



Armed Forces Act 2006

2006 CHAPTER 52

First Group of Parts Discipline

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

CHAPTER 6

MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

Mandatory sentences

217 Mandatory life imprisonment

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
 - (a) murder; or
 - (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- (2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

- (1) This section applies if—
 - (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - (b) the corresponding offence under the law of England and Wales is under that law—

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- (i) murder; or
 - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
 - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.
 - (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
 - (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

Required sentences

219 Dangerous offenders aged 18 or over

- (1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.
- (2) If the court is of the required opinion (defined by section 223), then—
 - (a) if the case falls within section 225(2) of the 2003 Act the court must impose the sentence required by section 225(2) of that Act;
 - (b) otherwise, it must impose the sentence required by section 225(3) of that Act.
- (3) In determining for the purposes of this section whether the case falls within section 225(2) of the 2003 Act, references in section 225(2) to “the offence” are to be read as references to the offence under section 42 of this Act.
- (4) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

220 Certain violent or sexual offences: offenders aged 18 or over

- (1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a specified offence other than a serious offence.
- (2) If the court is of the required opinion (defined by section 223), it must impose the sentence required by section 227(2) to (5) of the 2003 Act.
- (3) In section 227 of the 2003 Act as applied by this section—
 - (a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;
 - (b) the reference in subsection (3)(a) to section 153(2) of that Act is to be read as a reference to section 261(2) of this Act;

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- (c) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
- (d) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.

(4) In this section the following expressions—

- “serious offence”,
- “specified offence”,
- “specified violent offence”, and
- “specified sexual offence”,

have the meanings given by section 224 of the 2003 Act.

221 Dangerous offenders aged under 18

- (1) This section applies where a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.
- (2) If the court is of the required opinion (defined by section 223), then—
 - (a) if the case falls within section 226(2) of the 2003 Act the court must impose the sentence required by section 226(2) of that Act (read with subsection (3) (b) below);
 - (b) if the case falls within section 226(3) of that Act the court must impose the sentence required by section 226(3) of that Act.
- (3) In determining for the purposes of this section whether the case falls within section 226(2) of the 2003 Act and what the sentence required by that provision is—
 - (a) references in section 226(2) to “the offence” are to be read as references to the offence under section 42 of this Act; and
 - (b) references in section 226(2) to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.
- (4) In determining for the purposes of this section whether the case falls within section 226(3) of the 2003 Act, the reference in section 226(3) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales.
- (5) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

222 Offenders aged under 18: certain violent or sexual offences

- (1) This section applies where—
 - (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - (b) the corresponding offence under the law of England and Wales is a specified offence;
 - (c) the court is of the required opinion (defined by section 223); and

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- (d) where the corresponding offence under the law of England and Wales is a serious offence, the case is not one in which the court is required by section 221 to impose a sentence complying with subsection (2) of that section.
- (2) Where this section applies, the court must impose the sentence required by section 228(2) to (5) of the 2003 Act.
- (3) In section 228 of the 2003 Act as applied by this section—
- (a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;
 - (b) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence;
 - (c) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence; and
 - (d) references to the maximum term of imprisonment permitted for the offence are to the maximum term of imprisonment that (apart from section 219) is permitted for the offence under section 42 in the case of a person aged 18 or over.
- (4) In this section the following expressions—
- “serious offence”,
 - “specified offence”,
 - “specified violent offence”, and
 - “specified sexual offence”,
- have the meanings given by section 224 of the 2003 Act.

223 “The required opinion” for purposes of sections 219 to 222

- (1) “The required opinion” for the purposes of sections 219(2), 220(2), 221(2) and 222(1) is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
- (a) further specified offences; or
 - (b) further acts or omissions that would be specified offences if committed in England or Wales.
- (2) For the purposes of the court’s decision whether it is of that opinion, section 229(2) to (4) of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.
- (3) In section 229(2) to (4) of the 2003 Act as applied by this section—
- (a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and
 - (b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.
- (4) In this section—
- “serious harm” has the meaning given by section 224 of the 2003 Act;
 - “specified offence” has the meaning given by that section.

224 Place of detention under certain sentences

Where as a result of section 221 or 222 a court passes a sentence of—

- (a) detention for public protection under section 226(3) of the 2003 Act, or
 - (b) detention under section 228 of that Act,
- section 235 of that Act (place of detention etc) applies accordingly.

225 Third drug trafficking offence

(1) This section applies where —

- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
- (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.

(2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

226 Third domestic burglary

(1) This section applies where—

- (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
- (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.

(2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

227 Firearms offences

(1) This section applies if—

- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
- (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.

(2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

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- (3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

228 Appeals where previous convictions set aside

- (1) Subsection (3) applies where—
- (a) a sentence has been imposed on a person by virtue of section 219 or 220; and
 - (b) any previous conviction of his without which the court would not have been required to make the assumption mentioned in section 229(3) of the 2003 Act (as applied by section 223) has been subsequently set aside on appeal.
- (2) Subsection (3) also applies where—
- (a) a sentence has been imposed on any person by virtue of section 225 or 226; and
 - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.
- (3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.
- (4) Subsection (3) has effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).