
Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011, Paragraph 20. (See end of Document for details)

SCHEDULES

SCHEDULE 3

MINOR AMENDMENTS OF SERVICE LEGISLATION

Restrictions on community punishments

- 20 (1) In section 270 of AFA 2006 (general restrictions on community punishments), for subsections (7) and (8) substitute—

“(7) Subsections (1) and (2)(b) are subject to section 270A.”

- (2) After that section insert—

“270A Exception to restrictions on community punishments

- (1) If the conditions in subsection (2) are met, the power to award a community punishment in respect of an offence (“the current offence”) may be exercised even though the court would not otherwise regard—

- (a) the current offence, or
- (b) the combination of the current offence and one or more offences associated with it,

as serious enough to warrant a community punishment (despite the effect of section 238(1)(b)).

- (2) The conditions referred to in subsection (1) are—

- (a) that the offender was aged 16 or over when convicted of the current offence;
- (b) that on three or more previous occasions the offender has been awarded a relevant financial penalty; and
- (c) that the court, having regard to all the circumstances, considers that it would be in the interests of justice to award a community punishment.

- (3) In subsection (2)(b) a “relevant financial penalty” means a sentence consisting only of a fine—

- (a) passed on the offender in respect of a service offence, or member State service offence, committed by the offender when aged 16 or over;
- (b) passed on the offender on conviction by a civilian court in the British Islands of an offence so committed; or
- (c) passed on the offender on conviction by a civilian court in another member State of a relevant offence so committed.

- (4) For the purposes of subsection (2)(b) it is immaterial whether the offender has on other previous occasions been awarded a sentence other than a relevant financial penalty.

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- (5) The circumstances which must be had regard to under subsection (2)(c) include—
- (a) the nature of the offences for which the relevant financial penalties were awarded;
 - (b) the relevance of those offences to the current offence; and
 - (c) the time that has elapsed since those penalties were awarded.
- (6) For the purposes of subsection (3), none of the following forms part of an offender's sentence—
- (a) a service compensation order;
 - (b) a compensation order under—
 - (i) section 130 of the Sentencing Act;
 - (ii) section 249 of the Criminal Procedure (Scotland) Act 1995;
 - or
 - (iii) Article 14 of the Criminal Justice (Northern Ireland) Order 1994;
 - (c) a surcharge under section 161A of the 2003 Act.
- (7) This section does not limit the extent to which a court may, in accordance with section 238, treat previous convictions of the offender as increasing the seriousness of an offence.
- (8) In this section—
- (a) “member State service offence” means an offence which—
 - (i) was the subject of proceedings under the law governing all or any of the naval, military or air forces of a member State other than the United Kingdom; and
 - (ii) would constitute a service offence or an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom, by a person subject to service law, at the time of the conviction of the current offence;
 - (b) “relevant offence” means an offence which would constitute an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom at the time of the conviction of the current offence.”
- (3) In consequence of the amendments made by this paragraph, paragraphs 26(3) and (4) and 27 of Schedule 25 to the Criminal Justice and Immigration Act 2008 (which amend AFA 2006 but have not been commenced) are omitted.

Commencement Information

II Sch. 3 para. 20 in force at 2.4.2012 by S.I. 2012/669, art. 4(d) (with art. 13)

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