



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 8

#### SENTENCING POWERS AND MANDATORY ETC SENTENCES

### CHAPTER 6

#### MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

#### *Mandatory sentences*

#### **217 Mandatory life imprisonment**

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
  - (a) murder; or
  - (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- (2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

#### **Commencement Information**

- I1** S. 217 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. 217 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 30/06/2018.*

*Changes to legislation: Armed Forces Act 2006, Chapter 6 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure**

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is under that law—
    - (i) murder; or
    - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
  - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.
- (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

### **Commencement Information**

- I3** S. 218 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. 218 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*[<sup>F1</sup>Required or discretionary sentences for particular offences]*

### **Textual Amendments**

- F1** S. 219 cross-heading substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 13\(4\)](#); [S.I. 2009/1028](#), art. 2(b)

## **[<sup>F2</sup>218A Life sentence for second listed offence**

- (1) This section applies where—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is an offence listed in Part 1 of Schedule 15B to the 2003 Act;
  - (c) the offence was committed after this section comes into force; and
  - (d) the sentence condition and the previous offence condition are met.
- (2) Section 224A(2) of the 2003 Act applies in relation to the offender.
- (3) In section 224A(2)(a) of that Act as applied by subsection (2)—

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- (a) the reference to “the offence” is to be read as a reference to the offence under section 42; and
  - (b) the reference to “the previous offence referred to in subsection (4)” is to be read as a reference to the previous offence referred to in subsection (5) of this section.
- (4) The sentence condition is that, but for this section, the Court Martial would, in compliance with sections 260(2) and 261(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A of the 2003 Act as applied by section 219A of this Act.
- (5) The previous offence condition is that—
- (a) at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act (“the previous offence”); and
  - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section).
- (7) A sentence required to be imposed by section 224A(2) of that Act as a result of this section is not to be regarded as a sentence fixed by law.
- [ Where an offence is found to have been committed over a period of two or more days,<sup>F3</sup>(8) or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(c) and (5)(a) to have been committed on the last of those days.]]

#### Textual Amendments

- F2** S. 218A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 2; S.I. 2012/2906, art. 2\(t\)](#)
- F3** S. 218A(8) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 5\(3\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 5](#)

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

- C1** S. 218A modified by [S.I. 2009/1059, Sch. 2 para. 9A\(2\) \(as inserted \(E.W.\) \(3.12.2012\) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\), regs. 1, 5\(2\)\)](#)

## 219 [F4]Life sentence for certain dangerous] offenders aged 18 or over

- (1) This section applies where [F5—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a serious offence, and
  - (c) the court is of the required opinion (defined by section 223).]

[F6(2) Section 225(2) of the 2003 Act applies in relation to the offender.]

*Status: Point in time view as at 30/06/2018.*

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- (3) In section 225(2)<sup>F7</sup>... of the 2003 Act (as applied by subsection (2)), references to “the offence” are to be read as references to the offence under section 42 of this Act.
- (4) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

#### Textual Amendments

- F4** Words in s. 219 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 4](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F5** Words in s. 219(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 13\(2\)](#); S.I. 2009/1028, art. 2(b)
- F6** S. 219(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 3\(2\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F7** Words in s. 219(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 3\(3\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)

#### Commencement Information

- I5** S. 219 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. 219 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### **[<sup>F8</sup>219A Extended sentence for certain violent or sexual offenders aged 18 or over**

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
  - (b) the corresponding offence under the law of England and Wales is a specified offence;
  - (c) the court is of the required opinion (defined by section 223);
  - (d) the court is not required to impose a sentence of imprisonment for life by section 224A(2) of the 2003 Act (as applied by section 218A of this Act) or section 225(2) of that Act (as applied by section 219 of this Act); and
  - (e) condition A or B is met.
- (2) Condition A is that, at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act.
- (3) Condition B is that, if the court were to impose an extended sentence of imprisonment under section 226A of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (4) Subsections (4) to (9) of section 226A of the 2003 Act apply in relation to the offender.
- (5) In section 226A(4) to (9) of the 2003 Act as applied by this section—
  - (a) the reference in subsection (6) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;

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- (b) the reference in subsection (7) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
  - (c) the reference in subsection (8)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
  - (d) the reference in subsection (8)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (6) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

**Textual Amendments**

**F8** S. 219A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 5](#); S.I. 2012/2906, art. 2(t)

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

**C2** S. 219A modified by S.I. 2009/1059, Sch. 2 para. 9A(3) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(2\)](#))

**F<sup>9</sup>220 Certain violent or sexual offences: offenders aged 18 or over**

**Textual Amendments**

**F9** S. 220 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 6](#); S.I. 2012/2906, art. 2(t) (with art. 6)

**221 [F<sup>10</sup>Life sentence for certain dangerous] offenders aged under 18**

- (1) This section applies where [F<sup>11</sup>—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a serious offence, and
  - (c) the court is of the required opinion (defined by section 223).]

[F<sup>12</sup>(2) Section 226(2) of the 2003 Act applies in relation to the offender.]

- (3) [F<sup>13</sup>In section 226(2) of the 2003 Act (as applied [F<sup>14</sup>by] subsection (2))]—
- (a) references F<sup>15</sup>... to “the offence” are to be read as references to the offence under section 42 of this Act; and
  - (b) references F<sup>16</sup>... to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.

F<sup>17</sup>(4) .....

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- (5) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

#### Textual Amendments

- F10** Words in s. 221 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 8](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F11** Words in s. 221(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(2\)](#); S.I. 2009/1028, art. 2(b)
- F12** S. 221(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 7](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F13** Words in s. 221(3) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(a\)](#); S.I. 2009/1028, art. 2(b)
- F14** Word in s. 221(3) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 26](#); S.I. 2012/2906, art. 2(t)
- F15** Words in s. 221(3)(a) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(b\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F16** Words in s. 221(3)(b) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(b\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F17** S. 221(4) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(5\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

#### Commencement Information

- I7** S. 221 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. 221 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### <sup>F18</sup>221A Extended sentence for certain violent or sexual offenders aged under 18

- (1) This section applies where—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
  - (b) the corresponding offence under the law of England and Wales is a specified offence;
  - (c) the court is of the required opinion (defined by section 223);
  - (d) the court is not required by section 226(2) of the 2003 Act (as applied by section 221 of this Act) to impose a sentence of detention for life under section 209 of this Act; and
  - (e) if the court were to impose an extended sentence of detention under section 226B of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) Subsections (2) to (7) of section 226B of the 2003 Act apply in relation to the offender.
- (3) In section 226B(2) to (7) of the 2003 Act as applied by this section—
- (a) the reference in subsection (4) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;

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- (b) the reference in subsection (5) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
- (c) the reference in subsection (6)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
- (d) the reference in subsection (6)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.

(4) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

#### Textual Amendments

**F18** S. 221A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 9](#); S.I. 2012/2906, art. 2(t)

### <sup>F19</sup>222 Offenders aged under 18: certain violent or sexual offences

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#### Textual Amendments

**F19** S. 222 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 10](#); S.I. 2012/2906, art. 2(t) (with art. 6)

### 223 “The required opinion” for purposes of sections 219 to [<sup>F20</sup>221A]

- (1) “The required opinion” for the purposes of sections [<sup>F21</sup>219(1),<sup>F22</sup> 219A(1)], 221(1) and [<sup>F23</sup>221A(1)] is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
  - (a) further specified offences; or
  - (b) further acts or omissions that would be specified offences if committed in England or Wales.
- (2) For the purposes of the court's decision whether it is of that opinion, [<sup>F24</sup>section 229(2) and (2A)] of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.
- (3) In section 229(2) <sup>F25</sup>... of the 2003 Act as applied by this section—
  - (a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and
  - (b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.
- (4) In this section—
  - “serious harm” has the meaning given by section 224 of the 2003 Act;
  - “specified offence” has the meaning given by that section.

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#### Textual Amendments

- F20** Word in s. 223 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 28](#); S.I. 2012/2906, art. 2(t)
- F21** Words in s. 223(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(2\)](#); S.I. 2009/1028, art. 2(b)
- F22** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 27\(a\)](#); S.I. 2012/2906, art. 2(t)
- F23** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 27\(b\)](#); S.I. 2012/2906, art. 2(t)
- F24** Words in s. 223(2) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(3\)](#); S.I. 2009/1028, art. 2(b)
- F25** Words in s. 223(3) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(4\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

#### Commencement Information

- I9** S. 223 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. 223 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### [<sup>F26</sup>224 Place of detention under certain sentences

Section 235 of the 2003 Act (detention under sections 226, 226B and 228) applies to a person sentenced to be detained under section 226(3), 226B or 228 of that Act as applied by section 221, 221A or 222 of this Act.]

#### Textual Amendments

- F26** S. 224 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 29](#); S.I. 2012/2906, art. 2(t)

#### Commencement Information

- I11** S. 224 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](#))
- I12** S. 224 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### [<sup>F27</sup>224A Special custodial sentence for certain offenders of particular concern

- (1) This section applies where—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after this section comes into force),
  - (b) the corresponding offence under the law of England and Wales is an offence listed in Schedule 18A to the 2003 Act,
  - (c) the person was aged 18 or over when the offence was committed, and
  - (d) the court does not impose one of the following for the offence—
    - (i) a sentence of imprisonment for life, or
    - (ii) an extended sentence of imprisonment under section 226A of the 2003 Act (as applied by section 219A of this Act).



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- (2) If the court imposes a sentence of imprisonment for the offence, section 236A(2) to (4) of the 2003 Act apply in relation to the term of the sentence.
- (3) The references in subsections (1)(d) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.
- (4) In Schedule 18A to the 2003 Act, as applied by this section, the reference in paragraph 24 to section 30 of the Counter-Terrorism Act 2008 is to be read as a reference to section 32 of that Act.]

#### Textual Amendments

- F27** S. 224A inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 1 para. 8](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 72](#)

### 225 Third drug trafficking offence

- (1) This section applies where —
  - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.
- (2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—
  - (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

#### Commencement Information

- I13** S. 225 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](#))
- I14** S. 225 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 226 Third domestic burglary

- (1) This section applies where—
  - (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.
- (2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—
  - (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

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#### **Commencement Information**

- I15** S. 226 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](#))
- I16** S. 226 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **227 Firearms offences**

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.
- (2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- (3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

#### **Commencement Information**

- I17** S. 227 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](#))
- I18** S. 227 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **[<sup>F28</sup>227A Offences of threatening with a weapon in public or on school premises**

- (1) This section applies if—
- (a) a person aged 18 or over is convicted by a court of an offence under section 42 (criminal conduct); and
  - (b) the corresponding offence under the law of England and Wales is an offence under section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon in public or on school premises).
- (2) The court must impose a sentence of imprisonment for a term of at least 6 months unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3) In relation to times before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000, the reference in subsection (2) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.]

*Status: Point in time view as at 30/06/2018.*

*Changes to legislation: Armed Forces Act 2006, Chapter 6 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F28** S. 227A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 26 para. 24](#); S.I. 2012/2770, art. 2(f)

## 228 Appeals where previous convictions set aside

[<sup>F29</sup>(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).

(1B) The first case is where—

- (a) a sentence has been imposed on any person under section 224A of the 2003 Act (as applied by section 218A of this Act);
- (b) a previous conviction of that person has been subsequently set aside on appeal; and
- (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.

(1C) The second case is where—

- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);
- (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
- (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.

(1D) The third case is where—

- (a) a sentence has been imposed on any person under section 226A of the 2003 Act (as applied by section 219A of this Act);
- (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
- (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.

(1E) The fourth case is where—

- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
- (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
- (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.]

(2) [<sup>F30</sup>The fifth case is] where—

- (a) a sentence has been imposed on any person by virtue of section 225 or 226 [<sup>F31</sup>of this Act]; and
- (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.

(3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.

*Status: Point in time view as at 30/06/2018.*

*Changes to legislation: Armed Forces Act 2006, Chapter 6 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F32</sup>(3A) Subsection (3B) applies where—

- (a) a sentence has been imposed on a person under section 224A of the 2003 Act (as applied by section 218A of this Act);
- (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
- (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.

(3B) An application for leave to appeal against the sentence mentioned in subsection (3A) (a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.]

(4) [<sup>F33</sup>Subsections (3) and (3B) have] effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

#### Textual Amendments

- F29** S. 228(1A)-(1E) substituted for s. 228(1) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(2\)](#); S.I. 2012/2906, art. 2(t)
- F30** Words in s. 228(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F31** Words in s. 228(2)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F32** S. 228(3A)(3B) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(4\)](#); S.I. 2012/2906, art. 2(t)
- F33** Words in s. 228(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(5\)](#); S.I. 2012/2906, art. 2(t)

#### Commencement Information

- I19** S. 228 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](#))
- I20** S. 228 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**Status:**

Point in time view as at 30/06/2018.

**Changes to legislation:**

Armed Forces Act 2006, Chapter 6 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.