
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Armed Forces (Alignment of
Service Discipline Acts) Order 2008**

Suspended sentences of military and air-force courts-martial

25. After section 120 of each of the 1955 Acts insert—

“120ZA. Activation of suspended sentence: appeals

(1) Subsections (2) to (4) apply where a court-martial makes an order under section 120(5) of this Act.

(2) For the purposes of the Courts-Martial (Appeals) Act 1968 (c. 20) (“the 1968 Act”)—

- (a) the order is to be treated as a sentence passed on the offender for the offence for which the sentence was passed;
- (b) any appeal, or application for leave to appeal, against the sentence passed in respect of the new offence is to be treated as also being an appeal or application for leave to appeal against the order; and
- (c) any appeal, or application for leave to appeal, against the order is to be treated as also being an appeal or application for leave to appeal against the sentence passed in respect of the new offence.

(3) In relation to any appeal against the order, section 16A of the 1968 Act (powers on appeals against sentence) is to be read as conferring power—

- (a) to quash the order; or
- (b) if the court-martial gave a direction under section 120(5B) of this Act, to quash that direction.

(4) Where the Appeal Court quashes the order, or any direction under section 120(5B) of this Act, then in relation to any appeal against the sentence passed in respect of the new offence—

- (a) section 16A of the 1968 Act has effect as if the words “and which is not of greater severity than that for which it is substituted” were omitted; but
- (b) the Appeal Court may not exercise its powers under that section in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.

(5) Subsections (6) and (7) apply where a court-martial has power to make an order under section 120(5) of this Act in respect of a sentence (“the suspended sentence”) but does not do so.

(6) On any appeal against the sentence passed in respect of the new offence, the Appeal Court’s power under section 16A of the 1968 Act to pass a sentence in substitution for the sentence of the court-martial includes—

- (a) power to make an order under section 120(5) of this Act in respect of the suspended sentence; and

(b) if the court makes such an order, power to give a direction under section 120(5B) of this Act in relation to the order.

(7) But the Appeal Court may not exercise its powers under subsection (6) in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.

(8) In this section—

- (a) “the new offence” means the offence mentioned in section 120(5) of this Act; and
- (b) “the Appeal Court” means the Courts-Martial Appeal Court.”