



Armed Forces Act 2016

2016 CHAPTER 21

Offenders assisting investigations and prosecutions

11 Review of sentence following failure to assist

After section 304D of AFA 2006 insert—

“304E Review of sentence following failure to assist

- (1) This section applies if—
 - (a) the Court Martial has passed a sentence on a person in respect of a service offence;
 - (b) the sentence for the offence is not fixed by law or, if it is, the person pleaded guilty;
 - (c) the person received a discounted sentence in consequence of having offered, in accordance with a written agreement with the Director of Service Prosecutions (“the Director”), to give assistance to the investigator or prosecutor of an offence; and
 - (d) the person fails to any extent to give assistance in accordance with the agreement.
- (2) The Director may at any time refer the case back to the Court Martial if—
 - (a) the person is still serving the sentence; and
 - (b) the Director thinks it is in the interests of justice to do so.
- (3) The Court Martial dealing with a referral under this section must, if possible, consist of the people who were the members of the Court Martial when it passed the sentence to which the referral relates.
- (4) If the Court Martial is satisfied that the person knowingly failed to give the assistance, it may substitute for the sentence to which the referral relates such greater sentence as it thinks appropriate.
- (5) A greater sentence imposed under this section must not exceed the sentence which the court would have passed but for the agreement to give assistance.

Status: This is the original version (as it was originally enacted).

- (6) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater sentence imposed under this section has been served.
- (7) A person in respect of whom a referral is made under this section may, with the leave of the Court Martial Appeal Court, appeal to that court against a decision of the Court Martial under this section.
- (8) The Director may, with the leave of the Court Martial Appeal Court, appeal to that court against such a decision.
- (9) In relation to any proceedings under this section, the Secretary of State may make regulations containing provision corresponding to any provision in Parts 2 to 4 of the Court Martial Appeals Act 1968, with or without modifications (but this is subject to subsection (10)).
- (10) Regulations under subsection (9)—
- (a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;
 - (b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) Section 1(4) of the Court Martial Appeals Act 1968 (limitation on appeal from the Court Martial Appeal Court) does not prevent an appeal to the Supreme Court in accordance with regulations made under this section.
- (12) In this section—
- (a) “discounted sentence” means a sentence passed in accordance with section 304C or 304D;
 - (b) references to assisting the prosecutor are to assisting the Director or any other prosecutor.”