



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 9

#### SENTENCING: PRINCIPLES AND PROCEDURES

#### CHAPTER 1

##### PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS AND SUMMARY HEARINGS

##### *General sentencing principles*

#### **237 Duty to have regard to purposes of sentencing etc**

- (1) A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing—
  - (a) the punishment of offenders;
  - (b) the maintenance of discipline;
  - (c) the reduction of service offences and other crime (including reduction by deterrence);
  - (d) the reform and rehabilitation of offenders;
  - (e) the protection of the public;
  - (f) the making of reparation by offenders to persons affected by their offences.
- (2) If the offender is aged under 18 the court or officer must also have regard to his welfare.
- (3) This section does not apply in relation to—
  - (a) an offence the sentence for which is fixed by law;
  - (b) an offence the sentence for which, as a result of subsection (2) of any of sections 219 [F<sup>1</sup>, 221] and 225 to 227 of this Act (required custodial sentences), falls to be imposed under—
    - [F<sup>2</sup>section 225(2) or 226(2)] of the 2003 Act;
    - section 110(2) or 111(2) of the Sentencing Act; or

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section 51A(2) of the Firearms Act 1968 (c. 27).

- (4) In this section “sentencing” includes the making of any order when dealing with an offender in respect of his offence.

#### Textual Amendments

- F1** Word in s. 237(3)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 19\(a\)](#); [S.I. 2009/1028](#), art. 2(b)
- F2** Words in s. 237(3)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 19\(b\)](#); [S.I. 2009/1028](#), art. 2(b)

#### Commencement Information

- I1** S. 237 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. 237 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 238 Deciding the seriousness of an offence

- (1) A court or officer dealing with an offender for a service offence (“the current offence”) must in considering the seriousness of the offence—
- (a) consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;
  - (b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated;
  - (c) if the offender committed the current offence while—
    - (i) charged with another service offence and released from service custody, or
    - (ii) on bail,
 treat the fact that it was committed in those circumstances as an aggravating factor.
- (2) In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard (in particular) to—
- (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
  - (b) the time that has elapsed since the conviction.
- (3) Any reference in subsection (1) or (2) to a previous conviction is to be read as a reference to—
- (a) a previous conviction of a service offence; <sup>F3</sup> ...
  - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
  - <sup>F4</sup>(c) a previous conviction by a court in a member State other than the United Kingdom of a relevant offence under the law of that State, or
  - (d) a finding of guilt in respect of a member State service offence.]

<sup>F5</sup>(4) Nothing in this section prevents the court or officer from treating—

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- (a) a previous conviction by a court outside both the British Islands and any member State, or
- (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence or a member State service offence,

as an aggravating factor in any case where the court or officer considers it appropriate to do so.

(5) For the purposes of this section—

- (a) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction in respect of the current offence,
- (b) “member State service offence” means an offence which—
  - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
  - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence, and
- (c) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.]

#### Textual Amendments

- F3** Word in s. 238(3)(a) repealed (15.8.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), Sch. 17 para. 7(2)(a), **Sch. 23 Pt. 5** (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)
- F4** S. 238(3)(c)(d) inserted (15.8.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 17 para. 7(2)(b)** (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)
- F5** S. 238(4)(5) substituted for s. 238(4) (15.8.2010) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 17 para. 7(3)** (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)

#### Commencement Information

- I3** S. 238 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. 238 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## 239 Reduction in sentences for guilty pleas

- (1) This section applies where an offender—
  - (a) has pleaded guilty to a service offence in proceedings before a court; or
  - (b) at a summary hearing in respect of a service offence, has admitted the offence.
- (2) In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account—
  - (a) the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing; and
  - (b) the circumstances in which this indication was given.
- (3) In subsection (2) “sentence” includes any order made when dealing with the offender in respect of his offence.

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- (4) Subsection (5) applies in the case of an offence the sentence for which, as a result of section 225(2) or 226(2) of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act.
- (5) Nothing in section 110(2) or 111(2) of that Act prevents the court, after taking into account any matter mentioned in subsection (2) above, from imposing any sentence which is at least 80% of that specified in section 110(2) or 111(2) of that Act.

#### Commencement Information

- I5** S. 239 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. 239 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 240 Increase in sentence for racial or religious aggravation

- (1) This section applies where a court or officer dealing with an offender for a service offence (other than an offence mentioned in subsection (3)) is considering the seriousness of the offence.
- (2) If the offence was racially or religiously aggravated the court or officer—
- (a) must treat that fact as an aggravating factor; and
  - (b) must state in open court that the offence was so aggravated.
- (3) This section does not apply in relation to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under any of sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).
- (4) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

#### Commencement Information

- I7** S. 240 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. 240 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 241 Increase in sentence for aggravation related to disability or sexual orientation

- (1) This section applies where a court or officer dealing with an offender for a service offence within subsection (2) is considering the seriousness of the offence.
- (2) A service offence is within this subsection if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
    - (i) the sexual orientation (or presumed sexual orientation) of the victim; or
    - (ii) a disability (or presumed disability) of the victim; or

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- (b) the offence is motivated (wholly or partly)—
  - (i) by hostility towards persons who are of a particular sexual orientation;  
or
  - (ii) by hostility towards persons who have a disability or a particular disability.
- (3) The court or officer—
  - (a) must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in paragraph (a) or (b) of subsection (2);  
and
  - (b) must state in open court that the offence was committed in such circumstances.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether the offender's hostility is also based to any extent on any other factor not mentioned in that paragraph.
- (5) In this section “disability” means any physical or mental impairment.

#### Commencement Information

- I9** S. 241 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. 241 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### *Service detention and custodial sentences*

#### **242 Service detention: general restriction**

- (1) A court may not pass a sentence of service detention in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1) or section 243(2) (length of sentence), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- (3) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of service detention may not be—
  - (a) passed by an officer at a summary hearing, or
  - (b) passed or confirmed by the Summary Appeal Court,unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4) or section 243(3) (length of sentence), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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

- C1** S. 242 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1, rule 161\(9\)](#)

**Commencement Information**

- I11** S. 242 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. 242 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**243 Length of term of service detention: general provision**

- (1) This section applies where a sentence of service detention is passed in respect of a service offence.
- (2) Where the detention is imposed by a court other than the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.
- (3) Where the detention is imposed by an officer at a summary hearing or by the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the officer or court is commensurate with the seriousness of the offence (or, if it is imposed in respect of two or more offences, the seriousness of them taken together).

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

- C2** S. 243 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1, rule 161\(9\)](#)

**Commencement Information**

- I13** S. 243 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. 243 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**244 Limit on combined term of sentences of service detention**

- (1) A court or officer may not—
  - (a) pass a sentence of service detention,
  - (b) make a direction under section 189 (consecutive terms of service detention), or
  - (c) make an order under section 191 or 193 (activation of suspended sentence of service detention),
 whose effect would be that a person would (at the relevant time) be subject to sentences of service detention the combined term of which exceeds two years.
- (2) In subsection (1) “the relevant time” is the time immediately after the passing of the sentence or the making of the direction or order.

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- (3) For the purposes of this section, the combined term of sentences of service detention is—
- (a) if none of the sentences overlap, the aggregate of the terms of the sentences;
  - (b) otherwise, the aggregate of—
    - (i) the period (or periods) during which any of the sentences overlaps any other of them; and
    - (ii) the period (or periods) for which none of the sentences overlap.
- (4) Where subsection (1) is contravened, any part of any sentence of service detention which would (apart from this subsection) have effect after the end of the permitted period is remitted by virtue of this subsection.
- (5) In subsection (4) “permitted period” means the period—
- (a) beginning with the date of contravention; and
  - (b) equal in length to the longest sentence of service detention that could have been passed on that date without contravening subsection (1).
- (6) For the purposes of the reference in subsection (4) to a part of a sentence which would have effect after the end of the permitted period, any prospect of early release is to be disregarded.
- (7) In subsection (1)(a) “sentence of service detention” does not include a suspended sentence of service detention.

#### Commencement Information

- I15** S. 244 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. 244 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 245 Section 244: supplementary

- (1) Subsections (2) to (5) apply for the purposes of section 244.
- (2) A person is to be regarded as not subject to any sentence from which he has been released early.
- (3) A person is to be regarded as not subject to a suspended sentence of service detention unless an order that the sentence shall take effect has been made.
- (4) Subject to subsection (3), a person is to be regarded as subject to any sentence of service detention that has been passed on him but—
  - (a) has not taken effect; or
  - (b) as a result of section 290(5) or (6) or 291(6) or (7), has ceased to have effect and has not resumed effect.
- (5) A person who has been detained continuously pursuant to two or more sentences of service detention is to be regarded as subject to all of those sentences (whether or not any of them has been served in full).
- (6) For the purposes of subsection (5), any periods of detention which would be continuous but for section 290(3), (5) or (6) or 291(5), (6) or (7) are to be treated as continuous.

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#### **Commencement Information**

- I17** S. 245 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. 245 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **246 Crediting of time in service custody: terms of imprisonment and detention**

- (1) This section applies where—
  - (a) a court or officer sentences an offender to a term of imprisonment or service detention in respect of a service offence (“the offence in question”); and
  - (b) the offender has been kept in service custody, in connection with the offence in question or any related offence, for any period since being charged with the offence in question or any related offence.
- (2) The court must direct that the number of days for which the offender has been kept in service custody in connection with the offence in question or any related offence since being so charged is to count as time served by him as part of the sentence.
- (3) Subsection (2) does not apply if and to the extent that—
  - (a) rules made by the Secretary of State so provide in the case of—
    - (i) a period of service custody which is wholly or partly concurrent with a sentence of imprisonment or service detention; or
    - (ii) sentences of imprisonment or service detention for consecutive terms or for terms which are wholly or partly concurrent; or
  - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (4) Where the court gives a direction under subsection (2) it must state in open court—
  - (a) the number of days for which the offender was kept in service custody as mentioned in that subsection; and
  - (b) the number of days in relation to which the direction is given.
- (5) Where the court does not give a direction under subsection (2), or gives such a direction in relation to a number of days less than that for which the offender was kept in service custody as mentioned in that subsection, it must state in open court—
  - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (3); or
  - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (6) This section applies to—
  - (a) a determinate sentence of detention under section 209, and
  - (b) a sentence of detention under section 228 of the 2003 Act passed as a result of section 222 of this Act,
 as it applies to an equivalent sentence of imprisonment.
- (7) References in this section to “the court” are to the court or officer mentioned in subsection (1).



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

- C3** S. 246 modified by 1968 c. 20, Sch. 1 para. 4 (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 54**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)

#### Commencement Information

- I19** S. 246 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, Sch. 2 para. 13 as amended (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(3)**); S.I. 2009/1167, art. 4
- I20** S. 246 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

### 247 Crediting of time in service custody: supplementary

- (1) For the purposes of section 246(1) offences are related if the charges for them were founded on the same facts or evidence.
- (2) It is immaterial for the purposes of section 246(1) whether the offender has also been kept in service custody in connection with other offences, or has also been detained in connection with other matters.
- (3) For the purposes of section 246 a suspended sentence of imprisonment or a suspended sentence of service detention—
  - (a) is to be treated as a sentence of imprisonment or (as the case may be) service detention when an order that it shall take effect is made; and
  - (b) is to be treated as being imposed by that order.
- (4) Subsections (5) to (7) apply for the purposes of the reference in section 246(2) to the term of imprisonment or detention to which a person has been sentenced (that is to say, the reference to his “sentence”).
- (5) Consecutive terms of service detention, and terms of service detention which are wholly or partly concurrent, are to be treated as a single term.
- (6) Consecutive relevant custodial terms, and relevant custodial terms which are wholly or partly concurrent, are to be treated as a single term if—
  - (a) the sentences were passed on the same occasion; or
  - (b) where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the 2003 Act at any time during the period beginning with the first and ending with the last of those occasions.
- (7) For the purposes of subsection (6) any sentence within paragraph (a), (b) or (c) of section 188(4) is a relevant custodial term.

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

- C4** S. 247 modified by 1968 c. 20, Sch. 1 para. 4 (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 54**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)

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#### **Commencement Information**

- I21** S. 247 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](#))
- I22** S. 247 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Forfeiture of seniority and reduction in rank*

#### **248 Forfeiture of seniority and reduction in rank or disrating: general restriction**

- (1) A court may not pass a sentence of forfeiture of seniority, reduction in rank or disrating in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- (3) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of forfeiture of seniority, reduction in rank or disrating may not be—
  - (a) passed by an officer at a summary hearing, or
  - (b) passed or confirmed by the Summary Appeal Court,
 unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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

- C5** S. 248 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 161\(9\)](#)

#### **Commencement Information**

- I23** S. 248 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](#))
- I24** S. 248 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Financial punishments*

#### **249 Fixing of fines**

- (1) A court or officer fixing a fine to be imposed on an offender in respect of a service offence must, before fixing the amount of the fine, inquire into the offender's financial circumstances.

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- (2) The amount of any fine fixed by a court or officer in respect of a service offence must be such as, in the opinion of the court or officer, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine to be imposed on an offender in respect of a service offence, a court or officer must take into account the circumstances of the case including, among other things, the offender's financial circumstances so far as they are known, or appear, to the court or officer.
- (4) Subsection (3) applies whether taking into account the offender's financial circumstances has the effect of increasing or reducing the amount of the fine.
- (5) Where—
  - (a) the court has inquired into the offender's financial circumstances as required by this section,
  - (b) the offender has failed to co-operate with the court in its inquiry (whether by failing to comply with a financial statement order under section 266 or otherwise), and
  - (c) the court considers that it has insufficient information to make a proper determination of the offender's financial circumstances,
 the court may make such determination of his financial circumstances as it considers appropriate.
- (6) References in subsection (5) to “the court” are to the court or officer fixing a fine in respect of a service offence.

#### Commencement Information

- I25** S. 249 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](#))
- I26** S. 249 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 250 Determination of service compensation order

- (1) In determining whether to make a service compensation order against any person, and in determining the amount to be paid by any person under such an order, a court or officer must have regard to that person's financial circumstances so far as they appear or are known to the court or officer.
- (2) Where the court or officer considers—
  - (a) that it would be appropriate both to impose a fine and to make a service compensation order, but
  - (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,
 the court or officer must give preference to compensation (but may impose a fine as well).

#### Commencement Information

- I27** S. 250 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](#))
- I28** S. 250 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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## **251 Power to allow payment of fine or service compensation order by instalments**

- (1) A court or officer awarding a fine or service compensation order in respect of a service offence may make an order under this section.
- (2) An order under this section is an order—
  - (a) allowing time for payment of the amount due in respect of the fine or service compensation order (“the amount due”); or
  - (b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order.
- (3) If no order under this section is made when the fine or service compensation order is imposed, at any later time the appropriate court may make such an order on the application of the person by whom the amount due is payable (“the relevant person”).
- (4) The appropriate court may on the application of the relevant person vary an order made under this section.
- (5) In this section “the appropriate court” means—
  - (a) if the fine or service compensation order was imposed by an officer and subsection (6) applies, the commanding officer of the relevant person;
  - (b) if the fine or service compensation order was imposed by a court and subsection (6) or (7) applies, the Court Martial.
- (6) This subsection applies if the relevant person is for the time being—
  - (a) subject to service law;
  - (b) a member of a volunteer reserve force; or
  - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.
- (7) This subsection applies if the relevant person is for the time being a civilian subject to service discipline.

### **Commencement Information**

**I29** S. 251 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](#))

**I30** S. 251 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### *Reasons*

## **252 Duty to give reasons and explain sentence**

- (1) Any court or officer passing sentence on an offender for a service offence—
  - (a) must state in open court, in ordinary language and in general terms and in accordance with section 253, its (or his) reasons for deciding on the sentence passed; and
  - (b) must explain to the offender in ordinary language—
    - (i) the effect of the sentence;
    - (ii) where the offender is required to comply with any order forming part of the sentence, the effects of non-compliance with the order;

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- (iii) any power, on the application of the offender or any other person, to vary or review any order forming part of the sentence; and
  - (iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.
- (2) Subsection (1)(a) does not apply—
- (a) to an offence the sentence for which is fixed by law; or
  - (b) to an offence the sentence for which, as a result of subsection (2) of section 225, 226 or 227 of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act or section 51A(2) of the Firearms Act 1968 (c. 27).
- (3) The Secretary of State may by order—
- (a) prescribe cases in which subsection (1)(a) or (b) does not apply;
  - (b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.
- (4) In this section and section 253 “sentence” includes any order made when dealing with the offender in respect of his offence.

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

**C6** S. 252 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 123](#)

#### **Commencement Information**

**I31** S. 252 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](#))

**I32** S. 252 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **253 Duties in complying with section 252**

- (1) In complying with section 252(1)(a) an officer or the Summary Appeal Court must—
- (a) mention any aggravating or mitigating factors which he (or it) has regarded as being of particular importance;
  - (b) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the officer or court has imposed a punishment on the offender which is less severe than the punishment that would otherwise have been imposed, state that fact;
  - (c) where the sentence is one of service detention, state that he (or it) is of the opinion mentioned in section 242(4) and why; and
  - (d) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that he (or it) is of the opinion mentioned in section 248(4) and why.
- (2) In complying with section 252(1)(a) a court other than the Summary Appeal Court must—
- (a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the

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sentence is of a different kind or is outside that range, state the court's reasons for deciding on a sentence of a different kind or outside that range;

- (b) mention any aggravating or mitigating factors which the court has regarded as being of particular importance;
- (c) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the court has imposed a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact;
- (d) where the sentence is a custodial sentence and section 260 applies (and the case does not fall within section 260(3)), state that it is of the opinion mentioned in section 260(2) and why;
- (e) where the sentence is one of dismissal or dismissal with disgrace, state that it is of the opinion mentioned in section 265(1) and why;
- (f) where the sentence is one of service detention, state that it is of the opinion mentioned in section 242(1) and why;
- (g) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that it is of the opinion mentioned in section 248(1) and why; and
- (h) where the sentence consists of or includes a community punishment (and the case does not fall within section 151(2) of the 2003 Act as applied by section 270 of this Act), state that it is of the opinion mentioned in section 270(1) and why.

(3) In this section “guidelines” has the same meaning as in section 259.

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

**C7** S. 253(2) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, rule 123

**Commencement Information**

**I33** S. 253 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](#))

**I34** S. 253 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

*Savings*

**254 Savings for powers to mitigate sentence etc**

- (1) Nothing in any of sections 242, 243, 248, 249, 250, 256, 258, 260, 261, 265 and 270 prevents a court or officer from mitigating an offender's sentence by taking into account any such matters as, in the court's or officer's opinion, are relevant in mitigation of sentence.
- (2) Nothing in those sections prevents a court or officer from mitigating any punishment included in an offender's sentence by taking into account any other punishment included in that sentence.
- (3) Nothing in those sections or section 255 prevents a court, in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

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(4) Subsections (2) and (3) do not affect the generality of subsection (1).

**Commencement Information**

**I35** S. 254 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](#))

**I36** S. 254 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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