



# Armed Forces Act 2021

## 2021 CHAPTER 35

### *Sentencing and rehabilitation*

#### **13 Power of commanding officer to award service detention: Royal Marines**

- (1) Section 132 of AFA 2006 (punishments available to commanding officers) is amended as follows.
- (2) In subsection (1), in row 1 of the table, in the third column—
  - (a) after paragraph (a) insert—

“(aa) corporal in the Royal Marines;”;
  - (b) in paragraph (b), at the end insert “in any of Her Majesty’s military forces”;
  - (c) in paragraph (c), for “(but see” substitute “(see also”.
- (3) For subsection (1A) substitute—

“(1A) In row 1 of the Table, in paragraph (c) of the entry in the third column, in relation to the Royal Air Force Regiment, the reference to a corporal is to be read as a reference to a lance corporal.”
- (4) Section 133 of AFA 2006 (detention: limits on powers) is amended as follows.
- (5) In subsection (2)—
  - (a) after paragraph (a) insert—

“(aa) corporal in the Royal Marines;”;
  - (b) in paragraph (b), at the end insert “in any of Her Majesty’s military forces”.
- (6) After subsection (2) insert—

“(2A) In relation to the Royal Air Force Regiment, the reference in subsection (2) (c) to a corporal is to be read as a reference to a lance corporal.”

#### **14 Deprivation orders**

- (1) AFA 2006 is amended as follows.

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- (2) In section 132(1) (punishments available to commanding officer), in the table, after row 8 insert—

“9	a deprivation order (defined by section 177B)	only if section 177C permits”.
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- (3) In section 164(1) (punishments available to Court Martial), in the table, after row 12 insert—

“13	a deprivation order (defined by section 177B)	only if section 177C permits”.
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- (4) After section 177A insert—

*“Deprivation orders*

**177B Deprivation orders: interpretation**

- (1) A deprivation order is an order made under this Act which—
  - (a) is made in respect of an offender for an offence, and
  - (b) deprives the offender of any rights in the property to which the order relates.
- (2) In sections 177C and 177E “the decision maker”, in relation to an offender, means—
  - (a) the court by which the person is convicted, or
  - (b) the commanding officer who records a finding that the charge has been proved.
- (3) Nothing in subsection (2) prevents section 376 from applying in relation to this section and sections 177C to 177F.

**177C Deprivation order: availability**

- (1) Where an offender is convicted of a service offence, the decision maker may make a deprivation order relating to any property to which subsection (2) applies.
- (2) This subsection applies to property which—
  - (a) has been lawfully seized from the offender, or
  - (b) was in the offender’s possession or under the offender’s control when the offender was apprehended for, or charged with, the offence,
 if subsection (3) or (5) applies.
- (3) This subsection applies if the decision maker is satisfied that the property—
  - (a) has been used for the purpose of committing, or facilitating the commission of, a service offence, or
  - (b) was intended by the offender to be used for that purpose.
- (4) For the purposes of subsection (3), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of—

- (a) disposing of any property to which the offence relates, or
  - (b) avoiding apprehension or detection.
- (5) This subsection applies if—
- (a) the offence mentioned in subsection (1), or
  - (b) an offence which is taken into consideration by the decision maker in determining the offender’s sentence,
- consists of unlawful possession of the property.
- (6) Where a deprivation order is made, the property to which it relates is to be taken into the possession of an appropriate authority (if it is not already in the possession of such an authority).
- (7) In subsection (6) “appropriate authority” means—
- (a) a member of a service police force, or
  - (b) if no relevant body has been involved in the matter, the offender’s commanding officer.
- (8) In subsection (7) “relevant body” means a service police force or the tri-service serious crime unit.

#### **177D Vehicle to be treated as used for purposes of certain offences**

- (1) This section applies where a person—
- (a) commits an offence to which subsection (2) applies by driving, attempting to drive, or being in charge of a vehicle, or
  - (b) as the driver of a vehicle, commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 170(4) of the Road Traffic Act 1988 (duty to stop, report accident and give information or documents).
- (2) This subsection applies to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
- (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment,
  - (b) an offence of manslaughter, or
  - (c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).
- (3) The vehicle is to be regarded for the purposes of [section 177C\(3\)](#) (and [section 94A\(3\)\(b\)\(ii\)](#)) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).

#### **177E Exercise of power to make deprivation order**

- (1) In considering whether to make a deprivation order in respect of any property, the decision maker must have regard to—
- (a) the value of the property, and

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- (b) the likely financial and other effects on the offender of making the order (taken together with any other order that the decision maker contemplates making).
- (2) Where a deprivation order is available for an offence, the decision maker may make such an order whether or not it deals with the offender in any other way for the offence.

### **177F Application of proceeds of property subject to deprivation order**

- (1) This section applies where the Court Martial or the Service Civilian Court makes a deprivation order in relation to any property and—
- (a) the offence was one which resulted in a person suffering personal injury, loss or damage, or
  - (b) any such offence is taken into consideration by the court in determining sentence.
- (2) The court may also make an order that any proceeds which—
- (a) arise out of the disposal of the property, and
  - (b) do not exceed a sum specified by the court,
- are to be paid to the person.
- (3) A court may make an order under this section only if satisfied that, but for the inadequacy of the offender's means, it would have made a service compensation order under which the offender would have been required to pay compensation of an amount not less than the amount specified under subsection (2)(b).
- (4) An order under this section has no effect—
- (a) before the end of the 6 month period mentioned in section 94A(3)(a), or
  - (b) if a successful claim by a person claiming to be the owner of the property has been made by virtue of section 94(2)(a)."

(5) After section 94 (property in possession of service police or CO) insert—

### **“94A Property subject to deprivation order: modification of section 94**

- (1) This section applies to property to which a deprivation order relates which is in the possession of—
- (a) a commanding officer, or
  - (b) a member of a service police force,
- by virtue of section 177C(6) (including any such property that was already in the possession of the commanding officer or a member of a service police force when the order was made).
- (2) Regulations under section 94(1) must ensure that a judicial authority or a commanding officer may make an order by virtue of section 94(2)(a) or (b) (respectively) on an application which—
- (a) relates to property to which this section applies, and
  - (b) is made by a person claiming to be the owner of the property,
- only if the conditions in subsection (3) are met.

- (3) Those conditions are that—
- (a) the application is made before the end of the period of 6 months beginning with the day on which the deprivation order is made, and
  - (b) the claimant satisfies the judicial authority or the commanding officer (as the case may be)—
    - (i) that the claimant did not consent to the offender’s possession of the property, or
    - (ii) if the deprivation order was made by virtue of subsection (3) of section 177C (property used for the purpose of offence etc), that the claimant did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in that subsection.
- (4) Regulations under section 94(1) may enable a judicial authority or a commanding officer to make any order for disposal of property to which this section applies that the judicial authority or commanding officer (as the case may be) thinks appropriate (but this is subject to subsection (6)).
- (5) In subsection (4) the reference to disposal includes disposal by way of transferring the property into the ownership of the Secretary of State; but regulations made by virtue of subsection (4) may not provide for the Secretary of State to become the owner of property which is the subject of an order under section 177F (application of proceeds of property subject to deprivation order).
- (6) Subsection (4) applies only in relation to cases where no application by virtue of section 94(2)(a) or (b) made during the 6 month period mentioned in subsection (3)(a) by a person claiming to be the owner of the property was successful.
- (7) In this section “judicial authority” means the Court Martial, the Service Civilian Court or a judge advocate.”
- (6) In [Schedule 3](#) (civilians etc: modifications of Court Martial sentencing powers)—
- (a) in paragraph 1(1), in the table, after row 7 insert—

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“8	a deprivation order (defined by section 177B)	only if section 177C permits”;
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- (b) in paragraph 3(1), in the table, after row 10 insert—

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“11	a deprivation order (defined by section 177B)	only if section 177C permits”.
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## 15 Driving disqualification

- (1) AFA 2006 is amended as follows.
- (2) In section 164 (punishments available to Court Martial)—
- (a) in subsection (1), in the table, after row 13 (as inserted by section 14 above) insert—

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“14	a driving disqualification order (defined by section 177G)	only if subsection (5A) permits”;
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(b) after subsection (5) insert—

“(5A) The court may not make a driving disqualification order unless—

- (a) the offence was committed on or after the commencement of section 15 of the Armed Forces Act 2021, and
- (b) the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court (and the notice has not been withdrawn).”

(3) After section 177F (as inserted by section 14 above) insert—

*“Driving disqualification orders*

#### **177G Driving disqualification orders**

A driving disqualification order is an order made under this Act in respect of an offender that the offender is disqualified, for the period specified in the order, for holding or obtaining—

- (a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988, and
- (b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988).

#### **177H Driving disqualification: availability**

Where a driving disqualification order is available to a court, the court may make a driving disqualification order whether or not it also deals with the offender for the offence in any other way.

#### **177I Disqualification period**

- (1) Where a court makes a driving disqualification order in respect of an offender for an offence, the disqualification period must be such period as the court considers appropriate. But this is subject to sections 177J and 177K.
- (2) The disqualification period, in relation to a driving disqualification order made in respect of an offender, is the period specified in the order as the period for which the offender is disqualified for holding or obtaining a driving licence.

#### **177J Extension of disqualification where custodial sentence or service detention also imposed**

- (1) This section applies where a court—
  - (a) imposes a custodial sentence or a sentence of service detention on an offender for an offence, and
  - (b) makes a driving disqualification order in respect of the offender for the same offence.

- (2) But this section does not apply where the custodial sentence or sentence of service detention (as the case may be) is—
- (a) a suspended sentence of imprisonment,
  - (b) a suspended sentence of service detention, or
  - (c) a life sentence in relation to which the court makes a whole life order under section 321(3) of the Sentencing Code (life sentence: minimum term order or whole life order) by virtue of section 261A of this Act (life sentences: further provision).
- (3) The disqualification period must be—
- (a) the discretionary disqualification period, and
  - (b) the appropriate extension period.
- (4) The discretionary disqualification period is the period which the court would, in the absence of this section, have specified in the driving disqualification order.
- (5) The appropriate extension period for a sentence specified in column 2 is equal to the period calculated in accordance with column 3—

<i>Row</i>	<i>Sentence</i>	<i>Length of appropriate extension period</i>
1	a detention and training order under section 211 (offenders under 18: detention and training orders)	half the term of the detention and training order
2	a sentence of detention under section 224B (special sentence of detention for terrorist offenders of particular concern)	two-thirds of the term imposed pursuant to section 252A(5) of the Sentencing Code by virtue of section 224B(4) of this Act (the appropriate custodial term)
3	an extended sentence of detention under section 254 of the Sentencing Code by virtue of section 221A of this Act (extended sentence for certain violent, sexual or terrorism offenders aged under 18)	two-thirds of the term imposed pursuant to section 254(a) of the Sentencing Code (the appropriate custodial term)
4	a sentence of detention in a young offender institution to which subsections (2) and (3) of section 265 of the Sentencing Code apply by virtue of section 224A of this Act (special custodial sentence)	two-thirds of the term imposed pursuant to section 265(2)(a) of the Sentencing Code (the appropriate custodial term)

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<i>Row</i>	<i>Sentence</i>	<i>Length of appropriate extension period</i>
5	for certain offenders of particular concern) an extended sentence of detention in a young offender institution under section 266 of the Sentencing Code by virtue of section 219A of this Act (extended sentence for certain violent, sexual or terrorism offenders aged 18 or over)	two-thirds of the term imposed pursuant to section 266(a) of the Sentencing Code (the appropriate custodial term)
6	a serious terrorism sentence of detention in a young offender institution under section 268A of the Sentencing Code by virtue of section 219ZA of this Act (serious terrorism sentences)	the term imposed pursuant to section 268C(2) of the Sentencing Code (the appropriate custodial term)
7	a sentence of imprisonment to which subsections (2) and (3) of section 278 of the Sentencing Code apply by virtue of section 224A of this Act (special custodial sentence for certain offenders of particular concern)	two-thirds of the term imposed pursuant to section 278(2)(a) of the Sentencing Code (the appropriate custodial term)
8	an extended sentence of imprisonment under section 279 of the Sentencing Code by virtue of section 219A of this Act (extended sentence for certain violent, sexual or terrorism offenders aged 18 or over)	two-thirds of the term imposed pursuant to section 279(a) of the Sentencing Code (the appropriate custodial term)
9	a serious terrorism sentence of imprisonment under section 282A of the Sentencing Code by virtue of section 219ZA of this Act (serious terrorism sentences)	the term imposed pursuant to section 282C(2) of the Sentencing Code (the appropriate custodial term)
10	a custodial sentence in respect of which	two-thirds of the sentence



<i>Row</i>	<i>Sentence</i>	<i>Length of appropriate extension period</i>
11	section 244ZA of the Criminal Justice Act 2003 applies to the offender a custodial sentence not within any of the preceding entries in respect of which section 247A of the Criminal Justice Act 2003 applies to the offender	two-thirds of the sentence
12	a life sentence in relation to which a minimum term order is made under section 321 of the Sentencing Code by virtue of section 261A of this Act (life sentences: further provision)	the term specified in the minimum term order
13	service detention	half the term of detention imposed
14	any other case	half the custodial sentence imposed.

(6) In the case of a sentence specified in entry 3, 5 or 8 of column 2 in the table which is within section 247A(2A) of the Criminal Justice Act 2003, the corresponding entry in column 3 of the table is to be read with the omission of “two-thirds of”.

(7) Any period determined under subsection (5) which includes a fraction of a day must be rounded up to the nearest number of whole days.

(8) Where—

(a) an order (“the amending order”) is made under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence), and

(b) the amending order provides that the proportion of a custodial sentence for the time being referred to in section 243A(3)(a) or 244(3)(a) of that Act (release of prisoners in certain circumstances) is to be read as a reference to another proportion (the “new proportion”),

the Secretary of State may by regulations provide that the table in subsection (5) is to be read as if, in relation to such a sentence, entry 14 specified the new proportion.

### **177K Effect of custodial sentence or service detention in other cases**

(1) This section applies where a court makes a driving disqualification order in respect of an offender for an offence, and—

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- (a) it imposes a custodial sentence or a sentence of service detention (other than a suspended sentence) on the offender for another offence, or
  - (b) a custodial sentence or a sentence of service detention previously imposed on the offender has not expired.
- (2) In determining the disqualification period, the court must, so far as it is appropriate to do so, have regard to the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence or a sentence of service detention.
- (3) But the court may not take into account for this purpose any custodial sentence or sentence of service detention that it imposes on the offender for the offence.

#### **177L Requirement to produce licences where driving disqualification order made**

A court which makes a driving disqualification order in respect of an offender must require the offender to produce any (and, if more than one, all) of the following held by the offender—

- (a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;
- (b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988);
- (c) a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988).

#### **177M Driving disqualification: power to make equivalent provision to Road Traffic Offenders Act 1988**

- (1) The Secretary of State may by regulations make provision in relation to driving disqualification orders which is equivalent to that made by a relevant provision, subject to such modifications as the Secretary of State considers appropriate.
- (2) In this section, “relevant provision” means any of the following provisions of the Road Traffic Offenders Act 1988—
- (a) section 37 (effect of order of disqualification);
  - (b) section 39 (suspension of disqualification pending appeal);
  - (c) section 40 (power of appellate courts to suspend disqualification);
  - (d) section 42 (removal of disqualification);
  - (e) section 43 (rule for determining end of period of disqualification);
  - (f) section 47 (supplementary provisions);
  - (g) section 48 (exemption from disqualification in certain cases).”
- (4) In section 373 (orders, regulations and rules)—
- (a) in subsection (3)(d), after “93AA(2),” insert “177J(8),”;
  - (b) in [subsection \(5\)](#), at the beginning insert “Except for regulations made under section 177J(8),”;
  - (c) after subsection (5) insert—

“(5A) Regulations made under section 177J(8) may contain transitional, transitory and saving provision.”

- (5) In [Schedule 3](#) (civilians etc: modifications of Court Martial sentencing powers)—
- (a) in paragraph 1(1), in the table, after row 8 (as inserted by section 14 above) insert—

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“9	a driving disqualification order (defined by section 177G)	only if subsection (5A) permits”;
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- (b) in paragraph 3(1), in the table, after row 11 (as inserted by section 14 above) insert—

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“12	a driving disqualification order (defined by section 177G)	only if subsection (5A) permits”.
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## 16 Deprivation and driving disqualification orders: minor and consequential amendments

[Schedule 6](#) to this Act contains amendments that are consequential on, or otherwise connected with, sections 14 and 15.

## 17 Removal of requirement to take into account offences in member States

- (1) AFA 2006 is amended as follows.
- (2) In section 238 (deciding the seriousness of an offence)—
- (a) in subsection (3)—
- (i) in paragraph (a) at the end insert “or”;
- (ii) omit paragraphs (c) and (d);
- (b) for subsection (4) substitute—
- “(4) Nothing in this section prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so.”;
- (c) omit subsection (5).
- (3) In section 263 (restriction on imposing custodial sentence or service detention on unrepresented offender)—
- (a) in subsection (2)(b) omit the words from “, or sentenced to detention” to the end;
- (b) in subsection (6) omit paragraphs (c) and (d).
- (4) In section 270A (exception to restrictions on community punishments)—
- (a) in subsection (3)—
- (i) in paragraph (a) omit “, or member State service offence,” and at the end insert “or”;
- (ii) in paragraph (b) omit “or”;

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- (iii) omit paragraph (c);
  - (b) omit subsection (8).
- (5) In section 415 of the Sentencing Act 2020 (armed forces provisions: extent to Channel Islands, Isle of Man and British overseas territories), after subsection (6) insert—
- “(7) In subsection (6) references to this Act include this Act as amended by the [Taking Account of Convictions \(EU Exit\) \(Amendment\) Regulations 2020 \(S.I. 2020/1520\)](#).”

## 18 Rehabilitation periods: England and Wales

In section 5 of the Rehabilitation of Offenders Act 1974 (rehabilitation periods for particular sentences), in the Table in subsection (2)(b), after the fifth entry insert—

“A severe reprimand or reprimand under the Armed Forces Act 2006	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed”.
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