Draft Regulations laid before Parliament under paragraph 8D(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION

CRIMINAL LAW

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

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8B of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament, in accordance with paragraph 8D(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

Part 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020 and come into force immediately before IP completion day.

(2) If these Regulations are made before the commencement date within the meaning of the Sentencing Act 2020(**b**), nothing in section 1 of the Sentencing (Pre-consolidation Amendments) Act 2020(**c**) affects the operation of any amendment made by these Regulations.

Extent

2.—(1) Except as provided in paragraphs (2) and (3), these Regulations extend to the United Kingdom.

(2) The amendments made in Part 2 have the same extent within the United Kingdom as the provisions to which they relate.

(**a**) 2018 c. 16. Section 8B was inserted by section 18 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**b**) to be inserted.
(**c**) 2020 c. 9.

(3) The amendments made in Part 3 extend to England and Wales and Northern Ireland.

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(**a**) (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"."

(**a**) 1985 c. 23.

(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—

"(da) 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."."

Part 3

Amendments of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019

Amendment of the transitional provision in Part 6 (taking account of convictions)

7. For regulation 31 of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019(**a**) (transitional provision) substitute—

"**31.** —Transitional Provision

(1) This Part does not apply in relation to proceedings instituted before IP completion day (and see Article 62(1)(g) of the withdrawal agreement and sections 7A and 7C of the European Union (Withdrawal) Act 2018).

(**a**) S.I. 2019/780.

(2) For the purposes of paragraph (1) as it extends to England and Wales, proceedings are instituted when proceedings are instituted for the purposes of Part 1 of the Prosecution of Offences Act 1995, in accordance with section 15(2) of that Act.

(3) For the purposes of paragraph (1) as it extends to Northern Ireland, proceedings are instituted when proceedings are instituted for the purposes of Part 2 of the Justice (Northern Ireland) Act 2002(**a**), in accordance with section 44(1) of that Act."

Signatory text

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8B of the European Union (Withdrawal) Act 2018 to implement Part 3 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("the withdrawal agreement").

The purpose of these Regulations is to implement Article 62(1)(g) of Part 3, Title V of the withdrawal agreement which preserves the application of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the member States of the European Union in respect of new criminal proceedings instituted but not concluded before the end of the transition period.

Part 2 of these Regulations amends the Sentencing Act 2020 (to be inserted) which consolidated primary legislation relating to sentencing procedure and relevant secondary legislation and introduced the Sentencing Code. Part 3 of these Regulations amends Part 6 (taking account of convictions) of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/780) by which amendments were made to retained EU law to remove reciprocal arrangements based on Council Framework Decision 2008/675/JHA requiring known convictions in member States to be taken into account, to the extent national law requires national convictions to be taken into account. Part 1 of these Regulations ensures that, if these Regulations come into force before the Sentencing Code, then the amendments made by section 1 of the Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9) do not affect any amendment made by these Regulations. Section 1 of that Act provides for all offenders convicted after commencement of the Sentencing Code to be sentenced by applying the sentencing law and procedure in the Sentencing Code regardless of when the offence was committed, and has the effect of removing transitional provision in relation to previous convictions in the member States of the European Union, which are accordingly made in these Regulations instead.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

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