



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 9

#### SENTENCING: PRINCIPLES AND PROCEDURES

#### CHAPTER 2

##### PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS ONLY

##### *Custodial sentences and service detention*

#### **260 Discretionary custodial sentences: general restrictions**

- (1) This section applies where a court is dealing with an offender for a service offence punishable with a custodial sentence, other than an offence the sentence for which—
- (a) is fixed by law;
  - [<sup>F1</sup>(b) 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);
  - (c) 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);
  - (d) 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);
  - (e) falls to be imposed under [<sup>F2</sup>section 313(2A)] of the Sentencing Code as a result of section 225(2) (third drug trafficking offence);
  - (f) falls to be imposed under [<sup>F3</sup>section 314(2A)] of the Sentencing Code as a result of section 226(2) (third domestic burglary);
  - (g) falls to be imposed under section 311(2) of the Sentencing Code as a result of section 227(2) (firearms offences); or
  - (h) falls to be imposed under section 227A(1A) or (2) (threatening with a weapon in public or on school premises).]

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- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no less severe sentence can be justified for the offence.
- (3) Nothing in subsection (2) prevents the court from passing a custodial sentence where—
- (a) the court had proposed to award a community punishment; and
  - (b) the offender failed to express his willingness to comply with a requirement which the court proposed to include in the community punishment and which required an expression of such willingness.
- (4) In forming any such opinion as is mentioned in subsection (2) or section 261(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.
- [<sup>F4</sup>(4A) The reference in subsection (4) to a court forming any such opinion as is mentioned in subsection (2) or section 261(2) includes a court forming such an opinion for the purposes of section 218A(4).
- (4B) The reference in subsection (4) to a court forming any such opinion as is mentioned in section 261(2) also includes a court forming such an opinion for the purposes of [<sup>F5</sup>—
- (a) section 268(2) or 281(2) of the Sentencing Code, as applied by section 219A of this Act (extended sentences for offenders aged 18 or over), or
  - (b) section 256(2) of the Sentencing Code, as applied by section 221A of this Act (extended sentences for offenders aged under 18).]]

(5) For the purposes of this section a sentence falls to be imposed as a result of subsection (2) of section 225, 226 or 227 if it is required by that subsection and the court is not of the opinion there mentioned.

#### Textual Amendments

- F1** S. 260(1)(b)-(h) substituted for s. 260(1)(b) and word (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 58\(a\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F2** Words in s. 260(1)(e) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 8\(a\)](#) (with s. 124(11)(12))
- F3** Words in s. 260(1)(f) substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(k), [Sch. 12 para. 8\(b\)](#) (with s. 124(11)(12))
- F4** S. 260(4A)(4B) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 34\(3\)](#); [S.I. 2012/2906](#), art. 2(t)
- F5** S. 260(4B)(a)(b) substituted (1.12.2020) for words by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 58\(b\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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

- C1** S. 260 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

- I1** S. 260 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I2** S. 260 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **261 Length of discretionary custodial sentences: general provision**

- (1) This section applies where a court passes a custodial sentence for a service offence, other than a sentence fixed by law or <sup>[F6]</sup>imposed under <sup>[F7]</sup>—
  - (a) 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),
  - (b) 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), or
  - (c) section 258(2) of the Sentencing Code as a result of section 221(2) (life sentence for certain dangerous offenders aged under 18).]]
- (2) The custodial sentence 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) Subsection (2) is subject to sections <sup>[F8]</sup>219A, 221A], 225, 226 <sup>[F9]</sup>, 227 and 227A] (<sup>[F10]</sup>sentences that may or must be imposed] for certain offences).

### **Textual Amendments**

- F6** Words in s. 261(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 22\(a\)](#); [S.I. 2009/1028](#), art. 2(b)
- F7** S. 261(1)(a)-(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 59](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F8** Words in s. 261(3) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 35\(3\)](#); [S.I. 2012/2906](#), art. 2(t)
- F9** Words in s. 261(3) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 26 para. 28](#); [S.I. 2012/2770](#), art. 2(f)
- F10** Words in s. 261(3) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 22\(b\)](#); [S.I. 2009/1028](#), art. 2(b)

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

- C2** S. 261(1) 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**

- I3** S. 261 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. 261 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **<sup>[F11]</sup>261A Life sentences: further provision**

- (1) In Chapter 8 of Part 10 of the Sentencing Code (sections 321 to 324: effect of life sentences), references to a court include the Court Martial.
- (2) In section 322 of that Code as it applies in relation to a life sentence passed by the Court Martial—

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- (a) subsection (2)(b)(i) has effect as if, for “section 240ZA of the Criminal Justice Act 2003” there were substituted “ section 246 of the Armed Forces Act 2006 ”;
  - (b) subsection (4) has effect as if, for “section 52(2)” there were substituted “ section 252(1)(a) of the Armed Forces Act 2006 ”.
- (3) In section 323 of that Code as it applies in relation to a life sentence passed by the Court Martial,
- [ subsection (1C)(b) has effect as if for “section 252A, 254, <sup>F13</sup>... 278 or 279” <sup>F12</sup>(za) there were substituted—
    - (i) section 224A or 224B of the Armed Forces Act 2006, or
    - (ii) section 254, <sup>F14</sup>... 278 or 279 passed as a result of section 219A, 219ZA or 221A of that Act,]
 subsection (2)(c)(i) has effect as if, for “section 240ZA of the Criminal Justice Act 2003” there were substituted “ section 246 of the Armed Forces Act 2006 ”.
- (4) Section 324, as it applies in relation to a sentence passed by the Court Martial, has effect as if for the definition of “life sentence” there were substituted—
- ““life sentence” means any of the following sentences imposed under or by virtue of the Armed Forces Act 2006—
- (a) a sentence of imprisonment for life,
  - (b) a sentence of detention for life or during Her Majesty's pleasure, or
  - (c) a sentence of custody for life;”.]
- [<sup>F15</sup>(5) Schedule 21, as it applies in relation to a sentence passed by the Court Martial, has effect as if a reference to murder included reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is murder.]

#### Textual Amendments

- F11** S. 261A inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 25 para. 60** (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F12** S. 261A(3)(za) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), **ss. 129(2)**, 208(1); [S.I. 2022/520](#), reg. 5(1)
- F13** Words in s. 261A(3)(za) omitted (28.6.2022) by [2020 c. 17](#), **Sch. 26 para. 20A(za)(i)** (as inserted by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), **ss. 129(3)(d)**, 208(1); [S.I. 2022/520](#), **reg. 5(n)**)
- F14** Word in s. 261A(3)(za)(ii) omitted (28.6.2022) by [2020 c. 17](#), **Sch. 26 para. 20A(za)(ii)** (as inserted by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), **ss. 129(3)(d)**, 208(1); [S.I. 2022/520](#), **reg. 5(n)**)
- F15** S. 261A(5) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), **ss. 148**, 208(5)(p)

## 262 Power to recommend licence conditions

In [<sup>F16</sup>section 328 of the Sentencing Code] (court imposing prison term of 12 months or more may recommend licence conditions) “court” includes a court dealing with an offender for a service offence.

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#### Textual Amendments

**F16** Words in s. 262 substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 61](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

#### Commencement Information

**I5** S. 262 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. 262 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### [<sup>F17</sup> 262A Conversion of sentence of detention to sentence of imprisonment

- (1) In section 329 of the Sentencing Code (conversion of sentence of detention to sentence of imprisonment), “court” includes a court dealing with an offender for a service offence.
- (2) In its application to a court dealing with an offender for a service offence, that section has effect with the following modifications.
- (3) In subsection (5)—
  - (a) paragraph (a) has effect as if, after “254,” there were inserted “ passed as a result of section 221A of the Armed Forces Act 2006 ”;
  - (b) the words following paragraph (b) have effect as if, after “279” there were inserted “ passed as a result of section 219A(7) of the Armed Forces Act 2006 ”.
- (4) Subsection (7) has effect as if, for paragraphs (a) to (f) there were substituted—
  - “(a) a sentence of detention under section 209 of the Armed Forces Act 2006 (including one imposed under section 221 of that Act (detention for life));
  - (b) an extended sentence of detention under section 254 passed as a result of section 221A of the Armed Forces Act 2006;
  - (c) a sentence of detention during Her Majesty's pleasure (see section 218 of the Armed Forces Act 2006);
  - (d) a sentence of detention in a young offender institution;
  - (e) an extended sentence of detention in a young offender institution (see section 219A(4) of the Armed Forces Act 2006);
  - (f) a sentence of custody for life (see sections 210A, 217, 218A(1B) and 219(1A) of the Armed Forces Act 2006).”]

#### Textual Amendments

**F17** S. 262A inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 62](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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

**C3** S. 262A(4) 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

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## **263 Restriction on imposing custodial sentence or service detention on unrepresented offender**

- (1) A sentence of—
- (a) imprisonment, or
  - (b) service detention,
- must not be passed by the Court Martial or the Service Civilian Court, or passed or confirmed by the Summary Appeal Court, in respect of an offender who is not legally represented in that court.
- (2) Subsection (1) does not apply if the offender—
- (a) having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply; or
  - (b) was aged 21 or over when convicted, and has previously been sentenced to imprisonment by a civilian court in any part of the United Kingdom or for a service offence <sup>F18</sup>, or sentenced to detention by a court in any other member State or for a member State service offence].
- (3) The Court Martial or the Service Civilian Court must not—
- <sup>F19</sup>(a) pass a custodial sentence on an offender who is aged under 21 on conviction, or]
  - (b) make an order under section 211 (detention and training),
- on or in respect of an offender who is not legally represented in that court unless the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.
- (4) For the purposes of this section an offender is “legally represented” in the Court Martial or the Service Civilian Court only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- (5) For the purposes of this section an offender is “legally represented” in the Summary Appeal Court—
- (a) in a case where his appeal was only against punishment, if he has the assistance of counsel or a solicitor to represent him at some time during the proceedings in that court;
  - (b) in any other case, only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after the court confirms or substitutes the finding and before it confirms or passes sentence.
- (6) For the purposes of subsection (2)(b)—
- (a) a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded;
  - (b) “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence;
  - <sup>F20</sup>(c) 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) at the time it was done, would have constituted an offence in any part of the United Kingdom, or a service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces;

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- (d) “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

- F18** Words in s. 263(2)(b) inserted (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(5), [Sch. 17 para. 11\(a\)](#) (with s. 180, [Sch. 22 para. 42](#)); [S.I. 2010/1858](#), art. 3(d)(v)
- F19** S. 263(3)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 63](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F20** S. 263(6)(c)(d) inserted (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(5), [Sch. 17 para. 11\(b\)](#) (with s. 180, [Sch. 22 para. 42](#)); [S.I. 2010/1858](#), art. 3(d)(v)

#### Commencement Information

- I7** S. 263 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. 263 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 264 Effect of duties to pass custodial sentences on other powers of punishment

- (1) Where a provision of this Act requires a court to impose a particular custodial sentence in respect of an offence, it is not to be taken to prevent the court from including in its sentence for that offence any other authorised punishment.
- (2) In this section an “authorised punishment” means any punishment authorised by this Act apart from—
- service detention;
  - a service supervision and punishment order;
  - minor punishments;
  - a community punishment;
  - a conditional or absolute discharge.

#### Commencement Information

- I9** S. 264 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. 264 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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