



# Armed Forces Act 1986

## 1986 CHAPTER 21

### PART II

#### AMENDMENTS OF SERVICES ACTS ETC.

#### *Civilians*

#### **8 Application of limitation period to civilians ceasing to be subject to service law**

- (1) Subsection (3A) of section 209 of each of the 1955 Acts (application of Act to civilians) shall be renumbered subsection (3B) and before that subsection, as so renumbered, there shall be inserted the following subsection—

“(3A) For the purposes of paragraph (g) of subsection (3) of this section a person shall be deemed not to have ceased to be in such circumstances as are mentioned in that paragraph if he has so ceased by reason only of one or both of the following, namely—

- (a) the fact that he has ceased to be within the limits of a command within whose limits he continues to have his ordinary residence or to serve or to be employed;
- (b) the fact that there has been an interruption of his residence with a family of persons whose place of residence continues to be his home.”

- (2) In Schedule 4 to the 1957 Act (application of Act to certain civilians), after paragraph 4 there shall be inserted the following paragraph—

“4A For the purposes of section 52(2) of this Act a person shall be deemed not to have ceased to be a person to whom this Act applies by virtue of section 118(2) of this Act if he has so ceased by reason only of one or both of the following, namely—

- (a) the fact that he has ceased to be within the limits of a command within whose limits he continues to have his ordinary residence or to serve or to be employed;

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- (b) the fact that there has been an interruption of his residence with a family of persons whose place of residence continues to be his home.”
- (3) Nothing in this section shall affect the operation of any of the relevant provisions in relation to proceedings for an offence by a person who ceased, after the commission of the offence and more than the specified period before the coming into force of this section, to be in such circumstances that Part II of either of the 1955 Acts or any provision specified in section 118 of the 1957 Act applied to him.
- (4) In subsection (3) above—
  - " the relevant provisions " means section 132(3) of each of the 1955 Acts and section 52(2) of the 1957 Act; and
  - " the specified period", in relation to any proceedings, means the period specified in relation to those proceedings in the relevant provisions.

## 9 Power of Standing Civilian Court to defer sentence

- (1) In Schedule 5A to the Army Act 1955 (powers of court on trial of civilian), after paragraph 2 there shall be inserted the following paragraph—

*“Deferment of award of sentence*

- 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.
- (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 1976 (proceedings in Standing Civilian Courts) are satisfied in relation to him.

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- (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 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 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.”
- (2) The provisions set out in subsection (1) above shall also be inserted after paragraph 2 of Schedule 5A to the Air Force Act 1955 but as if in sub-paragraph (9)(a) for the words from " regular forces " to " 1955)" there were substituted the words " regular air force or of the regular forces (within the meaning of the Army Act 1955) ".
- (3) In paragraph 12 of Schedule 3 to the Armed Forces Act 1976 (power to make orders with respect to procedures before Standing Civilian Courts), after sub-paragraph (3) there shall be inserted the following sub-paragraph—
- “(3A) An order under this paragraph may, for the purposes of paragraph 2A of Schedule 5A to the Army Act 1955 and paragraph 2A of Schedule 5A to the Air Force Act 1955, specify the conditions to be satisfied, in relation to an offender, before a Standing Civilian Court that has deferred the award of sentence against the offender may award sentence during the period of deferment.”

## **10 Extension of power to make community supervision orders in relation to civilians**

- (1) In Schedule 5A to each of the 1955 Acts and Schedule 4A to the 1957 Act, in paragraph 4(1) (power to make community supervision order in relation to a civilian under 21 years of age), the words " under 21 years of age" shall be omitted.
- (2) In the first column of the Table in paragraph 15(3) of each of the Schedules amended by subsection (1) above (scale of punishments and orders for offenders of 21 and over), after paragraph 3 there shall be inserted the following paragraph—
- “3A Community supervision order.”

## **11 Extension of power to make custodial orders in relation to civilians**

- (1) In Schedule 5A to each of the 1955 Acts and Schedule 4A to the 1957 Act, in paragraph 10(1) (custodial orders in respect of offender under 21 but not less than 17 years of age)—
- (a) for the words " 17 years of age " there shall be substituted the words " the minimum age " ; and
  - (b) at the end there shall be inserted the words—

“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.”
- (2) In paragraph 10(1A) of each of the Schedules amended by subsection (1) above (restriction on making of custodial orders), at the end there shall be inserted the words " and 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."
- (3) In paragraph 10 (6) (b) of each of the said Schedules (appropriate institution in Scotland), for sub-paragraph (i) there shall be substituted the following sub-paragraphs—
- “(i) if the offender is a male person who is under the age of 16 years, such place as the Secretary of State may direct;
  - (ia) subject to sub-paragraph ((b) below, if the offender is a male person who has attained 16 years of age and the period specified in the order is not less than twenty-eight days nor more than four months, a detention centre;
  - (ib) where detention in a detention centre would be required by sub-paragraph (ia) above but the offender has already served such a sentence, a young offenders institution; and”.
- (4) In paragraph 10(6)(c) of each of the said Schedules (appropriate institution in Northern Ireland), for the words " a young offenders centre " there shall be substituted the following sub-paragraphs—
- “(i) if the offender is a male person who is under the age of 17 years, a remand home ; and
  - (ii) in any other case, a young offenders centre ;”.
- (5) In the third column of the Table in paragraph 15(3) of each of the said Schedules (scale of punishments and orders for offenders under 17), after paragraph 1 there shall be inserted the following paragraph—
- “1A Custodial order.”
- (6) This section shall not have effect in relation to offences committed before the coming into force of this section.

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## **12 Power of court-martial to suspend sentence on appeal from Standing Civilian Court**

- (1) In paragraph 18 of Schedule 3 to the Armed Forces Act 1976 (appeals from Standing Civilian Courts), after subparagraph (11) there shall be inserted the following sub-paragraph—

“(12) Where a court-martial passes a sentence on an appeal under this paragraph in a case in which the sentence of the Standing Civilian Court was suspended under paragraph 20(4) below, the court-martial may, if it thinks fit, direct that the suspension shall apply to the sentence of the court-martial in the same way as it would have applied to the sentence of the Standing Civilian Court.”

- (2) Accordingly, in sub-paragraph (8) of that paragraph, after the word " above " there shall be inserted the words " and sub-paragraph (12) below ".

## **13 Change of place of safety and return to United Kingdom of children in need of care or control**

- (1) Section 14 of the Armed Forces Act 1981 (temporary removal to and detention in a place of safety abroad of children of service families in need of care or control) shall be amended as follows.

- (2) For subsection (3) (power to order removal of child to place of safety outside United Kingdom) there shall be substituted the following subsection—

“(3) If an officer having jurisdiction in relation to a child to whom this section applies thinks fit, he may, on being satisfied on one or more of the grounds specified in subsection (4) below that the child is in need of care or control, order the child to be removed to and detained in a place of safety.”

- (3) After subsection (4) there shall be inserted the following subsection—

“(4A) A place of safety in which a child is required to be detained under this section may be situated either in the country or territory where the child resides or elsewhere (including in the United Kingdom); and an officer having jurisdiction in relation to a child detained in a place of safety outside the United Kingdom may make an order (including an order involving the return of the child to the United Kingdom) modifying the order by which the child is detained so as to require the child to be removed to and detained in another place of safety.”

- (4) In subsection (5) (officers having power to make orders)—

- (a) for the words from the beginning to " say " there shall be substituted the words " The officers having jurisdiction in relation to a child to whom this section applies or a child detained in a place of safety are " ; and
- (b) in paragraph (b), after the word " resides " there shall be inserted the words " or, as the case may be, was residing when he was removed to a place of safety ".

- (5) For subsections (7) to (9) (matters to be specified in order and effect and duration of orders) there shall be substituted the following subsections—

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- “(7) An order made by virtue of subsection (3) or (4A) above shall specify the place of safety to which the child is to be removed and shall be sufficient authority for—
- (a) the removal of the child to the place specified in the order;
  - (b) the detention of the child for the purpose of that removal in any other place or on board any ship or aircraft; and
  - (c) the detention of the child in the place so specified in accordance with the order.
- (8) An order made by virtue of subsection (3) above in relation to a child shall specify the period for which it is to have effect, being—
- (a) in a case where the order is made by the commanding officer of the person to whose family the child belongs or with whose family the child resides, a period not exceeding the period of eight days beginning with the date of the order ; and
  - (b) in a case where the order is made by an officer superior in command to the commanding officer of either of those persons, a period not exceeding the period of twenty-eight days beginning with that date;
- and, subject to the following provisions of this section, neither that order nor any order under subsection (4A) above modifying that order shall authorise the detention of the child after the end of the specified period.
- (9) Where it at any time appears to an officer having jurisdiction in relation to a child detained by virtue of an order under this section—
- (a) that the period for which the order is to have effect is less than the maximum period applicable under subsection (8) above in relation to an order made by that officer ; and
  - (b) that it is appropriate, for any reason, for the effect of the order to be extended or further extended,
- that officer may order the effect of the order to continue until a time no later after the making of the original order than the end of the said maximum period.
- (9A) Where a child is removed under this section to a place of safety in the United Kingdom—
- (a) the order in pursuance of which he is so removed shall not authorise his detention in that place after the end of the period of twenty-four hours beginning with his arrival in that place ; but
  - (b) the powers conferred by the Children and Young Persons Act 1933, the Children and Young Persons Act 1969, the Social Work (Scotland) Act 1968 and the Children and Young Persons Act (Northern Ireland) 1968 shall be exercisable in relation to the child as if everything which was relevant to the question under this section whether the child was in need of care or control were relevant, notwithstanding that the child is or has been detained in a place of safety, to the question whether the conditions for the exercise of any of those powers are satisfied.”
- (6) In subsection (10) (right of parent to make representations before order made), for the words " for the time being " there shall be substituted the words " or, as the case may be, was residing when he was removed to a place of safety under this section ".