

ARMED FORCES ACT 2006

EXPLANATORY NOTES

SECOND GROUP OF PARTS – MISCELLANEOUS MATTERS

Part 17 – Miscellaneous

Offences relating to service matters punishable by civilian courts

700. This group of sections creates several criminal offences relating to service matters that can be committed by any person.

Section 344: Aiding or abetting etc desertion or absence without leave

701. Subsection (1) makes it an offence to aid, abet, counsel or procure the commission by another person of an offence under section 8 (desertion) or section 9 (absence without leave). (An offence under section 8 or 9 may only be committed by a person who is subject to service law.)
702. Subsection (2) makes it an offence intentionally to do something (or omit to do something) that causes a person, whom the offender knows to be subject to service law, to be absent without leave.
703. Subsection (3) makes it an offence intentionally to impede the apprehension or prosecution of a person subject to service law who has committed an offence contrary to section 8 or 9 where the offender knows or believes the person subject to service law to be guilty of the relevant offence.
704. Subsection (4) provides that an offence contrary to this section may be committed in a “relevant territory” by any person, but outside a “relevant territory” only by a UK national or by a person who is resident in a “relevant territory”. Subsection (5) defines “relevant territory” as the UK, the Isle of Man or a British overseas territory.
705. Subsection (7) specifies the maximum sentences that may be passed on a person guilty of an offence under this section on summary conviction and on conviction on indictment. The term “statutory maximum” used at subsection (7)(a) is defined at section 377(6) and (7).

Section 341: Aiding or abetting etc malingering

706. Subsection (1) makes it an offence to aid, abet, counsel or procure the commission by another person of an offence under section 16 (malingering). (An offence under section 16 may only be committed by a person who is subject to service law.)
707. Subsection (2) makes it an offence to do something that causes a person, whom the offender knows to be subject to service law, an injury, or to do something that aggravates or prolongs an injury of his with the intention that the person subject to service law will avoid service.
708. Subsection (3) makes it an offence to do something that causes a person, whom the offender knows to be subject to service law, to believe that he has an injury, or to do

something that causes another person to believe that the person subject to service law has an injury, with the intention that the person subject to service law will avoid service.

709. Subsection (4) provides that an offence contrary to this section may be committed in a “relevant territory” by any person, but outside a “relevant territory” only by a UK national or by a person who is resident in a “relevant territory”. Subsection (5) defines “relevant territory” as the UK, the Isle of Man or a British overseas territory.

Section 346: Obstructing persons subject to service law in course of duty

710. Subsection (1) provides that it is an offence for any person intentionally to obstruct someone subject to service law acting in the course of his duty, if he knows or has reasonable cause to believe that the person he is obstructing is subject to service law.
711. Subsection (2) specifies that the offence may only be committed in the UK, the Isle of Man or a British overseas territory.
712. Subsection (3) specifies the maximum sentences that may be passed on a person guilty of an offence under this section on summary conviction.

Section 347: Sections 344 to 346: supplementary provisions

713. Subsection (1) provides that where an offence contrary to section 340 or 341 is committed in a British overseas territory, proceedings may be taken and the offence may otherwise be treated as having been committed in the UK or the Isle of Man. It also provides that this shall not prevent proceedings being taken for the offence in that British overseas territory.
714. Subsection (2) provides that where an offence contrary to section 340 or 341 is committed otherwise than in the UK, the Isle of Man or a British overseas territory, proceedings may be taken and the offence may otherwise be treated as having been committed in the UK, the Isle of Man or a British overseas territory.
715. Subsection (3) defines “United Kingdom national” for the purposes of sections 344 and 345.
716. Subsection (4) specifies what is meant by references in sections 344 to 346 to a person knowing, or having reasonable cause to believe, that another person is subject to service law.

Section 348: British overseas territories: references to maximum penalties

717. This section makes provision regarding sentences that can be imposed in a British overseas territory following a conviction for an offence under sections 344, 345 or 346 or under regulations made by virtue of section 343(5)(b) (Service inquiries). It empowers the British overseas territory to provide in law for the maximum sentence of imprisonment or the maximum fine to be higher or lower than that provided for in the Act, and in addition empowers it to specify the amount of local currency that is to be considered as equivalent to the maximum fine.
718. The effect of this is to allow British overseas territories to set penalties in line with those provided for under their own law for similar offences, taking into account matters such as average local incomes which may differ from those in the UK.

Exemptions for certain civil matters

Section 349: Exemption from tolls and charges

719. This section preserves the exemption for vehicles belonging to or in the service of HM Forces from tolls or charges in respect of their passing over roads or bridges and through

tunnels. This section also covers schemes for imposing charges on the keeping or use of vehicles on particular roads.

Section 350: Exemption of property used for service purposes from execution

720. This section exempts items used by a serviceman in the course of his duty from being taken in execution of a court order.

Powers of officers etc

Section 351: Detention etc of persons in overseas service hospitals

721. This section introduces Schedule 12. Schedule 12 makes provision for admitting persons suffering from mental disorder to service hospitals outside the British Islands, and detaining them there temporarily for assessment or treatment, in certain defined circumstances. The provisions apply only to persons subject to service law, or civilians subject to service discipline, who are outside the British Islands.

Section 352: Power to take affidavits and declarations

722. This section re-enacts a provision which authorises certain officers outside the UK to take affidavits or declarations from persons subject to service law or to service discipline, where an otherwise qualified person may not be available. This enables people who are serving overseas to nevertheless attend to such legal business that requires affidavits or declarations.
723. The section provides for the matters which the authorised officer must state in the jurat or attestation at the end of the affidavit or declaration, and further provides that a statement contained in an affidavit or declaration that purports to be signed by an authorised officer shall be admitted in evidence without separate proof of the signature or the facts contained in the statement.

Protection of children of service families

Section 353: Protection of children of service families

724. This section gives effect to Schedule 13, which amends those sections of the Armed Forces Act 1991 that provide for the protection of the children of Service families abroad.

Miscellaneous

Section 354: Extension of powers of command dependent on rank or rate

725. The operations and effectiveness of the Armed Forces depend fundamentally on the exercise of powers to give commands. Some authority to give commands derives simply from rank. A superior may give commands to someone of lower rank. Other parts of this authority flow from appointment to a particular responsibility, for example the authority of a CO over those within his unit.
726. This section deals with that part of the authority to command which arises simply from rank. It provides so that this authority is not limited by Service: an officer, warrant officer, or non commissioned officer of any Service (Army, Royal Navy, RAF or Royal Marines) has this authority over anyone of lower rank in any of the Services. The section accordingly makes tri-Service the general power to give orders arising from rank.

Section 355: Service of process

727. This section gives the Secretary of State power to make regulations allowing the service of process on “relevant persons” in connection with prescribed proceedings. “Relevant

persons” are defined as members of the regular forces, members of the reserve forces who are subject to service law (unless they are so subject on account of undertaking any training or duty) and civilians subject to service discipline (subsection (3)). The regulations may determine when service of process on a person’s CO will count as service on the person himself and when service of process has no effect (subsection (2)), for example when the CO certifies that the person is under orders for active service and that, in the CO’s opinion, there is not enough time for the person to attend the hearing and return.

Section 356: Avoidance of assignment of or charge on pay and pensions etc

728. This re-enacts a current provision to the same effect and makes void assignments and charges made of or against a serviceman’s pay, pension, bounty, grant or allowances. It further prevents a court from making an order which has the effect of preventing a serviceman receiving his pay etc and directing payment of it to another person. There are two exceptions to this general prohibition: the making or variation of attachment of earnings orders, which through the Attachment of Earnings Act 1971 may only be made against service pensions and gratuities; and the payment of a serviceman’s earnings to his trustee in bankruptcy for use in discharging his debts.

Section 357: Power of British overseas territory to apply Act, etc

729. Forces raised under the laws of a British overseas territory (“BOT”) are Her Majesty’s forces. Four BOTs (Bermuda, Gibraltar, the Falkland Islands and Montserrat) raise defence forces under their own law, and this section makes provision in relation to that.
730. Paragraph (a) is necessary because BOTs do not have the power to make legislation with extraterritorial effect without express permission.
731. Paragraph (b) provides that a BOT which makes legislation for its own defence force may do so by applying some or all of the provisions of this Act. This is not mandatory, and a BOT may make separate legislation for its own defence force.

Section 358: Amendments relating to reserve forces

732. This section introduces Schedule 14 which sets out amendments to the Reserve Forces Act 1980 and the Reserve Forces Act 1996, the majority of which are consequential upon changes to the provisions governing the regular forces made in this Act or remove redundant provisions in relation to the reserve forces.

Section 359: Pardons for servicemen executed for disciplinary offences: recognition as victims of First World War

733. This section provides that all servicemen executed for certain offences, described as “relevant offences”, committed between 4 August 1914 and 11 November 1918 shall be taken to be pardoned. The relevant offences, which include desertion and cowardice, are listed in subsection (3). The section does not lift the convictions or sentences of the servicemen affected. Nor does it create any new rights, entitlements or liabilities. It does not affect the royal prerogative of mercy.