



Armed Forces Act 2006

2006 CHAPTER 52

First Group of PartsDiscipline

PART 9

SENTENCING: PRINCIPLES AND PROCEDURES

CHAPTER 2

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS ONLY

General

255 Individual sentence for each offence

Where the Court Martial or the Service Civilian Court convicts a person, the court must pass a separate sentence in respect of each offence of which he is convicted.

256 Pre-sentence reports

- (1) Subject to subsection (2), a court must obtain and consider a pre-sentence report before—
 - (a) forming any such opinion as is mentioned in—
 - section 242(1) or 243(2) (service detention);
 - section 260(2) or 261(2) (custodial sentence); or
 - section 265(1) (dismissal or dismissal with disgrace);
 - (b) forming any such opinion as is mentioned in section 270(1) or (2)(b) (community punishment) or any opinion as to the suitability for the offender of the particular requirement or requirements to be included in a community punishment; or

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- (c) forming the required opinion for the purposes of section 219(2), 220(2), 221(2) or 222(1) (minimum sentences for dangerous offenders and sexual or violent offences).
- (2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (2) unless—
 - (a) there exists a previous pre-sentence report obtained in respect of the offender; and
 - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (4) No sentence is invalidated by a failure of a court to obtain and consider a pre-sentence report before doing any of the things mentioned in paragraphs (a) to (c) of subsection (1).
- (5) However, any court on appeal against a custodial sentence in respect of a service offence, a sentence of dismissal or dismissal with disgrace, a sentence of service detention or a community punishment—
 - (a) must (subject to subsection (6)) obtain a pre-sentence report if none was obtained by the court below; and
 - (b) must consider any such report obtained by it or by that court.
- (6) Subsection (5)(a) does not apply if the court is of the opinion—
 - (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
 - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court it is unnecessary to obtain a pre-sentence report.
- (7) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (6) unless—
 - (a) there exists a previous pre-sentence report obtained in respect of the offender; and
 - (b) the court has had regard to the information contained in that report or, if there is more than one such report, the most recent report.
- (8) Subsections (5) to (7) do not apply to the Summary Appeal Court on an appeal to it.
- (9) Subsections (1) to (4) do apply to the Summary Appeal Court in relation to a sentence of service detention, but as if the opinions referred to in subsection (1)(a) were any such opinion as is mentioned in section 242(4) or 243(3).

257 Pre-sentence reports: supplementary

- (1) In section 256 and this section “pre-sentence report” has the meaning given by section 158(1) of the 2003 Act.
- (2) In section 158(1) of that Act as applied by this section, “an appropriate officer” includes any registered social worker (as well as any person who is an appropriate officer within the meaning given by section 158(2) of that Act).

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- (3) In this section “registered social worker” means a person registered as a social worker in a register maintained by—
- (a) the General Social Care Council;
 - (b) the Care Council for Wales;
 - (c) the Scottish Social Services Council; or
 - (d) the Northern Ireland Social Care Council.
- (4) Section 159(1) to (3) and (5) of the 2003 Act (disclosure of reports) apply in relation to a pre-sentence report obtained by a court for the purposes of section 256 of this Act as they apply in relation to a report obtained by a court for the purposes of section 156 of that Act.

258 Mentally disordered offenders: requirement for medical report

- (1) Subject to subsection (2), before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must obtain and consider a medical report.
- (2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must consider—
- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
 - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by a failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
- (a) must obtain a medical report if none was obtained by the court below; and
 - (b) must consider any such report obtained by it or by that court.
- (5) In this section—
- “custodial sentence” does not include a custodial sentence fixed by law;
 - “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 (c. 20) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.
- (6) Nothing in this section is to be taken to limit the generality of—
- section 256 (pre-sentence reports); or
 - section 260(4) (information to be taken into account).

259 Sentencing guidelines

- (1) A court must—
- (a) in sentencing an offender for a service offence, have regard to any guidelines that are relevant to the offender’s case; and

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- (b) in exercising any other function relating to the sentencing of offenders for service offences, have regard to any guidelines which are relevant to the exercise of the function.
- (2) However, the court may depart from the guidelines mentioned in subsection (1)(a) or (b) if in its opinion the departure is justified by any features of service life or of the service disciplinary system that are relevant to the case.
- (3) Subsection (2) does not limit any power existing apart from that subsection to depart from guidelines.
- (4) References in subsection (1)(a) and (b) to sentencing an offender for a service offence include making any order when dealing with an offender in respect of such an offence.
- (5) In this section—
 - “guidelines” means sentencing guidelines issued by the Sentencing Guidelines Council under section 170(9) of the 2003 Act as definitive guidelines, as revised by subsequent guidelines so issued;
 - “sentencing guidelines” has the meaning given by section 170(1) of that Act.

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; or
 - (b) falls to be imposed as a result of subsection (2) of any of sections 219 to 222 and 225 to 227.
- (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.
- (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.

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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 falling to be imposed as a result of section 219(2) or 221(2).
- (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 220, 222, 225, 226 and 227 (required minimum sentences for certain offences).

262 Power to recommend licence conditions

In section 238(1) of the 2003 Act (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.

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.
- (3) The Court Martial or the Service Civilian Court must not—
 - (a) pass a sentence of detention under section 209 or 218 (young offenders' detention), 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—

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- (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.

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.

Dismissal

265 Dismissal: general restrictions

- (1) A court may not pass a sentence of dismissal or dismissal with disgrace in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1), 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.
- (3) The Court Martial must not pass a sentence of dismissal or dismissal with disgrace on an offender who is not legally represented in that court.
- (4) Subsection (3) does not apply if 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.
- (5) For the purposes of this section an offender is “legally represented” in the Court Martial 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.

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Financial punishments

266 Financial statement orders

- (1) Before sentencing a person who has been convicted of a service offence, a court may make a financial statement order; but this does not apply to the Summary Appeal Court.
- (2) A financial statement order is an order requiring the person to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.
- (3) A person who without reasonable excuse fails to comply with a financial statement order commits an offence and is liable to a fine not exceeding level 3 on the standard scale.
- (4) A person who in providing any statement in pursuance of a financial statement order—
 - (a) makes a statement which he knows to be false in a material particular,
 - (b) recklessly provides a statement which is false in a material particular, or
 - (c) knowingly fails to disclose any material fact,commits an offence and is liable to a fine not exceeding level 4 on the standard scale.

267 Power of court to remit fine

- (1) This section applies where a court has, in fixing the amount of a fine in respect of a service offence, determined the offender's financial circumstances under section 249(5).
- (2) If on subsequently inquiring into the offender's financial circumstances the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
 - (a) have fixed a smaller amount, or
 - (b) not have fined him,it may remit the whole or part of the fine.

268 Order for service parent or service guardian to pay fine or compensation

- (1) This section applies where—
 - (a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court;
 - (b) he is a civilian subject to service discipline;
 - (c) he has a service parent or service guardian; and
 - (d) the court is of the opinion that the case would best be met by the imposition of a fine or the making of a service compensation order (with or without any other punishment).
- (2) The court may, and if the offender is under 16 when convicted must, order that the fine or compensation awarded be paid by the service parent or service guardian instead of by the offender himself; but this is subject to subsection (3).

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- (3) Where (apart from this subsection) the court would be required by subsection (2) to make an order against a service parent or service guardian, the court need not make such an order if it is satisfied—
 - (a) that no service parent or service guardian can be found; or
 - (b) that it would be unreasonable to make such an order having regard to the circumstances of the case.
- (4) No order may be made under this section without giving the parent or guardian an opportunity of being heard, unless the parent or guardian has failed to attend having been required to do so.
- (5) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
 - (a) an order under this section is to be treated as a sentence passed on the parent or guardian for the offence; and
 - (b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.
- (6) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (7) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.
- (8) A parent or guardian is a “service parent” or “service guardian” for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.

269 Fixing of fine or compensation to be paid by parent or guardian

- (1) For the purposes of any order under section 268 against the parent or guardian of an offender—
 - (a) section 249 (fixing of fine) has effect as if any reference to the offender’s financial circumstances were to the parent’s or guardian’s financial circumstances, and as if the reference in subsection (5)(b) to the offender were to the parent or guardian;
 - (b) section 250(1) (determination of service compensation order) has effect as if any reference to the financial circumstances of the person against whom the service compensation order is made were to the financial circumstances of the parent or guardian;
 - (c) section 250(2) (preference to be given to compensation if insufficient means to pay both compensation and fine) has effect as if the reference to the offender were to the parent or guardian;
 - (d) section 267 (power to remit fine) has effect as if any reference to the offender’s financial circumstances were to the parent’s or guardian’s financial circumstances.
- (2) Before making an order under section 268 against a parent or guardian, the court may make a financial statement order with respect to him.
- (3) In subsection (2) “financial statement order” has the meaning given by subsection (2) of section 266, and subsections (3) and (4) of that section apply in relation to a financial

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statement order made under this section as they apply in relation to such an order made under that section.

Community punishments

270 Community punishments: general restrictions etc

- (1) A court must not award a community punishment in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a punishment.
- (2) Where a court awards a community punishment—
 - (a) the particular requirement (or requirements) included in the order must be such as the court considers the most suitable for the offender; and
 - (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- (3) In forming any such opinion as is mentioned in subsection (1) or (2)(b), 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.
- (4) In forming an opinion for the purposes of subsection (2)(a) the court may take into account any information about the offender which is before it.
- (5) In determining the restrictions on liberty to be imposed by a community punishment in respect of an offence, the court may have regard to any period for which the offender has, since being charged with the offence or any related offence, been kept in service custody in connection with the offence or any related offence.
- (6) In subsection (5) “related offence” has the meaning given by section 247.
- (7) Section 151 of the 2003 Act (community order for persistent offender previously fined) applies to a court dealing with an offender for a service offence as it applies to a civilian court in England and Wales, but as if—
 - (a) in subsection (1)(c), the reference to a community sentence were to a community punishment and the reference to section 143(2) of that Act were to section 238(1)(b) of this Act;
 - (b) in subsection (2), the reference to making a community order were to awarding a community punishment and the words “instead of imposing a fine” were omitted; and
 - (c) in subsection (7), the reference to section 143(2) of that Act were to section 238(1)(b) and (2) of this Act.
- (8) Accordingly, subsections (1) and (2)(b) above are subject to section 151(2) of the 2003 Act as applied by this section.