



Armed Forces Act 2006

2006 CHAPTER 52

First Group of Parts Discipline

PART 9

SENTENCING: PRINCIPLES AND PROCEDURES

CHAPTER 1

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS AND SUMMARY HEARINGS

General sentencing principles

237 Duty to have regard to purposes of sentencing etc

- (1) A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing—
 - (a) the punishment of offenders;
 - (b) the maintenance of discipline;
 - (c) the reduction of service offences and other crime (including reduction by deterrence);
 - (d) the reform and rehabilitation of offenders;
 - (e) the protection of the public;
 - (f) the making of reparation by offenders to persons affected by their offences.
- (2) If the offender is aged under 18 the court or officer must also have regard to his welfare.
- (3) This section does not apply in relation to—
 - (a) an offence the sentence for which is fixed by law;
 - (b) an offence the sentence for which, as a result of subsection (2) of any of sections 219 to 222 and 225 to 227 of this Act (required custodial sentences), falls to be imposed under—
 - any of sections 225 to 228 of the 2003 Act;

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section 110(2) or 111(2) of the Sentencing Act; or
section 51A(2) of the Firearms Act 1968 (c. 27).

- (4) In this section “sentencing” includes the making of any order when dealing with an offender in respect of his offence.

238 Deciding the seriousness of an offence

- (1) A court or officer dealing with an offender for a service offence (“the current offence”) must in considering the seriousness of the offence—
- (a) consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;
 - (b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated;
 - (c) if the offender committed the current offence while—
 - (i) charged with another service offence and released from service custody, or
 - (ii) on bail,
 treat the fact that it was committed in those circumstances as an aggravating factor.
- (2) In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard (in particular) to—
- (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
 - (b) the time that has elapsed since the conviction.
- (3) Any reference in subsection (1) or (2) to a previous conviction is to be read as a reference to—
- (a) a previous conviction of a service offence; or
 - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
- (4) Nothing in this section prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so.

239 Reduction in sentences for guilty pleas

- (1) This section applies where an offender—
- (a) has pleaded guilty to a service offence in proceedings before a court; or
 - (b) at a summary hearing in respect of a service offence, has admitted the offence.
- (2) In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account—
- (a) the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing; and
 - (b) the circumstances in which this indication was given.

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- (3) In subsection (2) “sentence” includes any order made when dealing with the offender in respect of his offence.
- (4) Subsection (5) applies in the case of an offence the sentence for which, as a result of section 225(2) or 226(2) of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act.
- (5) Nothing in section 110(2) or 111(2) of that Act prevents the court, after taking into account any matter mentioned in subsection (2) above, from imposing any sentence which is at least 80% of that specified in section 110(2) or 111(2) of that Act.

240 Increase in sentence for racial or religious aggravation

- (1) This section applies where a court or officer dealing with an offender for a service offence (other than an offence mentioned in subsection (3)) is considering the seriousness of the offence.
- (2) If the offence was racially or religiously aggravated the court or officer—
 - (a) must treat that fact as an aggravating factor; and
 - (b) must state in open court that the offence was so aggravated.
- (3) This section does not apply in relation to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under any of sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).
- (4) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

241 Increase in sentence for aggravation related to disability or sexual orientation

- (1) This section applies where a court or officer dealing with an offender for a service offence within subsection (2) is considering the seriousness of the offence.
- (2) A service offence is within this subsection if—
 - (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
 - (i) the sexual orientation (or presumed sexual orientation) of the victim; or
 - (ii) a disability (or presumed disability) of the victim; or
 - (b) the offence is motivated (wholly or partly)—
 - (i) by hostility towards persons who are of a particular sexual orientation; or
 - (ii) by hostility towards persons who have a disability or a particular disability.
- (3) The court or officer—
 - (a) must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in paragraph (a) or (b) of subsection (2); and

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- (b) must state in open court that the offence was committed in such circumstances.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether the offender’s hostility is also based to any extent on any other factor not mentioned in that paragraph.
- (5) In this section “disability” means any physical or mental impairment.

Service detention and custodial sentences

242 Service detention: general restriction

- (1) A court may not pass a sentence of service detention 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) or section 243(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.
- (3) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of service detention may not be—
 - (a) passed by an officer at a summary hearing, or
 - (b) passed or confirmed by the Summary Appeal Court,
 unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4) or section 243(3) (length of sentence), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

243 Length of term of service detention: general provision

- (1) This section applies where a sentence of service detention is passed in respect of a service offence.
- (2) Where the detention is imposed by a court other than the Summary Appeal Court, it 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) Where the detention is imposed by an officer at a summary hearing or by the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the officer or court is commensurate with the seriousness of the offence (or, if it is imposed in respect of two or more offences, the seriousness of them taken together).

244 Limit on combined term of sentences of service detention

- (1) A court or officer may not—

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- (a) pass a sentence of service detention,
- (b) make a direction under section 189 (consecutive terms of service detention), or
- (c) make an order under section 191 or 193 (activation of suspended sentence of service detention),

whose effect would be that a person would (at the relevant time) be subject to sentences of service detention the combined term of which exceeds two years.

- (2) In subsection (1) “the relevant time” is the time immediately after the passing of the sentence or the making of the direction or order.
- (3) For the purposes of this section, the combined term of sentences of service detention is—
 - (a) if none of the sentences overlap, the aggregate of the terms of the sentences;
 - (b) otherwise, the aggregate of—
 - (i) the period (or periods) during which any of the sentences overlaps any other of them; and
 - (ii) the period (or periods) for which none of the sentences overlap.
- (4) Where subsection (1) is contravened, any part of any sentence of service detention which would (apart from this subsection) have effect after the end of the permitted period is remitted by virtue of this subsection.
- (5) In subsection (4) “permitted period” means the period—
 - (a) beginning with the date of contravention; and
 - (b) equal in length to the longest sentence of service detention that could have been passed on that date without contravening subsection (1).
- (6) For the purposes of the reference in subsection (4) to a part of a sentence which would have effect after the end of the permitted period, any prospect of early release is to be disregarded.
- (7) In subsection (1)(a) “sentence of service detention” does not include a suspended sentence of service detention.

245 Section 244: supplementary

- (1) Subsections (2) to (5) apply for the purposes of section 244.
- (2) A person is to be regarded as not subject to any sentence from which he has been released early.
- (3) A person is to be regarded as not subject to a suspended sentence of service detention unless an order that the sentence shall take effect has been made.
- (4) Subject to subsection (3), a person is to be regarded as subject to any sentence of service detention that has been passed on him but—
 - (a) has not taken effect; or
 - (b) as a result of section 290(5) or (6) or 291(6) or (7), has ceased to have effect and has not resumed effect.
- (5) A person who has been detained continuously pursuant to two or more sentences of service detention is to be regarded as subject to all of those sentences (whether or not any of them has been served in full).

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- (6) For the purposes of subsection (5), any periods of detention which would be continuous but for section 290(3), (5) or (6) or 291(5), (6) or (7) are to be treated as continuous.

246 Crediting of time in service custody: terms of imprisonment and detention

- (1) This section applies where—
- (a) a court or officer sentences an offender to a term of imprisonment or service detention in respect of a service offence (“the offence in question”); and
 - (b) the offender has been kept in service custody, in connection with the offence in question or any related offence, for any period since being charged with the offence in question or any related offence.
- (2) The court must direct that the number of days for which the offender has been kept in service custody in connection with the offence in question or any related offence since being so charged is to count as time served by him as part of the sentence.
- (3) Subsection (2) does not apply if and to the extent that—
- (a) rules made by the Secretary of State so provide in the case of—
 - (i) a period of service custody which is wholly or partly concurrent with a sentence of imprisonment or service detention; or
 - (ii) sentences of imprisonment or service detention for consecutive terms or for terms which are wholly or partly concurrent; or
 - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (4) Where the court gives a direction under subsection (2) it must state in open court—
- (a) the number of days for which the offender was kept in service custody as mentioned in that subsection; and
 - (b) the number of days in relation to which the direction is given.
- (5) Where the court does not give a direction under subsection (2), or gives such a direction in relation to a number of days less than that for which the offender was kept in service custody as mentioned in that subsection, it must state in open court—
- (a) that its decision is in accordance with rules made under paragraph (a) of subsection (3); or
 - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (6) This section applies to—
- (a) a determinate sentence of detention under section 209, and
 - (b) a sentence of detention under section 228 of the 2003 Act passed as a result of section 222 of this Act,
- as it applies to an equivalent sentence of imprisonment.
- (7) References in this section to “the court” are to the court or officer mentioned in subsection (1).

247 Crediting of time in service custody: supplementary

- (1) For the purposes of section 246(1) offences are related if the charges for them were founded on the same facts or evidence.

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- (2) It is immaterial for the purposes of section 246(1) whether the offender has also been kept in service custody in connection with other offences, or has also been detained in connection with other matters.
- (3) For the purposes of section 246 a suspended sentence of imprisonment or a suspended sentence of service detention—
 - (a) is to be treated as a sentence of imprisonment or (as the case may be) service detention when an order that it shall take effect is made; and
 - (b) is to be treated as being imposed by that order.
- (4) Subsections (5) to (7) apply for the purposes of the reference in section 246(2) to the term of imprisonment or detention to which a person has been sentenced (that is to say, the reference to his “sentence”).
- (5) Consecutive terms of service detention, and terms of service detention which are wholly or partly concurrent, are to be treated as a single term.
- (6) Consecutive relevant custodial terms, and relevant custodial terms which are wholly or partly concurrent, are to be treated as a single term if—
 - (a) the sentences were passed on the same occasion; or
 - (b) where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the 2003 Act at any time during the period beginning with the first and ending with the last of those occasions.
- (7) For the purposes of subsection (6) any sentence within paragraph (a), (b) or (c) of section 188(4) is a relevant custodial term.

Forfeiture of seniority and reduction in rank

248 Forfeiture of seniority and reduction in rank or disrating: general restriction

- (1) A court may not pass a sentence of forfeiture of seniority, reduction in rank or disrating 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) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of forfeiture of seniority, reduction in rank or disrating may not be—
 - (a) passed by an officer at a summary hearing, or
 - (b) passed or confirmed by the Summary Appeal Court,
 unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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Financial punishments

249 Fixing of fines

- (1) A court or officer fixing a fine to be imposed on an offender in respect of a service offence must, before fixing the amount of the fine, inquire into the offender's financial circumstances.
- (2) The amount of any fine fixed by a court or officer in respect of a service offence must be such as, in the opinion of the court or officer, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine to be imposed on an offender in respect of a service offence, a court or officer must take into account the circumstances of the case including, among other things, the offender's financial circumstances so far as they are known, or appear, to the court or officer.
- (4) Subsection (3) applies whether taking into account the offender's financial circumstances has the effect of increasing or reducing the amount of the fine.
- (5) Where—
 - (a) the court has inquired into the offender's financial circumstances as required by this section,
 - (b) the offender has failed to co-operate with the court in its inquiry (whether by failing to comply with a financial statement order under section 266 or otherwise), and
 - (c) the court considers that it has insufficient information to make a proper determination of the offender's financial circumstances,the court may make such determination of his financial circumstances as it considers appropriate.
- (6) References in subsection (5) to "the court" are to the court or officer fixing a fine in respect of a service offence.

250 Determination of service compensation order

- (1) In determining whether to make a service compensation order against any person, and in determining the amount to be paid by any person under such an order, a court or officer must have regard to that person's financial circumstances so far as they appear or are known to the court or officer.
- (2) Where the court or officer considers—
 - (a) that it would be appropriate both to impose a fine and to make a service compensation order, but
 - (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,the court or officer must give preference to compensation (but may impose a fine as well).

251 Power to allow payment of fine or service compensation order by instalments

- (1) A court or officer awarding a fine or service compensation order in respect of a service offence may make an order under this section.

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- (2) An order under this section is an order—
 - (a) allowing time for payment of the amount due in respect of the fine or service compensation order (“the amount due”); or
 - (b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order.
- (3) If no order under this section is made when the fine or service compensation order is imposed, at any later time the appropriate court may make such an order on the application of the person by whom the amount due is payable (“the relevant person”).
- (4) The appropriate court may on the application of the relevant person vary an order made under this section.
- (5) In this section “the appropriate court” means—
 - (a) if the fine or service compensation order was imposed by an officer and subsection (6) applies, the commanding officer of the relevant person;
 - (b) if the fine or service compensation order was imposed by a court and subsection (6) or (7) applies, the Court Martial.
- (6) This subsection applies if the relevant person is for the time being—
 - (a) subject to service law;
 - (b) a member of a volunteer reserve force; or
 - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.
- (7) This subsection applies if the relevant person is for the time being a civilian subject to service discipline.

Reasons

252 Duty to give reasons and explain sentence

- (1) Any court or officer passing sentence on an offender for a service offence—
 - (a) must state in open court, in ordinary language and in general terms and in accordance with section 253, its (or his) reasons for deciding on the sentence passed; and
 - (b) must explain to the offender in ordinary language—
 - (i) the effect of the sentence;
 - (ii) where the offender is required to comply with any order forming part of the sentence, the effects of non-compliance with the order;
 - (iii) any power, on the application of the offender or any other person, to vary or review any order forming part of the sentence; and
 - (iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.
- (2) Subsection (1)(a) does not apply—
 - (a) to an offence the sentence for which is fixed by law; or
 - (b) to an offence the sentence for which, as a result of subsection (2) of section 225, 226 or 227 of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act or section 51A(2) of the Firearms Act 1968 (c. 27).

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- (3) The Secretary of State may by order—
- (a) prescribe cases in which subsection (1)(a) or (b) does not apply;
 - (b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.
- (4) In this section and section 253 “sentence” includes any order made when dealing with the offender in respect of his offence.

253 Duties in complying with section 252

- (1) In complying with section 252(1)(a) an officer or the Summary Appeal Court must—
- (a) mention any aggravating or mitigating factors which he (or it) has regarded as being of particular importance;
 - (b) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the officer or court has imposed a punishment on the offender which is less severe than the punishment that would otherwise have been imposed, state that fact;
 - (c) where the sentence is one of service detention, state that he (or it) is of the opinion mentioned in section 242(4) and why; and
 - (d) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that he (or it) is of the opinion mentioned in section 248(4) and why.
- (2) In complying with section 252(1)(a) a court other than the Summary Appeal Court must—
- (a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind or is outside that range, state the court’s reasons for deciding on a sentence of a different kind or outside that range;
 - (b) mention any aggravating or mitigating factors which the court has regarded as being of particular importance;
 - (c) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the court has imposed a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact;
 - (d) where the sentence is a custodial sentence and section 260 applies (and the case does not fall within section 260(3)), state that it is of the opinion mentioned in section 260(2) and why;
 - (e) where the sentence is one of dismissal or dismissal with disgrace, state that it is of the opinion mentioned in section 265(1) and why;
 - (f) where the sentence is one of service detention, state that it is of the opinion mentioned in section 242(1) and why;
 - (g) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that it is of the opinion mentioned in section 248(1) and why; and
 - (h) where the sentence consists of or includes a community punishment (and the case does not fall within section 151(2) of the 2003 Act as applied by section 270 of this Act), state that it is of the opinion mentioned in section 270(1) and why.

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- (3) In this section “guidelines” has the same meaning as in section 259.

Savings

254 Savings for powers to mitigate sentence etc

- (1) Nothing in any of sections 242, 243, 248, 249, 250, 256, 258, 260, 261, 265 and 270 prevents a court or officer from mitigating an offender’s sentence by taking into account any such matters as, in the court’s or officer’s opinion, are relevant in mitigation of sentence.
- (2) Nothing in those sections prevents a court or officer from mitigating any punishment included in an offender’s sentence by taking into account any other punishment included in that sentence.
- (3) Nothing in those sections or section 255 prevents a court, in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (4) Subsections (2) and (3) do not affect the generality of subsection (1).

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
 - (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.

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- (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).
- (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.

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- (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
 - (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.

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- (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.

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.

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- (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—
- (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;

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- (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.

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.

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- (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).
- (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.

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

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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.

CHAPTER 3

SUPPLEMENTARY

271 Civilian courts dealing with service offences

- (1) Nothing in this Part affects a civilian court dealing with an offender for a service offence.

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- (2) The Secretary of State may by regulations modify—
- (a) any provision of Chapter 1 of Part 12 of the 2003 Act (sentencing principles etc for civilian courts),
 - (b) any other enactment that confers functions on sentencing courts,
- in its application to a civilian court dealing with an offender for a service offence.