



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 13

#### DISCIPLINE: MISCELLANEOUS AND SUPPLEMENTARY

### CHAPTER 2

#### CONTEMPT OF COURT

#### **309 Offences of misbehaviour in court etc**

- (1) A qualifying service court has jurisdiction under this section to deal with any person (“the offender”) who at a time when he is within subsection (6)—
- (a) refuses to take an oath or make an affirmation when duly required by the court to do so;
  - (b) when a witness, refuses to answer any question which the court has lawfully required him to answer;
  - (c) when attending or brought before the court refuses to produce any document or other thing which is in his custody or under his control and which the court has lawfully required him to produce;
  - (d) intentionally interrupts the proceedings of the court or otherwise misbehaves in court; or
  - (e) intentionally insults or intimidates—
    - (i) any member of the court while that member is acting as such a member or is going to or returning from the court; or
    - (ii) any witness or other person whose duty it is to attend the court, while that witness or other person is attending the court or going to or returning from the court.
- (2) If the offender is a person subject to service law or a civilian subject to service discipline, the court may—

*Status: Point in time view as at 19/05/2020.*

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- (a) commit the offender to service custody for a specified period not exceeding 28 days;
  - (b) impose on him a fine not exceeding level 4 on the standard scale; or
  - (c) do both.
- (3) If the offender is not a person subject to service law or a civilian subject to service discipline, the court may impose on him a fine not exceeding level 4 on the standard scale.
- (4) A qualifying service court may at any time revoke an order of committal made by it under this section and, if the offender is in custody, order his discharge.
- (5) The following are qualifying service courts for the purposes of this section—
- (a) the Court Martial;
  - (b) the Summary Appeal Court;
  - (c) the Service Civilian Court.
- (6) A person is within this subsection at any time when—
- (a) he is in the United Kingdom; or
  - (b) he is outside the United Kingdom but is subject to service law or is a civilian subject to service discipline.

#### Commencement Information

- I1** S. 309 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](#))
- I2** S. 309 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 310 Power to detain before dealing with section 309 offence

- (1) Where a court with power to deal with a person under section 309 does not immediately exercise that power, it may order a service policeman, an officer of a UK police force or a member of court staff to take the offender into service custody and detain him in service custody until the rising of the court.
- (2) If at the end of that detention—
- (a) the court considers that a decision whether to exercise that power should not be taken without a further hearing, and
  - (b) any of the conditions in subsection (4) is satisfied,
- the court may give orders for the further detention of the offender in service custody.
- (3) An authorisation of detention under subsection (2) ends not more than 48 hours after the time when the offender was first detained under subsection (1).
- (4) The conditions referred to in subsection (2)(b) are—
- (a) that the court is satisfied that there are substantial grounds for believing that the offender, if released from service custody, would—
    - (i) fail to attend any hearing in the proceedings against him;
    - (ii) commit an offence while released; or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

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- (b) that the court is satisfied that he should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests;
  - (c) that the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of deciding whether the condition in paragraph (a) or (b) is met.
- (5) A person may use reasonable force, if necessary, in the exercise of any power arising from an order of a court under this section.

#### Commencement Information

- I3** S. 310 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](#))
- I4** S. 310 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 311 Certification to civil courts

- (1) This section applies if, in relation to proceedings before a qualifying service court, a person within section 309(6) does any act (“the offence”) that would constitute contempt of court if the proceedings were before a court having power to commit for contempt.
- (2) The qualifying service court, unless it has exercised any power conferred by section 309 in relation to the offence, may certify the offence—
  - (a) if it took place in a part of the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt;
  - (b) if it took place outside the United Kingdom, to the High Court in England and Wales.
- (3) The court to which the offence is certified may inquire into the matter, and after hearing—
  - (a) any witness who may be produced against or on behalf of the person, and
  - (b) any statement that may be offered in defence,may deal with him in any way in which it could deal with him if the offence had taken place in relation to proceedings before that court.
- (4) Where under this section a qualifying service court certifies an offence, it may not exercise any power conferred by section 309 in relation to the offence.
- (5) In this section—
  - “qualifying service court” has the same meaning as in section 309;
  - “act” includes an omission and references to the doing of an act are to be read accordingly.

#### Commencement Information

- I5** S. 311 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](#))
- I6** S. 311 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## **312 Decisions of court under section 309: making and effect**

- (1) Nothing in—
  - (a) section 149 (findings etc of the SAC), or
  - (b) section 160 (findings etc of the Court Martial),
 applies in relation to a decision of the Summary Appeal Court or the Court Martial under any of sections 309 to 311.
- (2) Any such decision is to be taken by the judge advocate.
- (3) Where the Court Martial or the Service Civilian Court commits a person to service custody under section 309, it may direct that the committal shall take effect from the end of any sentence of service detention—
  - (a) that has been passed on the person on a previous occasion; or
  - (b) (in the case of the Court Martial) that the court passes on the person on the same occasion.
- (4) Where the Summary Appeal Court commits a person to service custody under section 309 it may direct that the committal shall take effect from the end of any sentence of service detention that has been passed on the person on a previous occasion.
- (5) A court imposing a fine under section 309 may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.
- (6) In the provisions mentioned in subsection (7)—
  - (a) any reference to a sentence of service detention includes a reference to a committal to service custody under section 309; and
  - (b) references to persons sentenced to service detention are to be read accordingly.
- (7) Those provisions are—
  - section 294 (rank or rate while in custody pursuant to sentence);
  - section 296 (prohibition of detention in a prison, etc);
  - section 300 (service custody etc rules);
  - section 301 (duration of sentences: persons unlawfully at large);
  - section 302 (remission on passing of custodial sentence);
  - section 303 (arrest by service police of persons unlawfully at large);
  - section 318 (arrest by civilian police of persons unlawfully at large).

### **Commencement Information**

- I7** S. 312 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](#))
- I8** S. 312 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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