



Armed Forces Act 2006

2006 CHAPTER 52

PART 10

COURT MARTIAL DECISIONS: APPEALS AND REVIEW

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,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.

Status: Point in time view as at 28/06/2022.

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- (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 ^{F1}—
 - (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) ^{F2}section 313(2A)] of the Sentencing Code as a result of section 225(2) (third drug trafficking offence);
 - (v) ^{F3}section 314(2A)] 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).

^{F4}(7) Where a reference under subsection (1) relates to a case in which the Court Martial made ^{F5}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.

^{F6}(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.

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** Words in s. 273(6)(b)(iv) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 9\(a\)](#) (with s. 124(11)(12))
- F3** Words in s. 273(6)(b)(v) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 9\(b\)](#) (with s. 124(11)(12))
- F4** 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)
- F5** 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
- F6** 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

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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

- I1** 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](#))
- I2** 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

- 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](#))
- I4** 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—

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- (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

- I5** 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](#))
- I6** S. 275 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

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