

## SCHEDULES

### SCHEDULE 25

#### AMENDMENTS TO ARMED FORCES LEGISLATION

##### PART 2

##### ARMED FORCES ACT 2006

##### *Restrictions on imposing community punishment*

27 After section 270 insert—

**“270A Community punishment available only for offences punishable with imprisonment or for offenders previously fined**

The power to award a community punishment is only exercisable in respect of an offence if—

- (a) a person who is guilty of such an offence is liable to imprisonment; or
- (b) in any other case, section 270B(4) confers power to award such a punishment.

**270B Community punishment for offender previously fined**

- (1) This section provides for the award of a community punishment by a court in respect of an offence (“the current offence”) committed by a person to whom subsection (2) or (3) applies.
- (2) This subsection applies to the offender if—
  - (a) a person guilty of the current offence is liable to imprisonment,
  - (b) the offender was aged 16 or over when he was convicted;
  - (c) on three or more previous occasions the offender has, on conviction by a court for an offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine; and
  - (d) despite the effect of section 238(1)(b), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community punishment.
- (3) This subsection applies to the offender if—
  - (a) a person guilty of the current offence is not liable to imprisonment;
  - (b) the offender was aged 16 or over when he was convicted; and

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*Status: This is the original version (as it was originally enacted).*

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- (c) on three or more previous occasions the offender has, on conviction by a court for an offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine.
- (4) The court may award a community punishment in respect of the current offence if it considers that, having regard to all the circumstances including the matters referred to in subsection (5), it would be in the interests of justice to award such a punishment.
- (5) Those matters are—
  - (a) the nature of the offences to which the previous convictions mentioned in subsection (2)(c) or (3)(c) (as the case may be) relate and their relevance to the current offence; and
  - (b) the time that has elapsed since the offender’s conviction of each of those offences
- (6) In subsections (2)(c) and (3)(c) “conviction by a court” means—
  - (a) a conviction by a civilian court in any part of the United Kingdom for a service offence or for an offence punishable by the law of that part of the United Kingdom; or
  - (b) a conviction in service disciplinary proceedings.
- (7) For the purposes of subsections (2)(c) and (3)(c) a compensation order or a service compensation order awarded in service disciplinary proceedings does not form part of an offender’s sentence.
- (8) It is immaterial for the purposes of subsections (2)(c) and (3)(c) whether on previous occasions a court has passed on the offender a sentence not consisting only of a fine.
- (9) This section does not limit the extent to which a court may, in accordance with section 238(1)(b) and (2), treat any previous convictions of the offender as increasing the seriousness of an offence.
- (10) In this section—
  - (a) “service disciplinary proceedings” means proceedings (whether or not before a court) in respect of a service offence; and
  - (b) any reference to a conviction or sentence, in the context of such proceedings, includes anything that under section 376(1) to (3) is to be treated as a conviction or sentence.”