



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 9

SENTENCING: PRINCIPLES AND PROCEDURES

### CHAPTER 2

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS ONLY

*Custodial sentences and service detention*

#### **260 Discretionary custodial sentences: general restrictions**

- (1) This section applies where a court is dealing with an offender for a service offence punishable with a custodial sentence, other than an offence the sentence for which—
  - (a) is fixed by law; or
  - (b) falls to be imposed as a result of subsection (2) of any of sections 219 to 222 and 225 to 227.
- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no less severe sentence can be justified for the offence.
- (3) Nothing in subsection (2) prevents the court from passing a custodial sentence where—
  - (a) the court had proposed to award a community punishment; and
  - (b) the offender failed to express his willingness to comply with a requirement which the court proposed to include in the community punishment and which required an expression of such willingness.
- (4) In forming any such opinion as is mentioned in subsection (2) or section 261(2) (length of sentence), a court must take into account all such information as is available to

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it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

- (5) For the purposes of this section a sentence falls to be imposed as a result of subsection (2) of section 225, 226 or 227 if it is required by that subsection and the court is not of the opinion there mentioned.

#### **261 Length of discretionary custodial sentences: general provision**

- (1) This section applies where a court passes a custodial sentence for a service offence, other than a sentence fixed by law or falling to be imposed as a result of section 219(2) or 221(2).
- (2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.
- (3) Subsection (2) is subject to sections 220, 222, 225, 226 and 227 (required minimum sentences for certain offences).

#### **262 Power to recommend licence conditions**

In section 238(1) of the 2003 Act (court imposing prison term of 12 months or more may recommend licence conditions) “court” includes a court dealing with an offender for a service offence.

#### **263 Restriction on imposing custodial sentence or service detention on unrepresented offender**

- (1) A sentence of—
- (a) imprisonment, or
  - (b) service detention,
- must not be passed by the Court Martial or the Service Civilian Court, or passed or confirmed by the Summary Appeal Court, in respect of an offender who is not legally represented in that court.
- (2) Subsection (1) does not apply if the offender—
- (a) having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply; or
  - (b) was aged 21 or over when convicted, and has previously been sentenced to imprisonment by a civilian court in any part of the United Kingdom or for a service offence.
- (3) The Court Martial or the Service Civilian Court must not—
- (a) pass a sentence of detention under section 209 or 218 (young offenders' detention), or
  - (b) make an order under section 211 (detention and training),
- on or in respect of an offender who is not legally represented in that court unless the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.
- (4) For the purposes of this section an offender is “legally represented” in the Court Martial or the Service Civilian Court only if he has the assistance of counsel or a

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solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.

- (5) For the purposes of this section an offender is “legally represented” in the Summary Appeal Court—
- (a) in a case where his appeal was only against punishment, if he has the assistance of counsel or a solicitor to represent him at some time during the proceedings in that court;
  - (b) in any other case, only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after the court confirms or substitutes the finding and before it confirms or passes sentence.
- (6) For the purposes of subsection (2)(b)—
- (a) a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded;
  - (b) “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

## **264 Effect of duties to pass custodial sentences on other powers of punishment**

- (1) Where a provision of this Act requires a court to impose a particular custodial sentence in respect of an offence, it is not to be taken to prevent the court from including in its sentence for that offence any other authorised punishment.
- (2) In this section an “authorised punishment” means any punishment authorised by this Act apart from—
- service detention;
  - a service supervision and punishment order;
  - minor punishments;
  - a community punishment;
  - a conditional or absolute discharge.