

*Status: Point in time view as at 01/01/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), SCHEDULE 5A. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 5A]

#### POWERS OF COURT ON TRIAL OF CIVILIAN

##### Textual Amendments

**F1** Sch. 5A inserted by Armed Forces Act 1976 (c. 52), Sch. 4 para. 1

##### Textual Amendments applied to the whole legislation

**F1** Act: the provisions of the 1955 Acts providing for findings of courts-martial to be subject to confirmation and to revision at the direction of the confirming officer cease to have effect (1.4.1997 subject to art. 3 of the commencing S.I.) by virtue of 1996 c. 46, s. 15; S.I. 1997/304, arts. 2, 3, Sch. 2

#### *General*

1 The powers conferred by this Schedule shall be exercisable on the trial of a person (in this Schedule referred to as a “civilian”) to whom Part II of this Act is applied by section 209 above.

2 (1) In this Schedule—

“community supervision order” has the meaning assigned to it by paragraph 4(2) below;

“compensation order” has the meaning assigned to it by paragraph 11(1) below;

“the court” means a court-martial or a Standing Civilian Court;

“custodial order” has the meaning assigned to it by paragraph 10(1) below;

“local authority in England or Wales” means the council of a non-metropolitan county, a metropolitan district or a London borough or the Common Council of the City of London;

“local authority in Scotland” means a regional or islands council;

“order for absolute discharge” means an order under paragraph 3 below discharging a person absolutely;

“order for conditional discharge” means an order under that paragraph discharging a person subject to a condition;

“period of conditional discharge” means the period specified in an order for conditional discharge;

“prescribed” means prescribed by regulations under paragraph 17 below;

**F2** . . .

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“the Services Acts” means this Act, the <sup>M1</sup>Air Force Act 1955 and the <sup>M2</sup>Naval Discipline Act 1957; and

“supervision period” and “supervisor” have the meanings assigned to them by paragraph 4(2) below.

- (2) A parent or guardian is a service parent or guardian for the purposes of this Schedule if—
- (a) he is subject to service law, or
  - (b) Part II of this Act is applied to him by section 209 above, or
  - (c) Part II of the <sup>M3</sup>Air Force Act 1955 is applied to him by section 209 of that Act, or
  - (d) Parts I and II of the <sup>M4</sup>Naval Discipline Act 1957 are applied to him by section 118 of that Act.

#### Textual Amendments

- F2** Definition in Sch. 5A, para. 2 repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), ss. 6\(a\), 26\(2\), Sch. 3; S.I. 1991/2719, art. 2, Sch.](#) (with art. 3(1))

#### Marginal Citations

- M1** 1955 c. 19.  
**M2** 1957 c. 53.  
**M3** 1955 c. 19.  
**M4** 1957 c. 53.

*[<sup>F3</sup> Deferment of award of sentence]*

#### Textual Amendments

- F3** [Sch. 5A para. 2A](#) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 9\(1\)](#)

- 2A (1) Subject to the provisions of this paragraph, where a civilian is found guilty of an offence by a Standing Civilian Court, the Standing Civilian Court may defer the award of sentence against him for the purpose of enabling the Standing Civilian Court, or any other court to which it falls to deal with him, to have regard, in dealing with him, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.
- (2) Any deferment under this paragraph shall be until such date as may be specified by the Standing Civilian Court being a date not more than six months after the date on which the Standing Civilian Court announces the deferment; and where the award of sentence against an offender has been deferred on one occasion, it shall not be further deferred.
- (3) The power conferred by this paragraph shall be exercisable only if the offender consents and the Standing Civilian Court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

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- (4) A Standing Civilian Court which has deferred the award of sentence against an offender may deal with him at a time when the period of deferment has not expired if—
- (a) he is during that period found guilty of an offence by a court-martial under any of the Services Acts or by a Standing Civilian Court; or
  - (b) such conditions as may be specified for the purposes of this paragraph in an order under paragraph 12 of Schedule 3 to the Armed Forces Act <sup>M5</sup>1976 (proceedings in Standing Civilian Courts) are satisfied in relation to him.
- (5) Without prejudice to sub-paragraph (4) above, where a Standing Civilian Court has deferred the award of sentence against an offender in respect of one or more offences and the offender is, during the period of the deferment, found guilty of an offence (“the subsequent offence”) by a court-martial under any of the Services Acts or by a Standing Civilian Court, then, subject to subsection (6) below, the court which (whether during that period or not) deals with the offender for the subsequent offence may also, if this has not already been done, deal with him for the offence or offences in respect of which the award of sentence was deferred.
- (6) Subject to sub-paragraph (7) below, the power of a court under this paragraph to deal with an offender for an offence in respect of which the award of sentence has been deferred shall be a power to deal with him in any way in which the Standing Civilian Court which deferred the award of sentence could have dealt with him for that offence.
- (7) In a case falling within sub-paragraph (5) above a court-martial which awards a sentence of imprisonment or a sentence under a custodial order for the subsequent offence may (subject to the application to the aggregate of the sentences of any limit imposed by, or by any provision corresponding to, section 85 of this Act or paragraph 10(1A) below) order that the sentence shall begin to run from the expiry of any sentence which, being a sentence of imprisonment or a sentence under a custodial order, is awarded for the offence or offences in respect of which the award of sentence was deferred.
- (8) Where a Standing Civilian Court has deferred the award of sentence against an offender, the Court or the directing officer may order the offender’s arrest either—
- (a) in order to secure the offender’s appearance on the day specified by the Standing Civilian Court as the day on which it proposes to deal with him (including a day before the end of the period of deferment); or
  - (b) where the offender has failed to appear on a day so specified.
- (9) Where the arrest of an offender has been ordered under sub-paragraph (8) above, then, whether or not the offender continues to be subject to service law—
- (a) he may be arrested—
    - (i) by a provost officer; or
    - (ii) by any warrant officer or non-commissioned officer legally exercising authority under or on behalf of a provost officer; or
    - (iii) by order of any officer of the regular forces or of the regular air force (within the meaning of the Air Force Act <sup>M6</sup>1955); and
  - (b) a warrant for the offender’s arrest may be issued to any officer or officers of police by the directing officer or by any superior officer or authority.

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- (10) A warrant under sub-paragraph (9)(b) above shall specify the name of the person for whose arrest it is issued and shall refer to the order of the Standing Civilian Court or directing officer that that person be arrested.
- (11) A person arrested under this paragraph shall be delivered into military or air force custody and may be kept in such custody until his appearance before the Standing Civilian Court which deferred the award of sentence against him.
- (12) Where under this section an officer of police delivers a person into military or air force custody, there shall be handed over with him a certificate which shall—
- (a) be in such form as may be specified by order under paragraph 12 of Schedule 3 to the Armed Forces Act <sup>M7</sup>1976;
  - (b) be signed by that officer of police; and
  - (c) state the fact, date, time and place of arrest;
- and such a certificate shall for the purposes of this Act be evidence of the matters stated therein.
- (13) In this paragraph “the directing officer”, in relation to an offender, means the higher authority by whom the offender was sent for trial for the offence in respect of which the award of sentence was deferred, or any officer for the time being discharging the functions of that authority.

#### **Marginal Citations**

**M5** 1976 c.52 (7:1).

**M6** 1955 c.19 (7:1).

**M7** 1976 c.52 (7:1).

#### *Absolute and conditional discharge*

- 3 (1) The court by which a civilian is found guilty of an offence (not being an offence the sentence for which is fixed by law) may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that, during such period, not exceeding 3 years from the date of the order, as may be specified in the order, he commits no offence that may be tried by court-martial under any of the Services Acts or by a Standing Civilian Court.
- (2) If a court-martial under any of the Services Acts finds a person in whose case an order for conditional discharge has been made guilty of an offence committed during the period of conditional discharge, the court-martial may deal with him for the offence for which the order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence.
- (3) If a Standing Civilian Court finds such a person guilty of an offence committed during the period of conditional discharge, the Standing Civilian Court may deal with him for the offence for which the order was made in any manner in which such a court could deal with him if it had just found him guilty of that offence.
- (4) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

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### *Community supervision orders*

- 4 (1) Subject to sub-paragraph (4) below, where a civilian . . . <sup>F4</sup> is found guilty of an offence and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient that he should undergo a period of supervision, the court may make an order directing him to comply during a specified period not exceeding 12 months with the reasonable requirements of a specified person nominated in the prescribed manner.
- (2) In this Schedule—
- “community supervision order” means an order under this paragraph;
- “supervision period” means the period specified in a community supervision order; and
- “supervisor” means a person with whose requirements a community supervision order for the time being requires compliance on the part of the person subject to it.
- (3) The court making a community supervision order may include in it directions to the person who is to be subject to it to comply during the whole or any specified part of the supervision period with such requirements of any prescribed description as the court, having regard to the circumstances, considers will be beneficial for him.
- (4) Before making a community supervision order the court—
- (a) shall explain in ordinary language to the person who is to be subject to it the effect of such an order and the consequences under sub-paragraphs (6) to (10) below of breach of any requirement imposed by virtue of sub-paragraph (1) or (3) above, and
- (b) shall obtain his consent and, if he is under 17 years of age, the consent of his parent or guardian, to the making of the order and to the inclusion in it of any requirement by virtue of sub-paragraph (3) above.
- (5) If the court makes a community supervision order against any person on finding him guilty of an offence, it may not make any other order except a compensation order in respect of his conviction for that offence.
- (6) If a person subject to a community supervision order fails without reasonable excuse to comply with any requirement reasonably imposed by his supervisor or with any requirement included in the order by virtue of sub-paragraph (3) above, he shall be guilty of an offence triable by court-martial.
- (7) Any such offence shall be treated as if it were an offence against a provision of Part II of this Act.
- (8) If a court-martial under any of the Services Acts finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the court-martial may deal with him for the offence for which the community supervision order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence.
- (9) If a Standing Civilian Court finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the Standing Civilian Court may deal with him for the offence for which the community supervision order was made in any manner in which such a court could deal with him if it had just found him guilty of it.

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- (10) If the court finds a person guilty of an offence under sub-paragraph (6) above, it may, instead of dealing with him for the offence for which the community supervision order was made, impose a fine not exceeding £50 upon him.
- (11) An officer authorised by the Defence Council—
- (a) may discharge a community supervision order or modify such an order in any way which in his opinion does not increase its severity, and
  - (b) may replace a supervisor by specifying a new supervisor nominated in the prescribed manner.
- (12) The powers conferred by sub-paragraph (11)(a) above are without prejudice to any of the powers of a confirming officer or reviewing authority.

#### Textual Amendments

**F4** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 10(1), 16(2), [Sch. 2](#)

#### Modifications etc. (not altering text)

**C1** [Sch. 5A para. 4](#): power to exclude conferred by [Criminal Justice Act 1988 \(c. 33, SIF39:1\)](#), s. 50(4)(a)

#### *Absolute and conditional discharge and community supervision orders—supplementary*

- 5 (1) If upon finding a person guilty of an offence the court makes in respect of that offence—
- (a) an order for his absolute discharge, or
  - (b) an order for his conditional discharge, or
  - (c) a community supervision order,
- he shall be deemed not to have been convicted of the offence except—
- (i) where the order was an order for conditional discharge or a community supervision order, for the purposes of paragraph 3(2) or (3) or 4(8) or (9) above, as the case may be, and
  - (ii) in all cases, for the purposes specified in sub-paragraph (2) below.
- (2) The purposes mentioned in sub-paragraph (1)(ii) above are the purposes—
- (a) of the proceedings in which the order is made.
  - (b) of any confirmation, revision or review of those proceedings.
  - (c) of any appeal against conviction in those proceedings, and
  - (d) of the <sup>M8</sup>Rehabilitation of Offenders Act 1974 [<sup>F5</sup> or the <sup>M9</sup>Rehabilitation of Offenders (Northern Ireland) Order 1978].
- (3) Sub-paragraph (1) above shall not affect—
- (a) any right of a person in respect of whom an order for absolute or conditional discharge or a community supervision order was made to rely on his conviction in bar of any subsequent proceedings for the same offence; or
  - (b) the restoration of any property in consequence of the conviction.
- (4) No appeal shall lie against any such order.

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- (5) If a person is dealt with for an offence for which an order for conditional discharge or a community supervision order was made, the original order shall cease to have effect.
- (6) The powers conferred by paragraphs 3(2) and (3) and 4(8) and (9) above to deal with an offence for which an order for conditional discharge or a community supervision order has been made are without prejudice to any power of the court to deal with an offence, whenever committed, other than the offence for which the order in question was made.

**Textual Amendments**

**F5** Words added by S.I. 1978/1908 (N.I.27), art. 4(5)

**Marginal Citations**

**M8** 1974 c. 53.

**M9** 1978/1908 (N.I. 27).

**F6** . . .

**Textual Amendments**

**F6** Sch. 5A, para. 6 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

**F7**6 . . . . .

**Textual Amendments**

**F7** Sch. 5A para. 6 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

**F8** . . .

**Textual Amendments**

**F8** Sch. 5A para. 7 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

**F9**7 . . . . .

**Textual Amendments**

**F9** Sch. 5A para. 7 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

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*F10 . . .*

**Textual Amendments**

**F10** Sch. 5A, para. 8 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

F118 . . . . .

**Textual Amendments**

**F11** Sch. 5A para. 8 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

*F12 . . .*

**Textual Amendments**

**F12** Sch. 5A, para. 9 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

F139 . . . . .

**Textual Amendments**

**F13** Sch. 5A, para. 9 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), Sch. 3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))

*Custodial orders*

- 10 (1) Where a civilian who has attained [<sup>F14</sup>the minimum age] but is under 21 years of age is found guilty of an offence punishable under this Act with imprisonment, the court shall have power, [<sup>F15</sup>subject to [<sup>F16</sup> sub-paragraphs (1A) and (1AA) below]], to make an order (in this Schedule referred to as a “custodial order”) committing him to be detained [<sup>F17</sup>for a period, to be specified in the order, which—
- (a) shall not be less than 21 days;
  - (b) shall not exceed the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21; and
  - (c) if the order is made by a Standing Civilian Court, shall not exceed six months]

[<sup>F18</sup>and in this sub-paragraph “the minimum age”, in relation to a male offender, means 15 years of age and, in relation to a female offender, means 17 years of age.]

[<sup>F19</sup>(1A) <sup>F20</sup> . . . [<sup>F21</sup><sup>F20</sup> . . . the court shall not make a custodial order committing an offender under 17 years of age to be detained for a period which exceeds twelve months or for a period such that the continuous period for which he is committed to be detained under that order and any one or more other custodial orders exceeds twelve months.]]



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- [<sup>F22</sup>(1AA) The court may not make a custodial order unless it is satisfied—
- (a) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
  - (b) that he qualifies for a custodial sentence.
- (1AB) An offender qualifies for a custodial sentence if—
- (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
  - (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
  - (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.]

<sup>F19</sup>(1B) For the purposes of determining whether [<sup>F23</sup>it is satisfied as mentioned in paragraphs (a) and (b) of sub-paragraph (1AA) above with respect to an offender] the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his mental and physical condition.

    - (2) Before making a custodial order, the court shall consider any report made in respect of the offender by or on behalf of the Secretary of State.
    - (3) The court shall give a copy of any such report to the offender or any person representing him.

[<sup>F24</sup>(3A) Where the court makes a custodial order it shall be its duty—

    - (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of sub-paragraph (1AB) above, the paragraph or paragraphs in question, and why it is so satisfied; and
    - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(3B) Where the court makes a custodial order and, in accordance with its duty under sub-paragraph (3A) above, makes the statement required by paragraph (a) of that sub-paragraph, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.]

[<sup>F25</sup>(4) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.

(4A) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this paragraph.]

    - (5) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction.

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[<sup>F26</sup>(5A) The following provisions shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of imprisonment by the same court, that is to say—

- (a) where the court is a court-martial, sections 118(1) and 118A(1) and (3) of this Act; and
- (b) where the court is a Standing Civilian Court, section 8(2) of the <sup>M10</sup>Armed Forces Act 1976;

and, accordingly, references in those provisions to a sentence of imprisonment shall include for the purposes of this sub-paragraph references to a sentence under a custodial order.]

[<sup>F27</sup>(5B) For the period before a person sentenced under a custodial order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received), sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B of this Act shall apply in the case of the sentence as they apply in the case of a sentence of [<sup>F28</sup>imprisonment].]

(6) In this paragraph “appropriate institution” means—

- [<sup>F29</sup>(a) where the offender is [<sup>F30</sup>in or] removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, section 1C of the Criminal Justice Act 1982 having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;]
- [<sup>F31</sup>(b) where the offender is [<sup>F30</sup>in or] removed to Scotland, a young offenders institution;]
- [<sup>F32</sup>(c) where the offender is [<sup>F30</sup>in or] removed to Northern Ireland,
  - [ if the offender is a male person who is under the age of 17 years, a <sup>F33</sup>(i) remand home; and
  - (ii) in any other case, a young offenders centre;];]

and in sub-paragraph (4) above “enactment”, in relation to an offender who is removed to Northern Ireland, includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly.

[<sup>F34</sup>(6A) Section 15 of the Criminal Justice Act 1982 (release of young offenders) shall apply to persons released from a term of detention under a custodial order as it applies to persons released from a term of detention under a detention centre order or a term of youth custody.]

[<sup>F35</sup>(6B) [<sup>F36</sup>Section 32 of the Prisons (Scotland) Act 1989] (supervision of young offenders following release) shall apply to persons released from a term of detention under a custodial order as it applies to those released from a term of detention imposed under section 207 or section 415 of the Criminal Procedure (Scotland) Act <sup>M11</sup>1975.]

#### Textual Amendments

**F14** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), **s. 11(1)(a)(6)**

**F15** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, **Sch. 8 para. 7(a)(i)**

**F16** Words in [Sch. 5A, para. 10\(1\)](#) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 5(2)(a)**; [S.I. 1991/2719](#), **art.2** (with [art. 3\(1\)](#))

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- F17** Words in Sch. 5A para. 10(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(2)(b); S.I. 1991/2719, art.2 (with art. 3(1))
- F18** Words inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 11(1)(b)(6)
- F19** Sch. 5A para. 10(1A)(1B) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch. 8 para. 7(b)
- F20** Words in Sch. 5A, para. 10(1A) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 5(3), 26(2), Sch.3; S.I. 1991/2719, art. 2, Sch. (with art. 3(1))
- F21** Words inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 11(2)(6)
- F22** Sch. 5A, para. 10(1AA)(1AB) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(4); S.I. 1991/2719, art.2 (with art. 3(1))
- F23** Words in Sch. 5A, para. 10(1B) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(5); S.I. 1991/2719, art.2 (with art. 3(1))
- F24** Sch. 5A para. 10(3A)(3B) substituted (1.1.1992) for sub-para. (3A)(3B) (which were inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch. 8 para. 7(c)) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(6); S.I. 1991/2719, art. 2 (with art. 3(1))
- F25** Sch. 5A, para. 10(4)(4A) substituted (1.1.1992) for sub-para. (4) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(7); S.I. 1991/2719, art.2 (with art. 3(1))
- F26** Sch. 5A para. 10(5A) (which was inserted by Armed Forces Act 1981 (c. 55), Sch. 1 para. 3(3)) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), Sch. 1 para. 5(3)
- F27** Para. 10(5B) inserted by Armed Forces Act 1981 (c. 55), Sch. 1 para. 3(3)
- F28** Word substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), Sch. 1 para. 5(4)
- F29** Sch. 5A para. 10(6)(a) substituted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 123(6), Sch. 8 para. 5(a)
- F30** Words in Sch. 5A, para. 10(6)(a)(b)(c) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(8); S.I. 1991/2719, art. 2 (with art. 3(1))
- F31** Sch. 5A para. 10(6)(b) substituted (S.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(4), Sch. 9 para. 3(a)
- F32** Para. 10(6)(c) substituted by S.I. 1980/1088, art. 3
- F33** Sch. 5A para. 10(6)(c)(i)(ii) substituted for words by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 11(4)(6)
- F34** Sch. 5A para. 10(6A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch.8 para. 7(e)
- F35** Sch. 5A para. 10(6B) inserted (S.) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 46(2)
- F36** Words substituted by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), Sch. 2 para. 3

#### Marginal Citations

- M10** 1976 c.52(7:1).  
**M11** 1975 c.21(39:1).

### Compensation orders

- 11 (1) The court, on finding a civilian guilty of an offence, may, on application or otherwise (and whether or not it makes any other order), make an order (in this Schedule referred to as a “compensation order”) requiring him to pay such sum as appears to the court to be just as or towards compensation for any [<sup>F37</sup>personal injury, loss or damage], resulting from the offence or any other offence taking into consideration in determining sentence.

[<sup>F38</sup>(1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made by a court-martial for any personal injury shall not exceed such sum as is for the time being specified in sub-paragraph (2) below or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this

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sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

- (2) The sum specified in a compensation order made by a Standing Civilian Court shall not exceed [<sup>F39</sup>£2000].
- (3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of this paragraph as having resulted from the offence, however and by whomsoever the damage was caused.
- (4) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of his death, <sup>F40</sup> . . . .
- [<sup>F41</sup>(4A) A compensation order may only be made in respect of injury, loss or damage which was due to an accident arising out of the presence of a motor vehicle on a road if—
- (a) it is in respect of damage which is treated by sub-paragraph (3) above as resulting from an offence of unlawfully obtaining any property; or
  - (b) it is in respect of injury, loss or damage as respects which—
    - (i) the offender is uninsured in relation to the use of the vehicle; and
    - (ii) compensation is not payable under any arrangements specified by the Secretary of State for the purposes of this paragraph;
- and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.
- (4B) For the purposes of sub-paragraph (4A) above, a person is not uninsured in relation to the use of a vehicle if—
- (a) the vehicle is in the public service of the Crown; or
  - (b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 or paragraph (2) or paragraph (3) of Article 90 of the Road Traffic (Northern Ireland) Order 1981.]

(5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

[<sup>F42</sup>(6) Where the court considers—

    - (a) that it would be appropriate both to impose a fine and to make a compensation order, but
    - (b) that the person concerned has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).]

#### Textual Amendments

**F37** Words in [Sch. 5A para. 11\(1\)](#) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 9\(2\)](#); [S.I. 1991/2719, art.2](#) (with [art. 3\(1\)](#))

**F38** [Sch. 5A, para. 11\(1A\)](#) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 9\(3\)](#); [S.I. 1991/2719, art. 2](#) (with [art. 3\(1\)](#))

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- F39** "£2000" substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 8(1)(2)** and S.I. 1984/447, art. 2(1), **Sch. 1**
- F40** Words in Sch. 5A para. 11(4) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 9(4), 26(2), **Sch. 3; S.I. 1991/2719, art. 2**, Sch (with art. 3(1))
- F41** Sch. 5A, para. 11(4A) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 9(4); S.I. 1991/2719, **art. 2** (with art. 3(1))
- F42** Sch. 5A, para. 11(6) inserted (1.1.1992) by Armed Forces Act 1991 (C. 62, SIF 7:1), s. 9(5); S.I. 1991/2719, **art.2** (with art. 3(1))

**Modifications etc. (not altering text)**

- C2** Sch. 5A para. 11(2): power to amend conferred by Magistrates Courts Act 1980 (c. 43, SIF 82), s. 143(1)(2)(g) as substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 48(1)(a)(b)(iii)

- 12 (1) The operation of a compensation order made by a court-martial shall be suspended—
- (a) in any case until the end of the period specified under Part II of the <sup>M12</sup>Courts-Martial (Appeals) Act 1968 as the period within which an application for leave to appeal must be lodged; and
  - (b) if such an application is duly lodged, until either the application is finally refused or it is withdrawn or the appeal is determined or abandoned.
- (2) The operation of a compensation order made by a Standing Civilian Court shall be suspended\*<sup>M</sup>
- (a) in any case until the end of the period within which notice of appeal may be given; and
  - (b) if such notice is given, until the appeal is determined or abandoned.
- (3) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully petitions or appeals against his conviction of the offence or all the offences of which he was convicted in the proceedings in which the order was made; and
  - (b) he may petition or appeal against the order as if it were part of the sentence imposed for the offence in respect of which it was made.

**Marginal Citations**

**M12** 1968 c.20.

*Imposition of fines on and making of compensation orders against parents and guardians*

- 13 <sup>F43</sup>(1) Where—
- [ a civilian under 17 years of age is found guilty of an offence; and
  - <sup>F44</sup>(a)
  - (b) the court is of the opinion that the case would best be met (whether or not in conjunction with any other punishment) by the exercise of any power of the court to impose a fine in respect of the offence or to make a compensation order in respect of the offence or of any other offence taken into consideration in determining sentence,]

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it shall be the duty of the court to order that the fine or compensation awarded be paid by any parent or guardian of his who is a service parent or guardian, instead of by the person himself, unless the court is satisfied—

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(2) An order under this paragraph may be made against the parent or guardian if—

- (a) he has been required to attend in the manner prescribed by Rules of Procedure under section 103 above, or, as the case may be, by an order under paragraph 12 of Schedule 3 to the Armed Forces Act <sup>M13</sup>1976 to attend the court, and
- (b) he has failed to do so,

but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.]

[<sup>F45</sup>(3) A parent or guardian on or against whom a fine has been imposed or compensation order made under this paragraph may petition or appeal against the sentence as follows, that is to say—

- (a) if the court which imposed the fine or made the order was a court-martial, the parent or guardian may present a petition in accordance with section 108 of this Act against sentence or may appeal against sentence in accordance with section 8 of the <sup>M14</sup>Courts-Martial (Appeals) Act 1968 as if he had been convicted of and sentenced for the offence by the court-martial; or
- (b) if the court which imposed the fine or made the order was a Standing Civilian Court, the parent or guardian may present a petition in accordance with section 108 of this Act against sentence or may appeal against sentence under paragraph 18 of Schedule 3 to the <sup>M15</sup>Armed Forces Act 1976 as if he had been convicted of and sentenced for the offence by the Court.]

(4) If a parent or guardian against whom a fine is so imposed or an order so made—

- (a) is a member of the regular forces, or
- (b) is a member of the regular air force, as defined by section 223(1) of the <sup>M16</sup>Air Force Act 1955, or
- (c) is subject to the <sup>M17</sup>Naval Discipline Act 1957,

any sum which he is liable to pay, in so far as not otherwise paid by him, may be deducted from his pay.

#### Textual Amendments

**F43** Sch. 5A para. 13(1)(2) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s.58, **Sch. 8 para. 9**

**F44** Sch. 5A para. 13(1)(a)(b) substituted (*retrospectively*) by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), Sch. 1 para. 11

**F45** Para. 13(3) substituted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 3(6)**

#### Marginal Citations

**M13** 1976 c.52(7:1).

**M14** 1968 c. 20.

**M15** 1976 c. 52.

**M16** 1955 c. 19.

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**M17** 1957 c. 53.

*Orders requiring parents or guardians to enter into recognisance*

- 14 (1) Subject to sub-paragraph (2) below, where a civilian under 17 years of age is found guilty of any offence, the court may make an order requiring any parent or guardian of his who is a service parent or guardian to enter into a recognisance for an amount not exceeding [<sup>F46</sup>£1000] for a period not exceeding one year to exercise proper control over him.
- (2) The power conferred by sub-paragraph (1) above shall not be exercisable unless the parent or guardian consents.
- (3) Before making an order in the exercise of that power the court shall explain to the parent or guardian in ordinary language that if the offender is found guilty by court-martial under any of the Services Acts or by a Standing Civilian Court of another offence committed during the period specified in the order, his recognisance may be forfeited under sub-paragraph (4) below.
- (4) If a person whose parent or guardian has entered into a recognisance under this paragraph is found guilty by court-martial under any of the Services Acts or by a Standing Civilian Court of any offence committed within the period specified in the order, the recognisance or any part of it may in the prescribed manner be declared to be forfeited (without prejudice to any power of the court to punish the offender or to make any other order against him or an order against his parent or guardian under this paragraph or paragraph 13 above) and the person bound by it adjudged, subject to sub-paragraphs B (5) and (6) below, to pay the sum in which he is bound or any lesser sum.
- (5) No declaration may be made except against a person who is a service parent or guardian when it is made.
- (6) No declaration may be made against any person without giving him an opportunity of being heard unless—
- he has been required in the manner prescribed by Rules of Procedure under section 103 above or, as the case may be, by an order under paragraph 12 of Schedule 3 to the <sup>M18</sup>Armed Forces Act 1976 to attend the court, and
  - he has failed to do so.
- (7) Payment of any sum adjudged to be paid under this paragraph shall be enforceable as if it were a fine imposed for an offence against section 70 above.
- (8) No appeal shall lie from an order or declaration under this paragraph.
- [<sup>F47</sup>(9) In this paragraph “guardian”, in relation to an offender, includes any individual who, in the court’s opinion, has control of the offender.]

**Textual Amendments**

**F46** Figure substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, [Sch.8 para. 10\(1\)\(2\)](#) and [S.I. 1984/447, art. 2\(1\)](#), [Sch. 1](#)

**F47** [Para. 14\(9\)](#) inserted by [Armed Forces Act 1981 \(c. 55\)](#), [Sch. 1 para. 3\(9\)](#)

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**Modifications etc. (not altering text)**

- C3** Sch. 5A para. 14(1): power to amend conferred by Magistrates' Courts Act 1980 (c.43, SIF 82), s. 143(1)(2)(h) (as substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s.48(1)(a)(b)(iii) )

**Marginal Citations**

- M18** 1976 c. 52.

*Scale of punishments and orders*

- 15 (1) In their application to civilians, references in this Act to any punishment provided by this Act are, subject to sub-paragraphs (4) to (7) below and to the limitation imposed in any particular case by the addition of the word "less", references to any one or more of the punishments that may be awarded to civilians under this Act or of the orders that may be made against them under it.
- (2) For the purposes of Part II of this Act—
- (a) a punishment or order specified in any paragraph of one of the columns in the Table below shall be treated as less than any punishments or orders specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it; and
  - (b) a fine on or compensation order against an offender's parent or guardian shall be treated as involving the same degree of punishment as a fine of the same amount on the offender or, as the case may be, a compensation order of the same amount against him.
- (3) In the Table—
- (a) the first column applies in the case of a person who at the date of his conviction had attained 21 years of age;
  - (b) the second column applies in the case of a person who at the date of his conviction had attained 17 years of age but was under 21 years of age; and
  - (c) the third column applies in the case of a person who at the date of his conviction was under 17 years of age.

Table

Grading of Punishments and Orders

<i>Offender 21 or over</i>	<i>Offender 17 or over but under 21</i>	<i>Offender under 17</i>
1. Death.	1. Death.	1. Detention as the Secretary of State may direct. [ <sup>F48</sup> 1A. Custodial Order.]
2. Imprisonment.	2. [ <sup>F49</sup> custody for life].	<sup>F50</sup> ...
3. Fine.	3. Custodial order.	3. Fine.



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[<sup>F51</sup>3A. Community supervision order.]

4. Compensation order.	4. Fine.	4. Community supervision order.
5. Order for conditional discharge.	5. Community supervision order.	5. Compensation order.
6. Order for absolute discharge.	6. Compensation order.	6. Order binding over parent.
	7. Order for conditional discharge.	7. Order for conditional discharge.
	8. Order for absolute discharge.	8. Order for absolute discharge.

Note. In the application of the above Table—

(a) to a person convicted of murder who was under 18 years of age when the offence was committed, or

(b) to a person convicted of any offence who was under 18 years of age when the offence was committed and would be sentenced to death but for section 71A(3) above,

the references to death shall be omitted from the first and second columns, and a reference to detention during Her Majesty's pleasure shall be substituted—

(i) for the reference to [<sup>F52</sup>custody for life] in the second column, and

(ii) for the reference to detention as the Secretary of State may direct in the third column.

(4) No order requiring the giving of a consent of the making of an explanation may be made on any confirmation, review or revision of a sentence or any appeal against a sentence without the consent being given or the explanation made.

(5) If a community supervision order is made on any such confirmation, review, revision or appeal, no other order may be made except a compensation order.

(6) Where an order under paragraph 13 or 14 above was made at the trial, no other order under either of those paragraphs may be substituted for it on any such confirmation, review revision or appeal.

(7) Where—

(a) on the trial of any person an order might have been made against his parent or guardian under paragraph 13 or 14 above, and

(b) there is power, on confirmation, review, revision or appeal, to substitute a fine or compensation order for the order made on the trial,

that power shall include—

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(i) power to substitute a fine or compensation order of an equal or smaller amount under paragraph 13 above, and

(ii) power to make an order under paragraph 14 above which is not of greater severity, in the opinion of the person to whom it falls to exercise the power, than the order made on the trial.

#### **Textual Amendments**

**F48** Entry inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), **s. 11(5)(6)**

**F49** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, **Sch. 8 para. 11(a)**

**F50** [Sch. 5A para. 15\(3\) Table column 3 para. 2](#) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), ss. 6(c), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

**F51** Entry inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), **s. 10(2)**

**F52** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, **Sch. 8 para. 11(b)**

#### *Indemnity for persons carrying out orders under Schedule*

- 16 No action shall lie in respect of anything done by any person in pursuance of an order under this Schedule if the doing thereof would have been lawful but for a defect in any instrument made for the purposes of that order.

#### *Regulations*

- 17 (1) The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule.
- (2) The power to make regulations conferred by this paragraph includes power to make provision for specified cases or classes of cases, and for the purpose of any such orders classes of cases may be defined by reference to any circumstances specified in the regulations.
- (3) The power to make such regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Army Act 1955 (repealed), SCHEDULE 5A.