



# 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**

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| <b>I1</b> | S. 272 in force at 28.3.2009 for specified purposes by <a href="#">S.I. 2009/812</a> , <a href="#">art. 3(a)(b)</a> (with transitional provisions in <a href="#">S.I. 2009/1059</a> ) |
| <b>I2</b> | S. 272 in force at 31.10.2009 in so far as not already in force by <a href="#">S.I. 2009/1167</a> , <a href="#">art. 4</a>  |

### 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,

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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 <sup>F1</sup>—
    - (i) section 273(3) or 283(3) of the Sentencing Code as a result of section 218A(1B) or (2) (life sentence for second listed offence);
    - (ii) section 274(3) or 285(3) of the Sentencing Code as a result of section 219(1A) or (2) (life sentence for certain dangerous offenders aged 18 or over);
    - (iii) section 258(2) of the Sentencing Code as a result of section 221(2) (life sentence for certain dangerous offenders aged under 18);
    - (iv) section 313(2) of the Sentencing Code as a result of section 225(2) (third drug trafficking offence);
    - (v) section 314(2) of the Sentencing Code as a result of section 226(2) (third domestic burglary);
    - (vi) section 311(2) of the Sentencing Code as a result of section 227(2) (firearms offences); or
    - (vii) section 227A(1A) or (2) (threatening with a weapon in public or on school premises);]

but nothing in this subsection limits subsection (1)(a).

<sup>F2</sup>(7) Where a reference under subsection (1) relates to a case in which the Court Martial made <sup>F3</sup>a minimum term order under section 321 of the Sentencing Code], the Court Martial Appeal Court may not, in deciding what sentence is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time.

<sup>F4</sup>(7A) . . . . . ]

- (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.

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#### Textual Amendments

- F1** S. 273(6)(b)(i)(vii) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 70\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F2** S. 273(7)(7A) substituted for s. 273(7) (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 28](#); [S.I. 2009/1028](#), art. 2(b)
- F3** Words in s. 273(7) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 70\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F4** S. 273(7A) omitted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 70\(c\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

#### Modifications etc. (not altering text)

- C1** S. 273 modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#) (with s. 5(9)); [S.I. 2012/1236](#), reg. 2
- C2** S. 273(1)(a) modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [s. 166](#)

#### Commencement Information

- I3** 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](#))
- I4** S. 273 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 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—
  - (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

- I5** 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](#))

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**I6** S. 274 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **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**

- I7** 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](#))
- I8** S. 275 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **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,
 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 <sup>F5</sup>subsections (2) to (3A)].
- (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 <sup>F6</sup>before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.
- (3A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.]

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(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.

[<sup>F7</sup>(6) Section 276A applies in relation to the assessment of the amount of the compensation.]

(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.

[<sup>F8</sup>(7A) But in a case where—

- (a) a person's conviction for an offence is quashed on an appeal out of time, and
- (b) the person is to be subject to a retrial,

the conviction is not to be treated for the purposes of subsection (1) as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.]

(8) Schedule 9 (provision with regard to assessors) has effect.

#### Textual Amendments

- F5** Words in s. 276(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(2\)](#); S.I. 2009/1028, art. 2(b)
- F6** S. 273(3A) and preceding words at the end of subsection (3) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(3\)](#) (with [Sch. 25 para. 34\(1\)](#)); S.I. 2009/1028, art. 2(b)
- F7** S. 276(6) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(4\)](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)
- F8** S. 276(7A) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(5\)](#) (with [Sch. 25 para. 34\(3\)\(4\)](#)); S.I. 2009/1028, art. 2(b)

#### Commencement Information

- I9** 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](#))
- I10** S. 276 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### [<sup>F9</sup>276A Miscarriages of justice: amount of compensation

(1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 276 for a miscarriage of justice.

(2) In assessing so much of any compensation payable under section 276 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—

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- (a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction, and
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 276 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
- (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
  - (b) any other convictions of the person and any punishment resulting from them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 276 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 276 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—
- (a) £1 million in a case to which section 276B applies, and
  - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 276 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.
- That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.
- (7) The Secretary of State may by order amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

#### **Textual Amendments**

**F9** Ss. 276A, 276B inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\)](#), [Sch. 25 para. 30](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)

### **276B Cases where person has been detained for at least 10 years**

- (1) For the purposes of section 276A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
- (a) the conviction is reversed, or
  - (b) the pardon is given,
- as mentioned in section 276(1).
- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) by virtue of a sentence passed in respect of the relevant offence,

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- (b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
  - (a) in qualifying detention, and
  - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  - (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
  - (b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with an offence for which P was subsequently convicted other than—
    - (i) the relevant offence, or
    - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.
- (6) In this section—
  - “kept in service custody” means—
    - (a) kept in service custody under section 105(2) of the Armed Forces Act 2006, or
    - (b) kept in military, air-force or naval custody under section 75A(2) of the Army Act 1955 or of the Air Force Act 1955 or section 47G(2) of the Naval Discipline Act 1957 (as the case may be);
  - “mental health legislation” means—
    - (a) Part 3 of the Mental Health Act 1983, or
    - (b) the provisions of any earlier enactment corresponding to Part 3 of that Act;
  - “the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));
  - “remanded for mental health purposes” means remanded or admitted to hospital under section 35, 36 or 38 of the Mental Health Act 1983 or under any corresponding provision of any earlier enactment;
  - “reversed” has the same meaning as in section 276 of this Act.
- (7) If, as a result of the miscarriage of justice—

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- (a) two or more convictions are reversed, or
- (b) a pardon is given in respect of two or more offences,

“the relevant offence” means any of the offences concerned.]

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**Textual Amendments**

- F9** Ss. 276A, 276B inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 30](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)



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