 84 of the Sentencing Act is of no effect in a case in which the sentence of imprisonment referred to in that section was imposed in respect of an offence committed before 4th April 2005.

(18) 1967 c. 80.

(19) 1984 c. 47.

The Criminal Justice and Court Services Act 2000

31. The commencement of paragraph 136(2) of Schedule 32 to the 2003 Act is of no effect in relation to a person released under section 34A of the 1991 Act, whether or not that release takes place after 4th April 2005.

The International Criminal Court Act 2001

32. The commencement of paragraph 139 of Schedule 32 to the 2003 Act is of no effect in the case of a prisoner on whom a sentence of imprisonment has been imposed in relation to an offence committed before 4th April 2005, and to whom the provisions mentioned in paragraph 2(1)(d) and 3(1) of Schedule 7 to the International Criminal Court Act 2001⁽²⁰⁾ would have applied if that sentence had been imposed by a court in England and Wales.

Persons liable to removal from the United Kingdom

33. The coming into force of section 260 of the 2003 Act, and the repeal of sections 46 to 46B of the 1991 Act, is of no effect in relation to a prisoner liable to removal from the United Kingdom, if the requisite custodial period referred to in section 260(1) relates to a sentence of imprisonment imposed in respect of an offence committed before 4th April 2005.

Saving for service prisoners

34. The coming into force of the entry in Part 7 of Schedule 37 to the 2003 Act relating to the 1991 Act is of no effect in relation to a prisoner whose sentence of imprisonment is imposed by a service court⁽²¹⁾.

⁽²⁰⁾ 2001 c. 17.

⁽²¹⁾ “Service court” is defined by section 305 of the Sentencing Act.