



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 10

#### COURT MARTIAL DECISIONS: APPEALS AND REVIEW

#### CHAPTER 1

##### APPEALS FROM COURT MARTIAL

#### **272 Appeals to the Court Martial Appeal Court**

- (1) The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court.
- (2) Schedule 8 (amendment of the Courts-Martial (Appeals) Act 1968) has effect.

#### **Commencement Information**

- II** [S. 272](#) in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

#### CHAPTER 2

##### REVIEW OF COURT MARTIAL SENTENCE

#### **273 Review of unduly lenient sentence by Court Martial Appeal Court**

- (1) If the Attorney General considers—
  - (a) that a sentence passed by the Court Martial in respect of an offence under section 42 (criminal conduct) is unduly lenient, and
  - (b) that condition A or B is satisfied,

*Status: Point in time view as at 28/03/2009.*

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he may refer the case to the Court Martial Appeal Court for it to review the sentencing of the offender.

- (2) Condition A is that the corresponding offence under the law of England and Wales is under that law an offence which, if committed by an adult, is triable only on indictment.
- (3) Condition B is that the case is of a description specified for the purposes of this subsection in an order made by the Secretary of State.
- (4) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court.
- (5) On a reference under subsection (1), the Court Martial Appeal Court may—
  - (a) quash the sentence passed by the Court Martial; and
  - (b) pass in substitution for it any sentence which the Court Martial Appeal Court thinks appropriate and which is a sentence that the Court Martial had power to pass in respect of the offence.
- (6) For the purposes of subsection (1)(a), the Attorney General may consider that a sentence passed by the Court Martial is unduly lenient if he considers—
  - (a) that the Court Martial erred in law as to its powers of sentencing; or
  - (b) that the sentence is not that required by section 219, 220, 221, 222, 225, 226 or 227;
 but nothing in this subsection limits subsection (1)(a).
- (7) Where a reference under subsection (1) relates to an order under section 269(2) of the 2003 Act (determination of minimum term in relation to mandatory life sentence), the Court Martial Appeal Court may not, in deciding what order under section 269 of that Act is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time.
- (8) The reference in subsection (1)(a) to a sentence passed by the Court Martial does not include one passed on an appeal under section 285 (appeal from Service Civilian Court).
- (9) In this section and section 274 “sentence” includes any order made by a court when dealing with an offender.

#### **Commencement Information**

**I2** S. 273 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

## **274 Reference of point of law to Supreme Court**

- (1) Where the Court Martial Appeal Court has concluded its review of a case referred to it under section 273(1), the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed on the offender in the proceedings.
- (2) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court or the Supreme Court.
- (3) Such leave may not be given unless—

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- (a) the Court Martial Appeal Court has certified that the point of law is of general public importance; and
  - (b) it appears to the Court Martial Appeal Court or the Supreme Court (as the case may be) that the point is one which should be considered by the Supreme Court.
- (4) The Supreme Court must give its opinion on any point of law referred to it under subsection (1) and must—
- (a) remit the case to the Court Martial Appeal Court to be dealt with; or
  - (b) deal with the case itself.
- (5) For the purposes of dealing with a case itself the Supreme Court may exercise any powers of the Court Martial Appeal Court.

#### Commencement Information

- I3** S. 274 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

### 275 Power to make supplementary provision about review of sentence

- (1) The Secretary of State may by regulations make supplementary provision with respect to references under section 273(1) or 274(1) (including provision with respect to applications, proceedings and other matters in connection with such references).
- (2) The regulations may in particular include provision which is equivalent to that made by, or capable of being made under, any provision of—
- (a) this Act,
  - (b) the Court Martial Appeals Act 1968 (c. 20), or
  - (c) Schedule 3 to the Criminal Justice Act 1988 (c. 33) (reviews of sentencing; supplementary),
- subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

- I4** S. 275 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

## CHAPTER 3

### COMPENSATION FOR MISCARRIAGES OF JUSTICE

### 276 Compensation for miscarriages of justice

- (1) Where—
- (a) a person has been convicted by the Court Martial, and
  - (b) subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice,

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the Secretary of State shall pay compensation for the miscarriage of justice to him or, if he is dead, to his personal representatives; but this is subject to subsections (2) and (3).

- (2) Compensation under this section is not payable if the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (3) Compensation under this section is not payable unless an application for such compensation has been made to the Secretary of State.
- (4) The question whether there is a right to compensation under this section is to be determined by the Secretary of State.
- (5) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation is to be assessed by an assessor appointed by the Secretary of State.
- (6) In assessing the amount of compensation payable to or in respect of a person that is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
  - (a) the seriousness of the offence of which the person was convicted and the severity of the resulting sentence;
  - (b) the conduct of the investigation and prosecution of the offence; and
  - (c) any other convictions of the person and any resulting sentences.
- (7) The reference in subsection (1) to a conviction having been reversed is to be read as a reference to a conviction having been quashed—
  - (a) on an appeal out of time;
  - (b) on a reference under section 34 of the Court Martial Appeals Act 1968 (c. 20); or
  - (c) on a reference under section 12A of the Criminal Appeal Act 1995.
- (8) Schedule 9 (provision with regard to assessors) has effect.

#### **Commencement Information**

- I5** S. 276 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

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