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Armed Forces Act 2006

2006 CHAPTER 52

PART 9

SENTENCING: PRINCIPLES AND PROCEDURES

CHAPTER 1

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS AND SUMMARY HEARINGS

VALID FROM 28/03/2009

General sentencing principles

237 Duty to have regard to purposes of sentencing etc

- (1) A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing—
 - (a) the punishment of offenders;
 - (b) the maintenance of discipline;
 - (c) the reduction of service offences and other crime (including reduction by deterrence);
 - (d) the reform and rehabilitation of offenders;
 - (e) the protection of the public;
 - (f) the making of reparation by offenders to persons affected by their offences.
- (2) If the offender is aged under 18 the court or officer must also have regard to his welfare.
- (3) This section does not apply in relation to—
 - (a) an offence the sentence for which is fixed by law;

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- (b) an offence the sentence for which, as a result of subsection (2) of any of sections 219 to 222 and 225 to 227 of this Act (required custodial sentences), falls to be imposed under—
any of sections 225 to 228 of the 2003 Act;
section 110(2) or 111(2) of the Sentencing Act; or
section 51A(2) of the Firearms Act 1968 (c. 27).

- (4) In this section “sentencing” includes the making of any order when dealing with an offender in respect of his offence.

238 Deciding the seriousness of an offence

- (1) A court or officer dealing with an offender for a service offence (“the current offence”) must in considering the seriousness of the offence—
- (a) consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;
 - (b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated;
 - (c) if the offender committed the current offence while—
 - (i) charged with another service offence and released from service custody, or
 - (ii) on bail,
treat the fact that it was committed in those circumstances as an aggravating factor.
- (2) In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard (in particular) to—
- (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
 - (b) the time that has elapsed since the conviction.
- (3) Any reference in subsection (1) or (2) to a previous conviction is to be read as a reference to—
- (a) a previous conviction of a service offence; or
 - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
- (4) Nothing in this section prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so.

239 Reduction in sentences for guilty pleas

- (1) This section applies where an offender—
- (a) has pleaded guilty to a service offence in proceedings before a court; or
 - (b) at a summary hearing in respect of a service offence, has admitted the offence.

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- (2) In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account—
 - (a) the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing; and
 - (b) the circumstances in which this indication was given.
- (3) In subsection (2) “sentence” includes any order made when dealing with the offender in respect of his offence.
- (4) Subsection (5) applies in the case of an offence the sentence for which, as a result of section 225(2) or 226(2) of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act.
- (5) Nothing in section 110(2) or 111(2) of that Act prevents the court, after taking into account any matter mentioned in subsection (2) above, from imposing any sentence which is at least 80% of that specified in section 110(2) or 111(2) of that Act.

240 Increase in sentence for racial or religious aggravation

- (1) This section applies where a court or officer dealing with an offender for a service offence (other than an offence mentioned in subsection (3)) is considering the seriousness of the offence.
- (2) If the offence was racially or religiously aggravated the court or officer—
 - (a) must treat that fact as an aggravating factor; and
 - (b) must state in open court that the offence was so aggravated.
- (3) This section does not apply in relation to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under any of sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).
- (4) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

241 Increase in sentence for aggravation related to disability or sexual orientation

- (1) This section applies where a court or officer dealing with an offender for a service offence within subsection (2) is considering the seriousness of the offence.
- (2) A service offence is within this subsection if—
 - (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
 - (i) the sexual orientation (or presumed sexual orientation) of the victim; or
 - (ii) a disability (or presumed disability) of the victim; or
 - (b) the offence is motivated (wholly or partly)—
 - (i) by hostility towards persons who are of a particular sexual orientation; or

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(ii) by hostility towards persons who have a disability or a particular disability.

(3) The court or officer—

- (a) must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in paragraph (a) or (b) of subsection (2); and
- (b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether the offender's hostility is also based to any extent on any other factor not mentioned in that paragraph.

(5) In this section “disability” means any physical or mental impairment.

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