



# 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;
  - <sup>F1</sup>(b) an offence the sentence for which falls to be imposed under 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);

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- (ba) an offence the sentence for which falls to be imposed under 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);
  - (bb) an offence the sentence for which falls to be imposed under section 258(2) of the Sentencing Code as a result of section 221(2) (life sentence for certain dangerous offenders aged under 18);
  - (bc) an offence the sentence for which falls to be imposed under [F<sup>2</sup>section 313(2A)] of the Sentencing Code as a result of section 225(2) (third drug trafficking offence);
  - (bd) an offence the sentence for which falls to be imposed under [F<sup>3</sup>section 314(2A)] of the Sentencing Code as a result of section 226(2) (third domestic burglary);
  - (be) an offence the sentence for which falls to be imposed under section 311(2) of the Sentencing Code as a result of section 227(2) (firearms offences);]
  - (c) an offence the sentence for which falls to be imposed under section [F<sup>4</sup>227A(1A) or (2) (threatening with a weapon in public or on school premises)].
- (4) In this section “sentencing” includes the making of any order when dealing with an offender in respect of his offence.

#### Textual Amendments

- F1** S. 237(3)(b)-(be) substituted for s. 237(3)(b) (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 52\(a\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F2** Words in s. 237(3)(bc) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 6\(a\)](#) (with s. 124(11)(12))
- F3** Words in s. 237(3)(bd) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 6\(b\)](#) (with s. 124(11)(12))
- F4** Words in s. 237(3)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 52\(b\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

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

- C1** S. 237 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

#### 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;

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- (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>F5</sup> ... [<sup>F6</sup>or]
  - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
  - <sup>F7</sup>(c) .....
  - <sup>F7</sup>(d) .....
- [<sup>F8</sup>(4) Nothing in this section prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so.]
- <sup>F9</sup>(5) .....
- [<sup>F10</sup>(6) In section 69 of the Sentencing Code (seriousness of offence with terrorist connection)
- (a) the references to a court are to be read as including a court dealing with an offender for an offence under section 42, and
  - (b) the reference in subsection (1) to an offence specified in Schedule 1 to that Code 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 an offence specified in Schedule 1.]

**Textual Amendments**

- F5** 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)
- F6** Word in s. 238(3)(a) inserted (13.11.2023) by [Armed Forces Act 2021 \(c. 35\), ss. 17\(2\)\(a\)\(i\), 24\(1\); S.I. 2023/1102, reg. 4](#)
- F7** S. 238(3)(c)(d) omitted (13.11.2023) by virtue of [Armed Forces Act 2021 \(c. 35\), ss. 17\(2\)\(a\)\(ii\), 24\(1\); S.I. 2023/1102, reg. 4](#)
- F8** S. 238(4) substituted (13.11.2023) by [Armed Forces Act 2021 \(c. 35\), ss. 17\(2\)\(b\), 24\(1\); S.I. 2023/1102, reg. 4](#)
- F9** S. 238(5) omitted (13.11.2023) by virtue of [Armed Forces Act 2021 \(c. 35\), ss. 17\(2\)\(c\), 24\(1\); S.I. 2023/1102, reg. 4](#)

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**F10** S. 238(6) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 53** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

#### 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.
- (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 <sup>[F11]</sup>section 313(2A) or 314(2A) <sup>[F12]</sup>of the Sentencing Code].
- (5) Nothing in <sup>[F13]</sup>section 313(2A) or 314(2A) <sup>[F14]</sup>of that Code] 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 <sup>[F13]</sup>section 313(2A) or 314(2A) <sup>[F14]</sup>of that Code].
- <sup>[F15]</sup>(6) Nothing in section <sup>[F16]</sup>227A(1A) or (2)] prevents the court, after taking into account any matter mentioned in subsection (2) of this section, from imposing any sentence which is at least 80% of that specified in section <sup>[F16]</sup>227A(1A) or (2)].

#### Textual Amendments

- F11** Words in s. 239(4) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 7(2)** (with s. 124(11)(12))
- F12** Words in s. 239(4) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 54(a)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F13** Words in s. 239(5) substituted (28.6.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), s. 208(5)(k), **Sch. 12 para. 7(3)** (with s. 124(11)(12))
- F14** Words in s. 239(5) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 54(b)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F15** S. 239(6) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 26**; S.I. 2012/2770, art. 2(f)
- F16** Words in s. 239(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 54(c)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

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

- C2** S. 239(6) modified (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](#)

#### **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 <sup>F17</sup>, sexual orientation or transgender identity**

- (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;  
<sup>F18</sup> ...
    - (ii) a disability (or presumed disability) of the victim; or
    - <sup>F19</sup>(iii) the victim being (or being presumed to be) transgender, or]
  - (b) the offence is motivated (wholly or partly)—

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- (i) by hostility towards persons who are of a particular sexual orientation;  
<sup>F20</sup>  
 ...
  - (ii) by hostility towards persons who have a disability or a particular disability [<sup>F21</sup>, or
  - (iii) by hostility towards persons who are transgender.]
- (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.
- [<sup>F22</sup>(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.]

#### Textual Amendments

- F17** Words in s. 241 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(11\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F18** Word in s. 241(2)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(12\)\(a\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F19** S. 241(2)(a)(iii) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(12\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F20** Word in s. 241(2)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(13\)\(a\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F21** S. 241(2)(b)(iii) and word inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(13\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F22** S. 241(6) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 65\(14\)](#), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)

#### 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

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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.

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

- C3** 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)**

- C4** 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](#)

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## 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.
- (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.



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- (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.

#### 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.

[<sup>F23</sup>(2) The number of days for which the offender was 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 the offender as part of the sentence.

(2A) If, on any day on which the offender was kept in service custody, the offender was also detained in connection with any other matter, that day is not to count as time served.

(2B) A day counts as time served—

- (a) in relation to only one sentence, and
- (b) only once in relation to that sentence.

(2C) A day is not to count as time served as part of any [<sup>F24</sup>automatic release period served by the offender] (see section 255B(1) of the 2003 Act.)

(6) This section applies to—

- (a) a determinate sentence of detention under section 209, <sup>F25</sup>...
- (b) a sentence of detention under section [<sup>F26</sup>226B or] 228 of the 2003 Act passed as a result of section [<sup>F27</sup>221A or] 222 of this Act [<sup>F28</sup>,

[ an extended sentence of detention under section 254 of the Sentencing Code <sup>F29</sup>(ba) passed as a result of section 221A of this Act,] and

- (c) a determinate sentence of detention in a young offender institution,] as it applies to an equivalent sentence of imprisonment.

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- (7) References in this section to “the court” are to the court or officer mentioned in subsection (1).

#### Textual Amendments

- F23** S. 246(2)-(2C) substituted for s. 246(2)-(5) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(2\)](#); S.I. 2012/2906, art. 2(k)
- F24** Words in s. 246(2C) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 3](#) (with s. 23(4), [Sch. 7 para. 5](#)); S.I. 2015/40, art. 2(w)
- F25** Word in s. 246(6)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(3\)\(a\)](#); S.I. 2012/2906, art. 2(k)
- F26** Words in s. 246(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 32\(a\)](#); S.I. 2012/2906, art. 2(t)
- F27** Words in s. 246(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 32\(b\)](#); S.I. 2012/2906, art. 2(t)
- F28** S. 246(6)(c) and word inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(3\)\(b\)](#); S.I. 2012/2906, art. 2(k)
- F29** S. 246(6)(ba) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 55](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2

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

- C5** 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, 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

#### 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](#)
- I21** 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

## 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 [<sup>F30</sup>(but see section 246(2B))]<sup>F31</sup>....
- [<sup>F32</sup>(2A) The reference in section 246(2A) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—
- (a) detention pursuant to any custodial sentence;

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- (b) committal in default of payment of any sum of money;
  - (c) committal for want of sufficient distress to satisfy any sum of money;
  - (d) committal for failure to do or abstain from doing anything required to be done or left undone.]
- (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 [F33the references in section 246(2) and (2B)] 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) [F34a sentence within any of paragraphs (a) to (c)] of section 188(4) is a relevant custodial term.

#### Textual Amendments

- F30** Words in s. 247(2) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 13 para. 3\(2\)\(a\)](#); S.I. 2012/2906, art. 2(k)
- F31** Words in s. 247(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 13 para. 3\(2\)\(b\)](#); S.I. 2012/2906, art. 2(k)
- F32** S. 247(2A) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 13 para. 3\(3\)](#); S.I. 2012/2906, art. 2(k)
- F33** Words in s. 247(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 13 para. 3\(4\)](#); S.I. 2012/2906, art. 2(k)
- F34** Words in s. 247(7) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 25 para. 56](#) (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2

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

- C6** 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)

#### Commencement Information

- I22** 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](#))
- I23** S. 247 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 13/11/2023.*

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### *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)**

- C7** 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**

- I24** 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](#))
- I25** 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.
- (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.

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- (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

- I26** 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](#))
- I27** 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

- I28** 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](#))
- I29** S. 250 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 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—

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- (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.

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

- C8** S. 251 applied (1.12.2020) by 2020 c. 17, Sch. 10 para. 11A(1) (as modified by 2006 c. 52, Sch. 6A para. 7 (as inserted by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 12](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2))

**Commencement Information**

- I30** 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](#))
- I31** 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.

<sup>F35</sup>(2) . . . . .

- (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.

**Textual Amendments**

**F35** S. 252(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(a\)](#), 151(1); S.I. 2012/2906, art. 2(a)

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

**C9** S. 252 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 123](#)

**C10** S. 252 applied (13.11.2023) by S.I. 2009/1211, [rule 88H](#) (as inserted by [The Armed Forces \(Amendment of Court Rules\) Rules 2023 \(S.I. 2023/1097\)](#), [rules 1\(2\)](#), [13](#))

**C11** S. 252 applied (13.11.2023) by S.I. 2009/1209, [rule 99E](#) (as inserted by [The Armed Forces \(Amendment of Court Rules\) Rules 2023 \(S.I. 2023/1097\)](#), [rules 1\(2\)](#), [5](#))

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**Commencement Information**

**I32** 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](#))

**I33** 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—
  - <sup>F36</sup>(a) . . . . .
  - (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;
  - <sup>F37</sup>(c) . . . . .
  - <sup>F37</sup>(d) . . . . .
- (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 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;

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- F38(b) .....
- (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;
- F39(d) .....
- F39(e) .....
- F39(f) .....
- F39(g) .....
- F39(h) .....

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

**Textual Amendments**

- F36** S. 253(1)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 64(4)(b)**, 151(1); S.I. 2012/2906, art. 2(a)
- F37** S. 253(1)(c)(d) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 64(4)(b)**, 151(1); S.I. 2012/2906, art. 2(a)
- F38** S. 253(2)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 64(4)(b)**, 151(1); S.I. 2012/2906, art. 2(a)
- F39** S. 253(2)(d)-(h) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 64(4)(b)**, 151(1); S.I. 2012/2906, art. 2(a)

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

- C12** S. 253(2) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, **rule 123**
- C13** S. 253(2) applied (13.11.2023) by S.I. 2009/1211, **rule 88H** (as inserted by [The Armed Forces \(Amendment of Court Rules\) Rules 2023 \(S.I. 2023/1097\)](#), rules 1(2), **13**)
- C14** S. 253(2) applied (13.11.2023) by S.I. 2009/1209, **rule 99E** (as inserted by [The Armed Forces \(Amendment of Court Rules\) Rules 2023 \(S.I. 2023/1097\)](#), rules 1(2), **5**)

**Commencement Information**

- I34** 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)
- I35** 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.



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

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**Commencement Information**

**I36** 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](#))

**I37** S. 254 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 13/11/2023.

**Changes to legislation:**

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