



Armed Forces Act 2006

2006 CHAPTER 52

First Group of Parts Discipline

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.