



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

### CHAPTER 5

YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS

*Prohibition on imposing imprisonment on persons under 18*

#### **208 Prohibition on imposing imprisonment on persons under 18**

A person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

*Detention for certain serious offences*

#### **209 Offenders under 18 convicted of certain serious offences: power to detain for specified period**

- (1) Subsection (5) (power to pass sentence of detention) applies where—
  - (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) the case is within any of subsections (2) to (4).
- (2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—
  - (a) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and
  - (b) not an offence the sentence for which is fixed by law.

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- (3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—
  - (a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);
  - (b) section 13 of that Act (child sex offences committed by children or young persons);
  - (c) section 25 of that Act (sexual activity with a child family member); or
  - (d) section 26 of that Act (inciting a child family member to engage in sexual activity).
- (4) The case is within this subsection if it falls within section 227(1) (certain firearms offences).
- (5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.
- (6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence.
- (7) Subsections (5) and (6) are subject to (in particular)—
  - sections 221, 222 and 227 (required custodial sentences for certain offences); and
  - sections 260 and 261 (general restrictions on custodial sentences).

## **210 Detention under section 209: place of detention etc**

- (1) A person sentenced to be detained under section 209 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.
- (2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

### *Detention and training orders*

## **211 Offenders under 18: detention and training orders**

- (1) Where—
  - (a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and
  - (b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),
 the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.
- (2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.

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- (3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—
- (a) it is of the opinion mentioned in subsection (2);
  - (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
  - (c) the offence was committed on or after such date as may be appointed under section 100(2)(b)(ii) of the Sentencing Act (appointed day for purposes of orders under that Act).
- (4) Subsection (1) is also subject to sections 209, 218, 221, 222 and 227 (other custodial sentences that may or must be imposed in particular cases).

## **212 Term of detention and training order: general**

- (1) The term of an order made under section 211 in respect of an offence—
- (a) shall be 4, 6, 8, 10, 12, 18 or 24 months; and
  - (b) may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.
- (2) Where—
- (a) the offence is an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is under that law a summary offence, and
  - (c) the maximum term of imprisonment with which that offence is punishable in the case of a person aged 18 or over is 51 weeks,
- the term of the order may not exceed 6 months.

## **213 Application of provisions relating to civilian detention and training orders**

- (1) In the following provisions of the Sentencing Act references to a detention and training order include an order under section 211 of this Act—
- section 101(3) to (10) and (13) (power to impose consecutive terms, duty of court to take account of remands, etc);
  - sections 102 to 105, 106A and 107 (period of detention and training, period of supervision, breach of supervision requirements, etc).
- (2) In sections 101(3) to (10) and (13) and 106A of the Sentencing Act “court” includes a relevant service court (within the meaning given by section 196(2)).
- (3) In section 101(8) and (9) of the Sentencing Act in their application to an order under section 211 of this Act, any reference to an offender’s being “remanded in custody” is a reference to his being kept in service custody; and section 101(11) and (12) of that Act do not apply in relation to such an order.

## **214 Offences during currency of detention and training order**

- (1) This section applies to a person in respect of whom an order under section 211 has been made if—
- (a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) (“the new offence”); and
  - (b) whether before or after that date, he is convicted of the new offence.

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- (2) An offence is within this subsection if it is—
  - (a) a service offence which is punishable with imprisonment; or
  - (b) an offence in the British Islands which is so punishable.
- (3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such secure accommodation as the Secretary of State may determine for the whole or any part of the period which—
  - (a) begins with the date of the court’s order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1).
- (4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).
- (5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).
- (6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—
  - (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
  - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) If it appears to the Court Martial—
  - (a) that this section applies to a person,
  - (b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and
  - (c) that no order under subsection (3) or under section 105 of the Sentencing Act has been made in respect of the new offence,
 the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.
- (8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

## **215 Section 214: definitions etc**

- (1) Section 101(13) of the Sentencing Act (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.
- (2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.
- (3) In section 214 “secure accommodation” has the meaning given by section 107 of the Sentencing Act.

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## **216 Appeals against orders under section 214**

- (1) This section applies where an order under section 214 (“the relevant order”) is made.
- (2) 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) the relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and
  - (b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.
- (3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.