
STATUTORY INSTRUMENTS

2020 No. 1520

The Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020

Part 2

Amendments of the Sentencing Act 2020

Amendment of section 397 of the Sentencing Act 2020

3. In section 397 of the Sentencing Act 2020 (interpretation: general), after subsection (4) insert—

“(5) For the purposes of this Code, proceedings are instituted when they are instituted for the purposes of Part 1 of the Prosecution of Offences Act 1985(1) (see section 15(2) of that Act).”

Amendment of section 418 of the Sentencing Act 2020

4.—(1) Section 418 of the Sentencing Act 2020 (commencement of Schedule 26) is amended as follows.

(2) In subsection (2), for “6 to 23” substitute “6 to 11, 12(1)(a) to (d), (dc) to (f) and (2)(a), 13, 14(a) and (b) to (d), 15 and 16 to 23”.

(3) After subsection (4) insert—

“(4A) Paragraphs 12(1)(da) and (db) and (2)(b), 14(aa) and (ab), 15A, 15B and 26 (and paragraph 1 so far as it relates to them) come into force on IP completion day, or, if later, on the commencement date.”

Amendment of Schedule 22 to the Sentencing Act 2020

5.—(1) Part 6 of Schedule 22 to the Sentencing Act 2020 (amendments of the Sentencing Code: EU Exit) is amended as follows.

(2) In paragraph 86, for sub-paragraph (3) substitute—

“(3) After subsection (4) insert—

“(4A) If the proceedings for the current offence were instituted before IP completion day (see section 397(5)), “relevant previous conviction” in subsections (1) to (3) also includes—

- (a) a previous conviction of a relevant offence under the law of a member State by a court in that State, and
- (b) a finding of guilt in respect of a member State service offence (see subsection (6)).”

(3A) In subsection (6), for “(4)(d)” substitute “(4A)(b)”.

(3) In paragraph 87—

(a) the existing provision becomes sub-paragraph (1);

(b) after sub-paragraph (1) insert—

“(2) After subsection (2) insert—

“(2A) But the compulsory referral conditions are not met if—

(a) the proceedings for the offence were instituted before IP completion day (see section 397(5)) and,

(b) the offender has previously been convicted by or before a court in a member State of any offence”.

(4) After paragraph 87 insert—

“**87A.** Section 267 (extended sentence of detention in a young offender institution: availability) is amended as follows—

(a) in subsection (3), after “listed in” insert “Part 1, 2 or 3 of”;

(b) after that subsection insert—

“(3A) But if the proceedings for the offence were instituted before IP completion day (see section 397(5)), the earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Part 1, 2, 3 or 3A of Schedule 14.”.

(5) In paragraph 88—

(a) the existing provision becomes sub-paragraph (1);

(b) after sub-paragraph (1) insert—

“(2) After subsection (12) insert—

“(12A) If the proceedings for the index offence were instituted before IP completion day (see section 397(5)), the references to “an equivalent sentence” in the definitions of the following are to be read as also including an equivalent sentence imposed under the law of a member State—

(a) “extended sentence”, and

(b) “life sentence”.

(6) After paragraph 88 insert—

“**88A.** Section 280 (extended sentence of imprisonment: availability) is amended as follows—

(a) in subsection (3), after “listed in” insert “Part 1, 2 or 3 of”;

(b) after that subsection insert—

“(3A) But if the proceedings for the offence were instituted before IP completion day (see section 397(5)), the earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Part 1, 2, 3 or 3A of Schedule 14”.

(7) In paragraph 89—

(a) the existing provision becomes sub-paragraph (1);

(b) after sub-paragraph (1) insert—

“(2) after subsection (12) insert—

“(12A) If the proceedings for the index offence were instituted before IP completion day (see section 397(5)), the references to “an equivalent sentence” in the definitions of the following are to be read as also including an equivalent sentence imposed under the law of a member State—

- (a) “extended sentence”, and
- (b) “life sentence”.””

(8) In paragraph 90—

- (a) the existing provision becomes sub-paragraph (1);
- (b) after sub-paragraph (1) insert—

“(2) After subsection (3) insert—

“(3A) If the proceedings for the index offence were instituted before IP completion day (see section 397(5)), for the purposes of subsection (1) “relevant drug conviction” also includes—

- (a) a conviction in a member State of an offence committed on or after 16 August 2010 which would, if committed in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence, and
- (b) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted a class A drug offence if committed in England and Wales at the time of conviction.””

(9) In paragraph 91—

- (a) the existing provision becomes sub-paragraph (1);
- (b) after sub-paragraph (1) insert—

“(2) After subsection (3) insert—

“(3A) If the proceedings for the index offence were instituted before IP completion day (see section 397(5)), for the purposes of subsection (1) “relevant domestic burglary conviction” also includes—

- (a) a conviction in a member State of an offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary, if committed in England and Wales at the time of the conviction, and
- (b) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary if committed in England and Wales at the time of conviction.””

(10) In paragraph 92—

- (a) the existing provision becomes sub-paragraph (1);
- (b) after sub-paragraph (1) insert—

“(2) After subsection (4) insert—

“(4A) If the proceedings for the index offence were instituted before IP completion day (see section 397(5)), for the purposes of this section “relevant conviction” also includes—

- (a) a conviction in a member State of a civilian offence which would have constituted a relevant offence if committed in England and

Wales at the time of the conviction (whenever the offence was in fact committed), and

- (b) a conviction of a member State service offence which would have constituted a relevant offence if committed in England and Wales at the time of conviction (whenever the offence was in fact committed).”.”

(11) In paragraph 93—

(a) for sub-paragraph (2) substitute—

“(2) In subsection (1)—

- (a) for the words before “applies” substitute “Subsection (2)”;
- (b) omit paragraph (c) (but not the word “or” at the end of it);
- (c) in paragraph (d) omit “, or in any other member State,.”.”

(b) after subparagraph (2) insert—

“(2A) after subsection (2) insert—

“(2A) Subsection (2B) applies where an offender has been convicted—

- (a) in any member State of a corresponding drug trafficking offence, or
- (b) in any member State of a corresponding domestic burglary offence.

(2B) For the purposes of section 313 or 314 as it applies where the proceedings were instituted before IP completion day (see section 397(5)), a certificate given in accordance with subsection (3) of either or both of the following is evidence of the facts so certified—

- (a) that the offender was convicted of that offence on the date of the conviction;
- (b) that the offence was committed on a particular day, or over, or at some time during, a particular period.”.”

(c) omit sub-paragraph (3);

(d) for sub-paragraph (4) substitute—

“(4) In subsection (4)—

- (a) in the definition of “corresponding drug trafficking offence”, after “313(3)(b)” insert “or (3A)(a)”;
- (b) in the definition of “corresponding domestic burglary offence”, after “314(3)(b)” insert “or (3A)(a)”.”.”

(12) For paragraph 94 substitute—

“**94.**—(1) Section 318 (offences under service law) is amended as follows.

(2) In subsection (2) for “and (e)” substitute “and (3A)(b)”;

(3) In subsection (3)(a) for “and (e)” substitute “and (3A)(b)”.”

(13) In paragraph 95—

(a) in sub-paragraph (1) omit “In” and “Part 3,”;

(b) for sub-paragraph (2) substitute—

“(2) In paragraph 18, for “, Northern Ireland or a member State other than the United Kingdom” substitute “or Northern Ireland”;

(c) in sub-paragraph (4) after “In the heading” insert “of Part 3”;

- (d) after sub-paragraph (4) insert—
“(5) After Part 3 insert—

“Part 3A

PROCEEDINGS INSTITUTED BEFORE IP COMPLETION DAY: OFFENCES UNDER THE LAW OF A MEMBER STATE

20A. A civilian offence for which the person was convicted in a member State and which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 of this Schedule.

20B. A member State service offence which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 of this Schedule.”

- (6) In Part 4, after paragraph 21 insert—

“**22.** In this Schedule—

“civilian offence” means an offence other than an offence described in Part 2 of this Schedule or a member state service offence;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State governing all or any of the naval, military or air forces of that state.””

- (14) In paragraph 96—

- (a) in sub-paragraph (1) omit “Part 4,”;
(b) for sub-paragraph (2) substitute—

“(2) In paragraph 20—

- (a) for “, Northern Ireland or a member State other than the United Kingdom” substitute “or Northern Ireland”;

- (b) omit “This is subject to paragraph 23”.”

- (c) in sub-paragraph (4) after “In the heading” insert “of Part 4”;

- (d) after sub-paragraph (4) insert—
“(5) After Part 4 insert—

“Part 4A

PROCEEDINGS INSTITUTED BEFORE IP COMPLETION DAY: OFFENCES UNDER THE LAW OF A MEMBER STATE

23A. If the proceedings for the index offence were instituted before IP completion day (see section 397(5))—

- (a) a civilian offence for which the person was convicted in a member State and which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule;

- (b) a member State service offence which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule.

This is subject to paragraph 23C.

23B. Where the index offence was committed before 13 April 2015, this Part of this Schedule has effect—

- (a) as if, in paragraph 23A, the reference to a civilian offence were to an offence, and
- (b) with the omission of paragraphs 23A(b)."

(6) In paragraph 24(1) of Part 5 insert—

““civilian offence” means an offence other than an offence described in Part 2 of this Schedule or a member state service offence;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State governing all or any of the naval, military or air forces of that state.”.”

(15) In paragraph 97, for “19” substitute “18”.

(16) After paragraph 97 insert—

“**97A.** In paragraph 19 of this Schedule (which makes amendments to section 397A (offenders fined at least three times: interpretation)), after sub-paragraph (1) insert—

“(1A) After subsection (3) insert—

(3A) Where the court is dealing with the offender for an offence for which the proceedings were instituted before IP completion day (see section 397(5)), the reference in each of the relevant provisions to conviction by a court in the United Kingdom of an offence includes a reference to conviction by a court in a member State of a relevant offence.”.”

Amendment of Schedule 26 to the Sentencing Act 2020

6.—(1) Schedule 26 to the Sentencing Act 2020 (further amendments of the Armed Forces Act 2006) is amended as follows.

(2) In paragraph 12 (amendments of section 218A)—

- (a) the existing provision becomes sub-paragraph (1);
- (b) in that sub-paragraph, after paragraph (d) insert—

in subsection (6), for “(12)” in each place substitute “(12A)”;

(db) after that subsection insert—

(6A) In sections 273 and 283 of that Code as applied for the purpose of this section, subsection (12A) has effect as if—

- (a) for “index offence” there were substituted “offence under section 42”;
- (b) for “section 397(5)” there were substituted “section 377(8) of the Armed Forces Act 2006”.
- (dc) in subsection (6A) (as to be inserted by paragraph (db)), omit “section 273 and”;

(c) after sub-paragraph (1) insert—

“(2) In sub-paragraph (1)—

- (a) in paragraph (da), if it has not already come into force, omit “in each place”;
 - (b) in paragraph (e), for “(12)” substitute “(12A)”.
- (3) In paragraph 14 (amendments of section 219A), after paragraph (a) insert—
 - “(aa) in subsection (2), for “Schedule 14 to the Sentencing Code” substitute “Part 1, 2, or 3 of Schedule 14 to the Sentencing Code”;
 - (bb) after that subsection insert—
 - “(2A) But if the proceedings for the offence under section 42 were instituted before IP completion day (see section 377(8)), Condition A is that, when the offence was committed, the offender had been convicted of an offence listed in Part 1, 2, 3, or 3A of Schedule 14 to the Sentencing Code.”
- (4) After paragraph 15 insert—
 - “**15A.** In section 225 (third drug trafficking offence), after subsection (1) insert—
 - “(1A) For this purpose, section 313 of that Code has effect as if the reference in subsection (3A) to section 397(5) of that Code were to section 377(8) of this Act.”.
 - “**15B.** In section 226 (third domestic burglary), after subsection (1) insert—
 - “(1A) For this purpose, section 314 of that Code has effect as if the reference in subsection (3A) to section 397(5) of that Code were to section 377(8) of this Act.”.
- (5) After paragraph 25 insert—
 - “**26.** In section 377, at the end insert—
 - “(8) A reference to the institution of proceedings in, or in a provision applied by, section 218A, 219A, 225 or 226 is to a charge being brought under Chapter 2 of Part 5.”.