



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 1

#### OFFENCES

*Attempts, [<sup>F1</sup>encouragement and assistance], and aiding and abetting*

#### Textual Amendments

- F1** Words in s. 39 cross-heading substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 5 para. 10](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504, art. 2\(a\)](#)

### 39 Attempts

- (1) A person subject to service law commits an offence if he attempts to commit an offence to which this subsection applies.
- (2) Subsection (1) applies to any service offence except—
  - (a) an offence committed by virtue of section 41 (aiding and abetting);
  - (b) an offence under this section or section 42.
- (3) A civilian subject to service discipline commits an offence if he attempts to commit an offence to which this subsection applies.
- (4) Subsection (3) applies to—
  - (a) an offence under section 4, 13, 27, 28(2), 29, 107 or 306 of this Act or under section 18 or 20 of the Armed Forces Act 1991 (c. 62); and
  - (b) an offence under section 40 of [<sup>F2</sup>encouraging or assisting the commission of] an offence mentioned in paragraph (a).
- (5) For the purposes of this section a person attempts to commit an offence if, with intent to commit the offence, he does an act which is more than merely preparatory to the commission of the offence.

*Status: Point in time view as at 28/03/2009.*

*Changes to legislation: Armed Forces Act 2006, Cross Heading: Attempts, encouragement and assistance, and aiding and abetting is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) For those purposes, a person may attempt to commit an offence even though the facts are such that the commission of the offence is impossible.
- (7) Where—
- (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence, but
  - (b) if the facts of the case had been as he believed them to be his intention would be so regarded,
- then for the purposes of this section he shall be regarded as having had an intent to commit that offence.
- (8) Where in proceedings for an offence under this section there is evidence sufficient in law to support a finding that the defendant did an act falling within subsection (5), the question whether his act fell within that subsection is a question of fact.
- (9) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of the offence attempted.

#### Textual Amendments

- F2** Words in s. 39(4)(b) substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 5 para. 8](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504, art. 2\(a\)](#)

#### Commencement Information

- II** [S. 39](#) in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

### [<sup>F3</sup>40 Encouraging and assisting

- (1) A person subject to service law commits an offence if he encourages or assists the commission of a service offence (other than an offence under section 42).
- (2) A civilian subject to service discipline commits an offence if he encourages or assists the commission of an offence mentioned in section 39(4).
- (3) Reference in this section to encouraging or assisting the commission of an offence is to the doing of an act that would have constituted an offence under Part 2 of the Serious Crime Act 2007 if the offence encouraged or assisted had been an offence under the law of England and Wales.
- (4) In determining whether an act would have constituted an offence under that Part, section 49(4) of that Act has effect as if for “offences under this Part and listed offences” it read “offences under sections 39 and 40 of the Armed Forces Act 2006”.
- (5) Any requirement in that Part to specify matters in an indictment applies for the purposes of this section as it applies for the purposes of that Part, but with references to the indictment being read as references to the charge sheet.
- (6) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of—
  - (a) the service offence encouraged or assisted; or
  - (b) if convicted of the offence under this section by reference to more than one such service offence, any one of those service offences.]

*Status: Point in time view as at 28/03/2009.*

*Changes to legislation: Armed Forces Act 2006, Cross Heading: Attempts, encouragement and assistance, and aiding and abetting is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F3** S. 40 substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 5 para. 9](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), art. 2(a)

#### Commencement Information

- I2** S. 40 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

### 41 Aiding, abetting, counselling or procuring

- (1) Where a person subject to service law aids, abets, counsels or procures the commission by another person of an offence to which this subsection applies, he commits that offence.
- (2) Subsection (1) applies to any service offence except an offence under section 42.
- (3) A person who by virtue of subsection (1) commits an offence is liable to be charged, tried (including dealt with at a summary hearing) and punished as a principal offender.
- (4) Where a civilian subject to service discipline aids, abets, counsels or procures the commission by another person of an offence mentioned in section 39(4), he commits that offence and is liable to be charged, tried and punished as a principal offender.

#### Commencement Information

- I3** S. 41 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**Status:**

Point in time view as at 28/03/2009.

**Changes to legislation:**

Armed Forces Act 2006, Cross Heading: Attempts, encouragement and assistance , and aiding and abetting is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.