

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

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

Section 237: Duty to have regard to purposes of sentencing etc

473. Subsection (1) requires a service court or CO to have regard to the purposes of sentencing when dealing with an offender for a service offence. These considerations are the same as those set out in section 142 of the Criminal Justice Act 2003 (“the 2003 Act”), with an additional factor: the maintenance of discipline.
474. If the offender is under 18, subsection (2) also requires the court or CO to have regard to his welfare. This corresponds to section 44 of the Children and Young Persons Act 1933.
475. Subsection (3) dispenses with these requirements where the sentence is fixed by law, and where Chapter 6 of Part 8 requires a particular sentence to be imposed.

Section 238: Deciding the seriousness of an offence

476. A court or CO is required to take into account certain matters when determining the seriousness of an offence. These matters are essentially the same as those set out in section 143 of the 2003 Act.

Section 239: Reduction in sentences for guilty pleas

477. This section concerns the sentencing of offenders who have pleaded guilty (or, at a summary hearing, admitted the offence). It reflects section 144 of the 2003 Act.
478. Subsections (1) to (3) require the court or CO to take account of how early in the proceedings the offender indicated his intention to admit the offence, and the circumstances in which he did so.
479. Where the offender pleaded guilty to an offence to which section 225 or 226 applies (third drug trafficking and third domestic burglary offences), subsections (4) and (5) allow the court to reduce by up to 20 per cent the minimum sentence that would otherwise be required.

Section 240: Increase in sentence for racial or religious aggravation

480. Where a court or CO is considering the seriousness of an offence when sentencing an offender, the court or CO must treat the fact that the offence was racially or religiously motivated as an aggravating factor—except where the offence is one of those under the Crime and Disorder Act 1998 which are defined in terms of such aggravation, and carry a heavier sentence for that reason. The court or CO must state in open court (or, at a summary hearing, in the offender’s presence) that the offence was so aggravated. This section reflects section 145 of the 2003 Act.

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

481. This section requires a court or CO to treat as an aggravating factor the fact that the offender demonstrated hostility based on the victim’s sexual orientation or disability, or that the offence was motivated by hostility towards persons of a particular sexual orientation or persons with a disability, and to state in open court (or, at a summary hearing, in the offender’s presence) that this is the case. The section reflects section 146 of the 2003 Act.

Service detention and custodial sentences

Section 242: Service detention: general restriction

482. Subsection (1) prohibits a court (except the SAC) from passing a sentence of service detention unless the offence is serious enough to warrant such a sentence. If the offender is also convicted of other offences in the same proceedings, or is sentenced for other offences at the same time, or other offences are taken into consideration when sentencing him, those offences are “associated” with the offence for which he is sentenced; and a sentence of service detention can be passed if the combination of the offence for which he is sentenced and the associated offences is serious enough to warrant it. Subsection (4) similarly prohibits a CO or the SAC from awarding service detention unless the offence or offences for which the offender is being sentenced is or are serious enough to warrant it. These provisions apply to service detention a principle laid down in relation to custodial sentences by section 152 of the 2003 Act.
483. Subsections (2) and (5) require a court or CO, when deciding whether an offence or combination of offences is serious enough to warrant a sentence of service detention, or how long a sentence it warrants, to take into account all available information about the circumstances of the offence or offences. These provisions apply to service detention a principle laid down in relation to custodial sentences by section 156(1) of the 2003 Act.

Section 243: Length of term of service detention: general provision

484. Where a sentence of service detention is passed by a court (except the SAC), subsection (2) requires it to be for the shortest term commensurate with the seriousness of the offence and any associated offences (see paragraph 483 above). Where such a sentence is passed by a CO or the SAC, subsection (3) similarly requires it to be for the shortest term commensurate with the seriousness of the offence or offences for which the offender is sentenced. The section applies to service detention a principle laid down in relation to custodial sentences by section 153 of the 2003 Act.

Section 244: Limit on combined term of sentences of service detention

485. This section prohibits a court or CO from sentencing an offender, or activating a suspended sentence previously imposed on him, if it would result in the offender being subject to sentences of service detention amounting to more than two years in total. If a court or CO purports to do this, the excess period is remitted.

Section 245: Section 244: supplementary

486. This section supplements section 244. Subsection (2) provides that where an offender has been released from a sentence of service detention, the sentence does not count towards the two-year maximum.
487. Subsection (3) ensures that a suspended sentence of detention does not count for the purposes of the two-year limit unless it has been activated under section 191 or 193.
488. Subsection (4) ensures that a sentence of detention passed by a CO counts for the purposes of the two-year limit even if the offender is not currently in custody because of the rules in section 290 or 291 (which allow him to delay starting the sentence until he has had a chance to appeal).
489. Subsection (5) ensures that, where a person has been detained continuously under two or more sentences of detention (because one was made consecutive to another, or they were concurrent but one was for a longer period than another), both or all of those sentences count for the purposes of the two-year limit.

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

490. Where a term of imprisonment for a fixed term or a sentence of service detention is passed on an offender who has been kept in service custody for any period since he was charged, this section requires the court or CO to direct that time spent in custody by the offender in connection with the offence in question or any related offence should count towards the sentence, unless the court or CO thinks it just not to do so. This requirement may be relaxed by rules made by the Secretary of State in certain circumstances. A court or CO deciding not to make such a direction must state in open court why it has decided to do so. This section reflects section 240 of the 2003 Act.

Section 247: Crediting of time in service custody: supplementary

491. This section supplements section 246. Subsection (1) has the effect that section 246 applies not only where the offender has been kept in service custody when charged with the offence for which he is being sentenced, but also where he has been kept in service custody in connection with a different charge based on the same facts or evidence.
492. Subsection (2) provides that if the offender has been kept in service custody or detained in connection with other charges (which are not founded on the same facts or evidence), the fact that he has been detained is to be ignored for the purposes of section 246.
493. Subsection (3) ensures that section 246 does not apply when a suspended sentence is passed, but does apply if the sentence is activated.
494. Subsections (4) to (7) enable consecutive and concurrent sentences, in specified circumstances, to be treated as a single sentence for the purposes of section 246(2).

Forfeiture of seniority and reduction in rank

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

495. Subsection (1) prohibits a court (except the SAC) from passing a sentence of forfeiture of seniority, reduction in rank or disrating unless the offence and any associated offences are serious enough to warrant such a sentence. Subsection (4) similarly prohibits a CO or the SAC from passing such a sentence unless the offence or offences for which the offender is sentenced are serious enough to warrant it.

496. Subsections (2) and (5) require a court or CO, when deciding whether an offence or combination of offences is serious enough to warrant such a sentence, to take into account all available information about the circumstances of the offence or offences.

Financial punishments

Section 249: Fixing of fines

497. This section requires a court or CO, when fixing a fine in respect of a service offence, to inquire into the offender's financial circumstances; to determine what those circumstances are; to take account of those circumstances (whether that means increasing or reducing the fine) and the circumstances of the case; and to ensure that the amount of the fine reflects the seriousness of the offence. Section 249 reflects section 164 of the 2003 Act.

Section 250: Determination of service compensation order

498. A court or CO is required to have regard to the offender's financial circumstances when deciding whether to make a service compensation order, and, if so, for what amount. If the offender cannot afford to pay both a fine and compensation, compensation must be given priority. The section reflects part of section 130 of the Sentencing Act.

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

499. This section allows a court or CO imposing a fine or a service compensation order to make a further order allowing time to pay, or directing payment by instalments. If no order is made when the fine or compensation order is imposed, the offender can apply to the Court Martial for such an order at a later date. An offender can also apply to the Court Martial for the variation of such an order. But, where the fine or compensation order was awarded by a CO and the offender is a regular serviceman, a volunteer reservist or an ex-regular subject to an additional duties commitment, applications must be made instead to his CO.

Reasons

Section 252: Duty to give reasons and explain sentence

500. Section 252 requires a court or CO passing sentence to explain the reasons for the sentence (except where the sentence is fixed by law, or is required under Chapter 6 of Part 8) and the effect of the sentence and of failing to comply. The court must also explain any power to vary or review the sentence on application. The Secretary of State may relax these requirements in specified cases. The section reflects part of section 174 of the 2003 Act.

Section 253: Duties in complying with section 252

501. This section specifies particular matters which a court or CO must mention or explain in complying with the duty imposed by section 252. The section reflects part of section 174 of the 2003 Act.

Savings

Section 254: Savings for powers to mitigate sentence etc

502. Subsection (1) ensures that the sections there mentioned do not affect a court or CO's power to mitigate a sentence by taking account of anything that the court or CO thinks relevant.
503. Subsection (2) allows one punishment within a sentence to be mitigated by another.

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

504. Subsection (3) allows a court passing two or more sentences to apply the principle that the totality of the sentences properly reflects the overall seriousness of the offender's behaviour—for example, that the total length of consecutive sentences is not disproportionate.
505. The section reflects section 166 of the 2003 Act.