



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

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 [^{F1}, 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—
- [^{F2}(a) pass a custodial sentence on an offender who is aged under 21 on conviction, or]

Status: Point in time view as at 01/12/2020. This version of this provision has been superseded.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 263 is up to date with all changes known to be in force on or before 20 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) 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;
 - [^{F3}(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; - (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

- F1** 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)
- F2** 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
- F3** 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

- I1** 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](#))
- I2** S. 263 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:

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