



Armed Forces Act 2016

2016 CHAPTER 21

Offenders assisting investigations and prosecutions

10 Review of sentence following offer of assistance

After section 304C of AFA 2006 insert—

“304D Review of sentence following offer of assistance

- (1) This section applies if—
 - (a) the Court Martial has passed a sentence on a person in respect of a service offence;
 - (b) the sentence for the offence is not fixed by law or, if it is, the person pleaded guilty; and
 - (c) the person falls within subsection (2) or (3).
- (2) A person falls within this subsection if the person—
 - (a) received a discounted sentence in consequence of having offered, in accordance with a written agreement with the Director of Service Prosecutions (“the Director”), to give assistance to the investigator or prosecutor of an offence; and
 - (b) having given the assistance in accordance with the agreement, in accordance with another written agreement with the Director gives or offers to give further assistance to the investigator or prosecutor of an offence.
- (3) A person falls within this subsection if the person—
 - (a) received a sentence which was not discounted; and
 - (b) in accordance with a written agreement with the Director subsequently gives or offers to give assistance to the investigator or prosecutor of an offence.
- (4) The Director may at any time refer the case back to the Court Martial if—
 - (a) the person is still serving the sentence; and

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2016, Section 10. (See end of Document for details)

- (b) the Director thinks it is in the interests of justice to do so.
- (5) The Court Martial dealing with a referral under this section must, if possible, consist of the people who were the members of the Court Martial when it passed the sentence to which the referral relates.
- (6) The Court Martial may—
 - (a) take into account the extent and nature of the assistance given or offered; and
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- (7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a lesser sentence imposed under this section has been served.
- (8) A person in respect of whom a referral is made under this section may, with the leave of the Court Martial Appeal Court, appeal to that court against a decision of the Court Martial under this section.
- (9) The Director may, with the leave of the Court Martial Appeal Court, appeal to that court against such a decision.
- (10) In relation to any proceedings under this section, the Secretary of State may make regulations containing provision corresponding to any provision in Parts 2 to 4 of the Court Martial Appeals Act 1968, with or without modifications (but this is subject to subsection (11)).
- (11) Regulations under subsection (10)—
 - (a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;
 - (b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Section 1(4) of the Court Martial Appeals Act 1968 (limitation on appeal from the Court Martial Appeal Court) does not prevent an appeal to the Supreme Court in accordance with regulations made under this section.
- (13) Subsections (3) to (5) of section 304C apply for the purposes of this section as they apply for the purposes of that section but as if the references to subsection (2) of that section were references to subsection (6) of this section.
- (14) In this section—
 - (a) “discounted sentence” means a sentence passed in accordance with section 304C or this section;
 - (b) references to assisting the prosecutor are to assisting the Director or any other prosecutor.”

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2016, Section 10. (See end of Document for details)

Commencement Information

II [S. 10](#) in force at 17.4.2024 for specified purposes by [S.I. 2024/562](#), [reg. 2\(a\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Armed Forces Act 2016, Section 10.