

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 6 – Mandatory etc Custodial Sentences for Certain Offences

441. The sections in Chapter 6 of Part 8 require the Court Martial to impose certain custodial sentences where a person is convicted of a criminal conduct offence and a civilian court convicting him of the corresponding offence would be required to impose such a sentence.

Mandatory sentences

Section 217: Mandatory life imprisonment

442. This section requires the court to pass a sentence of life imprisonment where such a sentence would be mandatory in the case of the corresponding civilian offence. One such offence is murder. If the offender was under 18 at the time of the offence, however, section 218 applies instead.

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

443. Where life imprisonment is mandatory in the case of the corresponding civilian offence but the offender was under 18 at the time of the offence, under this section the court must sentence him to be detained during Her Majesty's pleasure.

Required sentences

444. Under each of sections 219 to 222 the Court Martial must pass a particular sentence where a civilian court convicting the offender of the corresponding offence would be required by Chapter 5 of Part 12 of the 2003 Act to pass such a sentence. These provisions apply where the conviction is for one of certain violent or sexual offences and in the court's view there is a significant risk of the offender's causing serious harm by committing more such offences.

Section 219: Dangerous offenders aged 18 or over

445. Where the corresponding offence is one of those listed in Schedule 15 to the 2003 Act and carries at least 10 years' imprisonment, and the offender is aged 18 or over when convicted, this section requires the court to pass a sentence either of life imprisonment or of imprisonment for public protection (which is another form of indeterminate sentence, defined by section 225(4) of the 2003 Act). Life imprisonment is mandatory if the conditions in section 225(2) of the 2003 Act (which determine when a civilian court would be required to pass such a sentence) are met.

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

446. Where the corresponding offence is listed in Schedule 15 to the 2003 Act but carries less than 10 years' imprisonment, and the offender is 18 or over, this section requires the court to pass an extended sentence of imprisonment. This sentence is defined by section 227 of the 2003 Act. It consists of an appropriate custodial term of at least 12 months, plus an extension period (of up to 5 years in the case of a violent offence, or 8 years in the case of a sexual offence) during which the offender is on licence.

Section 221: Dangerous offenders aged under 18

447. Where section 219 would apply but for the offender being under 18, this section requires the court to pass a sentence of detention for life under section 209 if the conditions in section 226(2) of the 2003 Act (which determine when a civilian court would be required to pass such a sentence under section 91 of the Sentencing Act) are met. If they are not met, the court must pass a sentence of detention for public protection (another form of indeterminate sentence, defined by section 226(4) of the 2003 Act), unless the court considers that an extended sentence of detention under section 228 of the 2003 Act (as required by section 222) would be adequate for the protection of the public.

Section 222: Offenders aged under 18: certain violent or sexual offences

448. Where section 220 would apply but for the offender being under 18, or section 221 applies but the court does not think that a sentence of detention for public protection is necessary, this section requires the court to pass an extended sentence of detention. This sentence is defined by section 228 of the 2003 Act. It consists of an appropriate custodial term of at least 12 months, plus an extension period (of up to 5 years in the case of a violent offence, or 8 years in the case of a sexual offence) during which the offender is on licence.

Section 223: "The required opinion" for purposes of sections 219 to 222

449. This section requires the Court Martial, in determining what sentence is required by sections 219 to 222, to apply criteria similar to those that a civilian court would be required to apply for the purposes of sections 225 to 228 of the 2003 Act. But, as well as assessing the risk of the offender's committing further specified offences in the UK, the Court Martial must also consider the risk of his doing things elsewhere that would be specified offences if done in England or Wales. If he is an adult and has previous convictions for specified offences, the court must assume that there is a significant risk unless it considers that this would be an unreasonable conclusion.

Section 224: Place of detention under certain sentences

450. This section applies section 235 of the 2003 Act, which provides for the place in which a person sentenced under section 226 or 228 of that Act may be detained, to a sentence under either of those sections passed by the Court Martial as a result of section 221 or 222.

Section 225: Third drug trafficking offence

451. Section 110 of the Sentencing Act requires an adult convicted of a third class A drug trafficking offence to be sentenced to at least seven years' imprisonment unless there are particular circumstances which would make this unjust. Subject to that exception, this section requires the Court Martial to impose such a sentence where it convicts an adult of a criminal conduct offence and section 110 of the Sentencing Act would apply if he were convicted by a civilian court of the corresponding offence.

Section 226: Third domestic burglary

452. Section 111 of the Sentencing Act requires an adult convicted of a third domestic burglary to be sentenced to at least three years' imprisonment unless there are particular circumstances which would make this unjust. Subject to that exception, this section requires the Court Martial to impose such a sentence where it convicts an adult of a criminal conduct offence and section 111 of the Sentencing Act would apply if he were convicted by a civilian court of the corresponding offence.

Section 227: Firearms offences

453. Section 51A of the Firearms Act 1968 requires an adult convicted of certain offences under that Act to be sentenced to at least five years' imprisonment if he was an adult when he committed the offence, or three if he was aged 16 or 17, unless there are exceptional circumstances which justify not passing such a sentence. Subject to that exception, this section requires the Court Martial to impose such a sentence where it convicts an adult of a criminal conduct offence and section 51A of the Firearms Act 1968 would apply if he were convicted by a civilian court of the corresponding offence.
454. If the offender is aged under 18 when convicted, the minimum sentence required by section 51A of the Firearms Act 1968 (in the absence of exceptional circumstances) is one of three years' detention under section 91 of the Sentencing Act. Where a person under 18 is convicted by the Court Martial and section 51A of the Firearms Act 1968 would apply if he were convicted by a civilian court of the corresponding offence, the minimum sentence required by this section (in the absence of exceptional circumstances) is one of three years' detention under section 209.

Section 228: Appeals where previous convictions set aside

455. This section allows an offender extra time to appeal against his sentence if, for the purpose of the sections in this Chapter, the court took account of a previous conviction of his which has since been set aside on appeal.