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Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

PART IV

MISCELLANEOUS AND GENERAL

Additional provisions as to forfeiture of pay and deductions from pay

Textual Amendments applied to the whole legislation

F1 Act repealed (prosp.) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 17](#) and the repeal being partly in force, as to which see individual provisions

[^{F1}128A General provisions.

- (1) No forfeiture of the pay of any person subject to this Act shall be imposed unless authorised by or under this or some other Act, and no deduction from such pay shall be made unless authorised either by this or some other Act or [^{F2}by or under an Order in Council made under the Naval and Marine Pay and Pensions Act 1865].
- (2) [^{F3}Such an Order in Council] shall not authorise the making of any penal deduction, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.
- (3) Notwithstanding subsections (1) and (2) above, [^{F4}and without prejudice to the power conferred on Her Majesty in Council by section 3 of the said Act of 1865] the Defence Council may by regulation, order or instruction, make provision for the making of any deduction authorised by Act, as to the time at which and the manner in which sums may be deducted from pay to give effect to authorised deductions or in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, as to the appropriation of any such sum or amount when deducted, and for the determination of questions as to forfeitures and deductions.

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- (4) A person subject to this Act shall, notwithstanding any deduction from his pay but subject to any forfeiture, remain in receipt of pay at not less than such minimum rate as may be prescribed by order of the Defence Council.
- (5) Notwithstanding that forfeiture of a person's pay for any period has been imposed in pursuance of this Act, he may remain in receipt of pay at such minimum rate as aforesaid; but the amount received for that period may be recovered from him by deduction from pay.
- (6) Any amount authorised to be deducted from the pay of a person subject to this Act may be deducted from any balance (whether or not representing pay) which may be due to him, and references in this Act to the making of deductions from pay shall be construed accordingly.]

Textual Amendments

- F1** Ss. 128A-128E inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 61(1), 78(4)(b)(5)**
- F2** Words substituted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), Sch. 1 para. 9(1)(a)
- F3** Words substituted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), **Sch. 1 para. 9(1)(b)**
- F4** Words substituted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), **Sch. 1 para. 9(1)(c)**

Modifications etc. (not altering text)

- C1** [S. 128A\(1\)](#) modified by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), **Sch. 1 para. 9(3)**

128B Deductions for payment of civil penalties.

Where a person sentenced or ordered by a civil court (whether within or without Her Majesty's dominions) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of his being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, a person subject to this Act, then, if the whole or any part of that sum is met by a payment made by or on behalf of any naval authority, the amount of the payment may be deducted from his pay.

128C Compensation for loss occasioned by wrongful act or negligence.

- (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations of the Defence Council, it appears to the Defence Council or an officer authorised by them that any loss of, or damage to, public or service property, has been occasioned by any wrongful act or negligence of a person subject to this Act (hereafter referred to as "the person responsible").
- (2) The Defence Council or authorised officer, as the case may be, may order the person responsible (whether or not he is subject to this Act at the time when the order is made) to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum in so far as not otherwise paid by the person responsible may be deducted from his pay.

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- (3) No order shall be made under subsection (2) above if, in proceedings (whether under this Act, the ^{M1}Army Act 1955 or the ^{M2}Air Force Act 1955) before a court-martial, the appropriate superior authority or the commanding officer of the person responsible, that person—
- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question, or
 - (b) has been awarded stoppages in respect of the same loss or damage;
- but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under that subsection.

Marginal Citations

- M1** 1955 c. 18.
M2 1955 c. 19.

128D Remission of deductions.

Any deduction imposed under section 128B or 128C above, or [^{F5}by or under an Order in Council made under section 3 of the Naval and Marine Pay and Pensions Act 1865], may be remitted by the Defence Council or in such manner and by such authority as may be provided by an Order in Council so made.

Textual Amendments

- F5** Words substituted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 9\(2\)](#)

128E Deductions in respect of judgment debts etc.

- (1) Where by any judgment or order enforceable by a court in the United Kingdom any sum is required to be paid by a person who is subject to this Act, the Defence Council or an officer authorised by them may, whether or not that person was subject to this Act at the time when the judgment or order was given or made, order such amount or amounts as the Council or officer think fit to be deducted from the pay of that person, and appropriated in or towards satisfaction of that sum:

Provided that this subsection shall not apply to any such sum as is mentioned in section 128B of this Act, or to any sum in respect of which deductions may be authorised by virtue of section 1(1) of the ^{M3}Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 or made by virtue of section 32(2)(b) of the ^{M4}Courts-Martial (Appeals) Act 1968.

- (2) The Defence Council or an officer authorised by them may by order vary or revoke any order previously made under this section.
- (3) The sums deducted from a person's pay by virtue of this section and section 1(1) of the ^{M5}Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 shall not together exceed such proportion of his pay as the Defence Council may determine.

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Marginal Citations

- M3 1947 c. 24.
 M4 1968 c. 20.
 M5 1947 c. 24.

[^{F6}128F Financial penalty enforcement orders.

(1) If—

- (a) a financial penalty has been awarded against any person under this Act, and
 [the penalty was—
- ^{F7}(b) (i) a fine awarded in respect of a qualifying offence (or in respect of such an offence together with other offences) on the conviction of a qualifying offence either of that person or of the person as whose parent or guardian that person is to pay the penalty; or
 (ii) stoppages or a compensation order awarded in respect of a qualifying offence, (whether on the conviction of any person of the offence or on a request by any person for the offence to be taken into consideration); and]
- (c) no term of imprisonment was imposed in default of payment, and
 (d) no appeal is outstanding and the time provided for the giving of notice of appeal against the award has expired, and
 (e) the whole or any part of the penalty remains unpaid or unrecovered, and
 (f) the person against whom the award was made is a person to whom this section applies,

the Defence Council or an officer authorised by them may make an order (in this section referred to as a “financial penalty enforcement order”) for the registration of the penalty by the relevant court.

(2) This section applies to a person who is, or would be but for section 119 above, neither subject to service law nor a civilian to whom Parts I and II of this Act are applied by section 118 above, Part II of the ^{M6}Army Act 1955 is applied by section 209 of that Act or Part II of the ^{M7}Air Force Act 1955 is applied by section 209 of that Act.

(3) In this section “qualifying offence” means

- (a) an offence under section 14A above committed outside the United Kingdom and consisting of or including acts or omissions that would constitute a comparable foreign offence or a local road traffic offence;
 (b) an offence under section 42 above;
 (c) an offence under any provision of this Act other than section 42 above consisting of or including acts or omissions which would also constitute an offence under section 42 above;

and for the purposes of this definition—

“comparable foreign offence” means an offence under the civil law of any place outside the United Kingdom which is comparable to an offence under the law of England and Wales; and

“local road traffic offence” means an offence under the civil law of any place outside the United Kingdom relating to road traffic.

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- (4) A financial penalty enforcement order shall contain a certificate issued on behalf of the Defence Council or by an officer authorised by them and stating—
- (a) that a financial penalty has been awarded against the person named in the order;
 - (b) that the conditions specified in paragraphs (b) to (f) of subsection (1) above are satisfied;
 - (c) the nature and amount of the penalty;
 - (d) the date on which and the [F8 offence or offences] in respect of which it was awarded;
 - (e) if it was awarded against the person named in the order as the parent or guardian of some other person, the fact that it was so awarded and the name of that other person;
 - (f) sufficient particulars of the case (including particulars of any offences taken into consideration at the trial);
 - (g) the date of any payment or recovery of a sum on account of the penalty;
 - (h) the sum outstanding; and
 - (j) the authority to whom and address to which any stoppages or compensation included in the penalty will fall, on recovery, to be remitted under subsection (7) below.
- (5) A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by an officer authorised by them shall be deemed to be such an order unless the contrary is proved, and a certificate under subsection (4) above shall be evidence of the matters stated.
- (6) Subject to subsection (7) below, upon registration of a financial penalty enforcement order—
- (a) service enforcement procedures shall cease to be available for the recovery of the sum certified as outstanding, and
 - (b) that sum shall be treated for all purposes as if it had been a fine imposed upon a conviction by the relevant court.
- (7) Stoppages or compensation recovered under this section shall be remitted to the authority at the address specified in the certificate under subsection (4) above.
- (8) Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one offence, it shall be deemed for the purposes of enforcement to be a single penalty only.
- (9) Where—
- (a) a financial penalty enforcement order has been made against any person, and
 - (b) he ceases to be a person to whom this section applies at a time when the whole or any part of the certified sum is still outstanding,
- service enforcement procedures shall apply to the amount outstanding as if it were a sum payable by way of a fine imposed by a civil court.
- (10) In this section—
- “financial penalty” means—
- (a) a fine, including a fine imposed by virtue of paragraph 13 of Schedule 4A below;
 - (b) stoppages;

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- (c) a compensation order imposed by virtue of paragraph 11 or 13 of Schedule 4A below; . . . ^{F9}

. . .
^{F9}

“the relevant court” means—

- (a) the magistrates’ court in England or Wales,
 (b) the sheriff court in Scotland, or
 (c) the court of summary jurisdiction in Northern Ireland,

within whose jurisdiction the person against whom a financial penalty enforcement order is made appears to the Defence Council or an officer authorised by them to reside or to be likely to reside;

“service enforcement procedures” means any procedure available by virtue of any of the following enactments, namely—

- (a) section 128A and section 128B above; and
 (b) sections 144, 146 and 209(4) and (4A) of the ^{M8}Army Act 1955 and the ^{M9}Air Force Act 1955;

“stoppages” has the meaning assigned to it by section 43(1)(l) above except that it does not include sums awarded by virtue of section 128C above.]

[^{F10}(11) Where a fine has been awarded together with stoppages or a compensation order, this section shall have effect in relation to the fine and to the stoppages or compensation order as if they were separate penalties.]

Textual Amendments

- F6** S. 128F inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 16, Sch. 8 paras. 1, 3
F7 S. 128F(1)(b) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(2\)](#)
F8 Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(3\)](#)
F9 “or” and paragraph(d) repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), [Sch. 2](#)
F10 S. 128F(11) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(4\)](#)

Marginal Citations

- M6** 1955 c. 18.
M7 1955 c. 19.
M8 1955 c. 18.
M9 1955 c. 19.

VALID FROM 01/01/1992

[128G ^{F11}Avoidance of assignment of or charge on naval pay and pensions etc.

- (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, pensions, bounty, grants or other allowances in the nature thereof payable to any person in respect of his or any other person’s service in Her Majesty’s naval forces shall be void.
- (2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

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(3) Nothing in this section—

- (a) shall apply to the making or variation of attachment of earnings orders; or
- (b) shall prejudice any enactment providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

(4) In the application of this section to Northern Ireland at any time before the coming into operation of the Insolvency (Northern Ireland) Order 1989, for the reference in subsection (3) above to a bankrupt's trustee in bankruptcy there shall be substituted a reference to an assignee in bankruptcy.]

Textual Amendments

F11 S. 128G inserted (1.1.1992) by Armed Forces Act 1991 (c. 62), s. 16(1)(2); S.I. 1991/2719, art. 2

Modifications etc. (not altering text)

C2 S. 128G amended (1.1.1992) by Naval Pensions Act 1884 (c. 44), s. 2 (as amended (1.1.1992) by Armed Forces Act 1991 (c. 62), s. 16(3); S.I. 1991/2719, art. 2)

C3 S. 128G(1) and (2) excluded (1.8.1996) by 1995 c. 26, ss. 166(5)(a), 167(4); S.I. 1996/1675, art. 3
S. 128G(1) and (2) excluded (1.8.1996) by S.I. 1995/3213 (NI 22), art. 162(4)(5)(a); S.R. 1996/284, art. 3

C4 S. 128G(1)(2) excluded (11.11.1999 for specified purposes otherwise 1.12.2000) by 1999 c. 30, ss. 44(1)(a), 89(5); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

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