



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

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

Status: Point in time view as at 01/12/2020. This version of this provision has been superseded.

Changes to legislation: Armed Forces Act 2006, Section 238 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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; ^{F1} ...
 - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
 - ^{F2}(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.]
- ^{F3}(4) Nothing in this section prevents the court or officer from treating—
- (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.]
- ^{F4}(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

- F1** 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)
- F2** 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)

Status: Point in time view as at 01/12/2020. This version of this provision has been superseded.

Changes to legislation: *Armed Forces Act 2006, Section 238 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F3** 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)
- F4** 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

- I1** 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)
- I2** S. 238 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 01/12/2020. This version of this provision has been superseded.

Changes to legislation:

Armed Forces Act 2006, Section 238 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.