



# Armed Forces Act 2006

## 2006 CHAPTER 52

### FIRST GROUP OF PARTS

#### DISCIPLINE

#### PART 1

#### OFFENCES

#### *Assisting an enemy, misconduct on operations etc*

### **1 Assisting an enemy**

- (1) A person subject to service law commits an offence if, without lawful excuse, he intentionally—
  - (a) communicates with an enemy;
  - (b) gives an enemy information that would or might be useful to the enemy;
  - (c) fails to make known to the proper authorities any information received by him from an enemy;
  - (d) provides an enemy with any supplies; or
  - (e) harbours or protects an enemy other than a prisoner of war.
- (2) A person subject to service law who has been captured by an enemy commits an offence if, without lawful excuse, he intentionally serves with or assists the enemy—
  - (a) in the prosecution of hostilities or of measures likely to influence morale; or
  - (b) in any other manner not authorised by international law.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Commencement Information

- I1** S. 1 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I2** S. 1 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 2 Misconduct on operations

- (1) A person subject to service law commits an offence if, without reasonable excuse, he—
- (a) surrenders any place or thing to an enemy; or
  - (b) abandons any place or thing which it is his duty to defend against an enemy or to prevent from falling into the hands of an enemy.
- (2) Subsections (3) to (5) apply to a person subject to service law who is—
- (a) in the presence or vicinity of an enemy;
  - (b) engaged in an action or operation against an enemy; or
  - (c) under orders to be prepared for any action or operation by or against an enemy.
- (3) A person to whom this subsection applies commits an offence if he fails to use his utmost exertions to carry out the lawful commands of his superior officers.
- (4) A person to whom this subsection applies commits an offence if he is on guard duty and posted or ordered to patrol, or is on watch, and—
- (a) without reasonable excuse, he sleeps; or
  - (b) (without having been regularly relieved) he leaves any place where it is his duty to be.
- (5) A person to whom this subsection applies commits an offence if, without reasonable excuse, he intentionally communicates with a person who is—
- (a) a member of any of Her Majesty's forces or of any force co-operating with them, or
  - (b) a relevant civilian,
- and the communication is likely to cause that person to become despondent or alarmed.
- (6) In subsection (5) “relevant civilian” means a person who—
- (a) is a civilian subject to service discipline; and
  - (b) is accompanying a person subject to service law who is—
    - (i) in the presence or vicinity of an enemy; or
    - (ii) engaged in an action or operation against an enemy.
- (7) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

### Modifications etc. (not altering text)

- C1** S. 2 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, 4 (with reg. 2(c))

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#### Commencement Information

- I3** S. 2 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 2 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 3 Obstructing operations

- (1) A person subject to service law commits an offence if—
- he does an act that is likely to put at risk the success of an action or operation of any of Her Majesty's forces; and
  - he intends to prevent, or is reckless as to whether he prevents, the success of the action or operation.
- (2) A person subject to service law commits an offence if—
- without lawful excuse, he does an act that delays or discourages an action or operation of any of Her Majesty's forces; and
  - he intends to delay or discourage the action or operation.
- (3) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—
- if the offence relates to an action or operation against an enemy, may be for life;
  - otherwise, must not exceed ten years.

#### Commencement Information

- I5** S. 3 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 3 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 4 Looting

- (1) A person within subsection (4) commits an offence if, without lawful excuse—
- he takes any property from a person who has been killed, injured, captured or detained in the course of an action or operation of any of Her Majesty's forces or of any force co-operating with them; or
  - he searches such a person with the intention of taking property from him.
- (2) A person within subsection (4) commits an offence if, without lawful excuse—
- he takes any property which has been left exposed or unprotected in consequence of—
    - an action or operation of any of Her Majesty's forces or of any force co-operating with them; or
    - an event, or state of affairs, in relation to which such an action or operation is undertaken; or

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- (b) he searches any place or thing with the intention of taking property of a description mentioned in paragraph (a).
- (3) A person within subsection (4) commits an offence if he takes otherwise than for the public service any vehicle, equipment or stores abandoned by an enemy.
- (4) A person is within this subsection if he is—
  - (a) a person subject to service law; or
  - (b) a civilian subject to service discipline.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—
  - (a) in the case of an offence under subsection (1) or (2), may be for life;
  - (b) in the case of an offence under subsection (3), must not exceed seven years.

#### Commencement Information

- I7** S. 4 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I8** S. 4 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 5 Failure to escape etc

- (1) Subsections (2) and (3) apply to a person subject to service law who has been captured by an enemy.
- (2) A person to whom this subsection applies commits an offence if—
  - (a) he is aware of steps that he could take to rejoin Her Majesty's forces;
  - (b) he could reasonably be expected to take those steps; and
  - (c) without lawful excuse, he fails to take them.
- (3) A person to whom this subsection applies commits an offence if, without lawful excuse, he intentionally prevents or discourages another person subject to service law who has been captured by an enemy from taking any reasonable steps to rejoin Her Majesty's forces.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed ten years.

#### Commencement Information

- I9** S. 5 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 5 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## Mutiny

### 6 Mutiny

- (1) A person subject to service law commits an offence if he takes part in a mutiny.
- (2) For the purposes of this section a person subject to service law takes part in a mutiny if—
  - (a) in concert with at least one other person subject to service law, he—
    - (i) acts with the intention of overthrowing or resisting authority; or
    - (ii) disobeys authority in such circumstances as to subvert discipline;
  - (b) he agrees with at least one other person subject to service law to overthrow or resist authority; or
  - (c) he agrees with at least one other person subject to service law to disobey authority, and the agreed disobedience would be such as to subvert discipline.
- (3) For the purposes of subsection (2)—
  - (a) “authority” means lawful authority in any part of Her Majesty's forces or of any force co-operating with them;
  - (b) the reference to acting includes omitting to act.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

#### Commencement Information

- I11** S. 6 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I12** S. 6 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 7 Failure to suppress mutiny

- (1) A person subject to service law commits an offence if—
  - (a) he knows that a mutiny is occurring or is intended; and
  - (b) he fails to take such steps as he could reasonably be expected to take to prevent or suppress it.
- (2) For the purposes of this section a mutiny occurs when a person subject to service law, in concert with at least one other person subject to service law—
  - (a) acts with the intention of overthrowing or resisting authority; or
  - (b) disobeys authority in such circumstances as to subvert discipline.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

#### Commencement Information

- I13** S. 7 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I14** S. 7 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *Desertion and absence without leave*

## **8 Desertion**

- (1) A person subject to service law commits an offence if he deserts.
- (2) For the purposes of this Act a person deserts if he is absent without leave and—
  - (a) he intends to remain permanently absent without leave; or
  - (b) he intends to avoid a period of active service.
- (3) In this section “active service” means service in—
  - (a) an action or operation against an enemy;
  - (b) an operation outside the British Islands for the protection of life or property; or
  - (c) the military occupation of a foreign country or territory.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—
  - (a) if the offender intended to avoid a period of active service, may be for life;
  - (b) otherwise, must not exceed two years.

#### **Commencement Information**

- I15** S. 8 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I16** S. 8 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **9 Absence without leave**

- (1) A person subject to service law commits an offence if subsection (2) or (3) applies to him.
- (2) This subsection applies to a person if he is intentionally or negligently absent without leave.
- (3) This subsection applies to a person if—
  - (a) he does an act, being reckless as to whether it will cause him to be absent without leave; and
  - (b) it causes him to be absent without leave.
- (4) In subsection (3) “act” includes an omission and the reference to the doing of an act is to be read accordingly.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

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#### Commencement Information

- I17** S. 9 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I18** S. 9 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 10 Failure to cause apprehension of deserters or absentees

- (1) A person subject to service law commits an offence if—
- (a) he knows that another person—
    - (i) has committed, is committing or is attempting to commit an offence under section 8 (desertion); or
    - (ii) is committing or attempting to commit an offence under section 9 (absence without leave); and
  - (b) he fails to take such steps as he could reasonably be expected to take to cause that person to be apprehended.
- (2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I19** S. 10 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I20** S. 10 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Insubordination etc*

### 11 Misconduct towards a superior officer

- (1) A person subject to service law commits an offence if—
- (a) he uses violence against a superior officer (“B”); and
  - (b) he knows or has reasonable cause to believe that B is a superior officer.
- (2) A person subject to service law commits an offence if—
- (a) his behaviour towards a superior officer (“B”) is threatening or disrespectful; and
  - (b) he knows or has reasonable cause to believe that B is a superior officer.
- (3) For the purposes of this section—
- (a) the behaviour of a person (“A”) towards another person (“B”) includes any communication made by A to B (whether or not in B’s presence);
  - (b) “threatening” behaviour is not limited to behaviour that threatens violence.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—

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- (a) in the case of an offence under subsection (1), or an offence under subsection (2) of behaviour that is threatening, ten years;
- (b) in any other case, two years.

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

**C2** S. 11 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, 4 (with reg. 2(c))

**Commencement Information**

**I21** S. 11 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I22** S. 11 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**12 Disobedience to lawful commands**

- (1) A person subject to service law commits an offence if—
  - (a) he disobeys a lawful command; and
  - (b) he intends to disobey, or is reckless as to whether he disobeys, the command.
- (2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed ten years.

**Commencement Information**

**I23** S. 12 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I24** S. 12 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**13 Contravention of standing orders**

- (1) A person subject to service law, or a civilian subject to service discipline, commits an offence if—
  - (a) he contravenes a lawful order to which this section applies; and
  - (b) he knows or could reasonably be expected to know of the order.
- (2) This section applies to standing orders, and other routine orders of a continuing nature, of any of Her Majesty's forces, made for any—
  - (a) part of Her Majesty's forces;
  - (b) area or place; or
  - (c) ship, train or aircraft;
 but paragraph (a) of this subsection does not apply in relation to a civilian subject to service discipline.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.



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#### Commencement Information

- I25** S. 13 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I26** S. 13 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 14 Using force against a sentry etc

- (1) A person subject to service law commits an offence if—
- (a) he uses force against a member of any of Her Majesty's forces, or of any force co-operating with them, who is—
    - (i) on guard duty and posted or ordered to patrol;
    - (ii) on watch; or
    - (iii) under orders to regulate traffic by land, water or air; or
  - (b) by the threat of force he compels such a person to let him or any other person pass.
- (2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I27** S. 14 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I28** S. 14 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Neglect of duty and misconduct*

### 15 Failure to attend for or perform duty etc

- (1) A person subject to service law commits an offence if, without reasonable excuse, he—
- (a) fails to attend for any duty;
  - (b) leaves any duty before he is permitted to do so; or
  - (c) fails to perform any duty.
- (2) A person subject to service law commits an offence if he performs any duty negligently.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

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

- C3** S. 15 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009](#) (S.I. 2009/826), [regs. 1, 5\(4\)](#) (with [reg. 2\(c\)](#))

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#### Commencement Information

- I29** S. 15 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I30** S. 15 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## 16 Malingering

- (1) A person subject to service law commits an offence if, to avoid service—
- (a) he pretends to have an injury;
  - (b) by any act he causes himself an injury;
  - (c) by any act or omission he aggravates or prolongs any injury of his; or
  - (d) he causes another person to injure him.
- (2) A person subject to service law commits an offence if, at the request of another person subject to service law (“B”) and with the intention of enabling B to avoid service—
- (a) by any act he causes B an injury; or
  - (b) by any act or omission he aggravates or prolongs any injury of B.
- (3) In this section—
- “injury” includes any disease and any impairment of a person's physical or mental condition, and the reference to injuring is to be read accordingly;
- “service” includes any particular duty or kind of duty.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I31** S. 16 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I32** S. 16 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## 17 Disclosure of information useful to an enemy

- (1) A person subject to service law commits an offence if—
- (a) without lawful authority, he discloses information that would or might be useful to an enemy; and
  - (b) he knows or has reasonable cause to believe that the information would or might be useful to an enemy.
- (2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I33** S. 17 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)

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**I34** S. 17 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 18 Making false records etc

- (1) A person subject to service law commits an offence if—
  - (a) he makes an official record, knowing that it is false in a material respect; and
  - (b) he knows or has reasonable cause to believe that the record is official.
- (2) A person who adopts as his own a record made by another person is for the purposes of subsection (1) to be treated, as well as that other person, as making the record.
- (3) A person subject to service law commits an offence if—
  - (a) with intent to deceive, he tampers with or suppresses an official document; and
  - (b) he knows or has reasonable cause to believe that the document is official.
- (4) A person subject to service law commits an offence if—
  - (a) with intent to deceive, he fails to make a record which he is under a duty to make; and
  - (b) he knows or has reasonable cause to believe that the record would, if made, be official.
- (5) For the purposes of this section—
  - (a) “record” means a document or an entry in a document;
  - (b) “document” means anything in which information is recorded;
  - (c) a record or document is official if it is or is likely to be made use of, in connection with the performance of his functions as such, by a person who holds office under the Crown or is in the service of the Crown.
- (6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

### Commencement Information

- I35** S. 18 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I36** S. 18 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 19 Conduct prejudicial to good order and discipline

- (1) A person subject to service law commits an offence if he does an act that is prejudicial to good order and service discipline.
- (2) In this section “act” includes an omission and the reference to the doing of an act is to be read accordingly.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

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

- C4** S. 19 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, **5(4)** (with reg. 2(c))

#### Commencement Information

- I37** S. 19 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I38** S. 19 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 20 Unfitness or misconduct through alcohol or drugs

- (1) A person subject to service law commits an offence if, due to the influence of alcohol or any drug—
- he is unfit to be entrusted with his duty or any duty which he might reasonably expect to be called upon to perform; or
  - his behaviour is disorderly or likely to bring discredit to Her Majesty's forces.

[<sup>F1</sup>(1A) For the purposes of subsection (1) a person is to be taken to be unfit to be entrusted with his duty, or a duty which he might reasonably expect to be called upon to perform, if his ability to carry out the duty in question is impaired.]

- (2) Subsection (1) does not apply to the influence of a drug on a person (“A”) if—
- the drug was taken or administered on medical advice and A complied with any directions given as part of that advice;
  - the drug was taken or administered for a medicinal purpose, and A had no reason to believe that the drug might impair his ability to carry out the duties mentioned in subsection (1)(a) or (as the case may be) result in his behaving in a way mentioned in subsection (1)(b);
  - the drug was taken on the orders of a superior officer of A; or
  - the drug was administered to A on the orders of a superior officer of the person administering it.

- (3) In this section—
- “drug” includes any intoxicant other than alcohol;
  - a person's “behaviour” includes anything said by him.

(4) In proceedings for an offence under this section, any paragraph of subsection (2) is to be treated as not having applied in relation to the defendant unless sufficient evidence is adduced to raise an issue as to whether it did.

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Textual Amendments

- F1** S. 20(1A) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 9, 32(3); [S.I. 2013/2501](#), art. 3(a)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

- C5** S. 20 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, 4 (with reg. 2(c))

#### Commencement Information

- I39** S. 20 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I40** S. 20 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### [<sup>F2</sup>20A Exceeding alcohol limit for prescribed safety-critical duties

- (1) A person subject to service law (“P”) commits an offence if the proportion of alcohol in P’s breath, blood or urine exceeds the relevant limit at a time when P—
  - (a) is performing, or purporting to perform, a prescribed duty; or
  - (b) might reasonably expect to be called on to perform such a duty.
- (2) In subsection (1) “prescribed duty” means a duty specified, or of a description specified, by regulations; but a duty or description may be specified only if performing that duty (or a duty of that description) with ability impaired by alcohol would result in a risk of—
  - (a) death;
  - (b) serious injury to any person;
  - (c) serious damage to property; or
  - (d) serious environmental harm.
- (3) In this section “the relevant limit”, in relation to a duty specified or of a description specified by regulations, means the limit prescribed by regulations in relation to that duty or duties of that description.
- (4) In this section “regulations” means regulations made by the Defence Council for the purposes of this section.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.]

#### Textual Amendments

- F2** S. 20A inserted (8.3.2012 for specified purposes, 1.11.2013 in so far as not already in force) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 10, 32\(3\)](#); [S.I. 2012/669](#), [art. 3\(b\)](#); [S.I. 2013/2501](#), [art. 3\(b\)](#)

### 21 Fighting or threatening behaviour etc

- (1) A person subject to service law commits an offence if, without reasonable excuse, he fights another person.
- (2) A person subject to service law commits an offence if—
  - (a) without reasonable excuse, his behaviour is—
    - (i) threatening, abusive, insulting or provocative; and
    - (ii) likely to cause a disturbance; and

*Status: Point in time view as at 02/12/2019.*

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- (b) he intends to be, or is aware that his behaviour may be, threatening, abusive, insulting or provocative.
- (3) For the purposes of this section a person's "behaviour" includes anything said by him.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I41** S. 21 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I42** S. 21 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 22 Ill-treatment of subordinates

- (1) A person subject to service law who is an officer, warrant officer or non-commissioned officer commits an offence if—
  - (a) he ill-treats a subordinate ("B");
  - (b) he intends to ill-treat B or is reckless as to whether he is ill-treating B; and
  - (c) he knows or has reasonable cause to believe that B is a subordinate.
- (2) For the purposes of this section a person ("B") is a subordinate of another person ("A") if—
  - (a) B is subject to service law; and
  - (b) A is a superior officer of B.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

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

- C6** S. 22 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), [regs. 1, 4](#) (with [reg. 2\(c\)](#))

#### Commencement Information

- I43** S. 22 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I44** S. 22 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 23 Disgraceful conduct of a cruel or indecent kind

- (1) A person subject to service law commits an offence if—
  - (a) he does an act which is cruel or indecent; and
  - (b) his doing so is disgraceful.
- (2) In this section "act" includes an omission and the reference to the doing of an act is to be read accordingly.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I45** S. 23 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I46** S. 23 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Property offences*

## **24 Damage to or loss of public or service property**

- (1) A person subject to service law commits an offence if—
- (a) he does an act that causes damage to or the loss of any public or service property or any property belonging to another person subject to service law; and
  - (b) either—
    - (i) he intends to cause damage to or the loss of the property, and there is no lawful excuse for his act; or
    - (ii) he is reckless as to whether he causes damage to or the loss of the property.
- (2) A person subject to service law commits an offence if—
- (a) negligently, he does an act that causes damage to or the loss of any public or service property; or
  - (b) he does an act that is likely to cause damage to or the loss of any public or service property and—
    - (i) he is reckless as to whether he causes damage to or the loss of the property; or
    - (ii) he is negligent.
- (3) For the purposes of this section—
- (a) “act” includes an omission and references to the doing of an act are to be read accordingly;
  - (b) references to causing include allowing;
  - (c) “loss” includes temporary loss;
  - (d) “property” means property of a tangible nature, and references to public or service property are to be read accordingly.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—
- (a) in the case of an offence under subsection (1), ten years;
  - (b) in the case of an offence under subsection (2), two years.

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#### Commencement Information

- I47** S. 24 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I48** S. 24 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 25 Misapplying or wasting public or service property

- (1) A person subject to service law commits an offence if he misapplies or wastes any public or service property.
- (2) A person guilty of an offence under this section is liable to any punishment mentioned in rows 2 to 12 of the Table in section 164.

#### Commencement Information

- I49** S. 25 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I50** S. 25 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 26 Sections 24 and 25: “public property” and “service property”

- (1) This section applies for the purposes of sections 24 and 25.
- (2) “Public property” means property belonging to or held for the purposes of—
  - (a) a department of the Government of the United Kingdom;
  - (b) any part of the Scottish Administration;
  - (c) a Northern Ireland department; or
  - (d) the National Assembly for Wales.
- (3) “Service property” means property—
  - (a) belonging to or used for the purposes of any of Her Majesty's forces;
  - (b) belonging to a Navy, Army and Air Force Institute; or
  - (c) belonging to an association established, or having effect as if established, under section 110 of the Reserve Forces Act 1996 (c. 14) (reserve associations).

#### Commencement Information

- I51** S. 26 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I52** S. 26 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Offences against service justice*

### 27 Obstructing or failing to assist a service policeman

- (1) A person within subsection (2) commits an offence if—



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- (a) he intentionally obstructs, or intentionally fails to assist when called upon to do so, a person who is—
    - (i) a service policeman acting in the course of his duty; or
    - (ii) a person subject to service law lawfully exercising authority on behalf of a provost officer; and
  - (b) he knows or has reasonable cause to believe that that person is a service policeman or a person exercising authority on behalf of a provost officer.
- (2) A person is within this subsection if he is—
- (a) a person subject to service law; or
  - (b) a civilian subject to service discipline.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I53** S. 27 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I54** S. 27 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 28 Resistance to arrest etc

- (1) A person subject to service law (“A”) commits an offence if another person (“B”), in the exercise of a power conferred by or under this Act, orders A into arrest and—
- (a) A disobeys the order;
  - (b) A uses violence against B; or
  - (c) A's behaviour towards B is threatening.
- (2) A person subject to service law, or a civilian subject to service discipline, commits an offence if—
- (a) he uses violence against a person who has a duty to apprehend him, or his behaviour towards such a person is threatening; and
  - (b) he knows or has reasonable cause to believe that the person has a duty to apprehend him.
- (3) For the purposes of this section—
- (a) a person's “behaviour” includes anything said by him;
  - (b) “threatening” behaviour is not limited to behaviour that threatens violence;
  - (c) a “duty” to apprehend a person means such a duty arising under service law.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I55** S. 28 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I56** S. 28 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 29 Offences in relation to service custody

- (1) A person subject to service law, or a civilian subject to service discipline, commits an offence if he escapes from lawful custody.
- (2) A person subject to service law, or a civilian subject to service discipline, commits an offence if—
  - (a) he uses violence against a person in whose lawful custody he is, or his behaviour towards such a person is threatening; and
  - (b) he knows or has reasonable cause to believe that the custody is lawful.
- (3) For the purposes of this section—
  - (a) references to custody are to service custody;
  - (b) a person's behaviour includes anything said by him;
  - (c) “threatening” behaviour is not limited to behaviour that threatens violence.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

### Commencement Information

- I57** S. 29 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I58** S. 29 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 30 Allowing escape, or unlawful release, of prisoners etc

- (1) A person subject to service law commits an offence if—
  - (a) he knows that a person is committed to his charge, or that it is his duty to guard a person;
  - (b) he does an act that results in that person's escape; and
  - (c) he intends to allow, or is reckless as to whether the act will allow, that person to escape, or he is negligent.
- (2) A person subject to service law commits an offence if—
  - (a) he knows that a person is committed to his charge;
  - (b) he releases that person without authority to do so; and
  - (c) he knows or has reasonable cause to believe that he has no such authority.
- (3) In this section “act” includes an omission and the reference to the doing of an act is to be construed accordingly.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—
  - (a) in the case of an offence under subsection (1) where the offender intended to allow the person to escape, or an offence under subsection (2) where the offender knew he had no authority to release the person, ten years;

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- (b) in any other case, two years.

#### Commencement Information

- I59** S. 30 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I60** S. 30 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Ships and aircraft*

## **31**     **Hazarding of ship**

- (1) A person subject to service law commits an offence if he does an act that causes the hazarding of any of Her Majesty's ships and—
- (a) he intends to cause damage to or the stranding or loss of the ship, and there is no lawful excuse for his act; or
  - (b) he is reckless as to whether he causes damage to or the stranding or loss of the ship.
- (2) A person subject to service law commits an offence if, negligently, he does an act that causes the hazarding of any of Her Majesty's ships.
- (3) For the purposes of this section—
- (a) “act” includes an omission and references to the doing of an act are to be read accordingly;
  - (b) references to causing include allowing;
  - (c) “Her Majesty's ships” means all ships belonging to or used for the purposes of any of Her Majesty's forces.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—
- (a) in the case of an offence under subsection (1), may be for life;
  - (b) in the case of an offence under subsection (2), must not exceed two years.

#### Commencement Information

- I61** S. 31 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I62** S. 31 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **32**     **Giving false air signals etc**

- (1) A person subject to service law commits an offence if, without lawful excuse, he intentionally—
- (a) gives a false air signal; or
  - (b) alters or interferes with an air signal or any equipment for giving an air signal.
- (2) In this section “air signal” means a message, signal or indication given (by any means) for the guidance of aircraft or a particular aircraft.

*Status: Point in time view as at 02/12/2019.*

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- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

#### Commencement Information

- I63** S. 32 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I64** S. 32 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 33 Dangerous flying etc

- (1) A person subject to service law commits an offence if—
- (a) he does an act—
    - (i) when flying or using an aircraft, or
    - (ii) in relation to an aircraft or aircraft material,
 that causes or is likely to cause loss of life or injury to any person; and
  - (b) either—
    - (i) he intends to cause loss of life or injury to any person, and there is no lawful excuse for his act; or
    - (ii) he is reckless as to whether he causes loss of life or injury to any person.
- (2) A person subject to service law commits an offence if, negligently, he does an act—
- (a) when flying or using an aircraft, or
  - (b) in relation to an aircraft or aircraft material,
- that causes or is likely to cause loss of life or injury to any person.
- (3) In this section—
- “act” includes an omission and the reference to the doing of an act is to be read accordingly;
- “aircraft material” includes—
- (a) parts of and accessories for aircraft (whether or not for the time being in aircraft);
  - (b) armaments in or for use in aircraft;
  - (c) any other equipment or instrument in or for use in aircraft;
  - (d) any equipment for use in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;
  - (e) any fuel for the propulsion of aircraft; and
  - (f) any lubricant for aircraft or for anything within any of paragraphs (a) to (d).
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—
- (a) in the case of an offence under subsection (1), may be for life;
  - (b) in the case of an offence under subsection (2), must not exceed two years.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I65** S. 33 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I66** S. 33 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 34 Low flying

- (1) A person subject to service law commits an offence if—
- (a) he flies an aircraft at a height less than the minimum height, other than—
    - (i) when taking off or landing; or
    - (ii) in any other circumstances prescribed by regulations made by the Defence Council; and
  - (b) he intends to fly, or is reckless as to whether he flies, the aircraft at a height less than the minimum height, or he is negligent.
- (2) If a person flies an aircraft in contravention of subsection (1) on the orders of another person who is in command of the aircraft, that other person is for the purposes of this section to be treated as flying the aircraft.
- (3) In this section “minimum height” means the height prescribed by regulations made by the Defence Council.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I67** S. 34 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I68** S. 34 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 35 Annoyance by flying

- (1) A person subject to service law commits an offence if—
- (a) he flies an aircraft so as to annoy or be likely to annoy any person;
  - (b) he can reasonably avoid flying the aircraft as mentioned in paragraph (a); and
  - (c) he intends to fly, or is reckless as to whether he flies, the aircraft so as to annoy any person, or he is negligent.
- (2) If a person flies an aircraft in contravention of subsection (1) on the orders of another person who is in command of the aircraft, that other person is for the purposes of this section to be treated as flying the aircraft.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in rows 3 to 12 of the Table in section 164.

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#### Commencement Information

- I69** S. 35 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I70** S. 35 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 36 Inaccurate certification

- (1) A person subject to service law commits an offence if he makes or signs a relevant certificate without having ensured its accuracy.
- (2) In this section “relevant certificate” means a certificate (including an electronic certificate) relating to—
  - (a) any matter affecting the seagoing or fighting efficiency of any of Her Majesty's ships;
  - (b) any of Her Majesty's aircraft;
  - (c) any aircraft material; or
  - (d) any equipment of a description prescribed by regulations made by the Defence Council.
- (3) In subsection (2)—
  - “Her Majesty's ships” has the meaning given by section 31;
  - “Her Majesty's aircraft” means all aircraft belonging to or used for the purposes of any of Her Majesty's forces;
  - “aircraft material” has the meaning given by section 33.
- (4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

- I71** S. 36 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I72** S. 36 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 37 Prize offences by officer in command of ship or aircraft

- (1) A person subject to service law who, while in command of any of Her Majesty's ships or aircraft, takes any ship or aircraft as prize commits an offence if he unlawfully fails to ensure that all the ship papers or aircraft papers found on board are sent to a prize court of competent jurisdiction.
- (2) A person subject to service law who, while in command of any of Her Majesty's ships or aircraft, takes any ship, aircraft or goods as prize commits an offence if he unlawfully fails to ensure that—
  - (a) the ship is brought to a convenient port for adjudication;
  - (b) the aircraft is brought to a convenient airfield for adjudication; or
  - (c) the goods are brought to a convenient port or airfield for adjudication.

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(3) In this section—

“Her Majesty's ships” and “Her Majesty's aircraft” have the meanings given (respectively) by sections 31 and 36;

“prize court” means a prize court within the meaning of the Naval Prize Act 1864 (c. 25);

“ship papers” and “aircraft papers” have the meanings given by section 2 of that Act.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

**I73** S. 37 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I74** S. 37 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 38 Other prize offences

(1) A person subject to service law commits an offence if—

- (a) he ill-treats a person who is on board a ship or aircraft when it is taken as prize; or
- (b) he unlawfully takes anything in the possession of such a person.

(2) A person subject to service law commits an offence if he unloads, unpacks or otherwise interferes with any goods that are on board a ship or aircraft which has been taken as prize, unless—

- (a) the goods have been adjudged by a prize court (within the meaning of the Naval Prize Act 1864 (c. 25)) to be lawful prize; or
- (b) the goods are removed for safe keeping or for necessary use by any of Her Majesty's forces or any force co-operating with them.

(3) A person subject to service law commits an offence if, without lawful excuse, he unloads, unpacks or otherwise interferes with any goods that are on board a ship or aircraft that has been detained in exercise of a belligerent right or under an enactment.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

#### Commencement Information

**I75** S. 38 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I76** S. 38 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Attempts, [F<sup>3</sup>encouragement and assistance], and aiding and abetting*

**Textual Amendments**

- F3** Words in s. 39 cross-heading substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 5 para. 10](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504, art. 2\(a\)](#)

**39 Attempts**

- (1) A person subject to service law commits an offence if he attempts to commit an offence to which this subsection applies.
- (2) Subsection (1) applies to any service offence except—
  - (a) an offence committed by virtue of section 41 (aiding and abetting);
  - (b) an offence under this section or section 42.
- (3) A civilian subject to service discipline commits an offence if he attempts to commit an offence to which this subsection applies.
- (4) Subsection (3) applies to—
  - (a) an offence under section 4, 13, 27, 28(2), 29, 107 or 306 of this Act or under section 18 or 20 of the Armed Forces Act 1991 (c. 62); and
  - (b) an offence under section 40 of [F<sup>4</sup>encouraging or assisting the commission of] an offence mentioned in paragraph (a).
- (5) For the purposes of this section a person attempts to commit an offence if, with intent to commit the offence, he does an act which is more than merely preparatory to the commission of the offence.
- (6) For those purposes, a person may attempt to commit an offence even though the facts are such that the commission of the offence is impossible.
- (7) Where—
  - (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence, but
  - (b) if the facts of the case had been as he believed them to be his intention would be so regarded,
 then for the purposes of this section he shall be regarded as having had an intent to commit that offence.
- (8) Where in proceedings for an offence under this section there is evidence sufficient in law to support a finding that the defendant did an act falling within subsection (5), the question whether his act fell within that subsection is a question of fact.
- (9) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of the offence attempted.

**Textual Amendments**

- F4** Words in s. 39(4)(b) substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 5 para. 8](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504, art. 2\(a\)](#)



*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I77** S. 39 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I78** S. 39 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### [<sup>F5</sup>40 Encouraging and assisting

- (1) A person subject to service law commits an offence if he encourages or assists the commission of a service offence (other than an offence under section 42).
- (2) A civilian subject to service discipline commits an offence if he encourages or assists the commission of an offence mentioned in section 39(4).
- (3) Reference in this section to encouraging or assisting the commission of an offence is to the doing of an act that would have constituted an offence under Part 2 of the Serious Crime Act 2007 if the offence encouraged or assisted had been an offence under the law of England and Wales.
- (4) In determining whether an act would have constituted an offence under that Part, section 49(4) of that Act has effect as if for “offences under this Part and listed offences” it read “offences under sections 39 and 40 of the Armed Forces Act 2006”.
- (5) Any requirement in that Part to specify matters in an indictment applies for the purposes of this section as it applies for the purposes of that Part, but with references to the indictment being read as references to the charge sheet.
- (6) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of—
  - (a) the service offence encouraged or assisted; or
  - (b) if convicted of the offence under this section by reference to more than one such service offence, any one of those service offences.]

#### Textual Amendments

- F5** S. 40 substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 5 para. 9](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), [art. 2\(a\)](#)

#### Commencement Information

- I79** S. 40 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I80** S. 40 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 41 Aiding, abetting, counselling or procuring

- (1) Where a person subject to service law aids, abets, counsels or procures the commission by another person of an offence to which this subsection applies, he commits that offence.
- (2) Subsection (1) applies to any service offence except an offence under section 42.
- (3) A person who by virtue of subsection (1) commits an offence is liable to be charged, tried (including dealt with at a summary hearing) and punished as a principal offender.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Where a civilian subject to service discipline aids, abets, counsels or procures the commission by another person of an offence mentioned in section 39(4), he commits that offence and is liable to be charged, tried and punished as a principal offender.

#### Commencement Information

- I81** S. 41 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I82** S. 41 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Criminal conduct*

#### **42 Criminal conduct**

- (1) A person subject to service law, or a civilian subject to service discipline, commits an offence under this section if he does any act that—
- is punishable by the law of England and Wales; or
  - if done in England or Wales, would be so punishable.
- (2) A person may be charged with an offence under this section even if he could on the same facts be charged with a different service offence.
- (3) A person guilty of an offence under this section is liable to—
- if the corresponding offence under the law of England and Wales is under that law an offence punishable with imprisonment, any punishment mentioned in the Table in section 164;
  - otherwise, any punishment mentioned in rows 5 to 12 of that Table.
- (4) Any sentence of imprisonment or fine imposed in respect of an offence under this section must not exceed—
- if the corresponding offence under the law of England and Wales is a summary offence, the maximum term of imprisonment or fine that could be imposed by a magistrates' court on summary conviction;
  - if that corresponding offence is an indictable offence, the maximum sentence of imprisonment or fine that could be imposed by the Crown Court on conviction on indictment.
- (5) In subsection (4) “a summary offence” and “an indictable offence” mean, respectively, a summary offence under the law of England and Wales and an indictable offence under that law.
- (6) In this section and sections 45 to 49 “act” includes an omission and references to the doing of an act are to be read accordingly.
- (7) In subsections (1) and (8) and sections 45 to 49 “punishable” means punishable with a criminal penalty.
- (8) In this Act “the corresponding offence under the law of England and Wales”, in relation to an offence under this section, means—
- the act constituting the offence under this section; or
  - if that act is not punishable by the law of England and Wales, the equivalent act done in England or Wales.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I83** S. 42 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I84** S. 42 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 43 Attempting criminal conduct

- (1) Subsection (2) applies for the purpose of determining whether an attempt is an offence under section 42.
- (2) For that purpose section 1(4) of the Criminal Attempts Act 1981 (c. 47) (offences that it is an offence to attempt) has effect as if for the words from “offence which” to “other than” there were substituted “offence under section 42 of the Armed Forces Act 2006 consisting of an act punishable by the law of England and Wales as an indictable offence or an act that, if done in England or Wales, would be so punishable by that law; but “indictable offence” here does not include”.
- (3) Section 42(6) applies for the purposes of section 1(4) of the Criminal Attempts Act 1981 as modified by this section.

#### Commencement Information

- I85** S. 43 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I86** S. 43 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 44 Trial of section 42 offence of attempt

- (1) Where, in proceedings for a section 42 offence of attempt, there is evidence sufficient in law to support a finding that the defendant did an act falling within subsection (1) of section 1 of the Criminal Attempts Act 1981, the question whether his act fell within that subsection is a question of fact.
- (2) In this section “a section 42 offence of attempt” means an offence under section 42 consisting of an act that is, or that would be if done in England or Wales, an offence under section 1(1) of the Criminal Attempts Act 1981 (c. 47).
- (3) References in subsections (1) and (2) to section 1(1) of the Criminal Attempts Act 1981 are to that provision as it has effect by virtue of section 43 above.

#### Commencement Information

- I87** S. 44 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I88** S. 44 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 45 Conspiring to commit criminal conduct

- (1) For the purpose of determining whether an agreement that a course of conduct be pursued is an offence under section 42—

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- (a) sections 1(1) and 2 of the Criminal Law Act 1977 (c. 45) (conspiracy) have effect as if any reference to an offence included a reference to an act that, if done in England or Wales, would be punishable by the law of England and Wales; and
- (b) section 1(2) of that Act has effect as if it read—

“(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of it, a person is nevertheless not guilty by virtue of subsection (1) above of conspiracy to commit—

- (a) that offence, or
- (b) an act that would amount to that offence if done in England or Wales,

unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence, or the act, is to take place.”

- (2) Section 42(6) applies for the purposes of section 1(2) of the Criminal Law Act 1977 as substituted by this section.

#### Commencement Information

- 189** S. 45 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- 190** S. 45 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### [<sup>F6</sup>46 Encouraging or assisting criminal conduct

- (1) Subsection (2) applies if a person subject to service law, or a civilian subject to service discipline, encourages or assists the doing of an act (or one or more of a number of acts) that, if done in England or Wales, would be punishable by the law of England and Wales.
- (2) Regardless of where that act (or those acts) might be done and of his state of mind with respect to that question, his encouragement or assistance shall be treated for the purposes of section 42(1) as an act that is punishable by the law of England and Wales (so far as it is not such an act in any event).
- (3) Reference in this section to encouraging or assisting is to an act that would constitute an offence under Part 2 of the Serious Crime Act 2007 disregarding any provision in that Part about the place where the act (or acts) being encouraged or assisted might be done or the accused's state of mind with respect to that question.]

#### Textual Amendments

- F6** S. 46 substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 5 para. 11](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), [art. 2\(a\)](#)

#### Commencement Information

- 191** S. 46 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I92** S. 46 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **47 Aiding, abetting, counselling or procuring criminal conduct**

- (1) Subsection (2) applies if—
  - (a) any person (“A”) does an act that is punishable by the law of England and Wales or would be so punishable if done in England or Wales; and
  - (b) a person subject to service law, or a civilian subject to service discipline, aids, abets, counsels or procures A's doing of that act.
- (2) Regardless of where the act aided, abetted, counselled or procured was done, the aiding, abetting, counselling or procuring shall be treated for the purposes of section 42(1) as an act that is punishable by the law of England and Wales.
- (3) For the purpose of determining whether an attempt is an act that falls within subsection (1)(a) above, section 1(4) of the Criminal Attempts Act 1981 (c. 47) has effect with the modification made by section 43.

### **Commencement Information**

- I93** S. 47 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I94** S. 47 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **48 Provision supplementary to sections 43 to 47**

- (1) This section applies where—
  - (a) an attempt, agreement or [<sup>F7</sup>encouragement or assistance], or a person's aiding, abetting, counselling or procuring, is an offence under section 42 by reason of section 43, 45, 46 or 47; and
  - (b) the act to which it relates (“the contemplated act”) is not an act that is (or that if done would have been) punishable by the law of England and Wales.
- (2) For the following purposes it shall be assumed that the contemplated act amounted to the offence under the law of England and Wales that it would have amounted to if it had been the equivalent act in England or Wales.
- (3) Those purposes are—
  - (a) the purpose of determining what punishment may be imposed for the offence under section 42;
  - (b) the purpose of determining for the purposes of any of the following provisions of this Act whether the act constituting the offence under section 42, or the equivalent act done in England or Wales, is or would be—
    - (i) an offence under the law of England and Wales;
    - (ii) any particular such offence;
    - (iii) such an offence of any particular description.

### **Textual Amendments**

- F7** Words in s. 48(1)(a) substituted (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 5 para. 12](#) (with [Sch. 13 para. 5](#)); [S.I. 2008/2504](#), [art. 2\(a\)](#)

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

- C7** S. 48 applied (with modifications) by 2003 c. 44, Sch. 15A para. 52(2) (as inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 13(2), 153(7), [Sch. 5](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 4 (with [Sch. 2 para. 2](#)))
- C8** S. 48 applied (with modifications) by 2003 c. 44, s. 233(2) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 218](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C9** S. 48 applied (with modifications) by 2000 c. 6, s. 114(3) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 166](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C10** S. 48 applied (with modifications) by 2000 c. 43, s. 27(3) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 179\(3\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C11** S. 48 applied (with modifications) by 1992 c. 34, s. 6(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 127\(3\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C12** S. 48 applied (with modifications) by 2003 c. 42, Sch. 5 para. 172A(2) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 213](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C13** S. 48 applied (with modifications) by 2003 c. 42, Sch. 3 para. 93A(3) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 212\(3\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C14** S. 48 applied (with modifications) by 1982 c. 48, s. 32(2A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 94\(4\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C15** S. 48 applied (3.8.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 98(5), 153(7) (with [Sch. 27 para. 32](#)); S.I. 2009/1842, art. 2(a)
- C16** S. 48 applied (with modifications) by 1991 c. 53, s. 33(1D) (as inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 26(2), 153(7) (with [Sch. 27 paras. 89](#)); S.I. 2009/2606, art. 3(b))
- C17** S. 48 applied (with modifications) by 2003 c. 44, s. 255A(10) (as inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 29(2), 153(7) (with [Sch. 27 para. 11](#)); S.I. 2009/2606, art. 3(c))

#### **Commencement Information**

- I95** S. 48 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059)
- I96** S. 48 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

## **49 Air Navigation Order offences**

- (1) If a person subject to service law, or a civilian subject to service discipline, does in or in relation to a military aircraft any act that if done in or in relation to a civil aircraft

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would amount to a prescribed Air Navigation Order offence, the act shall be treated for the purposes of section 42(1) as punishable by the law of England and Wales.

- (2) Where an act is an offence under section 42 by reason of subsection (1) above—
- (a) section 42(8)(b) does not apply; and
  - (b) it shall be assumed for the following purposes that the act amounted to the offence under the law of England and Wales that it would have amounted to if it had been done in or in relation to a civil aircraft.
- (3) Those purposes are—
- (a) the purpose of determining what punishment may be imposed for the offence under section 42;
  - (b) the purpose of determining for the purposes of any of the following provisions of this Act whether the act constituting the offence under section 42 is—
    - (i) an offence under the law of England and Wales;
    - (ii) any particular such offence;
    - (iii) such an offence of any particular description.

- (4) In this section—

“military aircraft” has the meaning given by section 92 of the Civil Aviation Act 1982 (c. 16);

“civil aircraft” means an aircraft that is registered in the United Kingdom and is not a military aircraft;

“Air Navigation Order offence” means an offence under an Order in Council made under section 60 of the Civil Aviation Act 1982 (whenever made, and whether or not also made under any other enactment);

“prescribed” means prescribed by an order made by the Secretary of State for the purposes of this section.

#### **Commencement Information**

**197** S. 49 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**198** S. 49 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **PART 2**

### JURISDICTION AND TIME LIMITS

#### **CHAPTER 1**

#### JURISDICTION

#### *Court Martial*

### **50 Jurisdiction of the Court Martial**

- (1) The Court Martial has jurisdiction to try any service offence.

*Status: Point in time view as at 02/12/2019.*

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- (2) In this Act “service offence” means—
- (a) any offence under Part 1;
  - [<sup>F8</sup>(aa) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);]
  - (b) an offence under section 107 (breach of requirement imposed on release from custody);
  - (c) an offence under section 229 (breach of service restraining order);
  - (d) an offence under section 266 (failure to comply with financial statement order);
  - [<sup>F9</sup>(e) an offence under section 305 (random drug testing);]
  - (f) any offence under regulations under section 328 (false answer during enlistment in a regular force) or section 343 (service inquiries) that the regulations provide is a service offence;
  - [<sup>F10</sup>(fa) an offence under paragraph 2, 3 or 4 of Schedule 2A (offences committed by a lay member of the Court Martial);
  - (fb) an offence under paragraph 5 of that Schedule (disclosing information about members' deliberations etc) committed by a person described in subparagraph (2) of that paragraph;]
  - (g) an offence under section 18 or 20 of the Armed Forces Act 1991 (c. 62) (orders for the protection of children);
  - (h) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996 (c. 14) (reserve forces offences); or
  - (i) an offence under paragraph 5(1) of Schedule 1 to that Act (false answer during enlistment in a reserve force) committed by a person within paragraph 5(3) of that Schedule.

#### Textual Amendments

- F8** S. 50(2)(aa) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 3\(2\)](#); [S.I. 2013/2501](#), art. 3(d)
- F9** S. 50(2)(e) substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 3\(4\)](#); [S.I. 2013/2501](#), art. 3(d)
- F10** S. 50(2)(fa)(fb) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 14 para. 5](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 80](#)

#### Commencement Information

- I99** S. 50 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I100** S. 50 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Service Civilian Court*

## 51 Jurisdiction of the Service Civilian Court

- (1) The Service Civilian Court has jurisdiction to try any service offence committed outside the British Islands by a civilian, except an offence within subsection (3) or an offence in relation to which subsection (6) applies.



*Status: Point in time view as at 02/12/2019.*

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- (2) For the purposes of subsection (1) an offence is committed by a civilian if it is committed by a person who, at the time when it is committed, is a civilian subject to service discipline.
- (3) The offences within this subsection are—
- (a) an indictable-only offence under section 42;
  - (b) an offence under section 266 committed in respect of a financial statement order made by a court other than the Service Civilian Court;
  - (c) any service offence under regulations under section 328 or 343;
  - [<sup>F11</sup>(ca) an offence under paragraph 2, 3, 4 or 5 of Schedule 2A (offences relating to members of the Court Martial);]
  - (d) an offence within section 50(2)(h) or (i) (Reserve Forces Act offences).
- (4) For the purposes of subsection (3)(a) an offence under section 42 is “indictable-only” if the corresponding offence under the law of England and Wales is under that law an offence which, if committed by an adult, is triable only on indictment; but this is subject to subsection (5).
- (5) Where the defendant is aged under 18 at the time a decision under section 279 is made, an offence under section 42 is “indictable-only” for the purposes of subsection (3)(a) above if (and only if)—
- (a) the corresponding offence under the law of England and Wales is murder, manslaughter or an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) [<sup>F12</sup>of causing or allowing the death of a child or vulnerable adult]; or
  - (b) section 227 (firearms offences) would apply if the accused were convicted by the Court Martial of the offence under section 42.
- (6) This subsection applies in relation to an offence if the defendant is for the time being—
- (a) a member of the regular or reserve forces; or
  - (b) liable to recall.
- (7) For the purposes of subsection (6) a person is “liable to recall” if—
- (a) under section 65(1) of the Reserve Forces Act 1996 (c. 14) he is liable to be recalled for service; or
  - (b) he is liable to be recalled as mentioned in section 35(1) of the Reserve Forces Act 1980 (c. 9).

#### Textual Amendments

**F11** S. 51(3)(ca) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 14 para. 6](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 80](#)

**F12** Words in s. 51(5)(a) substituted (2.7.2012) by [Domestic Violence, Crime and Victims \(Amendment\) Act 2012 \(c. 4\)](#), s. 4(2), [Sch. para. 11](#); [S.I. 2012/1432](#), art. 2

#### Commencement Information

**I101** S. 51 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I102** S. 51 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## *Commanding officers*

### **52 Charges capable of being heard summarily**

- (1) A charge against a person (“the accused”) in respect of an offence is capable of being heard summarily if (and only if) conditions A to C are met.
- (2) Condition A is that the offence is one that may be dealt with at a summary hearing (see section 53).
- (3) Condition B is that the accused is—
  - (a) an officer of or below the rank of commander, lieutenant-colonel or wing commander; or
  - (b) a person of or below the rank or rate of warrant officer.
- (4) Condition C is (subject to subsections (5) and (6)) that the accused is—
  - (a) subject to service law,
  - (b) a member of a volunteer reserve force, or
  - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment,
 from the time the offence is committed to the end of the summary hearing of the charge.
- (5) If the offence is one under section 96(1) of the Reserve Forces Act 1996 (c. 14) committed by virtue of section 96(2) of that Act, condition C is that the accused is—
  - (a) liable to recall, or
  - (b) a member of the regular forces,
 from the time the offence is committed to the end of the summary hearing of the charge.
- (6) If the offence is any other Reserve Forces Act offence, condition C is that the accused is a member of a reserve force from the time the offence is committed to the end of the summary hearing of the charge.
- (7) For the purposes of this section—
  - (a) a person is “liable to recall” if—
    - (i) under section 65(1) of the Reserve Forces Act 1996 he is liable to be recalled for service; or
    - (ii) he is liable to be recalled as mentioned in section 35(1) of the Reserve Forces Act 1980 (c. 9);
  - (b) “Reserve Forces Act offence” means an offence within section 53(1)(k).
- (8) Where at any time it falls to a person to determine for the purposes of any provision of this Act whether a charge is or would be capable of being heard summarily, the references in subsections (4) to (6) to the end of the summary hearing of the charge are to be read as references to that time.

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

**C18** S. 52 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, 6 (with reg. 2(c))

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#### Commencement Information

- I103** S. 52 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I104** S. 52 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 53 Offences that may be dealt with at a summary hearing

- (1) The following service offences may be dealt with at a summary hearing—
- (a) an offence under section 4(3);
  - (b) an offence under any of sections 9 to 15;
  - (c) an offence under section 16(1)(a), or an offence under section 16(1)(c) committed by omission;
  - (d) an offence under any of sections 17 to 29;
  - (e) an offence under section 30(1) of negligently doing an act that results in a person's escape, or an offence under section 30(2);
  - (f) an offence under any of sections 34 to 36;
  - (g) an offence under section 42 (criminal conduct) within subsection (3);
  - <sup>[F13]</sup>(ga) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);]
  - (h) an offence under section 107;
  - <sup>[F14]</sup>(i) an offence under section 305 (random drug testing);]
  - (j) any service offence under regulations under section 328 or 343;
  - (k) an offence under section 96 or 97 of the Reserve Forces Act 1996 of absence without leave.
- (2) Any reference in a paragraph of subsection (1), except paragraph (g), to an offence includes an offence under section 39 of attempting to commit that offence.
- (3) An offence under section 42 is within this subsection if the corresponding offence under the law of England and Wales is—
- (a) an offence listed in either Part of Schedule 1 (criminal conduct offences that may be dealt with at a summary hearing); or
  - (b) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) of attempting to commit an (indictable) offence so listed.
- (4) The Secretary of State may by order amend Schedule 1.

#### Textual Amendments

- F13** S. 53(1)(ga) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 4\(2\)](#); [S.I. 2013/2501](#), [art. 3\(d\)](#)
- F14** S. 53(1)(i) substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 4\(3\)](#); [S.I. 2013/2501](#), [art. 3\(d\)](#)

#### Commencement Information

- I105** S. 53 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I106** S. 53 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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#### **54 Charges which may be heard summarily only with permission or by senior officer**

- (1) An officer may not hear summarily a charge in respect of an offence within subsection (2) unless—
  - (a) he has obtained the permission of higher authority; or
  - (b) he is of or above the rank of rear admiral, major-general or air vice-marshal.
- (2) An offence is within this subsection if it is an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
  - (a) an offence listed in Part 2 of Schedule 1; or
  - (b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an (indictable) offence so listed.

##### **Commencement Information**

**I107** S. 54 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I108** S. 54 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **CHAPTER 2**

### TIME LIMITS FOR COMMENCING PROCEEDINGS

#### *Time limits for offences other than Reserve Forces Act offences*

#### **55 Time limit for charging former member of a regular or reserve force**

- (1) This section applies where a person ceases to be a member of a regular or reserve force.
- (2) The person may not, after the end of six months beginning with the date he ceased to be a member of that force, be charged with a service offence committed while he was a member.
- (3) Subsection (2) applies even if the person rejoins the force within those six months.

##### **Commencement Information**

**I109** S. 55 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I110** S. 55 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **56 Time limit for charging certain members or former members of ex-regular reserve forces**

- (1) This section applies where—
  - (a) a person, while a member of an ex-regular reserve force, has been subject to an additional duties commitment; and
  - (b) the person ceases to be subject to the commitment.

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- (2) The person may not, after the end of six months beginning with the date he ceased to be subject to the commitment, be charged with a service offence committed while he was so subject.

#### Commencement Information

- I111** S. 56 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I112** S. 56 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 57 Time limit for charging person formerly subject to service law

- (1) This section applies where a person ceases to be subject to service law.
- (2) The person may not, after the end of six months beginning with the date he ceased to be subject to service law, be charged with a service offence committed while he was so subject.
- (3) Subsection (2) applies even if the person (again) becomes subject to service law within those six months.
- (4) Subsection (2) does not apply in relation to an offence committed by a person when he was—
  - (a) a member of a volunteer reserve force; or
  - (b) a member of an ex-regular reserve force who was subject to an additional duties commitment.

#### Commencement Information

- I113** S. 57 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I114** S. 57 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 58 Time limit for charging civilian formerly subject to service discipline

- (1) Subsection (2) applies in any case where a person ceases to be a civilian subject to service discipline, except a case where at the time he does so he becomes subject to service law.
- (2) Where this subsection applies—
  - (a) the person may not, after the end of six months beginning with the date he ceased to be a civilian subject to service discipline, be charged with a service offence committed while he was such a civilian; and
  - (b) this applies even if he (again) becomes such a civilian within those six months.
- (3) Where a person ceases to be a civilian subject to service discipline and at the time he does so becomes subject to service law, section 57 has effect as if—
  - (a) the reference in subsection (2) to a service offence committed while the person was subject to service law included a service offence committed during the relevant period; and

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- (b) the reference in subsection (3) to becoming subject to service law included becoming a civilian subject to service discipline.
- (4) In subsection (3)(a) above “the relevant period” means the period while the person was a civilian subject to service discipline that ended with his becoming subject to service law.
- (5) Subsection (6) applies to a person—
- (a) who ceases to be a civilian subject to service discipline by reason only of—
- (i) leaving an area designated for the purposes of Schedule 15;
- [<sup>F15</sup>(ia) leaving a country in which he fell within paragraph 5 of that Schedule;]
- (ii) entering the British Islands; or
- (iii) leaving an area which a designation under paragraph 7 of Schedule 15 specifies as an area that he must be in for the designation to apply to him; and
- (b) who is residing or staying in a qualifying place at the time he does so.
- (6) As regards that time, and for so long after that time as he continues—
- (a) to reside or stay in a qualifying place, and
- (b) to be a person who is not a civilian subject to service discipline but who would be such a civilian if he were in a qualifying place,
- he is to be treated for the purposes of this section (apart from subsection (5)) as being such a civilian.
- (7) In subsections (5) and (6) “in a qualifying place” means—
- (a) in relation to a person who falls within subsection (5)(a) by reason of leaving an area designated for the purposes of Schedule 15, in any such area;
- [<sup>F16</sup>(aa) in relation to a person who falls within subsection (5)(a) by reason of leaving a country in which he fell within paragraph 5 of that Schedule, in that country or any other country in which he falls within that paragraph;]
- (b) in relation to a person who falls within subsection (5)(a) by reason of entering the British Islands, outside the British Islands;
- (c) in relation to a person who falls within subsection (5)(a) by reason of leaving an area mentioned in subsection (5)(a)(iii), in that area.
- [<sup>F17</sup>(8) In subsections (5)(a)(ia) and (7)(aa) “country” is to be read in accordance with paragraph 14 of Schedule 15.]

#### Textual Amendments

- F15** S. 58(5)(a)(ia) inserted (14.12.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 5\(a\)](#); [S.I. 2012/2921](#), art. 3(b)
- F16** S. 58(7)(aa) inserted (14.12.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 5\(b\)](#); [S.I. 2012/2921](#), art. 3(b)
- F17** S. 58(8) inserted (14.12.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 5\(c\)](#); [S.I. 2012/2921](#), art. 3(b)

#### Commencement Information

- I115** S. 58 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I116** S. 58 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **59 Time limit for charging offence under section 107**

- (1) A person may not be charged with an offence under section 107 (breach of requirement imposed on release from custody) after the end of whichever of the following periods ends last—
  - (a) six months beginning with the date of commission of the offence;
  - (b) two months beginning with the date the person is apprehended.
- (2) Where subsection (1) prohibits the charging of a person with an offence, the power under section 123(2)(c) or 125(2)(c) may not be exercised so as to charge that person with that offence.

### **Commencement Information**

**I117** S. 59 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I118** S. 59 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **60 Time limit for charging offence under section 266**

A person may not be charged with an offence under section 266 (failure to comply with financial statement order) after the end of whichever of the following periods ends first—

- (a) two years beginning with the date of commission of the offence;
- (b) six months beginning with the date the offence becomes known to a member of the Service Prosecuting Authority.

### **Commencement Information**

**I119** S. 60 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I120** S. 60 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **61 Sections 55 to 60: exceptions and interpretation**

- (1) References in sections 55 to 60 and this section to charging (except the second such reference in section 59(2)) are to charging under section 120 or 122.
- (2) Where any of sections 55 to 58 prohibits the charging of a person with an offence, the person may be charged with the offence if the Attorney General consents.
- (3) Each of sections 55 to 60 is without prejudice to the rest of those sections.
- (4) Nothing in those sections applies in relation to a Reserve Forces Act offence (as defined by section 62).

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#### **Commencement Information**

- I121** S. 61 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I122** S. 61 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Time limit for Reserve Forces Act offences*

## **62 Time limit for charging Reserve Forces Act offences**

- (1) A person may not be charged with a Reserve Forces Act offence after the end of whichever of the following periods ends last—
- (a) six months beginning with the date of commission of the offence;
  - (b) two months beginning with the date the offence becomes known to the person's commanding officer;
  - (c) two months beginning with the date the person is apprehended;
  - (d) if the offence was committed when the person was a relevant reservist, six months beginning with the date he ceases to be a relevant reservist.
- (2) If—
- (a) the offence was committed when the person was a relevant reservist, and
  - (b) he ceases to be a relevant reservist after committing it,
- the period in subsection (1)(d) is not extended by his (again) becoming a relevant reservist within the six months beginning with the date he so ceased.
- (3) In this section—
- (a) the reference in subsection (1) to charging is to charging under section 120 or 122;
  - (b) “Reserve Forces Act offence” means an offence within section 50(2)(h) or (i);
  - (c) “relevant reservist” means—
    - (i) a member of a volunteer reserve force; or
    - (ii) a member of an ex-regular reserve force who is in full-time service or subject to an additional duties commitment;
  - (d) “in full-time service” means in such service under a commitment entered into under section 24 of the Reserve Forces Act 1996 (c. 14).
- (4) Where subsection (1) prohibits the charging (as defined by subsection (3)(a)) of a person with an offence, the power under section 123(2)(c) or 125(2)(c) may not be exercised so as to charge that person with that offence.

#### **Commencement Information**

- I123** S. 62 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I124** S. 62 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)



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## CHAPTER 3

### DOUBLE JEOPARDY

#### 63 Service proceedings barring subsequent service proceedings

- (1) This section applies where a person—
  - (a) has been convicted or acquitted of a service offence; or
  - (b) has had a service offence taken into consideration when being sentenced;and in this section “offence A” means the offence mentioned in paragraph (a) or (b).
- (2) The Court Martial may not try that person for an offence (“offence B”) if—
  - (a) offence B is the same offence in law as offence A, or subsection (3) applies; and
  - (b) the alleged facts on which the charge in respect of offence B is based are the same, or substantially the same, as those on which the charge in respect of offence A was based.
- (3) This subsection applies if—
  - (a) the person was convicted of offence A, or offence A was taken into consideration, and offence B is an offence all of whose elements are elements of offence A;
  - (b) the person was acquitted of offence A and offence B is an offence whose elements include all the elements of offence A; or
  - (c) the person was convicted or acquitted of offence A by the Court Martial or the Service Civilian Court and offence B is an offence of which under section 161 (alternative offences) he could have been convicted on acquittal of offence A.
- (4) Where offence A is an offence taken into consideration which was not charged, the reference in subsection (2)(b) to the facts on which the charge in respect of offence A was based is to be read as a reference to the facts on which a charge in respect of offence A would have been based.
- (5) Where by reason of this section a person cannot be tried by the Court Martial for an offence—
  - (a) the Service Civilian Court may not try him for that offence; and
  - (b) a charge against him in respect of that offence may not be heard summarily by an officer.

#### Commencement Information

**I125** S. 63 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I126** S. 63 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 64 Service proceedings barring subsequent civilian proceedings

- (1) This section applies where a person—
  - (a) has been convicted or acquitted of an offence under section 42 (criminal conduct); or
  - (b) has had such an offence taken into consideration when being sentenced.

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*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) A civilian court in a relevant territory may not try that person for any offence for which, under the law of that territory, it would be debarred from trying him if he had been convicted or (as the case may be) acquitted by a court in England and Wales of the relevant offence.
- (3) “The relevant offence” means the offence under the law of England and Wales which the act (or alleged act) constituting the offence under section 42 amounted to.
- (4) Where that act (or alleged act) would amount to an offence under the law of England and Wales if it had been done in England or Wales, for the purposes of subsection (3) it shall be assumed to amount to that offence.
- (5) In this section “relevant territory” means—
  - (a) England and Wales;
  - (b) Scotland;
  - (c) Northern Ireland; or
  - (d) the Isle of Man.
- (6) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

#### **Commencement Information**

- I127** S. 64 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I128** S. 64 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **65 Sections 63 and 64: supplementary**

- (1) If a direction under section 127(1) or (2) has been made in relation to an offence, the person to whom the direction relates shall be treated—
  - (a) for the purposes of section 63, and
  - (b) in the case of a direction under section 127(2), for the purposes of section 64, as if he had been acquitted of the offence.
- (2) The reference in subsection (1)(a) above to section 63 does not include subsection (3) (c) of that section.
- (3) For the purposes of sections 63 and 64 a person shall be taken not to have had an offence taken into consideration when being sentenced if the sentence has been quashed.

#### **Commencement Information**

- I129** S. 65 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I130** S. 65 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 66 Civilian proceedings barring subsequent service proceedings

- (1) The Court Martial may not try a person for an offence under section 42 (criminal conduct) if the act constituting the offence amounts to an offence under the law of England and Wales for which a civilian court in England and Wales would on the ground of *autrefois acquit* or *autrefois convict* be debarred from trying him.
- (2) The Court Martial may not try a person for a non-criminal service offence (that is, a service offence not under section 42) if—
  - (a) any act constituting an element of the offence amounts to an offence under the law of England and Wales (“offence X”); and
  - (b) a civilian court in England and Wales would on the ground of *autrefois acquit* be debarred from trying the person for offence X.
- (3) Where an act constituting—
  - (a) an offence under section 42, or
  - (b) an element of a non-criminal service offence,would amount to an offence under the law of England and Wales if it had been done in England or Wales, it shall be assumed for the purposes of subsection (1) or (2) to amount to that offence.
- (4) Where a civilian court (anywhere) has taken an offence into consideration in sentencing a person and the sentence has not been quashed, the person shall be treated for the purposes of subsection (1) as having been convicted by that court of that offence.
- (5) Where by reason of this section a person cannot be tried by the Court Martial for an offence—
  - (a) the Service Civilian Court may not try him for that offence; and
  - (b) a charge against him in respect of that offence may not be heard summarily by an officer.
- (6) This section does not apply in any case where the question whether a person can be tried for an offence (or dealt with summarily for it) is determined by section 63.
- (7) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

### Commencement Information

**I131** S. 66 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I132** S. 66 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## PART 3

### POWERS OF ARREST, SEARCH AND ENTRY

#### CHAPTER 1

#### ARREST ETC

#### *Powers of arrest*

### 67 Power of arrest for service offence

- (1) A person who is reasonably suspected of being engaged in committing, or of having committed, a service offence may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to service law.
- (2) An officer may be arrested under subsection (1)—
  - (a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;
  - (b) by a service policeman; or
  - [<sup>F18</sup>(c) by a person who is lawfully exercising authority on behalf of a provost officer, and who—
    - (i) is an officer; or
    - (ii) is acting on the order of an officer.]
- (3) A person of or below the rank or rate of warrant officer may be arrested under subsection (1)—
  - (a) by an officer;
  - (b) by a warrant officer or non-commissioned officer of superior rank or rate;
  - (c) by a service policeman;
  - (d) by a person who is lawfully exercising authority on behalf of a provost officer; or
  - (e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.
- (4) A civilian subject to service discipline may be arrested under subsection (1)—
  - (a) by an officer;
  - (b) by a service policeman; or
  - (c) by a person who is lawfully exercising authority on behalf of a provost officer.
- (5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.
- (6) The power of arrest conferred on any person by this section may be exercised—
  - (a) personally;
  - (b) by giving orders for the arrest of the person who is to be arrested; or
  - (c) where that person is subject to service law, by ordering him into arrest.

*Status: Point in time view as at 02/12/2019.*

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#### Textual Amendments

**F18** S. 67(2)(c) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 2](#); [S.I. 2012/669](#), art. 4(d)

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

**C19** S. 67 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, [4\(3\)](#) (with reg. 2(c))

#### Commencement Information

**I133** S. 67 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I134** S. 67 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 68 Section 67: supplementary

- (1) In section 67(2)(a) the reference to being engaged in a mutiny is a reference to committing an offence under section 6.
- (2) For the purposes of section 67(3), a person who—
  - (a) is suspected of having committed a service offence while a member of Her Majesty's forces, and
  - (b) is not a member of Her Majesty's forces or a civilian subject to service discipline,is to be treated in relation to the offence as being of the rank or rate which he held when he was last a member of Her Majesty's forces.
- (3) For the purposes of section 67(4), a person who—
  - (a) is suspected of having committed a service offence while a civilian subject to service discipline, and
  - (b) is not a member of Her Majesty's forces or a civilian subject to service discipline,is to be treated in relation to the offence as if he were a civilian subject to service discipline.
- (4) Where a person may be charged (within the meaning of section 61(1)) with an offence only with the consent of the Attorney General (see section 61(2)), section 67(1) has effect in relation to the offence as if for the words from “in accordance with” to the end there were substituted “ by a service policeman ” (and as if section 67(2) to (5) were omitted).

#### Commencement Information

**I135** S. 68 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I136** S. 68 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## 69 Power of arrest in anticipation of commission of service offence

- (1) A service policeman may arrest a person whom he reasonably suspects of being about to commit a service offence.
- (2) Subsection (6) of section 67 applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.
- (3) Where a person is arrested under this section—
  - (a) the arrest must be reported as soon as practicable to his commanding officer; and
  - (b) he may be kept in service custody until such time as a service policeman is satisfied that the risk of his committing the service offence concerned has passed.

### Commencement Information

**I137** S. 69 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I138** S. 69 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Search on arrest*

## 70 Search by service policeman upon arrest

- (1) A service policeman may search an arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) A service policeman may search an arrested person for anything that is subject to search if he has reasonable grounds for believing that the arrested person may have any such thing concealed on him.
- (3) For the purposes of this section a thing is “subject to search” if—
  - (a) the arrested person might use it to assist him to escape from service custody; or
  - (b) in the case of an arrest under section 67 or 69, it might be evidence relating to a service offence.
- (4) References in this section to an arrested person are to a person arrested under section 67, 69, 110, 111 or 303.

### Modifications etc. (not altering text)

**C20** S. 70 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), [arts. 1, 6\(7\)\(a\)](#) (with [art. 3](#))

### Commencement Information

**I139** S. 70 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I140** S. 70 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## 71 Search by other persons upon arrest

- (1) A person (other than a service policeman) who is exercising a power of arrest may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) Subsection (4) (power to search arrested person for things subject to search) applies where—
  - (a) a person (“the arrested person”) is to be or has been arrested by a person other than a service policeman; and
  - (b) the commanding officer of the arrested person has reasonable grounds for believing that it is likely that that person would—
    - (i) escape from service custody, or
    - (ii) conceal, damage, alter or destroy evidence,if a search for things subject to search could not be carried out before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (3).
- (3) That assistance is—
  - (a) the assistance of a service policeman; or
  - (b) in a case where corresponding powers conferred by section 32(2)(a) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.
- (4) Where this subsection applies, the commanding officer of the arrested person may order or authorise the person exercising the power of arrest to search the arrested person, on or after exercising the power, for anything that is subject to search.
- (5) A commanding officer may give an order under subsection (4) only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (6) A person authorised under subsection (4) may exercise the power of search conferred by that subsection only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (7) Section 70(3) (meaning of things “subject to search”) applies for the purposes of this section.
- (8) References in this section to arrest are to arrest under section 67, 110 or 111, and related expressions in this section are to be read accordingly.
- (9) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

### Commencement Information

- I141** S. 71 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I142** S. 71 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 72 Sections 70 and 71: supplementary

- (1) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may search the arrested person only to the extent that is reasonably required for the purpose of discovering anything that is subject to search (within the meaning of those sections).
- (2) Nothing in section 70 or 71 authorises anyone to require an arrested person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.
- (3) The reference in subsection (2) to headgear does not include headgear worn for religious reasons.
- (4) Any power of search conferred by section 70 or 71 authorises the search of the arrested person's mouth.

### Commencement Information

**I143** S. 72 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I144** S. 72 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 73 Seizure and retention after search upon arrest

- (1) A person exercising the power conferred by section 70(1) or 71(1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.
- (2) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—
  - (a) that the person searched might use it to assist him to escape from service custody; or
  - (b) in the case of an arrest under section 67 or 69, that it is evidence of a service offence or has been obtained in consequence of the commission of a service offence.
- (3) In subsection (2) “item subject to legal privilege” has the meaning given by section 10 of PACE.

### Commencement Information

**I145** S. 73 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I146** S. 73 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 74 Power to make provision conferring power to search premises at which person arrested

The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under section 67, which is equivalent to that made by any of the provisions of section 32 of PACE which relate to



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the power to enter and search premises, subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

**I147** S. 74 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)

**I148** S. 74 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## CHAPTER 2

### STOP AND SEARCH

#### 75 Power of service policeman to stop and search persons, vehicles etc

- (1) A service policeman may, in the circumstances mentioned in subsection (2) and in a place permitted by section 78, search any of the following for stolen or prohibited articles, controlled drugs [<sup>F19</sup>, psychoactive substances] or Her Majesty's stores—
- (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;
  - (b) a service vehicle which is in the charge of any person;
  - (c) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law or a civilian subject to service discipline;
  - (d) anything which is in or on a service vehicle or a vehicle within paragraph (c).
- (2) The circumstances are that the service policeman has reasonable grounds for suspecting—
- (a) that the search will reveal stolen or prohibited articles;
  - (b) that the search will reveal Her Majesty's stores that have been unlawfully obtained;
  - [<sup>F20</sup>(c) in the case of the search of a person, that—
    - (i) the person is in possession of a controlled drug in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971, or
    - (ii) the person is in possession of a psychoactive substance in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Psychoactive Substances Act 2016; or
  - (d) in the case of the search of a vehicle, that—
    - (i) the search will reveal a controlled drug that is in a person's possession in the circumstances mentioned in paragraph (c)(i), or
    - (ii) the search will reveal a psychoactive substance that is in a person's possession in the circumstances mentioned in paragraph (c)(ii).]
- (3) A service policeman may detain for the purposes of a search under subsection (1)—

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- (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;
  - (b) any person in charge of a service vehicle;
  - (c) any service vehicle; and
  - (d) any vehicle within subsection (1)(c).
- (4) A service policeman may seize any article that he discovers in the course of a search under subsection (1) and that he has reasonable grounds for suspecting to be—
- (a) a stolen or prohibited article;
  - (b) evidence of an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971; <sup>F21</sup>...
  - [<sup>F22</sup>(ba) evidence of an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Psychoactive Substances Act 2016; or]
  - (c) any of Her Majesty's stores that have been unlawfully obtained.

#### Textual Amendments

- F19** Words in s. 75(1) inserted (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\), s. 63\(2\), Sch. 5 para. 7\(2\)\(a\)](#); S.I. 2016/553, reg. 2
- F20** S. 75(2)(c)(d) substituted (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\), s. 63\(2\), Sch. 5 para. 7\(2\)\(b\)](#); S.I. 2016/553, reg. 2
- F21** Word in s. 75(4) omitted (26.5.2016) by virtue of [Psychoactive Substances Act 2016 \(c. 2\), s. 63\(2\), Sch. 5 para. 7\(2\)\(c\)](#); S.I. 2016/553, reg. 2
- F22** S. 75(4)(ba) inserted (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\), s. 63\(2\), Sch. 5 para. 7\(2\)\(c\)](#); S.I. 2016/553, reg. 2

#### Commencement Information

- I149** S. 75 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I150** S. 75 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 76 Stop and search by persons other than service policemen

- (1) An officer may order or authorise a person subject to service law (other than a service policeman)—
- (a) to search, in a place permitted by section 78—
    - (i) a person within subsection (2),
    - (ii) a vehicle in the charge of such a person, or
    - (iii) anything which is in or on such a vehicle,
 for stolen or prohibited articles, controlled drugs [<sup>F23</sup>, psychoactive substances] or Her Majesty's stores;
  - (b) to detain such a person or vehicle for the purposes of such a search; and
  - (c) to seize any article that he discovers in the course of such a search and that he has reasonable grounds for suspecting to be an article within section 75(4) (a) to (c);

but this is subject to subsections (3) to (7).

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- (2) A person is within this subsection if he is—
- (a) a person subject to service law whose commanding officer is the officer mentioned in subsection (1);
  - (b) a civilian subject to service discipline whose commanding officer is that officer;
  - (c) a person whom—
    - (i) that officer (in the case of an order under subsection (1)), or
    - (ii) the authorised person (in the case of an authorisation under that subsection),has reasonable grounds for believing to be a person within paragraph (a) or (b).
- (3) An order under subsection (1) may be given only in relation to a particular person or vehicle.
- (4) An officer may give an order under subsection (1) only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the officer).
- (5) A person authorised under subsection (1) may exercise the power of search conferred by virtue of that subsection only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the authorised person).
- (6) An officer may give an order or authorisation under subsection (1) only if he has reasonable grounds for believing that it is likely that—
- (a) an offence under section 42 would be committed, or
  - (b) a person who has committed such an offence would avoid apprehension,
- if the powers conferred by this section could not be exercised before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (7).
- (7) That assistance is—
- (a) the assistance of a service policeman; or
  - (b) in a case where corresponding powers conferred by section 1 of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.

#### Textual Amendments

**F23** Words in s. 76(1)(a) inserted (26.5.2016) by [Psychoactive Substances Act 2016 \(c. 2\)](#), s. 63(2), [Sch. 5 para. 7\(3\)](#); [S.I. 2016/553](#), reg. 2

#### Commencement Information

**I151** S. 76 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I152** S. 76 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 77 Sections 75 and 76: definitions

- (1) Subsections (2) to (6) apply for the purposes of sections 75 and 76.

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- (2) “Controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38).
- (3) “Her Majesty's stores” has the same meaning as in the Public Stores Act 1875 (c. 25).
- (4) “Prohibited article” means—
- (a) an offensive weapon, other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty's forces;
  - (b) an article made or adapted for use in the course of or in connection with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence mentioned in subsection (8); or
  - (c) an article intended by the person having it with him for such use by him or by some other person.
- [<sup>F24</sup>(4A) Psychoactive substance” has the meaning given by section 2(1) of the Psychoactive Substances Act 2016.]
- (5) “Service vehicle” means a vehicle which—
- (a) belongs to any of Her Majesty's forces; or
  - (b) is in use for the purposes of any of those forces.
- (6) “Stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 (c. 60) in the provisions of that Act relating to goods which have been stolen.
- (7) In subsection (4)(a) “offensive weapon” means any article—
- (a) made or adapted for use for causing injury to persons; or
  - (b) intended by the person having it with him for such use by him or by some other person.
- (8) The offences referred to in subsection (4)(b) are—
- (a) an offence under section 1 of the Theft Act 1968 (theft);
  - (b) an offence under section 9 of that Act (burglary);
  - (c) an offence under section 12 of that Act (taking vehicle etc without consent);
  - (d) an offence under section 1 of the Criminal Damage Act 1971 (c. 48) (destroying or damaging property);
  - (e) an offence under section 1 of the Fraud Act 2006 (fraud).
- (9) The reference in subsection (4)(b) to an offence under section 42 includes an act or omission which would constitute such an offence if done or made by a person subject to service law.

#### **Textual Amendments**

**F24** S. 77(4A) inserted (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), s. 63(2), **Sch. 5 para. 7(4)**; S.I. 2016/553, reg. 2

#### **Commencement Information**

**I153** S. 77 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)

**I154** S. 77 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

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## 78 Places in which powers under sections 75 and 76 may be exercised

The powers conferred by sections 75 and 76 may be exercised only in—

- (a) any place to which (at the time of exercise of the power) the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;
- (b) any other place to which people have ready access (at the time of exercise of the power) but which is not a dwelling or service living accommodation; and
- (c) any premises which (at the time of exercise of the power) are permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces but are not service living accommodation.

### Commencement Information

**I155** S. 78 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I156** S. 78 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 79 Sections 75 and 76: limitation on searching persons or vehicles in certain gardens etc

- (1) Subsection (2) applies if a person (“A”) is in a garden or yard, or on other land, occupied with and used for the purposes of—
  - (a) a dwelling; or
  - (b) any service living accommodation within section 96(1)(a).
- (2) A person (“B”) may not by virtue of section 78(a) or (b) search A in the exercise of the power conferred by section 75 or 76 unless B has reasonable grounds for believing—
  - (a) that A does not reside in the dwelling or service living accommodation; and
  - (b) that A is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (3) Subsection (4) applies if a vehicle is in a garden or yard, or on other land, occupied with and used for the purposes of—
  - (a) a dwelling; or
  - (b) any service living accommodation within section 96(1)(a).
- (4) A person may not by virtue of section 78(a) or (b) search the vehicle or anything in or on it in the exercise of the power conferred by section 75 or 76 unless he has reasonable grounds for believing—
  - (a) that the person in charge of the vehicle does not reside in the dwelling or service living accommodation; and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (5) In this section “dwelling” does not include any dwelling which is permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I157** S. 79 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I158** S. 79 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 80 Searches under sections 75 and 76: supplementary

- (1) The time for which a person or vehicle may be detained for the purposes of a search under section 75 or 76 is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.
- (2) Nothing in section 75 or 76 authorises anyone to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.
- (3) The reference in subsection (2) to headgear does not include headgear worn for religious purposes.
- (4) Nothing in this Chapter limits the powers exercisable on any premises if, or to the extent that, the premises are being used for keeping persons in service custody.

#### Commencement Information

- I159** S. 80 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I160** S. 80 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 81 Power to make further provision about searches under sections 75 and 76

The Secretary of State may by order make provision, in relation to the search of persons or vehicles under section 75 or 76, which is equivalent to that made by any provision of—

- (a) section 2(1) to (7) and (9)(b) of PACE (provisions relating to search under section 1 of that Act and other powers), and
  - (b) section 3 of PACE (duty to make records concerning searches),
- subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

- I161** S. 81 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I162** S. 81 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 82 Application of Chapter to ships and aircraft

This Chapter applies to ships and aircraft as it applies to vehicles.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I163** S. 82 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I164** S. 82 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 3

### POWERS OF ENTRY, SEARCH AND SEIZURE

#### *Entry for purposes of obtaining evidence etc*

#### [<sup>F25</sup>83] Power of judge advocate to authorise entry and search

- (1) On an application made by a service policeman, a judge advocate may, if the relevant requirements are met, issue a warrant authorising a service policeman to enter and search—
  - (a) one or more sets of premises specified in the application; or
  - (b) any relevant residential premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified.
- (2) The relevant requirements are met (subject to subsection (3)) if the judge advocate is satisfied that each set of premises specified in the application is relevant residential premises and that there are reasonable grounds for believing—
  - (a) that a relevant offence has been committed;
  - (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is—
    - (i) in the case of a warrant authorising entry and search of specified premises, on those premises;
    - (ii) in the case of a warrant authorising entry and search of any relevant residential premises occupied or controlled by a specified person, on one or more sets of such premises occupied or controlled by that person;
  - (c) that the material would be likely to be admissible in evidence at a trial for the offence;
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
  - (e) that at least one of the conditions specified in subsection (4) applies in relation to each set of premises specified in the application.
- (3) If the application is for a warrant authorising entry and search of any relevant residential premises occupied or controlled by a specified person, the judge advocate must also be satisfied—
  - (a) that, because of the particulars of the offence mentioned in subsection (2)(a), there are reasonable grounds for believing that in order to find the material mentioned in subsection (2)(b) it is necessary to search relevant residential premises that are occupied or controlled by the person in question and are not specified in the application; and

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- (b) that it is not reasonably practicable to specify in the application all the relevant residential premises that the person occupies or controls and that might need to be searched.
- (4) The conditions mentioned in subsection (2)(e) are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) that entry to the premises will not be granted unless a warrant is produced;
  - (d) in the case of service living accommodation within section 96(1)(b) or (c)—
    - (i) that it is not practicable to communicate with the person or (as the case may be) any of the persons for whom the accommodation is provided; or
    - (ii) that there is no such person with whom it is practicable to communicate who will agree to grant access to the accommodation without the production of a warrant;
  - (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.
- (5) A warrant under this section may authorise entry to and search of premises on more than one occasion if, on the application for the warrant, the judge advocate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued.
- (6) If the warrant authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.
- (7) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).]

#### **Textual Amendments**

**F25** S. 83 substituted (14.12.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 7, 32(3)**; [S.I. 2012/2921](#), **art. 3(a)**

#### **Commencement Information**

**I165** S. 83 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I166** S. 83 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **84 Section 83: definitions**

- (1) Subsections (2) to (4) apply for the purposes of section 83.
- (2) “Relevant offence” means any of the following—
- (a) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an indictable offence;
  - (b) a service offence specified for the purposes of this subsection in an order made by the Secretary of State;



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- (c) a service offence whose commission has led to, or is intended or is likely to lead to, any of the consequences mentioned in subsection (5).

[<sup>F26</sup>(2A) In subsection (2)(a), the reference to an “indictable offence” has effect as if it included a reference to low-value shoplifting (as defined in section 22A(3) of the Magistrates' Courts Act 1980).]

- (3) “Relevant residential premises” means—
- (a) service living accommodation; or
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law;
    - (ii) a civilian subject to service discipline; or
    - (iii) a person who is suspected of having committed an offence in relation to which the warrant is sought.
- (4) “Items subject to legal privilege”, “excluded material” and “special procedure material” have the meanings given (respectively) by sections 10, 11 and 14 of PACE, but as if in section 11(2)(b) of PACE “enactment” included any provision of—
- (a) an Act of the Scottish Parliament or Northern Ireland legislation; or
  - (b) an instrument made under such an Act or under Northern Ireland legislation.
- (5) The consequences referred to in subsection (2)(c) are—
- (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any person;
  - (e) substantial financial gain to any person;
  - (f) serious financial loss to any person;
  - (g) the undermining of discipline or morale among members of any of Her Majesty's forces.
- (6) In subsection (5)(d) “injury” includes any disease and any impairment of a person's physical or mental condition.
- (7) For the purposes of subsection (5)(f), loss is serious if (having regard to all the circumstances) it is serious for the person who suffers it.

#### Textual Amendments

**F26** S. 84(2A) inserted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), [ss. 176\(7\), 185\(1\)](#) (with [ss. 8, 21, 33, 42, 58, 75, 93, 176\(8\)](#)); [S.I. 2014/949](#), [art. 3](#), [Sch. para. 17](#)

#### Commencement Information

**I167** S. 84 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I168** S. 84 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 85 Section 83: power to make supplementary provision

The Secretary of State may by order—

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- (a) make provision authorising the use, in connection with applications under section 83 to judge advocates, of live television or telephone links or similar arrangements;
- (b) make provision, in relation to warrants issued under that section or entry and search under such a warrant, which is equivalent to that made by any provision of sections 15 and 16 of PACE (which relate to the issue to constables of warrants to enter and search premises), subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

**I169** S. 85 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I170** S. 85 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 86 Power to make provision as to access to excluded material etc

[<sup>F27</sup>(1) The Secretary of State may by order make provision that enables a service policeman, for the purposes of an investigation of a relevant offence and by making an application to a judge advocate in accordance with the order—

- (a) to obtain access to excluded material or special procedure material on relevant residential premises; or
- (b) to obtain access to material (other than items subject to legal privilege) on premises other than relevant residential premises.

(2) An order under this section (an “enabling order”) may in particular—

- (a) so far as it relates to obtaining access to material on relevant residential premises, make provision equivalent to any provision of Schedule 1 to PACE (special procedure for obtaining production orders and warrants);
- (b) so far as it relates to obtaining access to material on premises other than relevant residential premises, make provision equivalent to any provision of paragraphs 1 to 11 of that Schedule (special procedure for obtaining production orders);
- (c) make provision equivalent to section 311(2) and (3) of this Act (certification to civil court of offences akin to contempt) in relation to a failure by a person within section 309(6) to comply with an order made by a judge advocate under the enabling order;
- (d) authorise the use, in connection with any application made by virtue of the enabling order, of live television or telephone links or similar arrangements.

(2A) Any power under subsection (2) to make provision which is equivalent to another provision includes power to make provision which is equivalent subject to such modifications as the Secretary of State considers appropriate.]

(3) In this section “relevant residential premises” means—

- (a) service living accommodation; or
- (b) premises occupied as a residence (alone or with other persons) by—
  - (i) a person subject to service law;
  - (ii) a civilian subject to service discipline; or
  - (iii) a person who is suspected of having committed the relevant offence concerned.

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[<sup>F28</sup>(4) In this section the following expressions have the meanings given by section 84—  
“excluded material”;  
“items subject to legal privilege”;  
“relevant offence”;  
“special procedure material”.]

#### Textual Amendments

**F27** S. 86(1)-(2A) substituted for s. 86(1)(2) (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 8(2), 32(3)**; [S.I. 2012/669](#), art. 3(a)

**F28** S. 86(4) substituted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 8(3), 32(3)**; [S.I. 2012/669](#), art. 3(a)

#### Commencement Information

**I171** S. 86 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I172** S. 86 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 87 Power of CO to authorise entry and search by service policeman

- (1) An officer may authorise a service policeman to enter and search premises within subsection (3) if the officer has reasonable grounds for believing—
- [<sup>F29</sup>(a) that a relevant offence within the meaning of section 84 has been committed;  
(b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;  
(c) that the material would be likely to be admissible in evidence at a trial for the offence;  
(d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);  
(e) that at least one of the conditions specified in section 83(4) applies; and  
(f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).]
- (2) That time is the earliest time by which it would be practicable—
- (a) for a service policeman to obtain and execute a warrant under section 83 authorising the entry and search of the premises; or  
(b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.
- (3) The premises referred to in subsection (1) are—
- (a) service living accommodation of a person whose commanding officer is the officer mentioned in that subsection;  
(b) premises occupied as a residence (alone or with other persons) by—

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- (i) a person subject to service law whose commanding officer is that officer; or
  - (ii) a civilian subject to service discipline whose commanding officer is that officer;
  - (c) premises which that officer has reasonable grounds for believing to be within paragraph (b).
- (4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

#### Textual Amendments

**F29** S. 87(1)(a)-(f) substituted for s. 87(1)(a)(b) (14.12.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 6](#); [S.I. 2012/2921](#), art. 3(b)

#### Commencement Information

**I173** S. 87 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I174** S. 87 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

## 88 Power of CO to authorise entry and search by other persons

- (1) An officer may authorise a person subject to service law (other than a service policeman) to enter and search service living accommodation within subsection (3) if the officer has reasonable grounds for believing—
- [<sup>F30</sup>(a) that a relevant offence within the meaning of section 84 has been committed;
- (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;
  - (c) that the material would be likely to be admissible in evidence at a trial for the offence;
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);
  - (e) that at least one of the conditions specified in section 83(4) applies (the reference in section 83(4)(e) to a service policeman being read as a reference to a person authorised under this subsection); and
  - (f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).]

(2) That time is the earliest time by which it would be practicable—

    - (a) to obtain the assistance of a service policeman; or
    - (b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.

(3) Service living accommodation is within this subsection if it is—

    - (a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1); and

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(b) within section 96(1)(b) or (c).

(4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

#### Textual Amendments

**F30** S. 88(1)(a)-(f) substituted for s. 88(1)(a)(b) (14.12.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 4 para. 7](#); [S.I. 2012/2921, art. 3\(b\)](#)

#### Commencement Information

**I175** S. 88 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I176** S. 88 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 89 Review by judge advocate of certain searches under section 87 or 88

- (1) Where any property has been seized and retained during a search under section 87 or 88, the officer who authorised the search must as soon as practicable request a judge advocate to undertake a review of the search and of the seizure and retention of anything seized and retained during it.
- (2) The Secretary of State may by order make provision—
  - (a) with respect to the practice and procedure which is to apply in connection with reviews under this section;
  - (b) conferring functions on judge advocates in relation to such reviews.

#### Commencement Information

**I177** S. 89 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I178** S. 89 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

*Entry for purposes of arrest etc*

### 90 Entry for purpose of arrest etc by a service policeman

- (1) A service policeman may for the purpose of arresting a person enter and search premises within subsection (2), but only if he has reasonable grounds for believing that the person is on the premises.
- (2) The premises referred to in subsection (1) are—
  - (a) service living accommodation;
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law;
    - (ii) a civilian subject to service discipline; or
    - (iii) the person to be arrested;
  - (c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).

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- (3) In relation to premises containing two or more separate dwellings, the powers conferred by subsection (1) are powers to enter and search—
- (a) any parts of the premises which the occupiers of any dwelling contained in the premises use in common with the occupiers of any other such dwelling; and
  - (b) any such dwelling that the service policeman has reasonable grounds for believing the person to be arrested to be in.
- (4) A service policeman may, for the purpose of saving life or limb or preventing serious damage to property, enter and search any—
- (a) service living accommodation;
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law; or
    - (ii) a civilian subject to service discipline; or
  - (c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).
- (5) Any power of search conferred by this section is a power to search only to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (6) References in this section to arrest are to arrest under section 67, 69, 110<sup>F31</sup>, 111 or 303,] and related expressions in this section are to be read accordingly.

#### **Textual Amendments**

**F31** Words in s. 90(6) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 3](#); [S.I. 2012/669](#), art. 4(d)

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

**C21** S. 90 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, [6\(7\)\(b\)](#) (with art. 3)

#### **Commencement Information**

**I179** S. 90 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I180** S. 90 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **91 Entry for purpose of arrest etc by other persons**

- (1) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(1) on a service policeman; but this is subject to subsection (3).
- (2) The premises are—
- (a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1);
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law whose commanding officer is that officer; or
    - (ii) a civilian subject to service discipline whose commanding officer is that officer;

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- (c) premises which that officer has reasonable grounds for believing to be within paragraph (b).
- (3) An officer may give an authorisation under subsection (1) only if—
  - (a) the arrest is to be made under section 67;
  - (b) the offence in respect of which the arrest is to be made is a relevant offence (as defined by section 84); and
  - (c) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (4)—
    - (i) the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence, or present a danger to himself or others; or
    - (ii) discipline or morale among members of any of Her Majesty's forces might be undermined.
- (4) That assistance is—
  - (a) the assistance of a service policeman, or
  - (b) in a case where corresponding powers conferred by section 17(1)(b) or (c) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force capable of exercising those corresponding powers.
- (5) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(4) on a service policeman; but this is subject to subsection (6).
- (6) An officer may give an authorisation under subsection (5) in relation to premises within section 90(4)(b) or (c) only if it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.
- (7) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

#### **Commencement Information**

**I181** S. 91 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I182** S. 91 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Additional powers of entry, search and seizure*

## **92 Power to make provision conferring powers of entry and search after arrest**

The Secretary of State may by order make provision, in relation to premises occupied or controlled by a person who—

- (a) has been arrested under section 67, and
- (b) is being held in service custody without being charged with a service offence, which is equivalent to that made by any provision of section 18 of PACE (entry and search after arrest), subject to such modifications as the Secretary of State considers appropriate.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I183** S. 92 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I184** S. 92 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 93 Power to make provision conferring power of seizure etc

The Secretary of State may by order make provision, in relation to—

- (a) a service policeman who, in connection with the investigation of a service offence, is lawfully on premises which are searchable by virtue of this Part, or
- (b) any power of seizure or retention conferred by or under this Part,

which is equivalent to that made by any provision of sections 19 to 21 of PACE (which relate to seizure) or section 22(1) to (4) of that Act (power to retain property seized), subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

- I185** S. 93 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I186** S. 93 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## [<sup>F32</sup>CHAPTER 3A

### TESTING FOR ALCOHOL AND DRUGS [<sup>F33</sup>IN CONNECTION WITH A SUSPECTED OFFENCE OR ACCIDENT]

#### Textual Amendments

- F32** Pt. 3 Ch. 3A inserted (8.3.2012 for specified purposes, 1.11.2013 in so far as not already in force) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 11\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 3\(c\)](#); [S.I. 2013/2501](#), [art. 3\(b\)](#)
- F33** Words in Pt. 3 Ch. 3A heading substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(1\)](#), [19\(1\)](#); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)

#### *Preliminary testing for alcohol and drugs*

### 93A Commanding officer's power to require preliminary tests

[ This section applies in the situations described in subsections (1) to (3C).]

<sup>F34</sup>(A1)

- (1) [<sup>F35</sup>The first situation is] where the commanding officer of a person subject to service law has reasonable cause to believe that that person—
  - (a) is committing a [<sup>F36</sup>safety-critical duty offence]; or
  - (b) has committed [<sup>F37</sup>such an] offence and still has alcohol or a drug in the body or is still under the influence of a drug.

<sup>F38</sup>(2) .....



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- (3) [<sup>F39</sup>The second situation is] where the commanding officer of a person who is a civilian subject to service discipline has reasonable cause to believe that that person—
- (a) is committing an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003 (maritime and aviation offences); or
  - (b) has committed such an offence under section 42 and still has alcohol or a drug in the body or is still under the influence of a drug.
- [ The third situation is where the commanding officer of a person subject to service law <sup>F40</sup>(3A) or of a person who is a civilian subject to service discipline has reasonable cause to believe that—
- (a) there has been an accident involving an aircraft or a ship; and
  - (b) at the time of the accident, the person was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship.
- (3B) The fourth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—
- (a) there has been an accident involving an aircraft or a ship;
  - (b) before the accident, the person carried out an aviation function in relation to the aircraft or a marine function in relation to the ship; and
  - (c) it is possible that the carrying out of the function by the person may have caused or contributed to—
    - (i) the occurrence of the accident;
    - (ii) any death, injury to a person, damage to property or environmental harm resulting from the accident; or
    - (iii) any risk of death or of such injury, damage or harm created by the accident.
- (3C) The fifth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—
- (a) there has been an accident which resulted in or created a risk of—
    - (i) death;
    - (ii) serious injury to any person;
    - (iii) serious damage to property; or
    - (iv) serious environmental harm;
  - (b) the person—
    - (i) was carrying out a safety-critical function at the time of the accident; or
    - (ii) carried out a safety-critical function before the accident; and
  - (c) it is possible that the carrying out of the safety-critical function by the person may have caused or contributed to—
    - (i) the occurrence of the accident;
    - (ii) the death, injury, damage or harm; or
    - (iii) the risk of death, injury, damage or harm.]

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- (4) [<sup>F41</sup>Where this section applies,] the commanding officer may require the person mentioned in [<sup>F42</sup>subsection (1), (3), (3A), (3B) or (3C) (“the affected person”)] to co-operate with any one or more of—
- (a) a preliminary breath test (see section 93B);
  - (b) a preliminary impairment test (see section 93C);
  - (c) a preliminary drug test (see section 93D).
- (5) The Defence Council may by regulations provide for the delegation by a commanding officer of the commanding officer's functions under this section.
- (6) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (4) commits an offence.
- (7) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.
- (8) For the purposes of this section, a person does not co-operate with a preliminary test unless the person's co-operation—
- (a) is sufficient to enable the test to be carried out; and
  - (b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

#### Textual Amendments

- F34** S. 93A(A1) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(a)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F35** Words in s. 93A(1) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(b)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F36** Words in s. 93A(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(c)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F37** Words in s. 93A(1)(b) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(d)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F38** S. 93A(2) omitted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(e)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F39** Words in s. 93A(3) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(f)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F40** S. 93A(3A)-(3C) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(g)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F41** Words in s. 93A(4) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(h)(i)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F42** Words in s. 93A(4) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(2)(h)(ii)**, 19(1); S.I. 2018/876, reg. 2(a)(b)

#### Section 93A: interpretation

[<sup>F43</sup>93AA

- (1) In section 93A(1), “safety-critical duty offence” means—
- (a) an offence under section 20A; or
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined in section 93I).
- (2) In section 93A(3A) and (3B)—

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“aviation function” means a role or activity in connection with aviation that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections;

“marine function” means a role or activity in connection with a ship or ships that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections.

- (3) The Defence Council may specify a role or activity (or description of role or activity) under subsection (2) only if carrying it out with ability impaired by alcohol or drugs would result in a risk of—
- (a) death,
  - (b) serious injury to any person,
  - (c) serious damage to property, or
  - (d) serious environmental harm,
- but this is subject to subsection (4).
- (4) The Defence Council's powers under subsection (2) include power to specify a role or activity that is undertaken in preparation for, or in connection with, the carrying out of a role or activity (or description of role or activity) that satisfies the test in subsection (3), either by specifying such a role or activity generally or by specifying a particular role or activity.
- (5) For the purposes of section 93A(3A) and (3B), an accident does not involve an aircraft or a ship simply because it takes place on an aircraft or ship.
- (6) In section 93A(3C), references to the carrying out of a safety-critical function are to—
- (a) the performance by a person subject to service law of a duty specified, or of a description specified, by regulations under section 20A(2) or of any other safety-critical duty (as defined in section 93I); or
  - (b) the carrying out by a person who is a civilian subject to service discipline, in the course of the person's employment, of a role or activity which, if it were carried out by a person subject to service law in the course of his or her duty, would be a safety-critical duty.
- (7) References in section 93A and this section to a person carrying out a function include a failure by the person to carry out a function at a time when the person is responsible for carrying it out (and related expressions are to be read accordingly).]

#### Textual Amendments

- F43** S. 93AA inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(3\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)

### 93B Preliminary breath test

- (1) [<sup>F44</sup> In a situation described in section 93A(1) or (3),] a preliminary breath test is a procedure administered by a service policeman under which—
- (a) the [<sup>F45</sup>affected] person provides a specimen of breath; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether the proportion of alcohol in the person's breath or blood is likely to be such as is necessary for the commission of the suspected offence.

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- [ In a situation described in section 93A(3A), (3B) or (3C), a preliminary breath test is<sup>F46</sup>(1A) a procedure administered by a service policeman under which—
- (a) the affected person provides a specimen of breath; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication of the proportion of alcohol in the person's breath or blood.]
- (2) A preliminary breath test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) In this section “the suspected offence” means an offence mentioned in section [F47]93A(1)(a)] or (3)(a) which the commanding officer has reasonable cause to believe has been committed.

#### Textual Amendments

- F44** Words in s. 93B(1) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(4\)\(a\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F45** Word in s. 93B(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(4\)\(b\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F46** S. 93B(1A) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(4\)\(c\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)
- F47** Word in s. 93B(3) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\), ss. 2\(4\)\(d\), 19\(1\); S.I. 2018/876, reg. 2\(a\)\(b\)](#)

### 93C Preliminary impairment test

- (1) A preliminary impairment test is a procedure under which a service policeman—
- (a) observes the [F48]affected] person performing tasks specified by the service policeman; and
  - (b) makes such other observations of the [F49]affected] person's physical state as the service policeman thinks expedient.
- (2) A preliminary impairment test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) The Provost Marshals (acting jointly) must issue, and may from time to time revise, a code of practice about—
- (a) the kind of task that may be specified for the purposes of a preliminary impairment test;
  - (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test;
  - (c) the way in which a preliminary impairment test should be administered; and

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- (d) the inferences that may be drawn by a service policeman from observations made in the course of a preliminary impairment test.
- (4) In subsection (3) “the Provost Marshals” means the Provost Marshals of each of the service police forces.
- (5) A service policeman administering a preliminary impairment test must have regard to the code of practice.
- (6) A service policeman may administer a preliminary impairment test only if the service policeman is approved for that purpose by a Provost Marshal of a service police force.
- (7) A code of practice under this section may include provision about—
- (a) the giving of approval under subsection (6); and
  - (b) in particular, the kind of training that a service policeman should have undergone, or the kind of qualification that a service policeman should possess, before being approved under that subsection.

#### Textual Amendments

- F48** Word in s. 93C(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(5\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)
- F49** Word in s. 93C(1)(b) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(5\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)

### 93D Preliminary drug test

- (1) A preliminary drug test is a procedure administered by a service policeman under which—
- (a) a specimen of sweat or saliva is obtained from the [<sup>F50</sup>affected] person; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether there is a drug in the person's body.
- (2) A preliminary drug test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.

#### Textual Amendments

- F50** Word in s. 93D(1)(a) substituted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(6\)](#), 19(1); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)

#### *Provision of specimens for analysis*

### 93E Provision of specimens for analysis

- (1) This section applies in relation to an investigation into whether a person has committed—

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- (a) an offence under section 20A;
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I); or
  - (c) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003.
- (2) In the course of the investigation a service policeman may require the person—
- (a) to provide two specimens of breath for analysis by means of an approved device;
  - (b) to provide a specimen of blood or urine for a laboratory test.
- (3) A requirement under this section may be imposed only at a service police establishment or a medical establishment.
- (4) For the purposes of this section and section 93F, a person does not provide a specimen of breath for analysis unless the specimen—
- (a) is sufficient to enable the analysis to be carried out; and
  - (b) is provided in such a way as to enable the objective of the analysis to be satisfactorily achieved.
- (5) For the purposes of this section and section 93F, a person provides a specimen of blood if and only if—
- (a) he consents to the taking of such a specimen from him;
  - (b) the specimen is taken from him by a registered medical practitioner or registered nurse; and
  - (c) the specimen is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (6) For the purposes of this section and section 93F, a person provides a specimen of urine if and only if the specimen—
- (a) is provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine; and
  - (b) is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (7) Where the provision of a specimen may be required under this section, the question of whether it is to be breath, blood or urine, and in the case of blood the question of who is to be asked to take it, is to be decided by the service policeman imposing the requirement.
- (8) But where a service policeman decides for the purposes of subsection (7) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
- (a) the registered medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
  - (b) the registered nurse who is asked to take it is of that opinion and there is no contrary opinion from a registered medical practitioner;
- and where by virtue of this subsection there can be no requirement to provide a specimen of blood, the service policeman may require a specimen of urine instead.

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- (9) A service policeman must, on requiring a person to provide a specimen in pursuance of this section, warn the person that a failure to provide it may render the person liable to proceedings for a service offence.
- (10) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.
- (11) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

### **93F Further provision about specimens under section 93E**

- (1) Where two specimens of breath are provided by a person in pursuance of section 93E, the one with the lower proportion of alcohol in the breath is to be used and the other is to be disregarded.
- (2) If the specimen with the lower proportion of alcohol contains no more than a prescribed proportion of alcohol, the person who provided it may claim that it should be replaced by such a specimen of blood or urine as may be required under section 93E.
- (3) If the person then provides such a specimen, neither specimen of breath is to be used.
- (4) In subsection (2) “prescribed” means prescribed by regulations made by the Defence Council for the purposes of this section; and the regulations may prescribe different proportions of alcohol in relation to different kinds of offence.
- (5) On a request made at the time a specimen of blood or urine is provided under section 93E, the person who provided the specimen must be given a part of the specimen sufficient for the purposes of analysis.

### **93G Specimens of blood from persons incapable of consenting**

- (1) A service policeman may request a registered medical practitioner to take a specimen of blood from a person (“the person concerned”), irrespective of whether that person consents, if—
  - (a) the service policeman would (in the absence of any incapacity of the person concerned and of any objection under section 93H) be entitled under section 93E to require the person concerned to provide a specimen of blood for a laboratory test;
  - (b) it appears to the service policeman that the person concerned has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
  - (c) it appears to the service policeman that the person concerned is or may be incapable of giving a valid consent to the taking of a specimen of blood (whether or not consent has purportedly been given); and
  - (d) it appears to the service policeman that that person's incapacity is attributable to medical reasons.
- (2) It is lawful for a registered medical practitioner to whom a request is made under this section, if that practitioner thinks fit—
  - (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and

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- (b) to provide the specimen to a service policeman.
- (3) The specimen must be of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (4) If a specimen is taken in pursuance of a request under this section, it must not be subjected to a laboratory test unless the person concerned—
  - (a) has been informed that it was taken;
  - (b) has been required by a service policeman to give permission for a laboratory test of the specimen; and
  - (c) has given permission.
- (5) A service policeman, on requiring a person to give permission for the purposes of this section for a laboratory test of a specimen, must warn the person that a failure to give the permission may render the person liable to proceedings for a service offence.
- (6) On a request made at the time a person gives permission under this section for a laboratory test of a specimen, that person must be given a part of the specimen sufficient for the purposes of analysis.
- (7) A person who, without reasonable excuse, fails to give permission for a laboratory test of a specimen taken from the person under this section is guilty of an offence.
- (8) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

*General provisions relating to testing*

**93H Patients in medical establishments**

- (1) This section applies in relation to a person who is at a medical establishment as a patient.
- (2) The person shall not be required to co-operate with a preliminary test or to provide a specimen under section 93E unless the responsible medical professional has been notified of the proposal to impose the requirement.
- (3) If the responsible medical professional objects on medical grounds the requirement must not be imposed.
- (4) If the responsible medical professional does not object on medical grounds and the requirement is imposed, the requirement must be for co-operation with a preliminary test administered, or for the provision of a specimen, at the medical establishment.
- (5) No specimen of blood may be taken from the person under section 93G, and the person may not be required to give permission for a laboratory test of a specimen taken under that section, unless the responsible medical professional—
  - (a) has been notified of the proposal that the specimen be taken or of the proposal to make the requirement; and
  - (b) has not objected on medical grounds.
- (6) In this section “the responsible medical professional” means—
  - (a) the registered medical practitioner in immediate charge of the person's case; or



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- (b) if there is no such registered medical practitioner, the registered nurse in immediate charge of the person's case.
- (7) In this section “medical grounds” means—
- (a) in relation to a requirement to co-operate with a preliminary test or to provide a specimen under section 93E, the ground that the requirement, or compliance with it by the patient, or any warning required by section 93E(9), would be prejudicial to the proper care and treatment of the patient;
  - (b) in relation to the taking of a specimen under section 93G or a requirement to give permission for a laboratory test of a specimen taken under that section, the ground that the taking of the specimen, the requirement, or any warning required by section 93G(5), would be so prejudicial.

### 93I Definitions for purposes of Chapter 3A

- (1) In this Chapter—

“approved”, in relation to a device, means approved by the Secretary of State;

“drug” includes any intoxicant other than alcohol;

“medical establishment” means any facility at which medical or surgical treatment for in- or out-patients is provided;

“preliminary test” means—

- (a) a preliminary breath test within the meaning of section 93B;
- (b) a preliminary impairment test within the meaning of section 93C; or
- (c) a preliminary drug test within the meaning of section 93D;

“safety-critical duty” means a duty which the commanding officer of the person mentioned in section 93A(1) [<sup>F51</sup>, 93AA(6)(a)] or 93E(1) reasonably believes is such that performing the duty with ability impaired by alcohol or drugs would result in a risk of—

- (a) death;
- (b) serious injury to any person;
- (c) serious damage to property; or
- (d) serious environmental harm;

“service police establishment” means any building or part of a building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties.

- (2) In this Chapter any reference to a service policeman includes a Royal Navy coxswain.]

#### Textual Amendments

**F51** Word in s. 93I inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 2\(7\), 19\(1\)](#); [S.I. 2018/876](#), [reg. 2\(a\)\(b\)](#)

*Status: Point in time view as at 02/12/2019.*

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## CHAPTER 4

### SUPPLEMENTARY

#### 94 Property in possession of service police or CO

- (1) The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman or a person's commanding officer in connection with the investigation of a service offence.
- (2) The regulations may in particular—
  - (a) enable the Court Martial, the Service Civilian Court or a judge advocate to make an order for the delivery of the property to the person appearing to the court or judge advocate to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judge advocate considers appropriate;
  - (b) enable the commanding officer of a person charged with a service offence—
    - (i) to determine that any property seized under this Part in connection with the investigation of a service offence should be delivered to the person appearing to the commanding officer to be the owner of the property; or
    - (ii) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate;
  - (c) enable the commanding officer of a person—
    - (i) in whose possession the property was before it was seized under this Part, or
    - (ii) who claims to be the owner of the property,
 to determine that it should be delivered to that person;
  - (d) make provision as to appeals against orders made by virtue of paragraph (a) and determinations made by virtue of paragraph (b) or (c); and
  - (e) provide that, at the end of a specified period from the making of an order by virtue of paragraph (a), the right of any person to take proceedings for the recovery of the property is to cease.
- (3) A determination made by virtue of subsection (2)(b) or (c) does not affect the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered.

#### **Commencement Information**

**I187** S. 94 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I188** S. 94 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 95 Saving provision

- (1) Nothing in this Part affects—
  - (a) any power of a service policeman or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes

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- of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation;
- (b) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation;
  - (c) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to search, or order the search of, a person or to stop and search, or order the stop and search of, a service vehicle; or
  - (d) any power of a service policeman or commanding officer to search, or order the search of, a service vehicle which is not in the charge of any person.
- (2) In subsection (1) “service vehicle” means a vehicle, ship or aircraft which—
- (a) belongs to any of Her Majesty's forces; or
  - (b) is in use for the purposes of any of those forces.

#### Commencement Information

**I189** S. 95 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I190** S. 95 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 96 “Service living accommodation”, “premises” and other definitions

- (1) In this Part “service living accommodation” means (subject to subsection (2))—
- (a) any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person [<sup>F52</sup>within subsection (1A)], or of such a person and members of his family, as living accommodation or as a garage;
  - (b) any other room, structure or area (whether on land or on a ship) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more persons [<sup>F53</sup>within subsection (1A)]; or
  - (c) any locker which—
    - (i) is provided by any of Her Majesty's forces for personal use by a person [<sup>F54</sup>within subsection (1A)] in connection with his sleeping accommodation, but
    - (ii) is not in a room, structure or area falling within paragraph (b).

[<sup>F55</sup>(1A) The following are persons within this subsection—

- (a) a person subject to service law;
  - (b) a civilian subject to service discipline.]
- (2) Premises are not service living accommodation for the purposes of this Part if, or to the extent that, they are being used for keeping persons in service custody.
- (3) In this Part “premises” includes any place and, in particular, includes—
- (a) any vehicle, ship or aircraft; and
  - (b) any tent or movable structure.

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- (4) In this Part “enactment” includes any provision of—
- (a) an Act of the Scottish Parliament or Northern Ireland legislation, or
  - (b) an instrument made under such an Act or under Northern Ireland legislation,
- and also includes any rule of law in Scotland.

#### Textual Amendments

- F52** Words in s. 96(1)(a) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 4\(2\)](#); [S.I. 2012/669](#), art. 4(d)
- F53** Words in s. 96(1)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 4\(2\)](#); [S.I. 2012/669](#), art. 4(d)
- F54** Words in s. 96(1)(c) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 4\(2\)](#); [S.I. 2012/669](#), art. 4(d)
- F55** S. 96(1A) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 4\(3\)](#); [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

- I191** S. 96 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I192** S. 96 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 97 Power to use reasonable force

[<sup>F56</sup>(1)] Where a power is conferred on any person by or under this Part, he may use reasonable force, if necessary, in the exercise of the power.

[<sup>F57</sup>(2) Subsection (1) does not apply in relation to powers conferred by Chapter 3A of this Part.]

#### Textual Amendments

- F56** S. 97(1): s. 97 renumbered as s. 97(1) (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 8\(1\)](#); [S.I. 2013/2501](#), art. 3(d)
- F57** S. 97(2) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 8\(2\)](#); [S.I. 2013/2501](#), art. 3(d)

#### Commencement Information

- I193** S. 97 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I194** S. 97 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## PART 4

### CUSTODY

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

- C22** Pt. 4 modified by 1968 c. 20, s. 20(1G)(1H) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 21\(a\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C23** Pt. 4 modified (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, [25\(3\)\(4\)](#) (with art. 3)

## CHAPTER 1

### CUSTODY WITHOUT CHARGE

#### 98 Limitations on custody without charge

- (1) Except in accordance with sections 99 to 102, a person arrested under section 67 may not be kept in service custody without being charged with a service offence.
- (2) If at any time the commanding officer of a person who is kept in service custody without being charged with a service offence—
  - (a) becomes aware that the grounds for keeping that person in service custody have ceased to apply, and
  - (b) is not aware of any other grounds on which continuing to keep that person in service custody could be justified under this Act,the commanding officer must, subject to subsection (3), order his immediate release from service custody.
- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested may not be released under subsection (2).
- (4) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

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

- C24** Ss. 98-102 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, [6\(7\)\(c\)](#) (with art. 3)

#### Commencement Information

- I195** S. 98 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059)
- I196** S. 98 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

#### 99 Authorisation by commanding officer of custody without charge

- (1) Where a person is arrested under section 67—
  - (a) the arrest, and

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- (b) any grounds on which he is being kept in service custody without being charged with a service offence,  
 must be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in service custody without being charged with a service offence, but only if the person who made the arrest has reasonable grounds for believing that keeping him in service custody without being charged is necessary—
- (a) to secure or preserve evidence relating to a service offence for which he is under arrest; or
- (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1), the commanding officer must as soon as practicable determine—
- (a) whether the requirements of subsection (4) are satisfied; and
- (b) if so, whether to exercise his powers under that subsection;
- and the person to whom the report relates may be kept in service custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If, in relation to the person to whom the report relates, the commanding officer has reasonable grounds for believing—
- (a) that keeping him in service custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him, and
- (b) that the investigation is being conducted diligently and expeditiously,
- he may authorise the keeping of that person in service custody.
- (5) Subject to subsection (6), an authorisation under subsection (4) ends not more than 12 hours after it is given.
- (6) Except in accordance with section 101 or 102, a person may not be kept in service custody later than 48 hours after the arrest without being charged with a service offence.
- (7) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence—
- (a) subsections (1) to (5) apply in relation to the arrest for that other offence;
- (b) the reference in subsections (2)(a) and (4)(a) to a service offence for which he is under arrest includes the service offence for which he was originally arrested;
- (c) the reference in subsection (6) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested; and
- (d) the last authorisation under subsection (4) (if any) given in relation to him ceases to have effect (and accordingly section 100 ceases to apply in relation to that authorisation).

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

**C24** Ss. 98-102 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **6(7)(c)** (with art. 3)

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#### **Commencement Information**

- I197** S. 99 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I198** S. 99 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **100 Review of custody by commanding officer**

- (1) The commanding officer of a person kept in service custody in accordance with section 99 must, subject to subsections (3) and (4), review the keeping of that person in service custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 99 apply on each review under this section as they apply where a report is received under section 99(1).
- (3) A review may be postponed if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 99(4), it is not practicable to carry out the review at that time.
- (4) A review may also be postponed if at the expiry of the last authorisation under section 99(4)—
  - (a) the person in service custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being questioned; or
  - (b) the commanding officer is not readily available.
- (5) Subsection (4) does not limit the power to postpone under subsection (3).
- (6) If a review is postponed under subsection (3) or (4)—
  - (a) it must be carried out as soon as practicable after the expiry of the last authorisation under section 99(4); and
  - (b) the keeping in service custody of the person to whom the review relates is by virtue of this paragraph authorised until that time.

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

- C24** Ss. 98-102 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), [arts. 1, 6\(7\)\(c\)](#) (with [art. 3](#))

#### **Commencement Information**

- I199** S. 100 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I200** S. 100 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **101 Extension by judge advocate of custody without charge**

- (1) If, on an application by the commanding officer of a person arrested under section 67, a judge advocate is satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, the judge advocate may by order authorise the keeping of that person in service custody.

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- (2) A judge advocate may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application; and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judge advocate must adjourn the hearing to enable him to obtain representation; and
  - (b) he may be kept in service custody during the adjournment.
- (4) The period for which a judge advocate, on an application under this section, may authorise the keeping of a person in service custody is such period, ending not more than 96 hours after the arrest, as he considers appropriate having regard to the evidence before him.
- (5) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, the reference in subsection (4) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.
- (6) For the purposes of this section and section 102, the continued keeping of a person in service custody is justified only if—
  - (a) keeping him in custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him; and
  - (b) the investigation is being conducted diligently and expeditiously.

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

**C24** Ss. 98-102 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **6(7)(c)** (with art. 3)

**Commencement Information**

**I201** S. 101 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I202** S. 101 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**102 Further provision about applications under section 101**

- (1) Subject to subsection (2), an application under section 101 may be made—
  - (a) at any time before the end of 48 hours after the arrest; or
  - (b) if it is not practicable for the application to be heard before the end of that period, as soon as practicable thereafter but not more than 96 hours after the arrest.
- (2) Where subsection (1)(b) applies, an authorisation on a review under section 100 may be for a period ending more than 48 hours after the arrest, but may not be—
  - (a) for a period of more than six hours; or
  - (b) for a period ending more than 96 hours after the arrest.



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- (3) If—
- (a) an application under section 101 is made more than 48 hours after the arrest, and
  - (b) it appears to the judge advocate that it would have been reasonable for the commanding officer to make the application before the end of that period,
- the judge advocate must refuse the application.
- (4) Where on an application under section 101 relating to any person the judge advocate is not satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, he must—
- (a) refuse the application; or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the arrest.
- (5) The person to whom the application relates may be kept in service custody during the adjournment.
- (6) Where a judge advocate refuses an application under section 101 at any time less than 48 hours after the arrest, he may direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.
- (7) Where a judge advocate refuses an application under section 101 at any later time, he must direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.
- (8) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, any reference in this section to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.

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

**C24** Ss. 98-102 applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **6(7)(c)** (with art. 3)

**Commencement Information**

**I203** S. 102 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I204** S. 102 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**103 Custody without charge: other cases**

Sections 98 to 102 apply—

- (a) where a person is transferred to or taken into service custody under section 313(4), 315(4), 316(3) or 317(4), and
- (b) in any other case where a person arrested by a member of a UK police force or overseas police force is transferred to service custody,

as they apply where a person is arrested under section 67, subject to such modifications as the Secretary of State may by order prescribe.

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#### **Commencement Information**

- I205** S. 103 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I206** S. 103 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### **104 Custody without charge: supplementary**

- (1) The Secretary of State may by regulations make provision—
- (a) for the delegation by the commanding officer of a person in service custody of any of the commanding officer's functions under sections 98 to 102;
  - (b) with respect to circumstances in which a person kept in service custody without being charged with a service offence is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) for the keeping of written records relating to compliance with any requirement of sections 69(3)(a) and 98 to 102 or of regulations under paragraph (b).
- (2) Any reference in sections 99 to 102 to a period of time is to be treated as approximate only.

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

- C25** S. 104(2) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), **arts. 1, 6(7)(c)** (with [art. 3](#))

#### **Commencement Information**

- I207** S. 104 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I208** S. 104 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **CHAPTER 2**

### CUSTODY ETC AFTER CHARGE

#### *Custody after charge*

### **105 Custody after charge**

- (1) Where a person (referred to in this section and sections 106 to 109 as “the accused”) is kept in service custody after being charged with a service offence, he must be brought before a judge advocate as soon as practicable.
- (2) At a hearing under subsection (1), the judge advocate may by order authorise the keeping of the accused in service custody, but only if one or more of conditions A to C in section 106 are met.
- (3) The period for which a judge advocate may, by an order under subsection (2), authorise the keeping of the accused in service custody is such period, ending not later than

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eight days after the day on which the order is made, as he considers appropriate having regard to the evidence before him.

(4) For the purpose of deciding whether condition A in section 106 is met, the judge advocate must have regard to such of the following considerations as appear to him to be relevant—

- (a) the nature and seriousness of the offence with which the accused is charged (and the probable method of dealing with him for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused's behaviour on previous occasions while charged with a service offence and released from service custody or while on bail in criminal proceedings, and
  - (d) the strength of the evidence that the accused committed the offence,
- as well as to any other considerations which appear to be relevant.

(5) If—

- (a) the accused is charged with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
  - (i) murder,
  - (ii) manslaughter,
  - (iii) an offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape), or
  - (iv) an attempt to commit an offence within sub-paragraph (i) or (iii),
- (b) representations are made as to any of the matters mentioned in condition A in section 106, and
- (c) the judge advocate decides not to authorise the keeping of the accused in service custody,

the judge advocate must state the reasons for his decision and must cause those reasons to be included in the record of the proceedings.

(6) An order under subsection (2) does not authorise the keeping of the accused in service custody—

- (a) if the accused is subsequently released from service custody, at any time after his release; or
- (b) at any time after he is sentenced in respect of the offence with which he is charged.

(7) Subsection (1) does not apply where the accused is charged with a service offence at a time when he is kept in service custody by reason of a sentence passed in respect of a service offence or of an order under subsection (2), unless that reason ceases to apply.

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

**C26** S. 105(2)-(4) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(a)** (with art. 3)

**Commencement Information**

**I209** S. 105 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. **3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I210** S. 105 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. **4**

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## 106 Conditions A to D

- (1) Condition A is that the judge advocate is satisfied that there are substantial grounds for believing that the accused, if released from service custody, would—
  - (a) fail to attend any hearing in the proceedings against him;
  - (b) commit an offence while released; or
  - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (2) Condition B is that the judge advocate is satisfied that the accused should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (3) Condition C is that the judge advocate is satisfied that, because of lack of time since the accused was charged, it has not been practicable to obtain sufficient information for the purpose of deciding whether condition A or B is met.
- (4) Condition D is that the accused's case has been adjourned for inquiries or a report and it appears to the judge advocate that it would be impracticable to complete the inquiries or make the report without keeping the accused in service custody.

### Commencement Information

- I211** S. 106 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I212** S. 106 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 107 Release from custody after charge

- (1) Subsections (2) and (3) apply where, at a hearing under section 105(1), the judge advocate does not authorise keeping the accused in service custody.
- (2) Subject to subsection (3), the accused must be released from service custody without delay.
- (3) The accused may be required to comply, before release or later, with such requirements as appear to the judge advocate to be necessary—
  - (a) to secure his attendance at any hearing in the proceedings against him;
  - (b) to secure that he does not commit an offence while released from custody;
  - (c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
  - (d) for his own protection or, if he is aged under 17, for his own welfare or in his own interests.
- (4) On an application made—
  - (a) by or on behalf of the accused, or
  - (b) by the commanding officer of the accused,
 any requirement imposed under subsection (3) (including such a requirement as previously varied under this subsection) may be varied or discharged by a judge advocate.

*Status: Point in time view as at 02/12/2019.*

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- (5) A person on whom a requirement has been imposed by virtue of subsection (3)(a) commits an offence if, without reasonable excuse, he fails to attend any hearing to which the requirement relates.
- (6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

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

- C27** S. 107 modified (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(2)** (with art. 3)
- C28** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, **rule 69(8)**
- C29** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 103**
- C30** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Summary Appeal Court\) Rules 2009 \(S.I. 2009/1211\)](#), art. 1, **rule 56(8)(9)**
- C31** S. 107(5)(6) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, **rule 136(8)**
- C32** S. 107(5) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 55(8)(9)**
- C33** S. 107(6) applied (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 103**

#### **Commencement Information**

- I213** S. 107 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I214** S. 107 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **108 Review of custody after charge**

- (1) Where the keeping of the accused in service custody is authorised by an order under section 105(2), it must be reviewed by a judge advocate not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he must—
  - (a) release the accused from service custody; or
  - (b) request a review.
- (3) Where a request is made under subsection (2)(b), a review must be carried out as soon as practicable.
- (4) Sections 105(2) to (6), 106 and 107 apply in relation to a review as they apply in relation to a hearing under section 105(1); but the application of section 105(3) is subject to subsection (7).
- (5) At the first review the accused may support an application for release from service custody with any argument as to fact or law (whether or not he has advanced that argument previously).

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- (6) At subsequent reviews the judge advocate need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judge advocate may, if the accused consents, authorise the keeping of the accused in service custody for a period of not more than 28 days.
- (8) In this section “review” means a review under subsection (1).

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

- C34** S. 108(1) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(c)** (with art. 3)
- C35** S. 108(4) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(b)** (with art. 3)
- C36** S. 108(5)-(8) applied (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **22(1)(c)** (with art. 3)

**Commencement Information**

- I215** S. 108 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I216** S. 108 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**109 Custody during proceedings of Court Martial or Service Civilian Court**

- (1) In relation to a review under section 108(1) which takes place between—
- (a) the arraignment of the accused before the Court Martial or the Service Civilian Court, and
  - (b) the conclusion of proceedings before the court,
- section 105(2) to (6) (as applied by section 108(4)) apply with the following modifications.
- (2) The reference in section 105(2) to conditions A to C is to be read as a reference to conditions A to D.
- (3) Where the accused is awaiting sentence—
- (a) references in section 105(4)(a) and (5) to an offence with which the accused is charged are to be read as references to the offence for which he is awaiting sentence; and
  - (b) section 105(4)(d) does not apply.

**Commencement Information**

- I217** S. 109 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I218** S. 109 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

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### *Arrest after charge*

#### **110 Arrest after charge or during proceedings by order of commanding officer**

- (1) The commanding officer of a person who—
  - (a) has been charged with, or is awaiting sentence for, a service offence, and
  - (b) is not in service custody,may, if satisfied that taking that person into service custody is justified, give orders for his arrest.
- (2) For the purposes of this section, taking a person into service custody is justified if there are reasonable grounds for suspecting that, if not taken into service custody, he would—
  - (a) fail to attend any hearing in the proceedings against him;
  - (b) commit an offence; or
  - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking a person into service custody is also justified for the purposes of this section if—
  - (a) he has failed to attend any hearing in the proceedings against him;
  - (b) there are reasonable grounds for suspecting that he should be taken into service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests; or
  - (c) there are reasonable grounds for suspecting that—
    - (i) if not taken into service custody, he would fail to comply with a requirement imposed under section 107(3); or
    - (ii) he has failed to comply with such a requirement.
- (4) A person arrested under subsection (1) who is kept in service custody—
  - (a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).
- (5) Where a power of arrest is conferred on any person by virtue of this section, he may use reasonable force, if necessary, in the exercise of the power.

#### **Commencement Information**

- I219** S. 110 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I220** S. 110 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **111 Arrest during proceedings at direction of court**

- (1) Where—
  - (a) a person has been arraigned before the Court Martial or the Service Civilian Court, and
  - (b) proceedings before the court have not concluded,

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a judge advocate, if satisfied that taking him into service custody is justified, may direct the arrest of that person.

- (2) Any person with power to arrest that person for a service offence has the same power, exercisable in the same way, to arrest him pursuant to a direction under subsection (1).
- (3) Subsections (2) and (3) of section 110 apply for the purposes of this section.
- (4) A person arrested under this section who is kept in service custody—
  - (a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).

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

- C37** S. 111 modified (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 28**
- C38** S. 111(4) modified (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), art. 1, **rule 29**

**Commencement Information**

- I221** S. 111 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I222** S. 111 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## CHAPTER 3

### CUSTODY PROCEEDINGS RULES

#### 112 Custody proceedings rules

- (1) The Secretary of State may make rules with respect to proceedings—
  - (a) on an application under section 101;
  - (b) under section 105(1);
  - (c) on an application under section 107(4);
  - (d) on a review under section 108(1), 110(4), 111(4) or 171(2).
- (2) Rules under this section may in particular make provision—
  - (a) with respect to arrangements preliminary to the proceedings;
  - (b) with respect to the representation of the person to whom the proceedings relate;
  - (c) with respect to evidence, including the admissibility of evidence;
  - (d) for procuring the attendance of witnesses;
  - (e) with respect to the immunities and privileges of witnesses;
  - (f) with respect to oaths and affirmations;
  - (g) with respect to circumstances in which a review under section 108(1), 110(4), 111(4) or 171(2) may be carried out without a hearing;



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- (h) with respect to the use for the purposes of the proceedings of live television or telephone links or similar arrangements, including the use of such links or other arrangements as a means of satisfying any requirement imposed by this Act for a person to be brought before a judge advocate;
- (i) for the appointment of persons to discharge administrative functions under the rules.

#### **Commencement Information**

**I223** S. 112 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I224** S. 112 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **PART 5**

### INVESTIGATION, CHARGING AND MODE OF TRIAL

#### **CHAPTER 1**

##### INVESTIGATION

###### *Duties of commanding officers*

#### **113 CO to ensure service police aware of possibility serious offence committed**

- (1) If an officer becomes aware of an allegation or circumstances within subsection (2), he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a Schedule 2 offence has or may have been committed by a relevant person.
- (3) In subsection (2) “relevant person” means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) In this Chapter “Schedule 2 offence” means a service offence listed in Schedule 2.
- (5) The Secretary of State may by order amend Schedule 2.

#### **Commencement Information**

**I225** S. 113 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I226** S. 113 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

*Status: Point in time view as at 02/12/2019.*

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## 114 CO to ensure service police aware of certain circumstances

- (1) If an officer of a prescribed description becomes aware of circumstances of a prescribed description, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.
- (2) In this section “prescribed” means prescribed by regulations under section 128.

### Commencement Information

- I227** S. 114 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I228** S. 114 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 115 Duty of CO with respect to investigation of service offences

- (1) This section applies where—
  - (a) an officer becomes aware of an allegation or circumstances within subsection (2); and
  - (b) the officer is not required by section 113(1) or 114(1) to ensure that a service police force is aware of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a service offence has or may have been committed by a relevant person.
- (3) In subsection (2) “relevant person” means a person whose commanding officer is the officer mentioned in subsection (1).
- (4) The officer must either—
  - (a) ensure that the matter is investigated in such way and to such extent as is appropriate; or
  - (b) ensure, as soon as is reasonably practicable, that a service police force is aware of the matter.
- (5) Subsection (4) does not apply if the matter has already been investigated in such way and to such extent as is appropriate.

### Commencement Information

- I229** S. 115 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I230** S. 115 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

*<sup>F58</sup>Provost Marshal's duty in relation to independence of investigations*

### Textual Amendments

- F58** S. 115A and cross-heading inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 3, 32(3)**; [S.I. 2012/669](#), **art. 4(a)**

*Status: Point in time view as at 02/12/2019.*

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## **115A Provost Marshal's duty in relation to independence of investigations**

- (1) This section applies in relation to each service police force.
- (2) The Provost Marshal of the force has a duty, owed to the Defence Council, to seek to ensure that all investigations carried out by the force are free from improper interference.
- (3) “Improper interference” includes, in particular, any attempt by a person who is not a service policeman to direct an investigation which is being carried out by the force.]

### *Duty of service policeman following investigation*

## **116 Referral of case following investigation by service or civilian police**

- (1) This section applies where—
  - (a) a service police force has investigated an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed; or
  - (b) a UK police force or overseas police force has investigated such an allegation or such circumstances and has referred the matter to a service police force.
- (2) If—
  - (a) a service policeman considers that there is sufficient evidence to charge a person with [<sup>F59</sup>a service offence that is not a CO offence], or
  - (b) a service policeman considers that there is sufficient evidence to charge a person with [<sup>F60</sup>a service offence that is a CO offence], and is aware of circumstances of a description prescribed by regulations under section 128 for the purposes of this paragraph,he must refer the case to the Director of Service Prosecutions (“the Director”).
- (3) If—
  - (a) a service policeman considers that there is sufficient evidence to charge a person with a service offence, <sup>F61</sup>...
  - (b) subsection (2) does not apply [<sup>F62</sup>, and
  - (c) section 117(5) (referral of connected cases to DSP) does not apply,]he must refer the case to the person's commanding officer.
- [<sup>F63</sup>(4) Subsection (4A) applies if—
  - (a) the allegation or circumstances would indicate to a reasonable person that [<sup>F64</sup>a person has committed, or might have committed, a service offence which is not one that may be dealt with at a summary hearing (see section 53)], or
  - (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,and a service policeman proposes not to refer the case to the Director under subsection (2) [<sup>F65</sup>or section 117(5)].
- (4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).]
- (5) [<sup>F66</sup>For the purposes of this section—

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- (a)] there is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted [<sup>F67</sup>, and
- (b) a service offence committed by a person is a “CO offence” if a charge against the person in respect of the offence is capable of being heard summarily by the person's commanding officer (see section 52).]

#### Textual Amendments

- F59** Words in s. 116(2)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(1)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F60** Words in s. 116(2)(b) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(1)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F61** Word in s. 116(3)(a) omitted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(2)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F62** S. 116(3)(c) and word inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(2)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F63** S. 116(4)(4A) substituted for s. 116(4) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 3 para. 5(1)**; S.I. 2012/669, art. 4(d)
- F64** Words in s. 116(4)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(3)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F65** Words in s. 116(4) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(3)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F66** Words in s. 116(5) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(4)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)
- F67** S. 116(5)(b) and word inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(4)(b)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)

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

- C39** S. 116 modified (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 3 para. 9(2)**
- C40** S. 116 excluded (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), arts. 1, **7(5)** (with art. 3)

#### Commencement Information

- I231** S. 116 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I232** S. 116 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### 117 Section 116: position where investigation is of multiple offences or offenders

- (1) This section applies where the investigation mentioned in section 116(1) relates to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons.
- (2) Each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.
- [<sup>F68</sup>(3) Subsections (4) and (5) apply if—
- (a) at least one of the cases has been, or must be, referred to the Director of Service Prosecutions (“the Director”) under section 116(2),

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- (b) a service policeman considers that there is sufficient evidence to charge a person with a service offence in another of the cases,
  - (c) that case is not required to be referred to the Director under section 116(2), and
  - (d) the service policeman considers that there is, or may be, a connection between a case falling within paragraph (a) and the case falling within paragraph (c), whether direct or indirect, that makes it appropriate for both cases to be referred to the Director.
- (4) The service policeman must consult the Director about the existence and nature of the connection between those cases.
- (5) Following that consultation, if the service policeman considers that there is a connection described in subsection (3)(d), the service policeman must refer the case falling within subsection (3)(c) to the Director.
- (6) The reference in this section to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a).]

#### Textual Amendments

**F68** S. 117(3)-(6) substituted for s. 117(3) (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 3(5)**, 19(1); [S.I. 2019/961](#), **reg. 2(1)(a)(b)** (with [reg. 3](#))

#### Commencement Information

**I233** S. 117 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I234** S. 117 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 118 Duty of service policeman to notify CO of referral to DSP

- (1) This section applies where a service policeman considers that there is sufficient evidence to charge a person (“A”) with a service offence and refers the case under section 116(2) [<sup>F69</sup>or 117(5)] to the Director of Service Prosecutions.
- (2) The service policeman must as soon as reasonably practicable after referring the case—
- (a) notify A's commanding officer of the referral; and
  - (b) provide prescribed documents to A's commanding officer.
- [<sup>F70</sup>(3) A notification under subsection (2)(a) must specify the service offence that the service policeman considers there is sufficient evidence to charge A with.
- (3A) Where that offence is a CO offence, the notification must—
- (a) specify whether the case is referred under section 116(2) or 117(5), and
  - (b) if the case is referred under section 116(2), specify the circumstances that bring the case within section 116(2)(b).]

(4) In this section—

    - (a) any reference to there being sufficient evidence to charge a person with a service offence is to be read in accordance with [<sup>F71</sup>section 116(5)(a)];
    - [<sup>F72</sup>(aa) any reference to a CO offence is to be read in accordance with section 116(5)(b);]

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) “prescribed documents” means documents prescribed for the purposes of subsection (2)(b) by regulations under section 128.

<sup>F73</sup>(5) .....

#### **Textual Amendments**

- F69** Words in s. 118(1) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(6\)\(a\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F70** S. 118(3)(3A) substituted for s. 118(3) (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(6\)\(b\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F71** Words in s. 118(4)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(6\)\(c\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F72** S. 118(4)(aa) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(6\)\(d\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F73** S. 118(5) omitted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), [ss. 3\(6\)\(e\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))

#### **Commencement Information**

- I235** S. 118 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I236** S. 118 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **CHAPTER 2**

### CHARGING AND MODE OF TRIAL

#### *Powers of charging etc*

#### **119 Circumstances in which CO has power to charge etc**

- (1) This section sets out the circumstances in which a commanding officer has initial powers (defined by section 120) in respect of a case.
- (2) If a commanding officer of a person becomes aware of an allegation which indicates, or circumstances which indicate, that the person has or may have committed a service offence, he has initial powers in respect of the case.
- (3) Subsection (2) does not apply if the allegation or circumstances—
  - (a) give or have given rise to the duty under section 113(1) or 114(1);
  - (b) are being or have been investigated by a service police force; or
  - (c) are being or have been investigated by a UK police force or overseas police force, and it appears to the commanding officer that that force may refer the matter to the service police.
- (4) A commanding officer has initial powers in respect of a case which a service policeman has referred to him under section 116(3) (referral of case following investigation by service or civilian police).

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) A commanding officer has initial powers in respect of a case which the Director of Service Prosecutions has referred to him under section 121(4) (referral of case by DSP).
- (6) If an allegation or circumstances mentioned in subsection (2) relate to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons, each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.

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

**C41** S. 119 modified (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 3 para. 9(2)**

#### **Commencement Information**

**I237** S. 119 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I238** S. 119 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **120 Power of CO to charge etc**

- (1) Subsections (2) and (3) apply where under section 119 a commanding officer has initial powers in respect of a case.
- (2) The officer may bring, in respect of the case, one or more charges that are capable of being heard summarily (see section 52).
- (3) The officer may refer the case to the Director of Service Prosecutions.
- (4) A charge brought under subsection (2) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (5) [<sup>F74</sup>Where an officer has referred a case under subsection (3), the officer must also refer to the Director of Service Prosecutions any other case—]
  - (a) which is of a description prescribed by regulations under section 128 for the purposes of this subsection, and
  - (b) as respects which the officer has initial powers,

<sup>F75</sup>  
....

#### **Textual Amendments**

**F74** Words in s. 120(5) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 4(1)(a)**, 19(1); [S.I. 2019/961](#), **reg. 2(1)(a)(b)** (with **reg. 3**)

**F75** Words in s. 120(5) omitted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), **ss. 4(1)(b)**, 19(1); [S.I. 2019/961](#), **reg. 2(1)(a)(b)** (with **reg. 3**)

#### **Commencement Information**

**I239** S. 120 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I240** S. 120 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

*Status: Point in time view as at 02/12/2019.*

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## 121 Power of DSP to <sup>F76</sup>charge or] direct bringing of charge etc

- (1) The powers in <sup>F77</sup>subsections (1A) to (5)] are exercisable by the Director of Service Prosecutions (“the Director”) in respect of a case which has been referred to him under—
- (a) section 116(2) (referral of case following investigation by service or civilian police);
  - <sup>F78</sup>(aa) section 117(5) (referral of connected cases);] or
  - (b) section 120(3) <sup>F79</sup>or (5)] (referral of case by CO).
- <sup>F80</sup>(1A) The Director may bring a charge or charges against the person concerned in respect of the case.
- (1B) If—
- (a) the Director brings a charge under subsection (1A), and
  - (b) the Service Civilian Court has jurisdiction to try the charge,
- the Director may allocate the charge for trial by that court.]
- (2) The Director may direct the commanding officer of the person concerned to bring, in respect of the case, such charge or charges against him as may be specified in the direction.
- (3) If—
- (a) the Director makes a direction under subsection (2), and
  - (b) the Service Civilian Court has jurisdiction to try the charge specified in the direction,
- the Director may allocate the charge for trial by that court.
- (4) The Director may refer the case to the commanding officer of the person concerned, but only if he has decided that it would not be appropriate <sup>F81</sup>to bring a charge under subsection (1A) or] to make a direction under subsection (2) in respect of it.
- (5) The Director may make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of any offence as regards which he could <sup>F82</sup>bring a charge under subsection (1A) or] make a direction under subsection (2).

### Textual Amendments

- F76** Words in s. 121 heading inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 5(1)(e)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F77** Words in s. 121(1) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 5(1)(a)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F78** S. 121(1)(aa) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 3(7)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F79** Words in s. 121(1)(b) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 4(2)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F80** S. 121(1A)(1B) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 5(1)(b)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F81** Words in s. 121(4) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 5(1)(c)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)
- F82** Words in s. 121(5) inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by *Armed Forces Act 2016 (c. 21)*, **ss. 5(1)(d)**, 19(1); S.I. 2019/961, **reg. 2(1)(a)(b)** (with **reg. 3**)



*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I241** S. 121 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I242** S. 121 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 122 Charges brought [<sup>F83</sup>by or] at direction of DSP

- (1) Where a direction under section 121(2) is given to an officer, he must bring the charge or charges specified in the direction.
- (2) A charge [<sup>F84</sup>brought by the Director of Service Prosecutions (“the Director”) under section 121(1A) or by an officer as a result of a direction under section 121(2)]—
  - (a) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial if [<sup>F85</sup>the Director allocated it (under section 121(1B) or (3))] for trial by that court;
  - (b) otherwise, is to be regarded for the purposes of this Part as allocated for Court Martial trial.

#### Textual Amendments

- F83** Words in s. 122 heading inserted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 5\(2\)\(c\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F84** Words in s. 122(2) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 5\(2\)\(a\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))
- F85** Words in s. 122(2)(a) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 5\(2\)\(b\)](#), 19(1); [S.I. 2019/961](#), [reg. 2\(1\)\(a\)\(b\)](#) (with [reg. 3](#))

#### Commencement Information

- I243** S. 122 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I244** S. 122 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Powers of commanding officer or DSP after charge etc*

## 123 Powers of CO after charge

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for summary hearing.
- (2) The accused's commanding officer may—
  - (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;
  - (e) refer the charge to the Director of Service Prosecutions.
- (3) The powers under subsection (2) may be exercised before or after the start of any summary hearing of the charge.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be capable of being heard summarily (see section 52).
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for summary hearing.
- (7) Where a charge is referred under subsection (2)(e) to the Director of Service Prosecutions, the charge and any other charge brought in respect of the same case are to be regarded for the purposes of this Part as allocated for Court Martial trial.

#### Commencement Information

**I245** S. 123 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I246** S. 123 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 124 CO to hear charge allocated for summary hearing

- (1) This section applies in respect of a charge which is regarded for the purposes of this Part as allocated for summary hearing.
- (2) The accused's commanding officer must hear the charge summarily unless—
  - (a) he exercises his powers under section 123(2)(b), (d) or (e) in respect of the charge (substitution of charge, discontinuance of proceedings, or referral to DSP); or
  - (b) the accused elects Court Martial trial of the charge (see section 129).
- (3) Subsection (2) is subject to sections 52 (charges capable of being heard summarily) and 54 (charges which may be heard summarily only with permission or by senior officer).

#### Commencement Information

**I247** S. 124 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I248** S. 124 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 125 Powers of DSP in respect of charge allocated for Court Martial trial

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Court Martial trial.
- (2) The Director of Service Prosecutions may—
  - (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) refer the charge to the accused's commanding officer, but only if the charge is capable of being heard summarily (see section 52);
  - (f) allocate the charge for trial by the Service Civilian Court, but only if the charge is one that that court has jurisdiction to try;
  - (g) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) Court Martial rules may restrict the exercise of powers under subsection (2)—
- (a) after arraignment by the Court Martial; [<sup>F86</sup>or]
  - (b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC); <sup>F87</sup>...
  - <sup>F87</sup>(c) .....
- <sup>F88</sup>(4) .....
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Court Martial trial.
- (7) Any charge referred under subsection (2)(e) to a commanding officer is to be regarded for the purposes of this Part as allocated for summary hearing.
- (8) Any charge allocated under subsection (2)(f) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.

#### Textual Amendments

- F86** Word in s. 125(3) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(2\)\(a\)](#); [S.I. 2012/669](#), art. 4(d)
- F87** S. 125(3)(c) and preceding word repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(2\)\(b\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)
- F88** S. 125(4) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 6\(3\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)

#### Commencement Information

- I249** S. 125 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I250** S. 125 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 126 Powers of DSP in respect of charge allocated for SCC trial

- (1) This section applies where a charge against a person (“the accused”) is for the time being regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (2) The Director of Service Prosecutions may—
- (a) amend the charge;
  - (b) substitute for the charge another charge against the accused;
  - (c) bring an additional charge against the accused;
  - (d) discontinue proceedings on the charge;

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (e) allocate the charge for trial by the Court Martial;
  - (f) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.
- (3) SCC rules may restrict the exercise, after a decision by the Service Civilian Court under section 279 as to whether it should try the charge, of powers under subsection (2).
- (4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be one that the Service Civilian Court has jurisdiction to try.
- (5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.
- (6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.
- (7) Any charge allocated under subsection (2)(e) is to be regarded for the purposes of this Part as allocated for Court Martial trial.

#### **Commencement Information**

- I251** S. 126 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I252** S. 126 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **CHAPTER 3**

### **SUPPLEMENTARY**

#### **127 Directions by DSP barring further proceedings**

- (1) A direction under this subsection is a direction that for the purposes of section 63 the person specified in the direction is to be treated as acquitted of the service offence so specified.
- (2) A direction under this subsection is a direction that for the purposes of sections 63 and 64 the person specified in the direction is to be treated as acquitted of the service offence so specified.

#### **Commencement Information**

- I253** S. 127 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I254** S. 127 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **128 Regulations for purposes of Part 5**

- (1) The Secretary of State may by regulations make such provision as he considers necessary or expedient for the purposes of any provision of this Part.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Regulations under this section may in particular make provision—
- (a) for the delegation by a commanding officer of any of his functions;
  - (b) as to the bringing, amendment and substitution of charges;
  - (c) as to the referral of cases and charges, including provision requiring a commanding officer in prescribed circumstances to refer a case or charge to the Director of Service Prosecutions;
  - (d) as to the examination of witnesses for the purpose of obtaining information of assistance to the Director of Service Prosecutions in connection with his functions under Chapter 2;
  - (e) requiring prescribed persons to be notified of prescribed matters.
- (3) In subsection (2) “prescribed” means prescribed by regulations under this section.

#### Commencement Information

**I255** S. 128 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I256** S. 128 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## PART 6

### SUMMARY HEARING AND APPEALS AND REVIEW

#### CHAPTER 1

##### SUMMARY HEARING

##### *Right to elect Court Martial trial*

#### **129 Right to elect Court Martial trial**

- (1) Before hearing a charge summarily the commanding officer must, in the way specified by rules under section 153, give the accused the opportunity of electing Court Martial trial of the charge.
- (2) If the accused elects Court Martial trial of the charge—
  - (a) the commanding officer must refer the charge to the Director of Service Prosecutions; and
  - (b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.
- (3) Where two or more charges against the accused are to be heard summarily together, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.
- [<sup>F89</sup>(4) Subsection (5) applies if an opportunity to elect Court Martial trial of a charge (“the original charge”) has been given under subsection (1) and subsequently—
  - (a) the charge is amended;

*Status: Point in time view as at 02/12/2019.*

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- (b) another charge is substituted for it; or
  - (c) an additional charge is brought.
- (5) Subsection (1) applies in relation to the amended, substituted or additional charge; and if the amendment, substitution or addition takes place after the start of the summary hearing, that subsection has effect in relation to the charge as if the reference to hearing a charge summarily were to proceeding with the hearing.
- (6) In subsection (4)—
- (a) “amended” means amended under section 123(2)(a) or, in the case of a charge referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, amended under section 125(2)(a) and referred to the commanding officer under section 125(2)(e);
  - (b) “substituted” means substituted under section 123(2)(b) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, substituted under section 125(2)(b) and referred to the commanding officer under section 125(2)(e);
  - (c) “brought”, in relation to an additional charge, means brought under section 123(2)(c) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, brought under section 125(2)(c) and referred to the commanding officer under section 125(2)(e).
- (7) Subsection (8) applies where—
- (a) an opportunity to elect Court Martial trial of a charge has been given under this section;
  - (b) the accused has not elected Court Martial trial; and
  - (c) at a time after the giving of the opportunity to elect, the commanding officer obtains extended powers for the purposes of any provision of section 133, 134, 135 or 194.
- (8) The provisions of this section requiring the giving of an opportunity to elect Court Martial trial of the charge shall apply again.]

#### Textual Amendments

**F89** S. 129(4)-(8) substituted for s. 129(4) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 7](#); [S.I. 2012/669, art. 4\(d\)](#)

#### Commencement Information

**I257** S. 129 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I258** S. 129 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 130 Further consequences of election for Court Martial trial

- (1) This section applies where the accused has elected Court Martial trial of a charge.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused refer to a commanding officer, under section 125(2)(e)—
  - (a) that charge (whether or not amended by the Director), or

*Status: Point in time view as at 02/12/2019.*

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- (b) any charge substituted under section 125(2)(b) or additionally brought under section 125(2)(c).
- (3) Where a charge mentioned in subsection (2) is referred under section 125(2)(e), the accused may not elect Court Martial trial of the charge (and accordingly section 129(1) does not apply in respect of the charge); but this does not apply [<sup>F90</sup>—
  - (a) where the charge is amended after referral;
  - (b) to any charge substituted for or added to the charge after referral; or
  - (c) where extended powers for the purposes of any provision of section 133, 134, 135 or 194 are obtained after referral.]

#### Textual Amendments

**F90** S. 130(3)(a)-(c) substituted for words (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 8](#); [S.I. 2012/669, art. 4\(d\)](#)

#### Commencement Information

**I259** S. 130 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I260** S. 130 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### [<sup>F91</sup>130A Restrictions on DSP's powers to substitute or add charges after election

- (1) This section applies where—
  - (a) a charge is for the time being regarded for the purposes of Part 5 as allocated for Court Martial trial; and
  - (b) the charge is in respect of an offence which would be a relevant offence for the purposes of Schedule 3A (sentencing powers of Court Martial where election for trial by that court) if the accused were convicted of it.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused substitute under section 125(2)(b)—
  - (a) a charge in respect of an offence which is not one that may be dealt with at a summary hearing (see section 53); or
  - (b) a charge in respect of an offence within section 54(2) (offences that may be dealt with summarily only with permission or by senior officer), except where the relevant charge was in respect of such an offence.
- (3) In subsection (2)(b) “relevant charge” means—
  - (a) in relation to a case A offence or a case B offence (within the meaning of Schedule 3A), the charge in respect of which the accused elected Court Martial trial; and
  - (b) in relation to a case C offence or a case D offence (within the meaning of Schedule 3A), the charge referred as mentioned in paragraph 4(c) of that Schedule.
- (4) The Director may not without the written consent of the accused bring under section 125(2)(c) a charge in addition to the charge.
- (5) In construing Part 1 of Schedule 3A (relevant offences) for the purposes of this section, paragraphs 3(b) and 5(c) of that Schedule are to be disregarded.]

*Status: Point in time view as at 02/12/2019.*

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### Textual Amendments

- F91** S. 130A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 9](#); S.I. 2012/669, art. 4(d) (with art. 9)

## *Summary hearing*

### 131 Summary hearing

- (1) This section applies where a commanding officer hears a charge summarily.
- (2) The commanding officer may dismiss the charge at any stage of the hearing; but this is subject to subsection (4) and to any provision of rules under section 153.
- (3) If the commanding officer determines that the charge has not been proved, he must dismiss the charge.
- (4) If the commanding officer determines that the charge has been proved, he must—
  - (a) record a finding that the charge has been proved; and
  - (b) award one or more of the punishments authorised by section 132.
- (5) Where the commanding officer records findings that two or more charges against a person have been proved, the award he must make under subsection (4) is a single award (consisting of one or more of those punishments) in respect of the charges taken together.
- (6) Nothing in this section authorises a commanding officer to include in an award two or more punishments within the same row of the Table in section 132, except where those punishments are—
  - (a) different minor punishments which regulations made under row 7 of the Table permit to be awarded together; or
  - (b) service compensation orders.

### Commencement Information

- I261** S. 131 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I262** S. 131 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## *Punishments available to commanding officer*

### 132 Punishments available to commanding officer

- (1) The second column of the following Table lists the punishments that may be awarded by a commanding officer who has heard a charge summarily, subject in the case of each punishment to any limitation shown in the third column opposite it.

#### TABLE

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
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*Status: Point in time view as at 02/12/2019.*

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1	detention for a term not exceeding the maximum allowed by section 133	only if the person being punished is of or below the rank of— (a) leading rate; (b) lance corporal or lance bombardier; (c) corporal in any of Her Majesty's air forces [ <sup>F92</sup> (but see subsection (1A))]
2	forfeiture of a specified term of seniority or of all seniority	only if the person being punished is an officer, and only in accordance with section 134
3	reduction in rank, or disrating	only if the person being punished is a warrant officer or non-commissioned officer, only in accordance with section 135, and not to an extent prohibited by regulations under section 135(4)
4	a fine not exceeding the maximum amount allowed by section 136	
5	a severe reprimand or a reprimand	only if the person being punished is an officer, warrant officer or non-commissioned officer
6	a service supervision and punishment order (defined by section 173)	only if the person being punished is an able rate, marine, soldier or airman
7	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
8	a service compensation order (defined by section 175) of an amount not exceeding the maximum allowed by section 137	

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[<sup>F93</sup>(1A) In this section and section 133 references to a corporal in any of Her Majesty's air forces do not include a corporal in the Royal Air Force Regiment.]

(2) Subsection (1) is subject to (in particular)—

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- (a) section 138 (prohibited combinations of punishments) and any regulations made under that section;
  - (b) Chapter 1 of Part 9 (general provisions about sentencing).
- (3) Where regulations under row 7 of the Table authorise a minor punishment, they may—
- (a) confer on the offender's commanding officer a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;
  - (b) confer on the offender's commanding officer the function of deciding the details of the punishment;
  - (c) provide for the delegation by the commanding officer of any of his functions under the regulations.

#### Textual Amendments

**F92** Words in s. 132(1) Table inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 12\(1\)\(a\)](#), 32(3); [S.I. 2012/669](#), [art. 4\(a\)](#)

**F93** S. 132(1A) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 12\(1\)\(b\)](#), 32(3); [S.I. 2012/669](#), [art. 4\(a\)](#)

#### Commencement Information

**I263** S. 132 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I264** S. 132 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 133 Detention: limits on powers

- (1) The maximum term of detention that a commanding officer may award under row 1 of the Table in section 132 to an able rate, marine, soldier or airman is—
- (a) 90 days if the commanding officer has extended powers for the purposes of this subsection;
  - (b) otherwise, 28 days.
- (2) A commanding officer may not award detention under row 1 of the Table in section 132 to a person of any of the following ranks—
- (a) leading rate,
  - (b) lance corporal or lance bombardier,
  - (c) corporal in any of Her Majesty's air forces,
- unless the commanding officer has extended powers for the purposes of this subsection; and the maximum term of detention that a commanding officer may (if he has those powers) award such a person is 90 days.
- (3) A commanding officer has extended powers for the purposes of subsection (1) or (2) if he has, [<sup>F94</sup>within the relevant time (defined by section 135A)] —
- (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (4) A commanding officer also has extended powers for the purposes of subsection (1) or (2) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

*Status: Point in time view as at 02/12/2019.*

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#### Textual Amendments

**F94** Words in s. 133(3) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 10](#); [S.I. 2012/669, art. 4\(d\)](#)

#### Commencement Information

**I265** S. 133 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I266** S. 133 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 134 Forfeiture of seniority: requirement for approval

- (1) A commanding officer may not award forfeiture of seniority under row 2 of the Table in section 132 unless he has extended powers for the purposes of this section.
- (2) A commanding officer has extended powers for the purposes of this section if he has, [<sup>F95</sup>within the relevant time (defined by section 135A)] —
  - (a) applied to higher authority for extended powers for the purposes of this section; and
  - (b) been notified by higher authority that his application has been granted.
- (3) A commanding officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

#### Textual Amendments

**F95** Words in s. 134(2) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 10](#); [S.I. 2012/669, art. 4\(d\)](#)

#### Commencement Information

**I267** S. 134 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I268** S. 134 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 135 Reduction in rank: limits on powers

- (1) A commanding officer may not award reduction in rank, or disrating, under row 3 of the Table in section 132 unless—
  - (a) he has extended powers for the purposes of this subsection; or
  - (b) the person being punished is a lance corporal or lance bombardier.
- (2) The reduction in rank or disrating that a commanding officer may award is reduction or disrating—
  - (a) by one acting rank or rate; or
  - (b) if the person being punished has no acting rank or rate, by one substantive rank or rate.
- [<sup>F96</sup>(3) Where the person being punished is a corporal in any of Her Majesty's air forces, the reduction in rank authorised by subsection (2)(a) or (b) (as the case may be) is reduction to the highest rank the person has held in that force as an airman; but this is subject to subsection (3A).

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- (3A) In relation to the Royal Air Force Regiment, the reference in subsection (3) to a corporal is to be read as a reference to a lance corporal.]
- (4) The Defence Council may by regulations provide that persons of a trade or branch specified in the regulations may not be reduced or disgraced under section 132 below a rank or rate so specified.
- (5) A commanding officer has extended powers for the purposes of subsection (1) if he has, [<sup>F97</sup>within the relevant time (defined by section 135A)] —
- (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (6) A commanding officer also has extended powers for the purposes of subsection (1) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

#### Textual Amendments

- F96** S. 135(3)(3A) substituted for s. 135(3) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 12(2)**, 32(3); [S.I. 2012/669](#), art. 4(a)
- F97** Words in s. 135(5) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 3 para. 10**; [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

- I269** S. 135 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I270** S. 135 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

#### [<sup>F98</sup>135A Extended powers: time for obtaining

- (1) In each of sections 133(3), 134(2) and 135(5), “within the relevant time” means before the start of the summary hearing; but this is subject to subsections (2) and (3).
- (2) Subsection (3) applies where after the start of a summary hearing—
  - (a) a charge is amended under section 123(2)(a);
  - (b) a charge is substituted for another charge under section 123(2)(b); or
  - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
  - (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
 is to be treated for the purposes of sections 133(3), 134(2) and 135(5) as made within the relevant time.]

#### Textual Amendments

- F98** S. 135A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 3 para. 11**; [S.I. 2012/669](#), art. 4(d)

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### 136 Fine: maximum amount

[<sup>F99</sup>(1) The maximum amount of a fine that a commanding officer may award is 28 days' pay.]

- (4) For the purposes of this section a day's pay is—
- (a) subject to paragraph (b), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded;
  - (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate.
- (5) If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of subsection (4) he is to be taken to have been on duty then.
- (6) In subsection (4) “special member” and “ordinary member” have the same meanings as in the Reserve Forces Act 1996 (c. 14).

#### Textual Amendments

**F99** S. 136(1) substituted for s. 136(1)-(3) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 12](#); [S.I. 2012/669, art. 4\(d\)](#) (with [art. 7](#))

#### Commencement Information

**I271** S. 136 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I272** S. 136 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 137 Service compensation orders: maximum amount

- (1) Where an award by a commanding officer consists of or includes one service compensation order, the compensation to be paid under the order must not exceed £1,000.
- (2) Where an award by a commanding officer consists of or includes two or more service compensation orders, the total compensation to be paid under the orders must not exceed £1,000.
- (3) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in subsections (1) and (2) such other sum as appears to him justified by the change.
- (4) In subsection (3) “the relevant date” means—
- (a) the date of the coming into force of this section; or
  - (b) where the sum for the time being specified in subsections (1) and (2) was substituted for a sum previously so specified, the date of the substitution.

#### Commencement Information

**I273** S. 137 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

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**I274** S. 137 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### 138 Prohibited combinations of punishments

(1) Subsections (2) to (6) apply where a commanding officer awards punishment in respect of an offender.

[<sup>F100</sup>(2) If he awards detention, the only additional punishments he may award are—

- (a) reduction in rank or disrating (subject to subsection (8));
- (b) a service compensation order.]

(4) If he awards forfeiture of seniority, the only additional punishments he may award are—

- (a) a severe reprimand or a reprimand;
- (b) a service compensation order.

(5) If he awards reduction in rank or disrating, the only additional punishments he may award are—

- (a) a suspended sentence of service detention (subject to subsection (8));
- (b) a service compensation order.

(6) If he awards a fine, he may not also award a service supervision and punishment order.

(7) Regulations under row 7 of the Table in section 132 may make provision, as respects any punishment authorised by those regulations, prohibiting that punishment from being awarded with any other punishment (whether or not so authorised) specified by the regulations.

(8) Nothing in this section authorises a commanding officer to award a particular punishment where the award of that punishment is prohibited otherwise than by this section.

(9) References in this section to a service compensation order include references to two or more such orders.

#### Textual Amendments

**F100** S. 138(2) substituted for s. 138(2)(3) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 13(1)**, 32(3); [S.I. 2012/669](#), **art. 4(a)** (with **art. 6(1)(2)**)

#### Commencement Information

**I275** S. 138 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I276** S. 138 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### 139 Savings for maximum penalties for offences

(1) Where a commanding officer awards punishment in respect of a single offence, nothing in sections 131 to 138 authorises him—

- (a) to award a punishment of a kind which the Court Martial could not award for that offence;

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- (b) if the offence is under section 42 (criminal conduct), to award a fine exceeding the maximum allowed by section 42(4).
- (2) Where a commanding officer awards punishment in respect of two or more offences—
  - (a) nothing in sections 131 to 138 authorises him to award a punishment of a particular kind unless it is one which the Court Martial could award for at least one of the offences; and
  - (b) if all the offences are under section 42 and the maximum fine allowed by section 136 exceeds the permitted maximum, nothing in sections 131 to 138 authorises him to award a fine exceeding the permitted maximum.
- (3) The permitted maximum is the total of the fines that under section 42(4) the commanding officer could award in respect of the offences if he had power to make separate awards in respect of them.

#### Commencement Information

**I277** S. 139 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I278** S. 139 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 2

### THE SUMMARY APPEAL COURT

#### 140 The Summary Appeal Court

- (1) There shall be a court, to be known as the Summary Appeal Court.
- (2) The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom.

#### Commencement Information

**I279** S. 140 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I280** S. 140 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 141 Right of appeal

- (1) A person in respect of whom—
  - (a) a charge has been heard summarily, and
  - (b) a finding that the charge has been proved has been recorded,may appeal to the Summary Appeal Court against the finding or against the punishment awarded.
- (2) Subject to subsection (3), any appeal under this section must be brought—
  - (a) within the period of 14 days beginning with the date on which the punishment was awarded (“the initial period”); or

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- (b) within such longer period as the court may allow by leave given before the end of the initial period.
- (3) The court may at any later time give leave for an appeal to be brought within such period as it may allow.
- (4) The respondent to an appeal under this section is the Director of Service Prosecutions.

**Commencement Information**

- I281** S. 141 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I282** S. 141 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**142 Constitution of the SAC for appeals**

- (1) For the purpose of hearing an appeal under section 141, the Summary Appeal Court is to consist of—
  - (a) a judge advocate;
  - (b) an officer qualified for membership under section 143 and not ineligible by virtue of section 144; and
  - (c) a third person who is an officer or warrant officer so qualified and not so ineligible.
- (2) Subsection (1) is subject to any provision made by SAC rules.
- (3) The judge advocate for an appeal under section 141 is to be specified by or on behalf of the Judge Advocate General.
- (4) The other members of the court for an appeal under section 141 are to be specified by or on behalf of the court administration officer.

**Commencement Information**

- I283** S. 142 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I284** S. 142 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**143 Officers and warrant officers qualified for membership of the SAC**

- (1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Summary Appeal Court if he is subject to service law.
- (2) An officer is not qualified for membership of the court unless—
  - (a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.



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- (4) An officer or warrant officer is not qualified for membership of the court if—
- (a) he is a member of the Military Court Service;
  - (b) he is a member of or on the staff of the Service Prosecuting Authority;
  - (c) he is a service policeman;
  - (d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;
  - (e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (f) he is an advocate or solicitor in Scotland;
  - (g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (5) In this section “relevant territory” means—
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### **Commencement Information**

**I285** S. 143 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I286** S. 143 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

#### **144 Officers and warrant officers ineligible for membership in particular circumstances**

- (1) An officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if—
- (a) he was the commanding officer of the appellant at any time in the period beginning with the date of commission of the offence which is the subject of the finding against the appellant and ending with the start of the appeal hearing;
  - (b) before the summary hearing, he took part in investigating the subject matter of any finding against the appellant;
  - (c) he is a higher authority who dealt with an application made before the summary hearing for permission under section 54 or for extended powers for the purposes of any provision of section 133, 134, 135, 136 or 194;
  - (d) he serves under the command of a person within paragraph (c);
  - (e) he serves under the command of the officer who conducted the summary hearing; or
  - (f) before the summary hearing, he conducted (whether alone or with other persons) an inquiry into the subject matter of any finding against the appellant.
- (2) A warrant officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if he falls within subsection (1)(b), (d), (e) or (f).

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Where there is more than one finding against the appellant, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.
- (4) SAC rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Summary Appeal Court.

#### Commencement Information

- I287** S. 144 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I288** S. 144 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 145 Open court

Subject to any provision made by SAC rules, the Summary Appeal Court must sit in open court.

#### Commencement Information

- I289** S. 145 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I290** S. 145 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 146 Hearing of appeals

- (1) An appeal under section 141 against a finding is to be by way of—
  - (a) a rehearing of the charge; and
  - (b) except where section 147(2) applies, a rehearing as respects punishment.
- (2) An appeal under section 141 against punishment is to be by way of a rehearing as respects punishment.
- (3) In the case of the hearing of an appeal under section 141, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (4) Any rulings or directions given under subsection (3) are binding on the court.

#### Commencement Information

- I291** S. 146 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I292** S. 146 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 147 Powers of the SAC

- (1) At a rehearing of a charge by virtue of section 146(1)(a), the Summary Appeal Court may—
  - (a) confirm or quash the finding concerned; or

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- (b) substitute for the finding concerned a finding that another charge has been proved.
- (2) Where the court quashes the finding, or (if there is more than one finding) every finding, made in respect of the appellant, it must quash the punishment which relates to that finding or, as the case may be, to those findings.
- (3) At a rehearing as respects punishment by virtue of section 146(1)(b) or (2), the Summary Appeal Court may—
  - (a) confirm the punishment awarded; or
  - (b) quash that punishment and award in substitution for it any punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary hearing to award; and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (4) SAC rules may make provision in connection with the exercise of the power under subsection (1)(b) (including provision restricting the exercise of the power).
- (5) In determining—
  - (a) whether to substitute a term of detention, or
  - (b) the length of any such substituted term,the court must take account of any period of the original term of detention that the appellant served.

#### **Commencement Information**

**I293** S. 147 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I294** S. 147 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **148 Effect of substituted punishment**

- (1) Unless it otherwise directs, any punishment substituted by the Summary Appeal Court has effect as if awarded on the day on which the original punishment was awarded, but this is subject to subsection (2).
- (2) Where the court substitutes a term of detention (other than a suspended sentence of service detention), the substituted term takes effect—
  - (a) if the court makes a direction under section 189(3), in accordance with the direction;
  - (b) otherwise, from the beginning of the day on which the punishment is substituted.

#### **Commencement Information**

**I295** S. 148 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I296** S. 148 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 149 Making of, and appeals from, decisions of the SAC

- (1) Subject to section 146(3), any decision of the Summary Appeal Court when constituted as mentioned in section 142(1) must be determined by a majority of the votes of the members of the court.
- (2) The appellant or respondent may question any decision of the Summary Appeal Court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Summary Appeal Court to have a case stated for the opinion of the High Court in England and Wales.

### Commencement Information

- I297** S. 149 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I298** S. 149 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 150 Privileges of witnesses and others

A witness before the Summary Appeal Court or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

### Commencement Information

- I299** S. 150 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I300** S. 150 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 151 SAC rules

- (1) The Secretary of State may by rules (referred to in this Act as “SAC rules”) make provision with respect to the Summary Appeal Court.
- (2) SAC rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) the hearing of appeals and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the appellant.
- (3) Without prejudice to the generality of subsections (1) and (2), SAC rules may make provision—
  - (a) as to oaths and affirmations for members of the court, witnesses and other persons;
  - (b) as to objections to, and the replacement of, members of the court;
  - (c) as to the constitution of the court;
  - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;

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- (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
  - (i) the payment of expenses to persons summoned to attend the court;
  - (ii) the issue by the court of warrants for the arrest of persons;
- (f) enabling an uncontested appeal to be determined without a hearing;
- (g) as to the bringing or abandonment of appeals;
- (h) for the discharge of a court (including provision as to rehearings following discharge);
  - (i) as to notifications and references under section 152;
  - (j) for the making and retention of records of the proceedings of the court;
  - (k) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (l) conferring functions in relation to the court on the court administration officer;
  - (m) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
  - (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) SAC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.
- (7) In this section “appeal” means an appeal under section 141.

#### Commencement Information

**I301** S. 151 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I302** S. 151 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 3

### REVIEW OF SUMMARY FINDINGS AND PUNISHMENTS

#### 152 Review of summary findings and punishments

- (1) Where—
  - (a) a charge has been heard summarily, and
  - (b) a finding that the charge has been proved has been recorded,

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the finding or the punishment awarded may be reviewed at any time.

- (2) A review under this section may be carried out by—
- (a) the Defence Council; or
  - (b) any officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (3) Subsection (4) applies where—
- (a) a review has been carried out under this section in respect of a finding or punishment; and
  - (b) the person to whom the review relates has not brought an appeal under section 141 within the period provided by subsection (2) of that section.
- (4) The person who carried out the review may, with the leave of the Summary Appeal Court, refer the finding or punishment to the court to be considered by it as on an appeal.
- (5) Subsections (6) and (7) apply where—
- (a) a review has been carried out under this section in respect of a finding or punishment; and
  - (b) the person to whom the review relates has brought an appeal under section 141.
- (6) If—
- (a) the Summary Appeal Court has not completed the hearing of the appeal, and
  - (b) the person who carried out the review considers that any matter arising at or from the summary hearing should be brought to the notice of the court,
- he may notify the court of that matter.
- (7) If—
- (a) the Summary Appeal Court has completed the hearing of the appeal, and
  - (b) the person who carried out the review considers that any matter arising at or from the summary hearing of which the court was not aware should have been brought to the notice of the court,
- he may, with the leave of the court, refer the finding or punishment, including any finding or punishment substituted or awarded by the court, to the court to be considered by it as on an appeal.
- (8) A reference to the Summary Appeal Court under subsection (4) or (7) shall be treated for the purposes of this Act as an appeal under section 141 brought by the person to whom the finding or punishment relates against the finding or punishment.

#### **Commencement Information**

**I303** S. 152 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I304** S. 152 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## CHAPTER 4

### SUMMARY HEARINGS ETC RULES

#### 153 Summary hearings etc rules

- (1) The Secretary of State may by rules make provision with respect to—
  - (a) the summary hearing of charges by commanding officers;
  - (b) hearings as regards the making of orders under section 193 (activation of suspended sentence of service detention).
- (2) Rules under this section may in particular make provision—
  - (a) as to the practice and procedure to be followed at hearings;
  - (b) as to evidence at hearings;
  - (c) for the delegation by a commanding officer of any of his functions;
  - (d) as to<sup>F101</sup>, and grants of,] extended powers;
  - (e) as to<sup>F102</sup>, and grants of,] permission to hear summarily charges of a kind mentioned in section 54;
  - (f) requiring prescribed persons to be notified of prescribed matters.
- (3) In subsection (2) “prescribed” means prescribed by rules under this section.

#### Textual Amendments

**F101** Words in s. 153(2)(d) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 13](#); [S.I. 2012/669](#), art. 4(d)

**F102** Words in s. 153(2)(e) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 13](#); [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

**I305** S. 153 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I306** S. 153 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## PART 7

### TRIAL BY COURT MARTIAL

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

**C42** Pt. 7 modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(1\)](#)

*Status: Point in time view as at 02/12/2019.*

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## CHAPTER 1

### THE COURT MARTIAL

#### 154 The Court Martial

- (1) There shall be a court, to be known as the Court Martial.
- (2) The Court Martial may sit in any place, whether within or outside the United Kingdom.

#### Commencement Information

**I307** S. 154 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I308** S. 154 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 155 Constitution of the Court Martial

- (1) In the case of any proceedings, the Court Martial is to consist of—
  - (a) a judge advocate; and
  - (b) at least three but not more than five other persons (“lay members”).
- (2) But Court Martial rules may provide that, in the case of proceedings of a prescribed description, there are to be—
  - (a) at least five but not more than seven lay members; or
  - (b) no lay members.
- (3) In the case of proceedings where the Court Martial consists of a judge advocate and lay members—
  - (a) a prescribed number of the lay members must be officers or warrant officers qualified for membership under section 156 and not ineligible by virtue of section 157; and
  - (b) the rest must be officers so qualified and not so ineligible.
- (4) Subsection (3) is subject to any provision made by Court Martial rules.
- (5) The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General.
- (6) The lay members for any proceedings are to be specified by or on behalf of the court administration officer.
- (7) The number of lay members specified under subsection (6) is to be the minimum required unless a judge advocate, in accordance with Court Martial rules, directs otherwise.
- (8) In subsection (7) “the minimum required” means—
  - (a) the minimum required by subsection (1)(b); or
  - (b) where rules made by virtue of subsection (2)(a) apply instead of subsection (1)(b), the minimum required by those rules.
- (9) In this section “prescribed” means prescribed by Court Martial rules.



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

**C43** S. 155(3) excluded (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 31\(2\)](#), [33\(1\)](#)

#### Commencement Information

**I309** S. 155 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I310** S. 155 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 156 Officers and warrant officers qualified for membership of the Court Martial

- (1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Court Martial if he is subject to service law.
- (2) An officer is not qualified for membership of the court unless—
  - (a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.
- (4) An officer or warrant officer is not qualified for membership of the court if—
  - (a) he is a member of the Military Court Service;
  - (b) he is a member of or on the staff of the Service Prosecuting Authority;
  - (c) he is a service policeman;
  - (d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;
  - (e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (f) he is an advocate or solicitor in Scotland;
  - (g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (5) In this section “relevant territory” means—
  - (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### Commencement Information

**I311** S. 156 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I312** S. 156 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## 157 Officers and warrant officers ineligible for membership in particular circumstances

- (1) An officer is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if—
  - (a) he was the commanding officer of the defendant at any time in the period beginning with the date of commission of the offence to which the arraignment relates and ending with the arraignment;
  - (b) he has taken part in investigating the subject matter of any charge against the defendant; or
  - (c) he has conducted (whether alone or with other persons) an inquiry into the subject matter of any charge against the defendant.
- (2) A warrant officer is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if he falls within subsection (1)(b) or (c).
- (3) Where a defendant is arraigned in respect of more than one offence, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.
- (4) Court Martial rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Court Martial for a description of proceedings so prescribed.

### Commencement Information

- I313** S. 157 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I314** S. 157 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 2

### COURT MARTIAL PROCEEDINGS

## 158 Open court

Subject to any provision made by Court Martial rules, the Court Martial must sit in open court.

### Modifications etc. (not altering text)

- C44** S. 158 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 152\(5\)](#)

### Commencement Information

- I315** S. 158 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I316** S. 158 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 159 Rulings and directions

- (1) In the case of proceedings where the Court Martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (2) Any rulings or directions given under subsection (1) are binding on the court.

### Commencement Information

- I317** S. 159 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I318** S. 159 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 160 Decisions of Court Martial: finding and sentence

- (1) Subject to the following provisions of this section, the finding of the Court Martial on a charge, and any sentence passed by it, must be determined by a majority of the votes of the members of the court.
- (2) The judge advocate is not entitled to vote on the finding.
- (3) In the case of an equality of votes on the finding, the court must acquit the defendant.
- (4) In the case of an equality of votes on the sentence, the judge advocate has a casting vote.

### Commencement Information

- I319** S. 160 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I320** S. 160 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 161 Power of Court Martial to convict of offence other than that charged

- (1) Where the Court Martial acquits a person of an offence specifically charged in the charge sheet, but the allegations in the charge sheet amount to or include (expressly or by implication) an allegation of another service offence, the court may convict him of that other offence.
- (2) For the purposes of subsection (1)—
  - (a) an allegation of an offence to which section 39(1) applies (offence X) shall be taken as including an allegation of an offence under that section of attempting to commit offence X; and
  - (b) an allegation of a completed section 42 offence shall be taken as including an allegation of a section 42 offence of attempt.
- (3) Subsection (1) applies in relation to a charge sheet containing more than one charge as if each charge were contained in a separate charge sheet.
- (4) In this section—

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“a completed section 42 offence” means an offence that, by virtue of section 1(4) of the Criminal Attempts Act 1981 (c. 47) as modified by section 43 of this Act, is an offence to which section 1 of that Act applies;

“a section 42 offence of attempt” has the meaning given by section 44(2).

#### Commencement Information

**I321** S. 161 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I322** S. 161 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 162 Privileges of witnesses and others

A witness before the Court Martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

#### Commencement Information

**I323** S. 162 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I324** S. 162 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 163 Court Martial rules

- (1) The Secretary of State may by rules (referred to in this Act as “Court Martial rules”) make provision with respect to the Court Martial.
- (2) Court Martial rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) trials and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the defendant;
  - (f) appeals from the Service Civilian Court.
- (3) Without prejudice to the generality of subsections (1) and (2), Court Martial rules may make provision—
  - (a) as to oaths and affirmations for members of the court, witnesses and other persons;
  - (b) as to objections to, and the replacement of, members of the court;
  - (c) as to the constitution of the court;
  - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
  - (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
    - (i) the payment of expenses to persons summoned to attend the court;
    - (ii) the issue by the court of warrants for the arrest of persons;

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*Status: Point in time view as at 02/12/2019.*

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- (f) as to the amendment of charges;
  - (g) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
  - (h) for the variation by the court of a sentence passed by it or the variation or rescission by it of an order made by it;
  - (i) for appeals—
    - (i) against any orders (including directions) of the court prohibiting or restricting the publication of any matter or excluding the public from any proceedings (whether made in preliminary proceedings or otherwise);
    - (ii) against any other orders or rulings made in proceedings preliminary to a trial;
  - (j) for the discharge of a court (including provision as to retrials and rehearings following discharge);
  - (k) for the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 (c. 11) (orders for the inspection of bankers' books for the purposes of legal proceedings) to be exercisable by a judge advocate as well as by the court or a judge within the meaning of that Act;
  - (l) for the making and retention of records of the proceedings of the court;
  - (m) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (n) conferring functions in relation to the court on the court administration officer;
  - (o) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
- (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) Court Martial rules must secure that, after arraignment, charges may not be amended—
- (a) in circumstances substantially different from those in which indictments are amendable by the Crown Court; or
  - (b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which indictments are so amendable.
- (7) Rules made by virtue of subsection (3)(h) may make provision about the commencement of sentences or orders varied by the court (including provision conferring on the court a power to direct that a sentence shall take effect otherwise than as mentioned in section 289(1)).
- (8) Court Martial rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.

*Status: Point in time view as at 02/12/2019.*

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- (9) Rules made by virtue of paragraph (i) of subsection (3) may confer jurisdiction on the Court Martial Appeal Court, and rules under section 49 of the Court Martial Appeals Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of that paragraph.

#### Commencement Information

**I325** S. 163 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I326** S. 163 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### [<sup>F103</sup>163A Offences

Schedule 2A makes provision about offences relating to members of the Court Martial and their deliberations.]

#### Textual Amendments

**F103** S. 163A inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 14 para. 2](#); [S.I. 2015/778](#), [art. 3](#), [Sch. 1 para. 80](#) (with [Sch. 2 para. 3\(c\)](#))

## CHAPTER 3

### PUNISHMENTS AVAILABLE TO COURT MARTIAL

#### 164 Punishments available to Court Martial

- (1) The second column of the following Table lists the punishments that may be awarded by sentence of the Court Martial, subject in the case of each punishment to any limitation shown in the third column opposite it.

TABLE

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
1	imprisonment	
2	dismissal with disgrace from Her Majesty's service	
3	dismissal from Her Majesty's service	
4	detention for a term not exceeding two years	not if the person being sentenced is an officer
5	forfeiture of a specified term of seniority or of all seniority	only if the person being sentenced is an officer

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6	reduction in rank, or disrating	only if the person being sentenced is a warrant officer or non-commissioned officer, and not to an extent prohibited by regulations under subsection (4)
7	a fine	
8	a service community order (defined by section 178)	only if the person being sentenced is on the same occasion sentenced to dismissal or dismissal with disgrace and subsection (5) permits
9	a severe reprimand or a reprimand	only if the person being sentenced is an officer, warrant officer or non-commissioned officer
10	a service supervision and punishment order (defined by section 173)	only if the person being sentenced is an able rate, marine, soldier or airman
11	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
12	a service compensation order (defined by section 175)	

- (2) Where this Act provides that a person guilty of a particular offence is liable to any punishment mentioned in the Table or in specified rows of the Table, it means he is liable to any one or more of the punishments so mentioned (subject in the case of each one to any limitation shown in the third column opposite it).
- (3) The previous provisions of this section are subject to (in particular)—  
<sup>F104</sup> ...  
Chapters 4 to 6 of Part 8 (imprisonment for under 12 months, young offenders' custodial sentences, and mandatory etc sentences for serious offences); <sup>F105</sup> ...  
Part 9 (general provisions about sentencing)<sup>F106</sup>; and  
Schedule 3A (offender elected Court Martial trial).]
- (4) The Defence Council may by regulations restrict the extent to which persons of a description specified in the regulations may be reduced in rank or disrated under this section.
- (5) The court may not make a service community order unless—  
(a) the offender is aged 18 or over when convicted; and  
(b) it appears to the court that he will reside in the United Kingdom when the order is in force.

*Status: Point in time view as at 02/12/2019.*

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- (6) Where regulations under row 11 of the Table authorise a minor punishment, they may—
- (a) confer on the Court Martial a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;
  - (b) confer on the offender's commanding officer the function of deciding the details of the punishment;
  - (c) provide for the delegation by the commanding officer of any of his functions under the regulations.
- (7) This section is modified in relation to certain offenders by Schedule 3 (civilians etc).

#### Textual Amendments

- F104** Words in s. 164(3) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(a\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(e)(f)(i)
- F105** Word in s. 164(3) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(b\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(e)(f)(i)
- F106** Words in s. 164(3) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(c\)](#); [S.I. 2012/669](#), art. 4(e)

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

- C45** S. 164(2) applied by 1996 c. 14, s. 127(4) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 14 para. 53\(3\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C46** S. 164(2) applied by 1991 c. 62, s. 23(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 13 para. 9\(3\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C47** S. 164(3) applied by 1991 c. 62, s. 23(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 13 para. 9\(3\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C48** S. 164(3) applied by 1996 c. 14, s. 127(4) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 14 para. 53\(3\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)

#### Commencement Information

- I327** S. 164 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I328** S. 164 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### [<sup>F107</sup>165 Sentencing powers of Court Martial where election for trial by that court instead of CO

Schedule 3A (sentencing powers of Court Martial where election for trial by that court instead of CO) has effect.]



*Status: Point in time view as at 02/12/2019.*

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#### Textual Amendments

**F107** S. 165 substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 14(1)**, 32(3); S.I. 2012/669, **art. 4(b)**

## CHAPTER 4

### FINDINGS OF UNFITNESS TO STAND TRIAL AND INSANITY

#### 166 Fitness to stand trial

- (1) This section applies where on a trial by the Court Martial the question arises (at the instance of the defence or otherwise) whether the defendant is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 (c. 84) it would constitute a bar to his being tried on indictment in England and Wales.
- (3) Subject to subsections (5) and (6), the question of fitness to stand trial must be determined as soon as it arises.
- (4) The question of fitness to stand trial is to be determined by the judge advocate.
- (5) If having regard to the nature of the supposed disability the judge advocate is of the opinion that it is expedient to do so and in the interests of the defendant, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.
- (6) If before the question of fitness to stand trial falls to be determined the court finds the defendant not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (7) A judge advocate may not make a determination under subsection (4) except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.

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

**C49** S. 166 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), **art. 1**, **rule 49(5)**

#### Commencement Information

**I329** S. 166 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I330** S. 166 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

#### 167 Finding that defendant did the act or made the omission charged

- (1) This section applies where in accordance with section 166(4) it is determined by the judge advocate that the defendant is unfit to stand trial.

*Status: Point in time view as at 02/12/2019.*

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- (2) The trial shall not proceed or further proceed but the court must, as respects the charge or each of the charges on which the defendant was to be or was being tried, determine whether it is satisfied that he did the act charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is so satisfied, it must make a finding that the defendant did the act charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, it must find the defendant not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) must be made—
  - (a) on the evidence (if any) already given in the trial; and
  - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed under this section by the judge advocate to put the case for the defence.
- (6) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but as respects any charge to which subsection (2) above applies—
  - (a) the question whether the court is satisfied as mentioned in that subsection is to be determined by the members of the court other than the judge advocate (“the lay members”); and
  - (b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.
- (7) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

#### **Commencement Information**

- I331** S. 167 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I332** S. 167 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **168 Findings of insanity**

- (1) This section applies where on the trial of a person by the Court Martial the court is satisfied, as respects the charge or any of the charges on which he is being tried, that—
  - (a) the defendant did the act charged against him as the offence; but
  - (b) at the time of that act he was insane.
- (2) The court must find that the defendant was not guilty of that offence by reason of insanity.
- (3) No finding under this section may be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.
- (4) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but—
  - (a) the question whether the court is satisfied as mentioned in subsection (1) above is to be determined by the members of the court other than the judge advocate (“the lay members”); and

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- (b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.
- (5) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

#### **Commencement Information**

**I333** S. 168 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I334** S. 168 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **169 Powers where person unfit to stand trial or not guilty by reason of insanity**

- (1) This section applies where on a trial by the Court Martial—
- (a) the defendant is found to be unfit to stand trial and to have done the act charged against him; or
  - (b) the defendant is found not guilty by reason of insanity.
- (2) Subject to subsections (4) and (5), the court must make in respect of the defendant—
- (a) a hospital order, with or without a restriction order;
  - (b) a service supervision order (defined by section 170); or
  - (c) an order discharging him absolutely.
- (3) In this section—
- “hospital order” means an order under section 37 of the Mental Health Act 1983 (c. 20) (“the 1983 Act”) as modified by Schedule 4 to this Act;
  - “restriction order” means an order under section 41 of that Act as so modified.
- (4) The power to make a hospital order by virtue of this section is not exercisable unless the conditions in subsections (1)(b) and (2) of section 37 of the 1983 Act, as modified by Schedule 4 to this Act, are satisfied.
- (5) Where—
- (a) the finding mentioned in subsection (1) relates to an offence the sentence for which is fixed by law, and
  - (b) the court has power to make a hospital order,
- the court must make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).
- (6) The functions of the court under this section, and any functions under the 1983 Act that are exercisable by the court by reason of this section or Schedule 4, are to be exercised by—
- (a) the judge advocate for the trial mentioned in subsection (1); or
  - (b) in a case where that judge advocate has made an interim hospital order under section 38 of the 1983 Act as modified by Schedule 4, by that or any other judge advocate.
- (7) In subsection (1) “act” includes an omission and the reference to the doing of an act is to be read accordingly.

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(8) Schedule 4 (modifications of the 1983 Act) has effect.

#### Commencement Information

- I335** S. 169 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I336** S. 169 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 170 Service supervision orders

- (1) In section 169 and this section a “service supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a person specified in the order (“the supervising officer”) for a period specified in the order.
- (2) The period specified in the order must not exceed the maximum period for the time being specified in paragraph 1(1) of Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84) (maximum period of civilian supervision order).
- (3) The court may not make a service supervision order under section 169(2)(b) unless it is satisfied—
  - (a) that, having regard to all the circumstances of the case, the making of a service supervision order is the most suitable way of dealing with the defendant;
  - (b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (c) that arrangements have been made for any treatment which (under subsection (4)) is intended to be specified in the order.
- (4) An order under section 169(2)(b) may, in accordance with regulations under subsection (5), require the supervised person to submit, during the whole of the period specified in the order or such part of it as may be so specified, to treatment by or under the direction of a registered medical practitioner.
- (5) The Secretary of State may by regulations make further provision in relation to service supervision orders, including in particular provision—
  - (a) as to the procedure to be followed by a court making a service supervision order;
  - (b) as to the descriptions of supervising officer who may be specified in such an order;
  - (c) for treatment to be provided, in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated, at a place other than a place specified in the order;
  - (d) authorising a court to include in a service supervision order requirements corresponding to any requirements that Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84) for the time being allows to be included in supervision orders under that Act;
  - (e) imposing on the supervised person obligations corresponding to any for the time being imposed by that Schedule;
  - (f) for the amendment and revocation of a service supervision order.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I337** S. 170 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I338** S. 170 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 171 Remission for trial

- (1) Where—
- (a) a person is detained in pursuance of a hospital order which the Court Martial had power to make by virtue of section 169(1)(a),
  - (b) the court also made a restriction order, and
  - (c) the restriction order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with [<sup>F108</sup>the responsible clinician] that the person can properly be tried, may remit the person for trial by the Court Martial.
- (2) A person remitted under this section must be transferred to service custody, but when he is so transferred—
- (a) he must as soon as practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review he is to be dealt with as on a review under section 108(1) (see section 108(4) to (8)).
- (3) On the transfer of a person to service custody under this section the hospital order and restriction order cease to have effect.
- (4) In this section—
- “hospital order” and “restriction order” have the same meanings as in section 169;
  - [<sup>F109</sup>“the responsible clinician” means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.]
- (5) In subsection (1)(a) the reference to a hospital order as there mentioned includes a reference to—
- (a) a hospital order made by virtue of section 16(1)(b) or 22(3A) of the Court Martial Appeals Act 1968 (c. 20);
  - (b) a hospital order made by virtue of section 25B(1) of that Act in a case in which a finding within section 169(1)(a) of this Act was made by the Court Martial.

#### Textual Amendments

- F108** Words in s. 171(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 15\(5\)\(a\)](#), 56(1); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F109** Words in s. 171(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 15\(5\)\(b\)](#), 56(1); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))

#### Commencement Information

- I339** S. 171 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

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**I340** S. 171 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 172 Provision supplementary to sections 166 and 168

- (1) In sections 166 and 168 and this section “duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State [<sup>F110</sup>, or by another person by virtue of section 12ZA or 12ZB of that Act.] as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the provisions of sections 166 and 168 which permit a court to act on the written evidence of—
  - (a) a registered medical practitioner, or
  - (b) a registered medical practitioner who is duly approved,
 a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may (subject to subsection (4)) be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved.
- (3) The court may require the signatory of any such report to be called to give oral evidence.
- (4) Where in pursuance of a direction of the court any such report is tendered in evidence otherwise than by or on behalf of the defendant, then—
  - (a) if the defendant is represented by counsel or a solicitor, a copy of the report must be given to his counsel or solicitor;
  - (b) if the defendant is not so represented the substance of the report must be disclosed to him or, if he is aged under 18, to his parent or guardian if present in court;
  - (c) the defendant may require the signatory of the report to be called to give oral evidence; and
  - (d) evidence to rebut the evidence contained in the report may be called by the defendant or on his behalf.

### Textual Amendments

**F110** Words in s. 172(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 38(5)(e)**, 306(4); [S.I. 2013/160](#), **art. 2(2)** (with **arts. 7-9**)

### Modifications etc. (not altering text)

**C50** S. 172 applied (with modifications) by 1968 c. 20, s. 22(3B) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), **s. 383(2)**, **Sch. 8 para. 23(c)** (with **s. 385**); [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), **art. 4**)

### Commencement Information

**I341** S. 172 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I342** S. 172 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

*Status: Point in time view as at 02/12/2019.*

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## PART 8

### SENTENCING POWERS AND MANDATORY ETC SENTENCES

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

**C51** Pt. 8 applied (with modifications) (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(2\)](#)

## CHAPTER 1

### DEFINITION ETC OF CERTAIN SENTENCES

#### *Service supervision and punishment orders*

#### **173 Service supervision and punishment orders**

- (1) A service supervision and punishment order is an order that—
  - (a) imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe; and
  - (b) provides that one-sixth of his gross pay for that period is forfeit.
- (2) The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made.
- (3) The requirements that regulations under this section may prescribe include, in particular—
  - (a) requirements to perform activities of a prescribed description;
  - (b) requirements not to use entitlement to leave;and the descriptions of activities that may be prescribed include extra work and drill.
- (4) A requirement included in regulations under this section may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may—
  - (a) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when;
  - (b) provide for the delegation by the commanding officer of any of his functions under the regulations.
- (5) Regulations under this section may prescribe different requirements for different parts of the period of the order.
- (6) In this section “prescribed” means prescribed by regulations under this section.

#### Commencement Information

**I343** S. 173 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I344** S. 173 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 174 Review of service supervision and punishment orders

- (1) The commanding officer of a person subject to a service supervision and punishment order must, at times prescribed by regulations made by the Defence Council, consider whether the order should continue in force.
- (2) If on a review under subsection (1) the commanding officer decides that the order should not continue in force, he must order that it shall immediately cease to have effect.
- (3) Regulations made by the Defence Council may—
  - (a) prescribe criteria to be applied by a commanding officer in deciding whether an order should continue in force;
  - (b) make provision about procedure in relation to orders under subsection (2).
- (4) Where a commanding officer makes an order under subsection (2), there remains forfeit one-sixth of the offender's gross pay for the period—
  - (a) beginning with the day the service supervision and punishment order is made; and
  - (b) ending with the day before the date of the commanding officer's order.

### Commencement Information

**I345** S. 174 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I346** S. 174 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## *Service compensation orders*

## 175 Service compensation orders

- (1) A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from—
  - (a) the offence of which he has been convicted; or
  - (b) where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration.
- (2) A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor.
- (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 is to be treated for the purposes of this section as having resulted from the offence, however and by whomever the damage was caused.
- (4) No service compensation order may be made in respect of—
  - (a) bereavement;
  - (b) funeral expenses; or
  - (c) loss of any other kind suffered by the dependants of a person in consequence of his death.



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- (5) No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless—
- (a) it is in respect of damage treated by subsection (3) 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 to which the Secretary of State is a party.
- (6) Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, 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.
- (7) For the purposes of subsection (5) 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 (c. 52) or Article 90(2) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).
- [<sup>F111</sup>(7A) The court must consider making a service compensation order in any case where it has power to do so.]
- (8) The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so.
- (9) References in this section to “the court” are references to the court or officer sentencing the offender.

#### Textual Amendments

**F111** S. 175(7A) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), [ss. 63\(2\)](#), [151\(1\)](#); [S.I. 2012/2906](#), [art. 2\(a\)](#)

#### Commencement Information

**I347** S. 175 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I348** S. 175 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 176 Service compensation orders: appeals etc

- (1) A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (2) Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made.
- (3) Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—

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- (a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
- (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

#### **Commencement Information**

**I349** S. 176 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I350** S. 176 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **177 Review of service compensation orders**

- (1) The appropriate court may, on the application of the person against whom a service compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) and (3).
- (2) The appropriate court may exercise a power conferred by subsection (1) only at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (3) The appropriate court may exercise a power conferred by subsection (1) only if it appears to the court—
  - (a) that the injury, loss or damage in respect of which the service compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order;
  - (b) in the case of a service compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
  - (c) that the person against whom the service compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.
- (4) In this section “the appropriate court” means—
  - (a) if the service compensation order was awarded by an officer and subsection (5) applies, the commanding officer of the person against whom the service compensation order was made;
  - (b) in any other case, the Court Martial.
- (5) This subsection applies if the person against whom the service compensation order was made is for the time being—
  - (a) subject to service law;
  - (b) a member of a volunteer reserve force; or
  - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

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#### Commencement Information

- I351** S. 177 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I352** S. 177 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Service community orders (civilians and dismissed servicemen only)*

### 178 Service community orders

- (1) A service community order is an order—
- imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and
  - specifying the local justice area in England and Wales, or (as the case may be) the locality in Scotland or the petty sessions district in Northern Ireland, where the offender resides or will reside.
- (2) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is subject to—
- any restriction that section 177(1) imposes in relation to a particular requirement;
  - the provisions of the 2003 Act mentioned in the paragraphs of section 177(2) of that Act; and
  - section 218 of that Act.
- (3) In the following provisions of the 2003 Act “community order” includes a service community order under this Act—
- section <sup>F112</sup>177(2A) to (6) (provision about the making of community orders);
- section 178 (power to provide for court review of community orders);
- Chapter 4 of Part 12 (further provision about orders).
- (4) In those provisions in their application in relation to a service community order under this Act, “court” includes a relevant service court.
- (5) The following provisions of the 2003 Act do not apply in relation to a service community order under this Act—
- section 207(3)(a)(ii) (condition for mental health treatment requirement);
- section 219(3) (requirement to give copy of order to magistrates' court).
- (6) For the purposes of this section each of the following is a relevant service court—
- the Court Martial;
  - the Service Civilian Court;
  - the Court Martial Appeal Court;
  - the Supreme Court on an appeal brought from the Court Martial Appeal Court.

#### Textual Amendments

- F112** Word in s. 178(3) substituted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 32](#) (with [Sch. 16 para. 35](#)); [S.I. 2013/2981](#), art. 2(e)

*Status: Point in time view as at 02/12/2019.*

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#### **Commencement Information**

- I353** S. 178 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I354** S. 178 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **179 Periodic review etc of service community orders**

- (1) In section 210 of the 2003 Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to a service community order under this Act—
- (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (2) to (4) shall be treated as omitted.
- (2) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if for subsections (3) to (5) there were substituted—

“(3A) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may revoke the service community order and deal with him, for the offence in respect of which the order was made—

- (a) if that offence is an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment;
- (b) if it is not an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence not punishable with imprisonment.

(3B) In dealing with the offender under subsection (3A) the court—

- (a) must take into account the extent to which the offender has complied with the requirements of the order, and
- (b) where subsection (3A)(a) applies, may impose a sentence of imprisonment notwithstanding anything in section 152(2).

(3C) A term of imprisonment or fine imposed under subsection (3A)—

- (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
- (b) where the order was made by the Service Civilian Court, must not exceed—
  - (i) in the case of a term of imprisonment, 12 months;
  - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”

- (3) Where a sentence is passed under section 211(3A) of the 2003 Act as substituted by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

#### **Commencement Information**

- I355** S. 179 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

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**I356** S. 179 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **180 Transfer of service community order to Scotland or Northern Ireland**

- (1) In Schedule 9 to the 2003 Act (transfer of community orders to Scotland or Northern Ireland)—
  - (a) “community order” includes a service community order under this Act; and
  - (b) in the provisions mentioned in subsection (2), “court” includes a relevant service court.
- (2) Those provisions are paragraphs 1(1) and (5), 2(1), 3(1) [<sup>F113</sup>and (4A)], 4(1), 6, 9 (except 9(b)) and 10(c) and (d).
- (3) In its application to a service community order under this Act, that Schedule has effect as if—
  - (a) the reference in paragraph 9(c) to the powers of the court making or amending the order were to the powers of the Crown Court;
  - (b) the reference in paragraph 11 to a community order made in England and Wales included a service community order made (anywhere) under this Act;
  - (c) the reference in paragraph 11 to the court which made the order or the court which last amended the order in England and Wales were to the Crown Court; and
  - (d) the reference in paragraph 15 to the court which made the order were to the Crown Court.
- (4) In this section “relevant service court” has the meaning given by section 178(6).

### **Textual Amendments**

**F113** Words in [s. 180\(2\)](#) inserted (31.7.2014 only in relation to the South London local justice area for specified purposes until 31.3.2016, 1.4.2016 for specified local justice areas for all purposes other than application by the Armed Forces Act 2006 until 31.3.2018, 1.5.2017 in relation to specified local justice areas for specified purposes until the end of 30.4.2019) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 76\(11\)\(a\), 77, 151\(3\)](#); [S.I. 2014/1777, arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (30.7.2015) by [S.I. 2015/1480, arts. 1, 2](#) and (30.1.2016) by [S.I. 2016/1, arts. 1, 2](#)); [S.I. 2016/286, arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (31.3.2017) by [S.I. 2017/225, arts. 1, 2](#)); [S.I. 2017/525, arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#))

### **Commencement Information**

**I357** S. 180 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I358** S. 180 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## **181 Breach, revocation or amendment of service community order**

Part 1 of Schedule 5 (application of Schedule 8 to the 2003 Act to service community orders) has effect.

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### Commencement Information

- I359** S. 181 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I360** S. 181 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *Overseas community orders (civilians only)*

## 182 Overseas community orders

- (1) An overseas community order is an order—
  - (a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act) [<sup>F114</sup>(but see subsection (1A) below)]; and
  - (b) not specifying anywhere as an area where the offender resides or will reside.
- [<sup>F115</sup>(1A) The order may not include a requirement mentioned in section 177(1)(ga) (a foreign travel prohibition requirement) or (ja) (an alcohol abstinence and monitoring requirement).]
- (2) The order may include a particular requirement mentioned in section 177(1) of the 2003 Act only if the court is satisfied—
  - (a) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and
  - (b) that arrangements will be made for the supervision of his compliance with the requirement.
- (3) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is also subject to—
  - (a) the provisions mentioned in the paragraphs of section 177(2) of that Act; and
  - (b) Schedule 6 to this Act (special provisions for young offenders).
- [<sup>F116</sup>(3A) In section 177(2A) and (2B) of the 2003 Act (community orders: punitive elements) “community order” includes an overseas community order if the offender is aged 18 or over when convicted of the offence in respect of which the overseas community order is made.]
- (4) Subject to section 183 below, in the following provisions of the 2003 Act “community order” includes an overseas order—
  - section 177(5) [<sup>F117</sup>, (5A), (5B)] and (6) (provision about the making of community orders);
  - Chapter 4 of Part 12 (further provision about orders).
- (5) In [<sup>F118</sup>the provisions of the 2003 Act mentioned in subsections (3A) and (4)] in their application in relation to an overseas community order, “court” includes a relevant service court.
- (6) For the purposes of this section each of the following is a relevant service court—
  - (a) the Court Martial;
  - (b) the Service Civilian Court;

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- (c) the Court Martial Appeal Court;
- (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

**Textual Amendments**

- F114** Words in s. 182(1)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(2\)](#), [151\(1\)](#); S.I. 2012/2906, art. 2(a)
- F115** S. 182(1A) inserted (3.12.2012 for specified purposes) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(3\)](#), [151\(1\)](#); S.I. 2012/2906, art. 2(a)
- F116** S. 182(3A) inserted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 33\(2\)](#) (with [Sch. 16 para. 35](#)); S.I. 2013/2981, art. 2(e)
- F117** Words in s. 182(4) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(4\)](#), [151\(1\)](#); S.I. 2012/2906, art. 2(a)
- F118** Words in s. 182(5) substituted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 33\(3\)](#) (with [Sch. 16 para. 35](#)); S.I. 2013/2981, art. 2(e)

**Commencement Information**

- I361** S. 182 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I362** S. 182 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**183 Overseas community orders: modifications of 2003 Act**

- (1) The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to overseas community orders—
  - F119** ...
  - section 207(3)(a)(ii) (condition for mental health treatment requirement);
  - sections 210 and 211 (periodic review of drug rehabilitation requirement);
  - section 215 (electronic monitoring requirement);
  - section 216 (requirement to specify local justice area);
  - section 218 (availability of arrangements in local justice area etc);
  - [**F120**section 220A(8) (duty to obtain permission before changing residence: definition of “the appropriate court”);]
- [**F121**(1A) Section 198(1) (duties of responsible officer) has effect as if at the end there were inserted—
  - “(c) where appropriate, to take steps to enforce those requirements.”]
- F122**(2) .....
- (3) The court by which an overseas community order is made must (as well as complying with so much as is applicable of section 219 of the 2003 Act) provide a copy of the order without delay—
  - (a) to the offender's commanding officer;
  - (b) if the offender is aged under 14, to his parent or guardian; and
  - (c) if the order imposes an education requirement under Schedule 6 to this Act, to Service Children's Education.
- [**F123**(3A) In section 220A of the 2003 Act (duty to obtain permission before changing residence), as it applies to an overseas community order, “the appropriate court” means the court that made the order.]

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- F124(4) .....
- F125(5) .....

#### Textual Amendments

- F119** Words in s. 183(1) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(2\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F120** Words in s. 183(1) inserted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 8\(a\)](#) (with s. 23(4), [Sch. 7 para. 7](#)); S.I. 2015/40, art. 2(w)
- F121** S. 183(1A) inserted (1.6.2014) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(3\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F122** S. 183(2) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F123** S. 183(3A) inserted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 8\(b\)](#) (with s. 23(4), [Sch. 7 para. 7](#)); S.I. 2015/40, art. 2(w)
- F124** S. 183(4) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F125** S. 183(5) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)

#### Commencement Information

- I363** S. 183 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I364** S. 183 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 184 Breach, revocation or amendment of overseas community order

Part 2 of Schedule 5 (application of Schedule 8 to the 2003 Act to overseas community orders) has effect.

#### Commencement Information

- I365** S. 184 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I366** S. 184 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Conditional or absolute discharge (civilians only)*

### 185 Conditional or absolute discharge

- (1) A conditional discharge is an order discharging the offender subject to the condition that he commits no service offence during a period specified in the order.
- (2) The period specified in the order (“the period of conditional discharge”) must—
  - (a) begin with the date of the order; and
  - (b) not exceed the maximum period for the time being specified in section 12(1)(b) of the Sentencing Act (maximum period of civilian conditional discharge).
- (3) An absolute discharge is an order discharging the offender absolutely.



*Status: Point in time view as at 02/12/2019.*

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- (4) Where by virtue of Schedule 3 a court sentences an offender by conditionally or absolutely discharging him, the sentence must not include any other punishment except a service compensation order.

#### Commencement Information

- I367** S. 185 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I368** S. 185 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 186 Commission of further offence by person conditionally discharged

- (1) This section applies where a person who has been conditionally discharged by virtue of Schedule 3 is convicted by the Court Martial or the Service Civilian Court (“the convicting court”) of an offence committed during the period of conditional discharge.
- (2) If the convicting court is the Court Martial, it may deal with him for the offence for which he was conditionally discharged in any way in which the court that conditionally discharged him could deal with him if it had just convicted him of that offence.
- (3) If the convicting court is the Service Civilian Court, it may deal with him for the offence for which he was conditionally discharged in any way in which it could deal with him if it had just convicted him of that offence.
- (4) If a person conditionally discharged is subsequently dealt with under this section for the offence in respect of which the order conditionally discharging him was made, that order ceases to have effect.
- (5) A person who—
- (a) is sentenced by a court under subsection (2) or (3) for an offence for which he was conditionally discharged, and
  - (b) was not convicted of that offence by that court,
- is to be treated, for the purpose of enabling him to appeal against the sentence under section 285 below or the Court Martial Appeals Act 1968 (c. 20), as if he had been so convicted.
- (6) Where subsection (3) applies and the offence for which the person was conditionally discharged is not one that the Service Civilian Court would have jurisdiction to try, it shall be assumed for the purposes of that subsection that it could have convicted him of the offence.

#### Commencement Information

- I369** S. 186 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I370** S. 186 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 187 Effect of discharge

- (1) A conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made shall be deemed not to be a conviction

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for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 186.

- (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently dealt with under section 186 for that offence, subsection (1) ceases to apply to the conviction.
- (3) Without prejudice to subsections (1) and (2), a conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made is in any event to be disregarded for the purposes of any enactment or instrument which—
  - (a) imposes any disqualification or disability on convicted persons; or
  - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) In subsection (3)—
 

“enactment” includes an enactment contained in an Act of the Scottish Parliament, in Northern Ireland legislation or in a local Act;

“instrument” means an instrument having effect by virtue of an Act or Northern Ireland legislation (and “Act” here includes an Act of the Scottish Parliament).
- (5) Subsections (1) to (4) do not affect—
  - (a) any appeal, whether against conviction or otherwise;
  - (b) any right of the offender to rely on his conviction in bar of any subsequent proceedings for the same offence; or
  - (c) the restoration of any property in consequence of the conviction.

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

**C52** S. 187(1) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 158(3)(d)**, 182(5) (with s. 180); [S.I. 2010/816](#), art. 2, Sch. para. 11

**Commencement Information**

**I371** S. 187 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I372** S. 187 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## CHAPTER 2

### CONSECUTIVE SENTENCES

#### 188 Consecutive custodial sentences

- (1) This section applies where a court passes a qualifying custodial sentence on a person in respect of a service offence.
- (2) In this section “qualifying custodial sentence” means—
  - (a) a determinate sentence of imprisonment;
  - (b) a determinate sentence of detention under section 209; or

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- (c) a sentence of detention under section [F126]226B] of the 2003 Act passed as a result of section [F127]221A] of this Act.
- (3) The court may direct—
- (a) that the sentence shall take effect from the end of any other qualifying custodial sentence that the court passes on the person on the same occasion;
- (b) that the sentence shall take effect from the end of any sentence to which this paragraph applies that was passed on the person on a previous occasion; or
- (c) that the sentence shall take effect from the date when the person is (or but for the direction would be) released from custody under any sentence to which this paragraph applies that was passed on him on a previous occasion.
- (4) Subsection (3)(b) applies to any of the following sentences, other than one from which the person has already been released early under Chapter 6 of Part 12 of the 2003 Act [F128] or under Part 2 of the Criminal Justice Act 1991]—
- (a) a determinate sentence of imprisonment passed in respect of a service offence or by a civilian court in England and Wales;
- (b) a determinate sentence of detention under section 209 of this Act or section 91 of the Sentencing Act;
- (c) a sentence of detention under section [F129]226B or] 228 of the 2003 Act (whether or not passed as a result of section [F130]221A or] 222 of this Act).
- (5) Subsection (3)(c) applies to any of the following sentences (wherever passed)—
- (a) a determinate sentence of imprisonment not falling within paragraph (a) of subsection (4);
- (b) a sentence not falling within paragraph (b) or (c) of subsection (4) but corresponding to a sentence so falling.
- (6) In subsection (1) “court” does not include a civilian court.

#### Textual Amendments

- F126** Word in s. 188(2)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 23\(2\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F127** Word in s. 188(2)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 23\(2\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F128** Words in s. 188(4) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 11](#); S.I. 2009/1028, art. 2(b)
- F129** Words in s. 188(4)(c) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 23\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F130** Words in s. 188(4)(c) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 23\(3\)\(b\)](#); S.I. 2012/2906, art. 2(t)

#### Commencement Information

- I373** S. 188 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I374** S. 188 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 189 Consecutive sentences of service detention

- (1) A court which passes a sentence of service detention on a person may direct that the sentence shall take effect from the end of any other sentence of service detention—

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- (a) that has been passed on him on a previous occasion; or
  - (b) that the court passes on him on the same occasion.
- (2) In subsection (1) “court” does not include the Summary Appeal Court.
- (3) Where an officer or the Summary Appeal Court awards a person a term of service detention, the officer or court may direct that the award shall take effect from the end of any other sentence of service detention that has been passed on him on a previous occasion.
- (4) This section is subject to section 244 (limit on combined term of sentences of service detention).

#### Commencement Information

**I375** S. 189 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I376** S. 189 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 3

### SUSPENDED SENTENCE OF SERVICE DETENTION

#### 190 Suspension of sentence of service detention

- (1) A court which, or officer who, passes a sentence of service detention may order that the sentence shall not have effect unless—
- (a) during a period specified in the order (“the operational period”) the offender commits another service offence or [<sup>F131</sup>an offence under the law of any part of the British Islands]; and
  - (b) a court or officer orders under section 191 or 193 that the sentence shall take effect.
- [<sup>F132</sup>(2) The operational period must be a period of not less than 3 months beginning with the date of the order made under this section.
- (2A) The maximum length of the operational period is—
- (a) where subsection (2B) applies, 24 months; and
  - (b) otherwise, 12 months.
- (2B) This subsection applies where the order under this section is made by—
- (a) the Court Martial,
  - (b) the Court Martial Appeal Court, or
  - (c) the Supreme Court on an appeal brought from the Court Martial Appeal Court, except where the order is made in circumstances in which Schedule 3A applies (sentencing powers in cases involving election under section 129 for trial by Court Martial) or on an appeal arising out of a case in which that Schedule applied.]
- (3) In this Act “suspended sentence of service detention” means a sentence to which an order under this section relates.

*Status: Point in time view as at 02/12/2019.*

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#### Textual Amendments

**F131** Words in s. 190(1)(a) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 14](#); [S.I. 2012/669](#), art. 4(d)

**F132** [S. 190\(2\)-\(2B\)](#) substituted for [s. 190\(2\)](#) (1.7.2019) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 6\(1\)](#), 19(1) (with [s. 6\(2\)\(3\)](#)); [S.I. 2019/961](#), reg. 2(2)

#### Commencement Information

**I377** S. 190 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I378** S. 190 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 191 Activation by Court Martial of suspended sentence of service detention

- (1) The Court Martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of service detention passed on him.
- (2) The Court Martial may also make an order under subsection (3) if—
  - (a) the Court Martial has passed a suspended sentence of service detention on a person;
  - (b) the person has been convicted of another service offence, or [<sup>F133</sup>an offence under the law of any part of the British Islands], committed during the operational period of the suspended sentence; and
  - (c) the person appears or is brought before the Court Martial following the issue of a summons or warrant under subsection (6).
- (3) An order under this subsection is an order—
  - (a) that the suspended sentence shall take effect with the original term unaltered; or
  - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
  - (a) that the suspended sentence shall take effect immediately; or
  - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.
- (5) Where—
  - (a) by virtue of subsection (2) the Court Martial orders that a suspended sentence shall take effect, and
  - (b) the conviction mentioned in subsection (2)(b) is a conviction by an officer or the Summary Appeal Court,any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.
- (6) If it appears to the Court Martial—
  - (a) that subsection (2)(a) and (b) apply, and

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- (b) that the offender has not been dealt with in respect of the suspended sentence, the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.
- (7) In subsection (2)(a) the reference to the Court Martial includes—
- (a) the Court Martial Appeal Court; and
  - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court.
- (8) This section is subject to section 244 (limit on combined term of sentences of service detention).

#### Textual Amendments

**F133** Words in s. 191(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 14](#); [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

**I379** S. 191 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I380** S. 191 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 192 Activation by Court Martial: appeals

- (1) This section applies where an order under section 191 is made.
- (2) For the purposes of the Court Martial Appeals Act 1968 (c. 20)—
- (a) the order is to be treated as a sentence passed on the offender by the Court Martial for the offence for which the suspended sentence was passed; and
  - (b) if the offender was not convicted of that offence by the Court Martial, he is to be treated for the purpose of enabling him to appeal against the order as if he had been so convicted.
- (3) For the purposes of any appeal against the order references in section 16A of that Act to passing a sentence include making an order.
- (4) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

#### Commencement Information

**I381** S. 192 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I382** S. 192 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 193 Activation by CO of suspended sentence of service detention

- (1) This section applies in relation to a suspended sentence of service detention passed on an offender by an officer or the Summary Appeal Court.
- (2) If—

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- (a) an officer records a finding that a charge against the offender in respect of an offence committed during the operational period of the suspended sentence is proved, or
  - (b) the offender is convicted of [<sup>F134</sup>an offence under the law of any part of the British Islands] which was committed during that operational period, and subsequently appears before his commanding officer,
- the officer may (subject to section 194) make an order under subsection (3).
- (3) An order under this subsection is an order—
- (a) that the suspended sentence shall take effect with the original term unaltered; or
  - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
- (a) that the suspended sentence shall take effect immediately; or
  - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the offender on a previous occasion or which the officer passes on the offender on the same occasion as he makes the order.
- (5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to section 292 (postponement of commencement of suspended sentence on activation by CO).

#### Textual Amendments

**F134** Words in s. 193(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 14](#); [S.I. 2012/669, art. 4\(d\)](#)

#### Commencement Information

**I383** S. 193 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I384** S. 193 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 194 Activation by CO: maximum term

- (1) The term of a suspended sentence as it takes effect by virtue of an order under section 193 must not exceed 28 days unless the officer has extended powers for the purposes of this section.
- (2) If—
- (a) section 193(2)(a) applies and the officer awards a term of service detention in respect of the offence mentioned there (“the new sentence”), and
  - (b) the officer makes an order under section 193 and the order provides for the suspended sentence to take effect from the end of the new sentence,
- the aggregate of the terms of the two sentences must not exceed 28 days or, if the officer has extended powers for the purposes of this section, 90 days.
- (3) Nothing in subsection (2) affects section 133 (which determines the maximum length etc of the new sentence).

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- (4) An officer has extended powers for the purposes of this section if he has, [<sup>F135</sup>within the relevant time (defined by section 194A)] —
- (a) applied to higher authority for extended powers for the purposes of this section; and
  - (b) been notified by higher authority that his application has been granted.
- (5) An officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.
- <sup>F136</sup>(6) .....
- (7) Section 193 is subject to section 244 (limit on combined term of sentences of service detention).

#### Textual Amendments

**F135** Words in s. 194(4) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 15\(2\)](#); [S.I. 2012/669, art. 4\(d\)](#)

**F136** S. 194(6) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 15\(3\), Sch. 5](#); [S.I. 2012/669, art. 4\(d\)\(f\)\(i\)](#)

#### Commencement Information

**I385** S. 194 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I386** S. 194 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

#### [<sup>F137</sup>194A] **Extended powers of activation: time for obtaining**

- (1) In section 194(4) “within the relevant time” means—
- (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
  - (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.
- (2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the hearing—
- (a) a charge is amended under section 123(2)(a);
  - (b) a charge is substituted for another charge under section 123(2)(b); or
  - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of section 194(4) as made within the relevant time.]



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### Textual Amendments

**F137** S. 194A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 16](#); S.I. 2012/669, art. 4(d)

## 195 Suspended sentences: powers of SAC

- (1) For the purposes of Chapters 2 and 3 of Part 6 (appeals and reviews), an order under section 193 is to be treated as a punishment awarded for the offence for which the suspended sentence was awarded.
- (2) Where an order under section 193 was made by virtue of a finding within section 193(2)(a)—
  - (a) any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of it is for the purposes of Chapter 2 of Part 6 to be treated as also being an appeal or application for leave to appeal against the order;
  - (b) any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment.
- (3) Subsections (4) to (7) apply on an appeal to the Summary Appeal Court in a case in which section 193(2)(a) applied (power of CO to activate suspended sentence following finding of guilt).
- (4) If the officer made an order under section 193, the Summary Appeal Court may (as an alternative to confirming the order)—
  - (a) quash the order; or
  - (b) make, in substitution for the order, any order under that section that the officer could have made.
- (5) If the officer did not make an order under that section, the Summary Appeal Court may make any order under that section that the officer could have made.
- (6) Section 147(3) has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if paragraph (b)(ii) were omitted.
- (7) But the court may not exercise its powers under section 147(3) or subsection (4) or (5) above 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 officer.
- (8) On an appeal against an order under section 193 made by virtue of section 193(2)(b), the Summary Appeal Court may (as an alternative to confirming the order)—
  - (a) quash the order; or
  - (b) make, in substitution for the order, any order under section 193 that—
    - (i) the officer could have made; and
    - (ii) is no more severe than the order appealed against.
- (9) In determining in any case—
  - (a) whether to substitute an order under section 193, or
  - (b) the terms of any such substituted order,

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the Summary Appeal Court must take account of any period of the suspended sentence that the appellant served.

#### Commencement Information

- I387** S. 195 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I388** S. 195 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 4

### IMPRISONMENT FOR TERM OF UNDER 12 MONTHS

#### *Application of provisions in the 2003 Act*

#### 196 Term of sentence etc

- (1) In the following provisions of the 2003 Act, “court” includes a relevant service court—  
<sup>F138</sup> ...  
 sections 189 and 190 (suspended sentences of imprisonment);  
 Chapter 4 of Part 12 (further provision about orders) in its application in relation to a <sup>F139</sup>...suspended sentence order.
- (2) For the purposes of this Chapter, each of the following is a relevant service court—
- (a) the Court Martial;
  - (b) the Service Civilian Court;
  - (c) the Court Martial Appeal Court;
  - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

#### Textual Amendments

- F138** Words in s. 196 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(2\)\(a\)](#); [S.I. 2012/2906](#), art. 2(h)
- F139** Words in s. 196 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(2\)\(b\)](#); [S.I. 2012/2906](#), art. 2(h)

#### Commencement Information

- I389** S. 196 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I390** S. 196 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Imprisonment with or without “custody plus” order*

#### <sup>F140</sup>197 Imprisonment with or without a custody plus order

.....

*Status: Point in time view as at 02/12/2019.*

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**Textual Amendments**

**F140** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); S.I. 2012/2906, art. 2(h)

**F140 198 Transfer to Scotland or Northern Ireland of custody plus order**

.....

**Textual Amendments**

**F140** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); S.I. 2012/2906, art. 2(h)

**F140 199 Revocation and amendment of custody plus orders**

.....

**Textual Amendments**

**F140** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); S.I. 2012/2906, art. 2(h)

*Suspended sentences of imprisonment*

**200 Suspended sentence orders** <sup>F141</sup> ...

<sup>F142</sup>(1) .....

<sup>F142</sup>(2) .....

<sup>F142</sup>(3) .....

<sup>F142</sup>(4) .....

(5) In section 189(1) of the 2003 Act (suspended sentence orders) as it applies to a relevant service court, paragraph <sup>F143</sup>(a) (commission of UK offence in operational period of order) has effect as if for the words from “commits” to <sup>F144</sup>“imprisonment,” there were substituted “commits—

<sup>F145</sup>(i) another service offence (within the meaning of the Armed Forces Act 2006), or

<sup>F145</sup>(ii) an offence <sup>F146</sup>“under the law of any part of the British Islands,”.

(6) A relevant service court may not specify in a suspended sentence order with community requirements a requirement to be complied with outside the United Kingdom.

<sup>F147</sup>(7) In this Chapter “a suspended sentence order with community requirements” means a suspended sentence order that imposes one or more community requirements within the meaning of section 189(7)(c) of the 2003 Act.]

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F141** Words in s. 200 heading omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(2\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F142** S. 200(1)-(4) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(3\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F143** Word in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(4\)\(a\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F144** Words in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(4\)\(b\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F145** Word in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(4\)\(c\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F146** Words in s. 200(5)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 17](#); S.I. 2012/669, art. 4(d)
- F147** S. 200(7) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 15\(5\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

### Commencement Information

- I391** S. 200 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I392** S. 200 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## <sup>F148</sup>201 Order without community requirements: provisions not applying

.....

### Textual Amendments

- F148** S. 201 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 9 para. 16](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

## 202 Order with community requirements: disapplication of certain provisions

The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to a suspended sentence order with community requirements made by a relevant service court—

- section 207(3)(a)(ii) (condition for mental health treatment requirement);
- section 219(3) (requirement to give copy of order to magistrates' court).

### Commencement Information

- I393** S. 202 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I394** S. 202 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## 203 Review of order with community requirements

- (1) In section 191 of the 2003 Act (provision for periodic reviews of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
  - (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (3) to (5) shall be treated as omitted.
- (2) In section 210 of that Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to such an order—
  - (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (2) to (4) shall be treated as omitted.
- (3) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if—
  - (a) in subsection (3)(b) for the words from “he could have been dealt with” to the end there were substituted “ it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment ”;
  - (b) in subsection (4)(b) the words in brackets were omitted; and
  - (c) after subsection (4) there were inserted—

“(4A) A term of imprisonment or fine imposed under subsection (3)(b)—

    - (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
    - (b) where the order was made by the Service Civilian Court, must not exceed—
      - (i) in the case of a term of imprisonment, 12 months;
      - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”
- (4) Where a sentence is passed under section 211(3)(b) of the 2003 Act as modified by subsection (3) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

### Commencement Information

- I395** S. 203 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I396** S. 203 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 204 Transfer to Scotland or Northern Ireland of order with community requirements

- (1) In paragraphs 1(1) and 6(1) of Schedule 13 to the 2003 Act (court making suspended sentence order with community requirements may require compliance in Scotland or Northern Ireland), “court” includes a relevant service court.
- (2) In paragraphs 1(5) and (6), 3, [<sup>F149</sup>6(5)][<sup>F149</sup>6(4A) and (5)] and 8 of that Schedule (ancillary provisions), “court” (where the context allows) includes a relevant service court.

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- (3) Where Part 3 of that Schedule applies to a suspended sentence order made by a relevant service court—
- (a) references in that Part to “the original court” are to be read as references to the Crown Court; and
  - (b) the following shall be treated as omitted—
    - (i) the definition of “original court” in paragraph 11;
    - (ii) paragraph 12(3).
- (4) Paragraph 20(6)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a suspended sentence order made by a relevant service court.

#### Textual Amendments

**F149** Words in s. 204(2) substituted (31.7.2014 only in relation to the South London local justice area for specified purposes until 31.3.2016, 1.4.2016 for specified local justice areas for all purposes other than application by the Armed Forces Act 2006 until 31.3.2018, 1.5.2017 in relation to specified local justice areas for specified purposes until the end of 30.4.2019, 19.5.2020 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 76\(11\)\(b\)](#), [77](#), [151\(3\)](#); [S.I. 2014/1777](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (30.7.2015) by [S.I. 2015/1480](#), [arts. 1, 2](#) and (30.1.2016) by [S.I. 2016/1](#), [arts. 1, 2](#)); [S.I. 2016/286](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (31.3.2017) by [S.I. 2017/225](#), [arts. 1, 2](#)); [S.I. 2017/525](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)); [S.I. 2020/478](#), [art. 2](#)

#### Commencement Information

**I397** S. 204 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I398** S. 204 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 205 Amendment of order with community requirements

- (1) In Part 3 of Schedule 12 to the 2003 Act (amendment of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
- (a) “the appropriate court” means the Crown Court;
  - (b) the reference in paragraph 17 to the court responsible for the order is to be read as a reference to the Crown Court; and
  - (c) paragraphs 13(3), [<sup>F150</sup>14(4)], 15(6), 16(4), 18(2) and 22(1)(b)(ii) and (d) and (2) shall be treated as omitted.
- (2) Paragraph 15 of that Schedule has effect in its application to such an order as if—
- (a) in sub-paragraph (4)(b) for the words “of the offence” there were substituted “of an offence punishable with imprisonment”; and
  - (b) after sub-paragraph (5) there were inserted—
 

“(5A) A term of imprisonment or fine imposed under sub-paragraph (4)(b) —

    - (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and

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- (b) where the order was made by the Service Civilian Court, must not exceed—
- (i) in the case of a term of imprisonment, 12 months;
  - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”
- (3) Paragraphs 2(b) and 3 of that Schedule shall be treated as omitted for the purposes of Part 3 of that Schedule as it applies to such an order.
- (4) Where a sentence is passed under paragraph 15(4)(b) of Schedule 12 to the 2003 Act as modified by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

#### Textual Amendments

**F150** Word in s. 205(1)(c) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\), s. 22\(1\), Sch. 6 para. 9](#) (with s. 23(4), [Sch. 7 para. 7](#)); [S.I. 2015/40, art. 2\(w\)](#)

#### Commencement Information

**I399** S. 205 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I400** S. 205 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 206 Suspended sentence: further conviction or breach of community requirement

Schedule 7 (modification of Schedule 12 to the 2003 Act in relation to suspended sentences passed by relevant service courts) has effect.

#### Commencement Information

**I401** S. 206 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I402** S. 206 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### Supplementary

## 207 Definitions for purposes of Chapter

In this Chapter—

**F151**  
...

“relevant service court” has the meaning given by section 196(2) of this Act;

“suspended sentence order” means an order under section 189(1) of the 2003 Act;

“suspended sentence order with community requirements” has the meaning given by section [<sup>F152</sup>200(7)] of this Act;

**F153**  
...

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#### Textual Amendments

- F151** Words in s. 207 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(4\)](#); S.I. 2012/2906, art. 2(h)
- F152** Word in s. 207 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 17\(a\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F153** Words in s. 207 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 17\(b\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

#### Commencement Information

- I403** S. 207 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I404** S. 207 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 5

### YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS

#### *Prohibition on imposing imprisonment on persons under 18*

#### **208 Prohibition on imposing imprisonment on persons under 18**

A person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

#### Commencement Information

- I405** S. 208 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I406** S. 208 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Detention for certain serious offences*

#### **209 Offenders under 18 convicted of certain serious offences: power to detain for specified period**

- (1) Subsection (5) (power to pass sentence of detention) applies where—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) the case is within any of subsections (2) to (4).
- (2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—
- (a) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and
  - (b) not an offence the sentence for which is fixed by law.



*Status: Point in time view as at 02/12/2019.*

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- (3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—
  - (a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);
  - (b) section 13 of that Act (child sex offences committed by children or young persons);
  - (c) section 25 of that Act (sexual activity with a child family member); or
  - (d) section 26 of that Act (inciting a child family member to engage in sexual activity).
- (4) The case is within this subsection if it falls within section 227(1) (certain firearms offences).
- (5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.
- (6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence.
- (7) Subsections (5) and (6) are subject to (in particular)—
  - <sup>F154</sup>[<sup>F155</sup>sections 224A and 226(2)] of the 2003 Act (as applied by [<sup>F156</sup>sections 218A and 221(2)] of this Act) and section 227 of this Act] (required custodial sentences for certain offences); and
  - sections 260 and 261 (general restrictions on custodial sentences).

#### Textual Amendments

**F154** Words in s. 209(7) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 12](#); [S.I. 2009/1028](#), [art. 2\(b\)](#)

**F155** Words in s. 209(7) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 24\(a\)](#); [S.I. 2012/2906](#), [art. 2\(t\)](#)

**F156** Words in s. 209(7) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 24\(b\)](#); [S.I. 2012/2906](#), [art. 2\(t\)](#)

#### Commencement Information

**I407** S. 209 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I408** S. 209 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 210 Detention under section 209: place of detention etc

- (1) A person sentenced to be detained under section 209 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I409** S. 210 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I410** S. 210 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Detention and training orders*

## 211 Offenders under 18: detention and training orders

- (1) Where—
- (a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and
  - (b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),
- the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.
- (2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.
- (3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—
- (a) it is of the opinion mentioned in subsection (2);
  - (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
  - (c) the offence was committed on or after such date as may be appointed under section 100(2)(b)(ii) of the Sentencing Act (appointed day for purposes of orders under that Act).
- (4) Subsection (1) is also subject to sections 209, 218, [<sup>F157</sup>218A,] 221, [<sup>F158</sup>221A] and 227 (other custodial sentences that may or must be imposed in particular cases).

#### Textual Amendments

- F157** Word in s. 211(4) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 25\(a\)](#); [S.I. 2012/2906](#), art. 2(t)
- F158** Word in s. 211(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 25\(b\)](#); [S.I. 2012/2906](#), art. 2(t)

#### Commencement Information

- I411** S. 211 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I412** S. 211 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## 212 Term of detention and training order: general

- (1) The term of an order made under section 211 in respect of an offence—
  - (a) shall be 4, 6, 8, 10, 12, 18 or 24 months; and
  - (b) may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.
- (2) Where—
  - (a) the offence is an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is under that law a summary offence, and
  - (c) the maximum term of imprisonment with which that offence is punishable in the case of a person aged 18 or over is 51 weeks,the term of the order may not exceed 6 months.

### Commencement Information

- I413** S. 212 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I414** S. 212(1) in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 213 Application of provisions relating to civilian detention and training orders

- (1) In the following provisions of the Sentencing Act references to a detention and training order include an order under section 211 of this Act—
  - section 101(3) to (10) and (13) (power to impose consecutive terms, duty of court to take account of remands, etc);
  - sections 102 to 105, [<sup>F159</sup>106A to 107] (period of detention and training, period of supervision, breach of supervision requirements, etc).
- (2) In sections 101(3) to (10) and (13) [<sup>F160</sup>, 104B(1)][<sup>F161</sup>, 106(6)] and 106A of the Sentencing Act “court” includes a relevant service court (within the meaning given by section 196(2)).
- (3) In section 101(8) and (9) of the Sentencing Act in their application to an order under section 211 of this Act, any reference to an offender's being “remanded in custody” is a reference to his being kept in service custody; and section 101(11) and (12) of that Act do not apply in relation to such an order.
- [<sup>F162</sup>(4) Subsection (5) applies where an order under section 104(3) (further period of detention or supervision) of the Sentencing Act is made against an offender for breach of supervision requirements—
  - (a) during a period of supervision under an order under section 211 of this Act,
  - (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
  - (c) during one of a series of further periods of supervision—
    - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
    - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).

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- (5) In the application of sections 104A and 104B of the Sentencing Act in relation to the offender, references to section 105 of that Act include section 214 of this Act.
- (6) In subsection (4)—
- “further period of supervision” means a period of supervision imposed under section 104(3)(aa) of the Sentencing Act;
- “supervision requirements” means requirements under section 103(6)(b) of that Act.
- (7) In section 104B of the Sentencing Act, references to a custodial sentence within the meaning of that Act include a custodial sentence within the meaning of this Act.]

#### Textual Amendments

- F159** Words in s. 213(1) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), **Sch. 6 para. 2** (with s. 23(4), [Sch. 7 para. 2](#)); [S.I. 2015/40](#), art. 2(w)
- F160** Word in s. 213(2) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 80(9)(a), 151(1)** (with s. 80(10)(11)); [S.I. 2012/2906](#), art. 2(a)
- F161** Word in s. 213(2) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 3 para. 18(b)**; [S.I. 2012/669](#), art. 4(d)
- F162** S. 213(4)-(7) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 80(9)(b), 151(1)** (with s. 80(10)(11)); [S.I. 2012/2906](#), art. 2(a)

#### Commencement Information

- I415** S. 213 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I416** S. 213 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 214 Offences during currency of detention and training order

- (1) This section applies to a person in respect of whom an order under section 211 has been made if—
- (a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) (“the new offence”); and
- (b) whether before or after that date, he is convicted of the new offence.
- (2) An offence is within this subsection if it is—
- (a) a service offence which is punishable with imprisonment; or
- (b) [<sup>F163</sup>an offence under the law of any part of the British Islands] which is so punishable.
- (3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such [<sup>F164</sup>youth detention accommodation] as the Secretary of State may determine for the whole or any part of the period which—
- (a) begins with the date of the court's order; and
- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1).
- (4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).
- (6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—
  - (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
  - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) If it appears to the Court Martial—
  - (a) that this section applies to a person,
  - (b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and
  - (c) that no order under subsection (3) or under section 105 of the Sentencing Act has been made in respect of the new offence,the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.
- (8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

#### Textual Amendments

- F163** Words in s. 214(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 19](#); [S.I. 2012/669, art. 4\(d\)](#)
- F164** Words in s. 214(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\), s. 41\(1\), Sch. 3 para. 17\(2\)](#); [S.I. 2007/3001, art. 2\(1\)\(r\)](#)

#### Commencement Information

- I417** S. 214 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I418** S. 214 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 215 Section 214: definitions etc

- (1) Section 101(13) of the Sentencing Act (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.
- (2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.
- (3) In section 214 [<sup>F165</sup>“youth detention accommodation”] has the meaning given by section 107 of the Sentencing Act.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F165** Words in s. 215(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\), s. 41\(1\), Sch. 3 para. 17\(3\)](#); [S.I. 2007/3001, art. 2\(1\)\(r\)](#)

#### Commencement Information

**I419** S. 215 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I420** S. 215 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 216 Appeals against orders under section 214

- (1) This section applies where an order under section 214 (“the relevant order”) is made.
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) the relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and
  - (b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.
- (3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.

#### Commencement Information

**I421** S. 216 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I422** S. 216 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## CHAPTER 6

### MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

#### *Mandatory sentences*

## 217 Mandatory life imprisonment

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
  - (a) murder; or

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- (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- (2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

#### Commencement Information

- I423** S. 217 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I424** S. 217 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is under that law—
    - (i) murder; or
    - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
  - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.
- (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

#### Commencement Information

- I425** S. 218 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I426** S. 218 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

*[<sup>F166</sup>Required or discretionary sentences for particular offences]*

#### Textual Amendments

- F166** S. 219 cross-heading substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 13\(4\)](#); [S.I. 2009/1028, art. 2\(b\)](#)

*Status: Point in time view as at 02/12/2019.*

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## **[<sup>F167</sup>218A] Life sentence for second listed offence**

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is an offence listed in Part 1 of Schedule 15B to the 2003 Act;
  - (c) the offence was committed after this section comes into force; and
  - (d) the sentence condition and the previous offence condition are met.
- (2) Section 224A(2) of the 2003 Act applies in relation to the offender.
- (3) In section 224A(2)(a) of that Act as applied by subsection (2)—
  - (a) the reference to “the offence” is to be read as a reference to the offence under section 42; and
  - (b) the reference to “the previous offence referred to in subsection (4)” is to be read as a reference to the previous offence referred to in subsection (5) of this section.
- (4) The sentence condition is that, but for this section, the Court Martial would, in compliance with sections 260(2) and 261(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A of the 2003 Act as applied by section 219A of this Act.
- (5) The previous offence condition is that—
  - (a) at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act (“the previous offence”); and
  - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section).
- (7) A sentence required to be imposed by section 224A(2) of that Act as a result of this section is not to be regarded as a sentence fixed by law.

[ Where an offence is found to have been committed over a period of two or more days,  
<sup>F168</sup>(8) or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(c) and (5)(a) to have been committed on the last of those days. ]

### **Textual Amendments**

**F167** S. 218A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 2; S.I. 2012/2906, art. 2\(t\)](#)

**F168** S. 218A(8) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), ss. 5\(3\), 95\(1\); S.I. 2015/778, art. 3, Sch. 1 para. 5](#)

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

**C53** S. 218A modified by S.I. 2009/1059, Sch. 2 para. 9A(2) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\), regs. 1, 5\(2\)](#))



*Status: Point in time view as at 02/12/2019.*

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## 219 [F169 Life sentence for certain dangerous] offenders aged 18 or over

- (1) This section applies where [F170 —
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a serious offence, and
  - (c) the court is of the required opinion (defined by section 223).]

[F171(2) Section 225(2) of the 2003 Act applies in relation to the offender.]

- (3) In section 225(2) [F172... of the 2003 Act (as applied by subsection (2)), references to “the offence” are to be read as references to the offence under section 42 of this Act.
- (4) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

### Textual Amendments

- F169** Words in s. 219 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 4](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F170** Words in s. 219(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 13\(2\)](#); S.I. 2009/1028, art. 2(b)
- F171** S. 219(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 3\(2\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F172** Words in s. 219(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 3\(3\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)

### Commencement Information

- I427** S. 219 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I428** S. 219 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## [F173] 219A [F174, sexual or terrorism] offenders aged 18 or over

- (1) This section applies where—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
  - (b) the corresponding offence under the law of England and Wales is a specified offence;
  - (c) the court is of the required opinion (defined by section 223);
  - (d) the court is not required to impose a sentence of imprisonment for life by section 224A(2) of the 2003 Act (as applied by section 218A of this Act) or section 225(2) of that Act (as applied by section 219 of this Act); and
  - (e) condition A or B is met.
- (2) Condition A is that, at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act.

*Status: Point in time view as at 02/12/2019.*

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- (3) Condition B is that, if the court were to impose an extended sentence of imprisonment under section 226A of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (4) Subsections (4) to (9) of section 226A of the 2003 Act apply in relation to the offender.
- (5) In section 226A(4) to (9) of the 2003 Act as applied by this section—
- (a) the reference in subsection (6) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
  - (b) the reference in subsection (7) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
  - (c) the reference in subsection (8)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
  - (d) the reference in subsection (8)(b) to a specified sexual offence [<sup>F175</sup>or a specified terrorism offence] is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence [<sup>F175</sup> or a specified terrorism offence].
- (6) In this section “specified offence”, “specified sexual offence” [<sup>F176</sup>, “specified terrorism offence”] and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

#### Textual Amendments

- F173** S. 219A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 5; S.I. 2012/2906, art. 2\(t\)](#)
- F174** Words in s. 219A heading substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(3\), Sch. 4 para. 11\(2\)\(a\)](#) (with s. 25(3)(4))
- F175** Words in s. 219A(5)(d) inserted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(3\), Sch. 4 para. 11\(2\)\(b\)](#) (with s. 25(3)(4))
- F176** Words in s. 219A(6) inserted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(3\), Sch. 4 para. 11\(2\)\(c\)](#) (with s. 25(3)(4))

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

- C54** S. 219A modified by S.I. 2009/1059, Sch. 2 para. 9A(3) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\), regs. 1, 5\(2\)](#))

### <sup>F177</sup> 220 Certain violent or sexual offences: offenders aged 18 or over

.....

#### Textual Amendments

- F177** S. 220 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 6; S.I. 2012/2906, art. 2\(t\)](#) (with art. 6)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 221 [F178 Life sentence for certain dangerous] offenders aged under 18

- (1) This section applies where [F179 —
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a serious offence, and
  - (c) the court is of the required opinion (defined by section 223).]

[F180(2) Section 226(2) of the 2003 Act applies in relation to the offender.]

- (3) [F181In section 226(2) of the 2003 Act (as applied [F182by] subsection (2))]—
- (a) references F183... to “the offence” are to be read as references to the offence under section 42 of this Act; and
  - (b) references F184... to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.

F185(4) .....

- (5) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

### Textual Amendments

- F178** Words in s. 221 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 8](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F179** Words in s. 221(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(2\)](#); S.I. 2009/1028, art. 2(b)
- F180** S. 221(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 7](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F181** Words in s. 221(3) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(a\)](#); S.I. 2009/1028, art. 2(b)
- F182** Word in s. 221(3) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 26](#); S.I. 2012/2906, art. 2(t)
- F183** Words in s. 221(3)(a) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(b\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F184** Words in s. 221(3)(b) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(4\)\(b\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F185** S. 221(4) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 15\(5\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

### Commencement Information

- I429** S. 221 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I430** S. 221 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## [F186 221A Extended sentence for certain violent [F187, sexual or terrorism] offenders aged under 18

- (1) This section applies where—

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
  - (b) the corresponding offence under the law of England and Wales is a specified offence;
  - (c) the court is of the required opinion (defined by section 223);
  - (d) the court is not required by section 226(2) of the 2003 Act (as applied by section 221 of this Act) to impose a sentence of detention for life under section 209 of this Act; and
  - (e) if the court were to impose an extended sentence of detention under section 226B of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) Subsections (2) to (7) of section 226B of the 2003 Act apply in relation to the offender.
- (3) In section 226B(2) to (7) of the 2003 Act as applied by this section—
- (a) the reference in subsection (4) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
  - (b) the reference in subsection (5) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
  - (c) the reference in subsection (6)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
  - (d) the reference in subsection (6)(b) to a specified sexual offence [<sup>F188</sup>or a specified terrorism offence] is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence [<sup>F188</sup>or a specified terrorism offence].
- (4) In this section “specified offence”, “specified sexual offence” [<sup>F189</sup>, “specified terrorism offence”] and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

#### Textual Amendments

**F186** S. 221A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 9](#); S.I. 2012/2906, art. 2(t)

**F187** Words in s. 221A heading substituted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 11\(3\)\(a\)](#) (with s. 25(3)(4))

**F188** Words in s. 221A(3)(d) inserted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 11\(3\)\(b\)](#) (with s. 25(3)(4))

**F189** Words in s. 221A(4) inserted (12.4.2019) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(3), [Sch. 4 para. 11\(3\)\(c\)](#) (with s. 25(3)(4))

<sup>F190</sup>**222 Offenders aged under 18: certain violent or sexual offences**

.....

*Status: Point in time view as at 02/12/2019.*

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### Textual Amendments

**F190** S. 222 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 10](#); S.I. 2012/2906, art. 2(t) (with art. 6)

## 223 “The required opinion” for purposes of sections 219 to <sup>F191</sup>221A]

- (1) “The required opinion” for the purposes of sections <sup>F192</sup>219(1), <sup>F193</sup>219A(1)], 221(1)] and <sup>F194</sup>221A(1)] is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
  - (a) further specified offences; or
  - (b) further acts or omissions that would be specified offences if committed in England or Wales.
- (2) For the purposes of the court's decision whether it is of that opinion, <sup>F195</sup>section 229(2) and (2A)] of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.
- (3) In section 229(2) <sup>F196</sup>... of the 2003 Act as applied by this section—
  - (a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and
  - (b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.
- (4) In this section—

“serious harm” has the meaning given by section 224 of the 2003 Act;  
“specified offence” has the meaning given by that section.

### Textual Amendments

- F191** Word in s. 223 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 28](#); S.I. 2012/2906, art. 2(t)
- F192** Words in s. 223(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 17\(2\)](#); S.I. 2009/1028, art. 2(b)
- F193** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 27\(a\)](#); S.I. 2012/2906, art. 2(t)
- F194** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 27\(b\)](#); S.I. 2012/2906, art. 2(t)
- F195** Words in s. 223(2) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 17\(3\)](#); S.I. 2009/1028, art. 2(b)
- F196** Words in s. 223(3) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 17\(4\)](#), [Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

### Commencement Information

- I431** S. 223 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059)
- I432** S. 223 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F197</sup>224 Place of detention under certain sentences**

Section 235 of the 2003 Act (detention under sections 226, 226B and 228) applies to a person sentenced to be detained under section 226(3), 226B or 228 of that Act as applied by section 221, 221A or 222 of this Act.]

### **Textual Amendments**

**F197** S. 224 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 29](#); S.I. 2012/2906, art. 2(t)

### **Commencement Information**

**I433** S. 224 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I434** S. 224 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **[<sup>F198</sup>224A Special custodial sentence for certain offenders of particular concern**

- (1) This section applies where—
  - (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after this section comes into force),
  - (b) the corresponding offence under the law of England and Wales is an offence listed in Schedule 18A to the 2003 Act,
  - (c) the person was aged 18 or over when the offence was committed, and
  - (d) the court does not impose one of the following for the offence—
    - (i) a sentence of imprisonment for life, or
    - (ii) an extended sentence of imprisonment under section 226A of the 2003 Act (as applied by section 219A of this Act).
- (2) If the court imposes a sentence of imprisonment for the offence, section 236A(2) to (4) of the 2003 Act apply in relation to the term of the sentence.
- (3) The references in subsections (1)(d) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.
- (4) In Schedule 18A to the 2003 Act, as applied by this section, the reference in paragraph 24 to section 30 of the Counter-Terrorism Act 2008 is to be read as a reference to section 32 of that Act.]

### **Textual Amendments**

**F198** S. 224A inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 1 para. 8](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 72](#)

## **225 Third drug trafficking offence**

- (1) This section applies where —
  - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

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- (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.
- (2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

#### Commencement Information

- I435** S. 225 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I436** S. 225 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 226 Third domestic burglary

- (1) This section applies where—
- (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.
- (2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

#### Commencement Information

- I437** S. 226 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I438** S. 226 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 227 Firearms offences

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.
- (2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

#### Commencement Information

- I439** S. 227 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I440** S. 227 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### <sup>F199</sup>227A Offences of threatening with a weapon in public or on school premises

- (1) This section applies if—
- (a) a person aged 18 or over is convicted by a court of an offence under section 42 (criminal conduct); and
  - (b) the corresponding offence under the law of England and Wales is an offence under section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon in public or on school premises).
- (2) The court must impose a sentence of imprisonment for a term of at least 6 months unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3) In relation to times before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000, the reference in subsection (2) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.]

#### Textual Amendments

- F199** S. 227A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [s. 151\(1\)](#), [Sch. 26 para. 24](#); [S.I. 2012/2770](#), [art. 2\(f\)](#)

### 228 Appeals where previous convictions set aside

<sup>F200</sup>(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).

- (1B) The first case is where—
- (a) a sentence has been imposed on any person under section 224A of the 2003 Act (as applied by section 218A of this Act);
  - (b) a previous conviction of that person has been subsequently set aside on appeal; and
  - (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (1C) The second case is where—
- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);



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- (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
  - (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.
- (1D) The third case is where—
- (a) a sentence has been imposed on any person under section 226A of the 2003 Act (as applied by section 219A of this Act);
  - (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
  - (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.
- (1E) The fourth case is where—
- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
  - (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
  - (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.]
- (2) [<sup>F201</sup>The fifth case is] where—
- (a) a sentence has been imposed on any person by virtue of section 225 or 226 [<sup>F202</sup>of this Act]; and
  - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.
- (3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.
- [<sup>F203</sup>(3A) Subsection (3B) applies where—
- (a) a sentence has been imposed on a person under section 224A of the 2003 Act (as applied by section 218A of this Act);
  - (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
  - (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (3B) An application for leave to appeal against the sentence mentioned in subsection (3A)
- (a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.]
- (4) [<sup>F204</sup>Subsections (3) and (3B) have] effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

#### Textual Amendments

**F200** S. 228(1A)-(1E) substituted for s. 228(1) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(2\)](#); S.I. 2012/2906, art. 2(t)

**F201** Words in s. 228(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)

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**F202** Words in s. 228(2)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 30\(3\)\(b\)](#); S.I. 2012/2906, art. 2(t)

**F203** S. 228(3A)(3B) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 30\(4\)](#); S.I. 2012/2906, art. 2(t)

**F204** Words in s. 228(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 30\(5\)](#); S.I. 2012/2906, art. 2(t)

#### **Commencement Information**

**I441** S. 228 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I442** S. 228 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## CHAPTER 7

### COURT ORDERS OTHER THAN SENTENCES

#### *Service restraining orders*

#### **229 Service restraining orders**

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
  - (a) it convicts or acquits a person (“the defendant”) of an offence; and
  - (b) the defendant is subject to service law or is a civilian subject to service discipline.
- (2) An order under this section—
  - (a) prohibits the defendant from doing anything described in the order; and
  - (b) has effect for a fixed period specified in the order or until further order.
- (3) An order under this section may be made, and a prohibition may be included in the order, only for the purpose of protecting a person mentioned in the order from conduct which amounts to harassment.
- (4) A person subject to service law or a civilian subject to service discipline commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an order under this section.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
- (6) In proceedings for an order under this section, the Director of Service Prosecutions and the defence may lead (as further evidence) any evidence which would be admissible in proceedings in the High Court in England and Wales for an injunction under section 3 of the Protection from Harassment Act 1997 (c. 40).

#### **Commencement Information**

**I443** S. 229 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

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**I444** S. 229 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **230 Service restraining orders: supplementary**

- (1) Section 7 (interpretation) of the Protection from Harassment Act 1997 (c. 40) (“the 1997 Act”) applies for the purposes of section 229 of this Act as it applies for the purposes of sections 5 and 5A of that Act.
- (2) Section 12 of the 1997 Act (national security etc) applies for the purposes of section 229 of this Act as if—
  - (a) the reference in subsection (1)(c) to serious crime were a reference to serious service offences or serious crime (committed anywhere);
  - (b) the reference in subsection (1) to the 1997 Act were a reference to section 229 of this Act.
- (3) Where the Court Martial Appeal Court allows an appeal against conviction it may remit the case to the Court Martial for that court to consider whether to proceed under section 229.
- (4) Section 229 applies in relation to a case remitted under subsection (3) as if subsection (1)(a) were omitted.

#### **Commencement Information**

- I445** S. 230 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I446** S. 230 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **231 Service restraining orders: appeals**

- (1) This section applies where a court makes an order under section 229—
  - (a) after it has acquitted the defendant of an offence; or
  - (b) in respect of a case remitted to it under section 230(3).
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and
  - (b) the defendant is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court.
- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

#### **Commencement Information**

- I447** S. 231 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I448** S. 231 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 232 Service restraining orders: variation and revocation

- (1) The Court Martial may vary or revoke an order under section 229 on an application made by—
  - (a) the Director of Service Prosecutions;
  - (b) the defendant; or
  - (c) any other person mentioned in the order.
- (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).
- (3) Where a person is convicted of an offence under section 229, the court that convicts him may vary or revoke the order to which the offence relates.

### Commencement Information

**I449** S. 232 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I450** S. 232 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*<sup>F205</sup>Service sexual offences prevention orders etc*

### Textual Amendments

**F205** Ss. 232A-232G and cross-heading inserted (8.3.2012 for specified purposes) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 17\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 3\(d\)](#)

## 232A Service sexual offences prevention orders

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
  - (a) it deals with a person within subsection (2) (“the defendant”) in respect of—
    - (i) a qualifying section 42 offence of which the defendant has been convicted; or
    - (ii) a relevant finding in relation to a qualifying section 42 offence; and
  - (b) it is satisfied that it is necessary to make an order under this section for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (2) The following are persons within this subsection—
  - (a) a member of the regular forces;
  - (b) a member of the reserve forces (whether or not for the time being subject to service law);
  - (c) a civilian subject to service discipline;
  - (d) a person who the court is satisfied is intending to become, or likely to become, a civilian subject to service discipline.
- (3) An order under this section—
  - (a) prohibits the defendant from doing anything described in the order; and

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- (b) has effect for a fixed period, of at least five years, specified in the order or until further order.
- (4) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (5) Where—
  - (a) a court makes an order under this section, and
  - (b) the defendant is already subject to such an order (whether made by that court or another),the earlier order ceases to have effect.
- (6) In this section and sections 232B to 232E—
  - (a) “protecting the service community outside the United Kingdom from serious sexual harm” from a person means protecting the service community outside the United Kingdom, or particular members of that community, from serious physical or psychological harm, caused by the person committing one or more offences under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 to SOA 2003;
  - (b) “qualifying section 42 offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 or 5 to SOA 2003;
  - (c) “relevant finding”, in relation to an offence, means—
    - (i) a finding that a person is not guilty of the offence by reason of insanity; or
    - (ii) a finding that a person is unfit to stand trial and has done the act charged;
  - (d) “service community” means persons subject to service law and civilians subject to service discipline;
  - (e) “SOA 2003” means the Sexual Offences Act 2003.
- (7) In construing subsection (6)(a) or (b), any condition subject to which an offence is listed in Schedule 3 to SOA 2003 that relates—
  - (a) to the way in which a person is dealt with in respect of the offence or a relevant finding, or
  - (b) to the age of any person,is to be disregarded.

## **232B Service SOPOs: appeals**

- (1) This section applies where the Court Martial makes an order under section 232A in respect of a relevant finding in relation to a qualifying section 42 offence.
- (2) For the purposes of the Court Martial Appeals Act 1968—
  - (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and
  - (b) the defendant is to be treated for the purpose of enabling the defendant to appeal against the order as if the defendant had been convicted of the offence by the court.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

### **232C Service SOPOs etc: variation and revocation**

- (1) The Court Martial may vary or revoke an order under section 232A on an application made by—
- (a) a Provost Marshal; or
  - (b) the person subject to the order.
- (2) If subsection (3) applies, the Court Martial may vary or revoke an order under section 104 of SOA 2003 (sexual offences prevention order) on an application made by—
- (a) a Provost Marshal; or
  - (b) the person subject to the order.
- (3) This subsection applies if the person subject to the order under section 104 of SOA 2003 (“the SOA order”) is also subject to an associated order under section 232A and either—
- (a) the person is subject to service law or a civilian subject to service discipline; or
  - (b) the application is made together with an application for the variation or revocation of the associated order under section 232A.
- (4) An order may be varied under this section so as to extend the period for which it has effect, or so as to impose additional prohibitions, only if—
- (a) in the case of an order under section 232A, the court is satisfied that the variation is necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the person subject to the order (in which case section 232A(4) applies accordingly);
  - (b) in the case of an order under section 104 of SOA 2003, the requirements of section 108(5) of that Act are met (protection of public in United Kingdom from serious sexual harm).
- (5) The Court Martial must not before the end of the relevant period revoke an order under section 232A, or an order under section 104 of SOA 2003, without the consent of—
- (a) the person subject to the order; and
  - (b) a Provost Marshal.
- (6) In subsection (5) “the relevant period” means the period of five years beginning with the day on which the order was made.
- (7) For the purposes of this section an order under section 104 of SOA 2003 and an order under section 232A are “associated” if they were made by the Court Martial or the Service Civilian Court in dealing with the same offence or relevant finding.
- (8) This section is without prejudice to section 108 of SOA 2003 (application to civilian court for variation etc of a sexual offences prevention order).

### **232D Variation or revocation: appeals**

- (1) A person may appeal to the Court Martial Appeal Court against—
- (a) the variation under section 232C of an order to which the person is subject; or

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- (b) a decision by the Court Martial not to vary or revoke such an order on an application under that section.
- (2) On an appeal under subsection (1), the Court Martial Appeal Court may make—
- (a) such orders as may be necessary to give effect to its determination of the appeal; and
  - (b) such incidental or consequential orders as appear to it to be just.

### **232E Extended prohibitions orders**

- (1) On an application made by a Provost Marshal, the Court Martial must make an order under this section in respect of a person within subsection (2) if the relevant requirements are met.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
  - (b) a member of the reserve forces (whether or not for the time being subject to service law);
  - (c) a civilian subject to service discipline.
- (3) The relevant requirements are met if the Court Martial is satisfied—
- (a) that the person is subject to an order under section 104 or 105 of SOA 2003 (“the principal order”); and
  - (b) that there are members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal order.
- (4) For the purposes of subsection (3)(b) a person (“P”) is “protected” by the principal order if one or more of the prohibitions included in the order are for the purposes of the protection of P, or of persons of a description within which P falls.
- (5) An order under this section—
- (a) prohibits the person subject to the order from doing anything described in the order; and
  - (b) has effect—
    - (i) until the expiry of the principal order; or
    - (ii) if earlier, until the principal order is varied, renewed or discharged under section 108 of SOA 2003.
- (6) Only corresponding prohibitions may be included in an order under this section.
- (7) For the purposes of subsection (6) a “corresponding prohibition” is a prohibition in substantially the same terms as a prohibition in the principal order (“the principal prohibition”), subject to such modifications as are necessary to secure that the prohibition is for the purposes of the protection of members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal prohibition.
- (8) In subsection (7) “protected” is to be construed in accordance with subsection (4).

### **232F Extended prohibitions orders: appeals**

- (1) A person may appeal to the Judge Advocate General against the making of an order under section 232E in respect of the person.

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- (2) The Secretary of State may by rules make provision about appeals under this section, and the rules may in particular make provision—
- (a) specifying the grounds on which an appeal may be brought;
  - (b) with respect to the procedure which is to apply in connection with an appeal;
  - (c) with respect to the powers of the Judge Advocate General in relation to an appeal.

### **232G Offence: breach of order under section 232A or 232E**

- (1) A person within subsection (2) (“P”) commits an offence if, without reasonable excuse, P does anything which P is prohibited from doing by an order under section 232A or 232E.
- (2) The following are persons within this subsection—
  - (a) a person subject to service law;
  - (b) a civilian subject to service discipline.
- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
- (4) Where a person is convicted of an offence under this section, the court that convicts him may vary or revoke the order to which the offence relates.]

*Order for parent or guardian to enter into recognizance*

### **233 Order for service parent or service guardian to enter into recognizance**

- (1) Where—
  - (a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court,
  - (b) he is a civilian subject to service discipline, and
  - (c) he has a service parent or service guardian,
 the court may, and in the circumstances mentioned in subsection (3) must, exercise the powers conferred by this section.
- (2) The powers conferred by this section are as follows—
  - (a) with the consent of the offender's service parent or service guardian, to order that parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him; and
  - (b) if the service parent or service guardian refuses consent and the court considers the refusal unreasonable, to order that parent or guardian to pay a fine not exceeding level 3 on the standard scale.
- (3) The circumstances referred to in subsection (1) as those in which the court must exercise the powers conferred by this section are—
  - (a) that the offender is under 16 when convicted; and
  - (b) that the court is satisfied, having regard to the circumstances of the case, that the exercise of those powers would be desirable in the interests of preventing the commission by him of further offences.



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- (4) Where the powers conferred by this section are not exercised in a case where subsection (1) applies and the offender is under 16 when convicted, the court must state in open court that it is not satisfied as mentioned in subsection (3)(b) and why it is not so satisfied.
- (5) A parent or guardian is a “service parent” or “service guardian” for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.
- (6) For the purposes of this section, taking “care” of a person includes giving him protection and guidance and “control” includes discipline.

#### Commencement Information

- I451** S. 233 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I452** S. 233 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 234 Recognizances and fines under section 233: further provision

- (1) An order under section 233 must not require the parent or guardian to enter into a recognizance for an amount exceeding level 3 on the standard scale.
- (2) Such an order must not require the parent or guardian to enter into a recognizance—
  - (a) for a period exceeding three years; or
  - (b) where the offender will reach the age of 18 in a period shorter than three years, for a period exceeding that shorter period.
- (3) In fixing the amount of a recognizance under that section, the court must take into account (among other things) the means of the parent or guardian so far as they appear or are known to the court, and this applies whether taking those means into account has the effect of increasing or reducing the amount of the recognizance.
- (4) A recognizance under section 233 may, where the court has passed an overseas community order on the offender, include a provision that the service parent or service guardian ensure that the offender complies with the requirements of that order.
- (5) A court imposing a fine under section 233(2)(b) may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.

#### Commencement Information

- I453** S. 234 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I454** S. 234 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 235 Recognizances: appeals, variation and revocation

- (1) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) an order under section 233 is to be treated as a sentence passed on the parent or guardian for the offence; and

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- (b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.
- (2) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (3) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.
- (4) The Court Martial may vary or revoke an order under section 233 if on the application of the parent or guardian it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

#### Commencement Information

- I455** S. 235 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I456** S. 235 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 236 Forfeiture of recognizance

- (1) Where—
  - (a) a recognizance under section 233 has been entered into, and
  - (b) the offender commits a service offence during the period of the recognizance, the Court Martial or the Service Civilian Court may on convicting the offender of that offence (and subject to subsection (2)) declare the recognizance to be forfeited.
- (2) The court may not make such a declaration where the parent or guardian is neither a person subject to service law nor a civilian subject to service discipline.
- (3) If a court declares under this section that a recognizance is to be forfeited it must—
  - (a) adjudge the parent or guardian to pay the sum in which he is bound;
  - (b) adjudge him to pay part of that sum; or
  - (c) remit that sum.
- (4) A court declaring under this section that a recognizance is to be forfeited may make an order under section 251 (power to allow payment by instalments); and in relation to a forfeiture under this section, section 251(2) to (7) have effect as if references to the fine or service compensation order were to the forfeiture.

#### Commencement Information

- I457** S. 236 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I458** S. 236 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## PART 9

### SENTENCING: PRINCIPLES AND PROCEDURES

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

**C55** Pt. 9 modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, s. 163

## CHAPTER 1

### PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS AND SUMMARY HEARINGS

#### *General sentencing principles*

#### **237 Duty to have regard to purposes of sentencing etc**

- (1) A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing—
  - (a) the punishment of offenders;
  - (b) the maintenance of discipline;
  - (c) the reduction of service offences and other crime (including reduction by deterrence);
  - (d) the reform and rehabilitation of offenders;
  - (e) the protection of the public;
  - (f) the making of reparation by offenders to persons affected by their offences.
- (2) If the offender is aged under 18 the court or officer must also have regard to his welfare.
- (3) This section does not apply in relation to—
  - (a) an offence the sentence for which is fixed by law;
  - (b) an offence the sentence for which, as a result of subsection (2) of any of sections [F<sup>206</sup>218A,] 219 [F<sup>207</sup>, 221] and 225 to 227 of this Act (required custodial sentences), falls to be imposed under—
    - [F<sup>208</sup>section [F<sup>209</sup>224A,] 225(2) or 226(2)] of the 2003 Act;
    - section 110(2) or 111(2) of the Sentencing Act; or
    - section 51A(2) of the Firearms Act 1968 (c. 27)[F<sup>210</sup>;
  - (c) an offence the sentence for which falls to be imposed under section 227A(2).]
- (4) In this section “sentencing” includes the making of any order when dealing with an offender in respect of his offence.

#### Textual Amendments

**F206** Word in s. 237(3)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 31\(a\)](#); S.I. 2012/2906, art. 2(t)

**F207** Word in s. 237(3)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 19\(a\)](#); S.I. 2009/1028, art. 2(b)

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**F208** Words in s. 237(3)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 19\(b\)](#); S.I. 2009/1028, art. 2(b)

**F209** Word in s. 237(3)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 31\(b\)](#); S.I. 2012/2906, art. 2(t)

**F210** S. 237(3)(c) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 26 para. 25](#); S.I. 2012/2770, art. 2(f)

#### Commencement Information

**I459** S. 237 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I460** S. 237 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 238 Deciding the seriousness of an offence

- (1) A court or officer dealing with an offender for a service offence (“the current offence”) must in considering the seriousness of the offence—
  - (a) consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;
  - (b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated;
  - (c) if the offender committed the current offence while—
    - (i) charged with another service offence and released from service custody, or
    - (ii) on bail,
 treat the fact that it was committed in those circumstances as an aggravating factor.
- (2) In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard (in particular) to—
  - (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and
  - (b) the time that has elapsed since the conviction.
- (3) Any reference in subsection (1) or (2) to a previous conviction is to be read as a reference to—
  - (a) a previous conviction of a service offence; <sup>F211</sup>...
  - (b) a previous conviction by a court in the British Islands of an offence other than a service offence.
  - <sup>F212</sup>(c) a previous conviction by a court in a member State other than the United Kingdom of a relevant offence under the law of that State, or
  - (d) a finding of guilt in respect of a member State service offence.]
- <sup>F213</sup>(4) Nothing in this section prevents the court or officer from treating—
  - (a) a previous conviction by a court outside both the British Islands and any member State, or
  - (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence or a member State service offence,

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as an aggravating factor in any case where the court or officer considers it appropriate to do so.

- (5) For the purposes of this section—
- (a) an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction in respect of the current offence,
  - (b) “member State service offence” means an offence which—
    - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
    - (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence, and
  - (c) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.]

#### Textual Amendments

- F211** Word in s. 238(3)(a) repealed (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(5\), Sch. 17 para. 7\(2\)\(a\), Sch. 23 Pt. 5](#) (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)
- F212** S. 238(3)(c)(d) inserted (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(5\), Sch. 17 para. 7\(2\)\(b\)](#) (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)
- F213** S. 238(4)(5) substituted for s. 238(4) (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(5\), Sch. 17 para. 7\(3\)](#) (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(iii)

#### Commencement Information

- I461** S. 238 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I462** S. 238 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 239 Reduction in sentences for guilty pleas

- (1) This section applies where an offender—
- (a) has pleaded guilty to a service offence in proceedings before a court; or
  - (b) at a summary hearing in respect of a service offence, has admitted the offence.
- (2) In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account—
- (a) the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing; and
  - (b) the circumstances in which this indication was given.
- (3) In subsection (2) “sentence” includes any order made when dealing with the offender in respect of his offence.
- (4) Subsection (5) applies in the case of an offence the sentence for which, as a result of section 225(2) or 226(2) of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act.

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- (5) Nothing in section 110(2) or 111(2) of that Act prevents the court, after taking into account any matter mentioned in subsection (2) above, from imposing any sentence which is at least 80% of that specified in section 110(2) or 111(2) of that Act.
- [<sup>F214</sup>(6) Nothing in section 227A(2) prevents the court, after taking into account any matter mentioned in subsection (2) of this section, from imposing any sentence which is at least 80% of that specified in section 227A(2).]

#### Textual Amendments

**F214** S. 239(6) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 26 para. 26](#); S.I. 2012/2770, art. 2(f)

#### Commencement Information

**I463** S. 239 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I464** S. 239 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 240 Increase in sentence for racial or religious aggravation

- (1) This section applies where a court or officer dealing with an offender for a service offence (other than an offence mentioned in subsection (3)) is considering the seriousness of the offence.
- (2) If the offence was racially or religiously aggravated the court or officer—
  - (a) must treat that fact as an aggravating factor; and
  - (b) must state in open court that the offence was so aggravated.
- (3) This section does not apply in relation to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under any of sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).
- (4) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

#### Commencement Information

**I465** S. 240 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I466** S. 240 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 241 Increase in sentence for aggravation related to disability [<sup>F215</sup>, sexual orientation or transgender identity]

- (1) This section applies where a court or officer dealing with an offender for a service offence within subsection (2) is considering the seriousness of the offence.
- (2) A service offence is within this subsection if—

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- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
- (i) the sexual orientation (or presumed sexual orientation) of the victim;  
F216  
...
  - (ii) a disability (or presumed disability) of the victim; or
  - [F217(iii) the victim being (or being presumed to be) transgender, or]
- (b) the offence is motivated (wholly or partly)—
- (i) by hostility towards persons who are of a particular sexual orientation;  
F218  
...
  - (ii) by hostility towards persons who have a disability or a particular disability [F219, or
  - (iii) by hostility towards persons who are transgender.]
- (3) The court or officer—
- (a) must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in paragraph (a) or (b) of subsection (2); and
  - (b) must state in open court that the offence was committed in such circumstances.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether the offender's hostility is also based to any extent on any other factor not mentioned in that paragraph.
- (5) In this section “disability” means any physical or mental impairment.
- [F220(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.]

#### Textual Amendments

- F215** Words in s. 241 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(11)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F216** Word in s. 241(2)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(12)(a)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F217** S. 241(2)(a)(iii) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(12)(b)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F218** Word in s. 241(2)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(13)(a)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F219** S. 241(2)(b)(iii) and word inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(13)(b)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)
- F220** S. 241(6) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 65(14)**, 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)

#### Commencement Information

- I467** S. 241 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I468** S. 241 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

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### *Service detention and custodial sentences*

#### **242 Service detention: general restriction**

- (1) A court may not pass a sentence of service detention in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1) or section 243(2) (length of sentence), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- (3) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of service detention may not be—
  - (a) passed by an officer at a summary hearing, or
  - (b) passed or confirmed by the Summary Appeal Court,
 unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4) or section 243(3) (length of sentence), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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

**C56** S. 242 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 161\(9\)](#)

#### **Commencement Information**

**I469** S. 242 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I470** S. 242 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **243 Length of term of service detention: general provision**

- (1) This section applies where a sentence of service detention is passed in respect of a service offence.
- (2) Where the detention is imposed by a court other than the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.
- (3) Where the detention is imposed by an officer at a summary hearing or by the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the officer or court is commensurate with the seriousness of the offence (or, if it is imposed in respect of two or more offences, the seriousness of them taken together).



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

**C57** S. 243 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 161\(9\)](#)

#### **Commencement Information**

**I471** S. 243 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I472** S. 243 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **244 Limit on combined term of sentences of service detention**

- (1) A court or officer may not—
  - (a) pass a sentence of service detention,
  - (b) make a direction under section 189 (consecutive terms of service detention), or
  - (c) make an order under section 191 or 193 (activation of suspended sentence of service detention),
 whose effect would be that a person would (at the relevant time) be subject to sentences of service detention the combined term of which exceeds two years.
- (2) In subsection (1) “the relevant time” is the time immediately after the passing of the sentence or the making of the direction or order.
- (3) For the purposes of this section, the combined term of sentences of service detention is—
  - (a) if none of the sentences overlap, the aggregate of the terms of the sentences;
  - (b) otherwise, the aggregate of—
    - (i) the period (or periods) during which any of the sentences overlaps any other of them; and
    - (ii) the period (or periods) for which none of the sentences overlap.
- (4) Where subsection (1) is contravened, any part of any sentence of service detention which would (apart from this subsection) have effect after the end of the permitted period is remitted by virtue of this subsection.
- (5) In subsection (4) “permitted period” means the period—
  - (a) beginning with the date of contravention; and
  - (b) equal in length to the longest sentence of service detention that could have been passed on that date without contravening subsection (1).
- (6) For the purposes of the reference in subsection (4) to a part of a sentence which would have effect after the end of the permitted period, any prospect of early release is to be disregarded.
- (7) In subsection (1)(a) “sentence of service detention” does not include a suspended sentence of service detention.

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#### **Commencement Information**

- I473** S. 244 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I474** S. 244 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **245 Section 244: supplementary**

- (1) Subsections (2) to (5) apply for the purposes of section 244.
- (2) A person is to be regarded as not subject to any sentence from which he has been released early.
- (3) A person is to be regarded as not subject to a suspended sentence of service detention unless an order that the sentence shall take effect has been made.
- (4) Subject to subsection (3), a person is to be regarded as subject to any sentence of service detention that has been passed on him but—
  - (a) has not taken effect; or
  - (b) as a result of section 290(5) or (6) or 291(6) or (7), has ceased to have effect and has not resumed effect.
- (5) A person who has been detained continuously pursuant to two or more sentences of service detention is to be regarded as subject to all of those sentences (whether or not any of them has been served in full).
- (6) For the purposes of subsection (5), any periods of detention which would be continuous but for section 290(3), (5) or (6) or 291(5), (6) or (7) are to be treated as continuous.

#### **Commencement Information**

- I475** S. 245 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I476** S. 245 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **246 Crediting of time in service custody: terms of imprisonment and detention**

- (1) This section applies where—
  - (a) a court or officer sentences an offender to a term of imprisonment or service detention in respect of a service offence (“the offence in question”); and
  - (b) the offender has been kept in service custody, in connection with the offence in question or any related offence, for any period since being charged with the offence in question or any related offence.
- [<sup>F221</sup>(2) The number of days for which the offender was kept in service custody in connection with the offence in question or any related offence since being so charged is to count as time served by the offender as part of the sentence.
- (2A) If, on any day on which the offender was kept in service custody, the offender was also detained in connection with any other matter, that day is not to count as time served.

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- (2B) A day counts as time served—
- (a) in relation to only one sentence, and
  - (b) only once in relation to that sentence.
- (2C) A day is not to count as time served as part of any [<sup>F222</sup>automatic release period served by the offender] (see section 255B(1) of the 2003 Act.)
- (6) This section applies to—
- (a) a determinate sentence of detention under section 209, <sup>F223</sup> ...
  - (b) a sentence of detention under section [<sup>F224</sup>226B or] 228 of the 2003 Act passed as a result of section [<sup>F225</sup>221A or] 222 of this Act [<sup>F226</sup>, and
  - (c) a determinate sentence of detention in a young offender institution,] as it applies to an equivalent sentence of imprisonment.
- (7) References in this section to “the court” are to the court or officer mentioned in subsection (1).

#### Textual Amendments

- F221** S. 246(2)-(2C) substituted for s. 246(2)-(5) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(2\)](#); S.I. 2012/2906, art. 2(k)
- F222** Words in s. 246(2C) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 3](#) (with s. 23(4), [Sch. 7 para. 5](#)); S.I. 2015/40, art. 2(w)
- F223** Word in s. 246(6)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(3\)\(a\)](#); S.I. 2012/2906, art. 2(k)
- F224** Words in s. 246(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 32\(a\)](#); S.I. 2012/2906, art. 2(t)
- F225** Words in s. 246(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 32\(b\)](#); S.I. 2012/2906, art. 2(t)
- F226** S. 246(6)(c) and word inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 13 para. 2\(3\)\(b\)](#); S.I. 2012/2906, art. 2(k)

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

- C58** S. 246 modified by 1968 c. 20, Sch. 1 para. 4 (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 54](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059, Sch. 2 para. 13 as amended (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(3\)](#)); S.I. 2009/1167, art. 4

#### Commencement Information

- I477** S. 246 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059, Sch. 2 para. 13 as amended (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(3\)](#)); S.I. 2009/1167, art. 4
- I478** S. 246 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)
- I479** S. 246 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059, Sch. 2 para. 13 as amended (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(3\)](#)); S.I. 2009/1167, art. 4

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## 247 Crediting of time in service custody: supplementary

- (1) For the purposes of section 246(1) offences are related if the charges for them were founded on the same facts or evidence.
- (2) It is immaterial for the purposes of section 246(1) whether the offender has also been kept in service custody in connection with other offences [<sup>F227</sup>(but see section 246(2B))]<sup>F228</sup> ....
- [<sup>F229</sup>(2A) The reference in section 246(2A) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—
  - (a) detention pursuant to any custodial sentence;
  - (b) committal in default of payment of any sum of money;
  - (c) committal for want of sufficient distress to satisfy any sum of money;
  - (d) committal for failure to do or abstain from doing anything required to be done or left undone.]
- (3) For the purposes of section 246 a suspended sentence of imprisonment or a suspended sentence of service detention—
  - (a) is to be treated as a sentence of imprisonment or (as the case may be) service detention when an order that it shall take effect is made; and
  - (b) is to be treated as being imposed by that order.
- (4) Subsections (5) to (7) apply for the purposes of [<sup>F230</sup>the references in section 246(2) and (2B)] to the term of imprisonment or detention to which a person has been sentenced (that is to say, the reference to his “sentence”).
- (5) Consecutive terms of service detention, and terms of service detention which are wholly or partly concurrent, are to be treated as a single term.
- (6) Consecutive relevant custodial terms, and relevant custodial terms which are wholly or partly concurrent, are to be treated as a single term if—
  - (a) the sentences were passed on the same occasion; or
  - (b) where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the 2003 Act at any time during the period beginning with the first and ending with the last of those occasions.
- (7) For the purposes of subsection (6) any sentence within paragraph (a), (b) or (c) of section 188(4) is a relevant custodial term.

### Textual Amendments

- F227** Words in s. 247(2) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 13 para. 3(2)(a)**; S.I. 2012/2906, art. 2(k)
- F228** Words in s. 247(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 13 para. 3(2)(b)**; S.I. 2012/2906, art. 2(k)
- F229** S. 247(2A) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 13 para. 3(3)**; S.I. 2012/2906, art. 2(k)
- F230** Words in s. 247(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 13 para. 3(4)**; S.I. 2012/2906, art. 2(k)

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

- C59** S. 247 modified by 1968 c. 20, Sch. 1 para. 4 (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 54](#); [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#); [S.I. 2009/1167](#), [art. 4](#))

#### **Commencement Information**

- I480** S. 247 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I481** S. 247 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Forfeiture of seniority and reduction in rank*

#### **248 Forfeiture of seniority and reduction in rank or disrating: general restriction**

- (1) A court may not pass a sentence of forfeiture of seniority, reduction in rank or disrating in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- (3) In subsections (1) and (2) “court” does not include the Summary Appeal Court.
- (4) A sentence of forfeiture of seniority, reduction in rank or disrating may not be—
  - (a) passed by an officer at a summary hearing, or
  - (b) passed or confirmed by the Summary Appeal Court,
 unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.
- (5) In forming any such opinion as is mentioned in subsection (4), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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

- C60** S. 248 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 161\(9\)](#)

#### **Commencement Information**

- I482** S. 248 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I483** S. 248 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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### *Financial punishments*

#### **249 Fixing of fines**

- (1) A court or officer fixing a fine to be imposed on an offender in respect of a service offence must, before fixing the amount of the fine, inquire into the offender's financial circumstances.
- (2) The amount of any fine fixed by a court or officer in respect of a service offence must be such as, in the opinion of the court or officer, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine to be imposed on an offender in respect of a service offence, a court or officer must take into account the circumstances of the case including, among other things, the offender's financial circumstances so far as they are known, or appear, to the court or officer.
- (4) Subsection (3) applies whether taking into account the offender's financial circumstances has the effect of increasing or reducing the amount of the fine.
- (5) Where—
  - (a) the court has inquired into the offender's financial circumstances as required by this section,
  - (b) the offender has failed to co-operate with the court in its inquiry (whether by failing to comply with a financial statement order under section 266 or otherwise), and
  - (c) the court considers that it has insufficient information to make a proper determination of the offender's financial circumstances,
 the court may make such determination of his financial circumstances as it considers appropriate.
- (6) References in subsection (5) to “the court” are to the court or officer fixing a fine in respect of a service offence.

#### **Commencement Information**

**I484** S. 249 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I485** S. 249 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **250 Determination of service compensation order**

- (1) In determining whether to make a service compensation order against any person, and in determining the amount to be paid by any person under such an order, a court or officer must have regard to that person's financial circumstances so far as they appear or are known to the court or officer.
- (2) Where the court or officer considers—
  - (a) that it would be appropriate both to impose a fine and to make a service compensation order, but
  - (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

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the court or officer must give preference to compensation (but may impose a fine as well).

#### Commencement Information

**I486** S. 250 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I487** S. 250 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 251 Power to allow payment of fine or service compensation order by instalments

- (1) A court or officer awarding a fine or service compensation order in respect of a service offence may make an order under this section.
- (2) An order under this section is an order—
  - (a) allowing time for payment of the amount due in respect of the fine or service compensation order (“the amount due”); or
  - (b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order.
- (3) If no order under this section is made when the fine or service compensation order is imposed, at any later time the appropriate court may make such an order on the application of the person by whom the amount due is payable (“the relevant person”).
- (4) The appropriate court may on the application of the relevant person vary an order made under this section.
- (5) In this section “the appropriate court” means—
  - (a) if the fine or service compensation order was imposed by an officer and subsection (6) applies, the commanding officer of the relevant person;
  - (b) if the fine or service compensation order was imposed by a court and subsection (6) or (7) applies, the Court Martial.
- (6) This subsection applies if the relevant person is for the time being—
  - (a) subject to service law;
  - (b) a member of a volunteer reserve force; or
  - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.
- (7) This subsection applies if the relevant person is for the time being a civilian subject to service discipline.

#### Commencement Information

**I488** S. 251 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I489** S. 251 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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*Reasons*

**252 Duty to give reasons and explain sentence**

- (1) Any court or officer passing sentence on an offender for a service offence—
  - (a) must state in open court, in ordinary language and in general terms and in accordance with section 253, its (or his) reasons for deciding on the sentence passed; and
  - (b) must explain to the offender in ordinary language—
    - (i) the effect of the sentence;
    - (ii) where the offender is required to comply with any order forming part of the sentence, the effects of non-compliance with the order;
    - (iii) any power, on the application of the offender or any other person, to vary or review any order forming part of the sentence; and
    - (iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.
- <sup>F231</sup>(2) .....
- (3) The Secretary of State may by order—
  - (a) prescribe cases in which subsection (1)(a) or (b) does not apply;
  - (b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.
- (4) In this section and section 253 “sentence” includes any order made when dealing with the offender in respect of his offence.

**Textual Amendments**

**F231** S. 252(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(a\)](#), 151(1); S.I. 2012/2906, art. 2(a)

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

**C61** S. 252 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 123](#)

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**Commencement Information**

**I490** S. 252 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I491** S. 252 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**253 Duties in complying with section 252**

- (1) In complying with section 252(1)(a) an officer or the Summary Appeal Court must—
  - <sup>F232</sup>(a) .....
  - (b) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the officer or court has imposed a punishment on the offender which is less severe than the punishment that would otherwise have been imposed, state that fact;
  - <sup>F233</sup>(c) .....



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F233(d) .....

(2) In complying with section 252(1)(a) a court other than the Summary Appeal Court must—

(a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind or is outside that range, state the court's reasons for deciding on a sentence of a different kind or outside that range;

F234(b) .....

(c) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the court has imposed a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact;

F235(d) .....

F235(e) .....

F235(f) .....

F235(g) .....

F235(h) .....

(3) In this section “guidelines” has the same meaning as in section 259.

**Textual Amendments**

**F232** S. 253(1)(a) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a)

**F233** S. 253(1)(c)(d) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a)

**F234** S. 253(2)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a)

**F235** S. 253(2)(d)-(h) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 64\(4\)\(b\)](#), 151(1); S.I. 2012/2906, art. 2(a)

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

**C62** S. 253(2) applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 123](#)

**Commencement Information**

**I492** S. 253 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I493** S. 253 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Savings*

**254 Savings for powers to mitigate sentence etc**

(1) Nothing in any of sections 242, 243, 248, 249, 250, 256, 258, 260, 261, 265 and 270 prevents a court or officer from mitigating an offender's sentence by taking into account any such matters as, in the court's or officer's opinion, are relevant in mitigation of sentence.

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- (2) Nothing in those sections prevents a court or officer from mitigating any punishment included in an offender's sentence by taking into account any other punishment included in that sentence.
- (3) Nothing in those sections or section 255 prevents a court, in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (4) Subsections (2) and (3) do not affect the generality of subsection (1).

#### **Commencement Information**

**I494** S. 254 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I495** S. 254 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## **CHAPTER 2**

### PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS ONLY

#### *General*

#### **255 Individual sentence for each offence**

Where the Court Martial or the Service Civilian Court convicts a person, the court must pass a separate sentence in respect of each offence of which he is convicted.

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

**C63** S. 255 modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), **art. 1, rule 161(2)**

#### **Commencement Information**

**I496** S. 255 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I497** S. 255 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

#### **256 Pre-sentence reports**

- (1) Subject to subsection (2), a court must obtain and consider a pre-sentence report before—
  - (a) forming any such opinion as is mentioned in—
    - section 242(1) or 243(2) (service detention);
    - section 260(2) or 261(2) (custodial sentence); or
    - section 265(1) (dismissal or dismissal with disgrace);
  - (b) forming any such opinion as is mentioned in section 270(1) or (2)(b) (community punishment) or any opinion as to the suitability for the offender

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- of the particular requirement or requirements to be included in a community punishment; or
- (c) forming the required opinion for the purposes of [<sup>F236</sup>section 219(1), [<sup>F237</sup>219A(1)], 221(1) or [<sup>F238</sup>221A(1)]] (sentences for dangerous offenders).]
- (2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (2) unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
- (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (4) No sentence is invalidated by a failure of a court to obtain and consider a pre-sentence report before doing any of the things mentioned in paragraphs (a) to (c) of subsection (1).
- (5) However, any court on appeal against a custodial sentence in respect of a service offence, a sentence of dismissal or dismissal with disgrace, a sentence of service detention or a community punishment—
- (a) must (subject to subsection (6)) obtain a pre-sentence report if none was obtained by the court below; and
- (b) must consider any such report obtained by it or by that court.
- (6) Subsection (5)(a) does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court it is unnecessary to obtain a pre-sentence report.
- (7) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (6) unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
- (b) the court has had regard to the information contained in that report or, if there is more than one such report, the most recent report.
- (8) Subsections (5) to (7) do not apply to the Summary Appeal Court on an appeal to it.
- (9) Subsections (1) to (4) do apply to the Summary Appeal Court in relation to a sentence of service detention, but as if the opinions referred to in subsection (1)(a) were any such opinion as is mentioned in section 242(4) or 243(3).
- [<sup>F239</sup>(10) The reference in subsection (1)(a) to a court forming any such opinion as is mentioned in section 260(2) or 261(2) includes a court forming such an opinion for the purposes of section 218A(4).]

#### Textual Amendments

**F236** Words in s. 256(1)(c) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 20](#); S.I. 2009/1028, art. 2(b)

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**F237** Word in s. 256(1)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 33\(2\)\(a\)](#); S.I. 2012/2906, art. 2(t)

**F238** Word in s. 256(1)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 33\(2\)\(b\)](#); S.I. 2012/2906, art. 2(t)

**F239** S. 256(10) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 33\(3\)](#); S.I. 2012/2906, art. 2(t)

#### Commencement Information

**I498** S. 256 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I499** S. 256 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 257 Pre-sentence reports: supplementary

- (1) In section 256 and this section “pre-sentence report” has the meaning given by section 158(1) of the 2003 Act.
- (2) In section 158(1) of that Act as applied by this section, “an appropriate officer” includes any registered social worker (as well as any person who is an appropriate officer within the meaning given by section 158(2) of that Act).
- (3) In this section “registered social worker” means a person registered as a social worker in a register maintained by—
  - [<sup>F240</sup>(a) Social Work England;]
  - (b) the Care Council for Wales;
  - (c) the Scottish Social Services Council; or
  - (d) the Northern Ireland Social Care Council.
- (4) Section 159(1) to (3) and (5) of the 2003 Act (disclosure of reports) apply in relation to a pre-sentence report obtained by a court for the purposes of section 256 of this Act as they apply in relation to a report obtained by a court for the purposes of section 156 of that Act.

#### Textual Amendments

**F240** [S. 257\(3\)\(a\)](#) substituted (2.12.2019) by [Children and Social Work Act 2017 \(c. 16\), s. 70\(2\), Sch. 5 para. 32](#); S.I. 2019/1436, reg. 2(s)

#### Commencement Information

**I500** S. 257 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I501** S. 257 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 258 Mentally disordered offenders: requirement for medical report

- (1) Subject to subsection (2), before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must obtain and consider a medical report.
- (2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

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- (3) Before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must consider—
  - (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
  - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by a failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) must obtain a medical report if none was obtained by the court below; and
  - (b) must consider any such report obtained by it or by that court.
- (5) In this section—

“custodial sentence” does not include a custodial sentence fixed by law;

“medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 (c. 20) by the Secretary of State [<sup>F241</sup>, or by another person by virtue of section 12ZA or 12ZB of that Act,] as having special experience in the diagnosis or treatment of mental disorder.
- (6) Nothing in this section is to be taken to limit the generality of—

section 256 (pre-sentence reports); or

section 260(4) (information to be taken into account).

#### Textual Amendments

**F241** Words in s. 258(5) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 38\(5\)\(f\)](#), 306(4); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

#### Commencement Information

**I502** S. 258 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I503** S. 258 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 259 Sentencing guidelines

- (1) A court must—
  - (a) in sentencing an offender for a service offence, have regard to any guidelines that are relevant to the offender's case; and
  - (b) in exercising any other function relating to the sentencing of offenders for service offences, have regard to any guidelines which are relevant to the exercise of the function.
- (2) However, the court may depart from the guidelines mentioned in subsection (1)(a) or (b) if in its opinion the departure is justified by any features of service life or of the service disciplinary system that are relevant to the case.
- (3) Subsection (2) does not limit any power existing apart from that subsection to depart from guidelines.

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- (4) References in subsection (1)(a) and (b) to sentencing an offender for a service offence include making any order when dealing with an offender in respect of such an offence.
- [<sup>F242</sup>(5) In this section “guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued.]

#### Textual Amendments

**F242** S. 259(5) substituted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(4)(e), [Sch. 21 para. 89](#) (with s. 180); [S.I. 2010/816](#), art. 2, [Sch. para. 20\(b\)](#)

#### Commencement Information

**I504** S. 259 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I505** S. 259 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Custodial sentences and service detention*

#### 260 Discretionary custodial sentences: general restrictions

- (1) This section applies where a court is dealing with an offender for a service offence punishable with a custodial sentence, other than an offence the sentence for which—
- (a) is fixed by law; or
  - (b) falls to be imposed [<sup>F243</sup>under section [<sup>F244</sup>224A,] 225(2) or 226(2) of the 2003 Act (as applied by section [<sup>F245</sup>218A,] 219(2) or 221(2) of this Act) or as a result of any of sections 225 to [<sup>F246</sup>227A] of this Act.]
- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no less severe sentence can be justified for the offence.
- (3) Nothing in subsection (2) prevents the court from passing a custodial sentence where—
- (a) the court had proposed to award a community punishment; and
  - (b) the offender failed to express his willingness to comply with a requirement which the court proposed to include in the community punishment and which required an expression of such willingness.
- (4) In forming any such opinion as is mentioned in subsection (2) or section 261(2) (length of sentence), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- [<sup>F247</sup>(4A) The reference in subsection (4) to a court forming any such opinion as is mentioned in subsection (2) or section 261(2) includes a court forming such an opinion for the purposes of section 218A(4).
- (4B) The reference in subsection (4) to a court forming any such opinion as is mentioned in section 261(2) also includes a court forming such an opinion for the purposes of section 226A(6) or 226B(4) of the 2003 Act (as applied by section 219A or 221A of this Act).]

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- (5) For the purposes of this section a sentence falls to be imposed as a result of subsection (2) of section 225, 226 or 227 if it is required by that subsection and the court is not of the opinion there mentioned.

#### Textual Amendments

- F243** Words in s. 260(1)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\)](#), [Sch. 25 para. 21](#); S.I. 2009/1028, art. 2(b)
- F244** Word in s. 260(1)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 34\(2\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F245** Word in s. 260(1)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 34\(2\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F246** Word in s. 260(1)(b) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 26 para. 27](#); S.I. 2012/2770, art. 2(f)
- F247** S. 260(4A)(4B) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 34\(3\)](#); S.I. 2012/2906, art. 2(t)

#### Commencement Information

- I506** S. 260 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I507** S. 260 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 261 Length of discretionary custodial sentences: general provision

- (1) This section applies where a court passes a custodial sentence for a service offence, other than a sentence fixed by law or <sup>F248</sup>imposed under section <sup>F249</sup>[224A,] 225 or 226 of the 2003 Act (as applied by section <sup>F250</sup>[218A,] 219(2) or 221(2) of this Act).
- (2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.
- (3) Subsection (2) is subject to sections <sup>F251</sup>[219A, 221A], 225, 226 <sup>F252</sup>[227, 227A] (<sup>F253</sup>[sentences that may or must be imposed] for certain offences).

#### Textual Amendments

- F248** Words in s. 261(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\)](#), [Sch. 25 para. 22\(a\)](#); S.I. 2009/1028, art. 2(b)
- F249** Word in s. 261(1) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 35\(2\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F250** Word in s. 261(1) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 35\(2\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F251** Words in s. 261(3) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 22 para. 35\(3\)](#); S.I. 2012/2906, art. 2(t)
- F252** Words in s. 261(3) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\)](#), [Sch. 26 para. 28](#); S.I. 2012/2770, art. 2(f)
- F253** Words in s. 261(3) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\)](#), [Sch. 25 para. 22\(b\)](#); S.I. 2009/1028, art. 2(b)

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#### Commencement Information

- I508** S. 261 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I509** S. 261 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 262 Power to recommend licence conditions

In section 238(1) of the 2003 Act (court imposing prison term of 12 months or more may recommend licence conditions) “court” includes a court dealing with an offender for a service offence.

#### Commencement Information

- I510** S. 262 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I511** S. 262 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 263 Restriction on imposing custodial sentence or service detention on unrepresented offender

- (1) A sentence of—
- (a) imprisonment, or
  - (b) service detention,
- must not be passed by the Court Martial or the Service Civilian Court, or passed or confirmed by the Summary Appeal Court, in respect of an offender who is not legally represented in that court.
- (2) Subsection (1) does not apply if the offender—
- (a) having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply; or
  - (b) was aged 21 or over when convicted, and has previously been sentenced to imprisonment by a civilian court in any part of the United Kingdom or for a service offence [<sup>F254</sup>, or sentenced to detention by a court in any other member State or for a member State service offence].
- (3) The Court Martial or the Service Civilian Court must not—
- (a) pass a sentence of detention under section 209 or 218 (young offenders' detention), or
  - (b) make an order under section 211 (detention and training),
- on or in respect of an offender who is not legally represented in that court unless the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.
- (4) For the purposes of this section an offender is “legally represented” in the Court Martial or the Service Civilian Court only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- (5) For the purposes of this section an offender is “legally represented” in the Summary Appeal Court—



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- (a) in a case where his appeal was only against punishment, if he has the assistance of counsel or a solicitor to represent him at some time during the proceedings in that court;
  - (b) in any other case, only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after the court confirms or substitutes the finding and before it confirms or passes sentence.
- (6) For the purposes of subsection (2)(b)—
- (a) a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded;
  - (b) “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence;
  - [<sup>F255</sup>(c) member State service offence” means an offence which—
    - (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
    - (ii) at the time it was done, would have constituted an offence in any part of the United Kingdom, or a service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces;
  - (d) “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.]

#### Textual Amendments

**F254** Words in s. 263(2)(b) inserted (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(5\), Sch. 17 para. 11\(a\)](#) (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(v)

**F255** S. 263(6)(c)(d) inserted (15.8.2010) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(5\), Sch. 17 para. 11\(b\)](#) (with s. 180, Sch. 22 para. 42); S.I. 2010/1858, art. 3(d)(v)

#### Commencement Information

**I512** S. 263 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I513** S. 263 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 264 Effect of duties to pass custodial sentences on other powers of punishment

- (1) Where a provision of this Act requires a court to impose a particular custodial sentence in respect of an offence, it is not to be taken to prevent the court from including in its sentence for that offence any other authorised punishment.
- (2) In this section an “authorised punishment” means any punishment authorised by this Act apart from—
  - service detention;
  - a service supervision and punishment order;
  - minor punishments;
  - a community punishment;
  - a conditional or absolute discharge.

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#### **Commencement Information**

- I514** S. 264 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I515** S. 264 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *Dismissal*

#### **265 Dismissal: general restrictions**

- (1) A court may not pass a sentence of dismissal or dismissal with disgrace in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In forming any such opinion as is mentioned in subsection (1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.
- (3) The Court Martial must not pass a sentence of dismissal or dismissal with disgrace on an offender who is not legally represented in that court.
- (4) Subsection (3) does not apply if the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.
- (5) For the purposes of this section an offender is “legally represented” in the Court Martial only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.

#### **Commencement Information**

- I516** S. 265 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I517** S. 265 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *Financial punishments*

#### **266 Financial statement orders**

- (1) Before sentencing a person who has been convicted of a service offence, a court may make a financial statement order; but this does not apply to the Summary Appeal Court.
- (2) A financial statement order is an order requiring the person to give to the court, within such period as may be specified in the order, such a statement of his [<sup>F256</sup>assets and other] financial circumstances as the court may require.

*Status: Point in time view as at 02/12/2019.*

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- (3) A person who without reasonable excuse fails to comply with a financial statement order commits an offence and is liable to a fine not exceeding level 3 on the standard scale.
- (4) A person who in providing any statement in pursuance of a financial statement order—
  - (a) makes a statement which he knows to be false in a material particular,
  - (b) recklessly provides a statement which is false in a material particular, or
  - (c) knowingly fails to disclose any material fact,commits an offence and is liable to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

**F256** Words in s. 266(2) inserted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 38](#); [S.I. 2013/2981](#), art. 2(e)

#### Commencement Information

**I518** S. 266 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I519** S. 266 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

## 267 Power of court to remit fine

- (1) This section applies where a court has, in fixing the amount of a fine in respect of a service offence, determined the offender's financial circumstances under section 249(5).
- (2) If on subsequently inquiring into the offender's financial circumstances the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
  - (a) have fixed a smaller amount, or
  - (b) not have fined him,it may remit the whole or part of the fine.
- [<sup>F257</sup>(3) Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 269A, it must reduce the term by the corresponding proportion.
- (4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.]

#### Textual Amendments

**F257** S. 267(3)(4) inserted (20.12.2013) by [The Armed Forces \(Remission of Fines\) Order 2013 \(S.I. 2013/3234\)](#), arts. 1, 2

#### Commencement Information

**I520** S. 267 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I521** S. 267 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **268 Order for service parent or service guardian to pay fine or compensation**

- (1) This section applies where—
  - (a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court;
  - (b) he is a civilian subject to service discipline;
  - (c) he has a service parent or service guardian; and
  - (d) the court is of the opinion that the case would best be met by the imposition of a fine or the making of a service compensation order (with or without any other punishment).
- (2) The court may, and if the offender is under 16 when convicted must, order that the fine or compensation awarded be paid by the service parent or service guardian instead of by the offender himself; but this is subject to subsection (3).
- (3) Where (apart from this subsection) the court would be required by subsection (2) to make an order against a service parent or service guardian, the court need not make such an order if it is satisfied—
  - (a) that no service parent or service guardian can be found; or
  - (b) that it would be unreasonable to make such an order having regard to the circumstances of the case.
- (4) No order may be made under this section without giving the parent or guardian an opportunity of being heard, unless the parent or guardian has failed to attend having been required to do so.
- (5) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) an order under this section is to be treated as a sentence passed on the parent or guardian for the offence; and
  - (b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.
- (6) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (7) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.
- (8) A parent or guardian is a “service parent” or “service guardian” for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.

### **Commencement Information**

**I522** S. 268 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I523** S. 268 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **269 Fixing of fine or compensation to be paid by parent or guardian**

- (1) For the purposes of any order under section 268 against the parent or guardian of an offender—

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) section 249 (fixing of fine) has effect as if any reference to the offender's financial circumstances were to the parent's or guardian's financial circumstances, and as if the reference in subsection (5)(b) to the offender were to the parent or guardian;
  - (b) section 250(1) (determination of service compensation order) has effect as if any reference to the financial circumstances of the person against whom the service compensation order is made were to the financial circumstances of the parent or guardian;
  - (c) section 250(2) (preference to be given to compensation if insufficient means to pay both compensation and fine) has effect as if the reference to the offender were to the parent or guardian;
  - (d) section 267 (power to remit fine) has effect as if any reference to the offender's financial circumstances were to the parent's or guardian's financial circumstances.
- (2) Before making an order under section 268 against a parent or guardian, the court may make a financial statement order with respect to him.
- (3) In subsection (2) “financial statement order” has the meaning given by subsection (2) of section 266, and subsections (3) and (4) of that section apply in relation to a financial statement order made under this section as they apply in relation to such an order made under that section.

#### **Commencement Information**

**I524** S. 269 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I525** S. 269 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **[<sup>F258</sup>269] Fines: fixing of term of imprisonment for default**

- (1) Where the Court Martial imposes a fine on a person aged 18 or over, the court must make an order fixing a term of imprisonment which the person is to undergo if—
  - (a) any sum which the person is liable to pay is not duly paid or recovered; and
  - (b) an enforcement order is made.
- (2) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be fixed under this section for fines of the amounts set out in that Table.
- (3) Where the person mentioned in subsection (1) is sentenced by the court to, or is serving or otherwise liable to serve, a term of—
  - (a) imprisonment,
  - (b) detention in a young offender institution, or
  - (c) detention under section 108 of the Sentencing Act (detention of persons aged 18 to 21 for default or contempt),the court may order that any term of imprisonment fixed under subsection (1) shall not begin to run until after the end of that other term.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) For the purposes of references in subsection (3) to a term of imprisonment or detention which a person has been sentenced to or is serving or liable to serve, consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term.
- (5) References in subsection (3) to a term which a person is serving or liable to serve are to a term imposed—
- (a) by a relevant service court; or
  - (b) by a civilian court in any part of the United Kingdom.
- (6) In this section—
- “enforcement order” means an order under regulations made under section 322 (orders for enforcement by prescribed courts of fines etc);
- “relevant service court” means the Court Martial, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court.]

#### Textual Amendments

**F258** Ss. 269A-269C inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 16(1)**, 32(3); S.I. 2013/2501, art. 3(c)

### [<sup>F258</sup>269B] **Service compensation orders: power to set maximum term of imprisonment for default**

- (1) This section applies where—
- (a) the Court Martial makes a service compensation order and the person by whom the compensation is payable is aged 18 or over; and
  - (b) the court thinks that the usual default term is insufficient.
- (2) In subsection (1) “the usual default term” means the period for which the person would be liable to be committed to prison for default if—
- (a) an enforcement order were made; and
  - (b) by virtue of that order, the amount payable under the service compensation order were treated as if it had been a fine imposed on a conviction by a magistrates' court in England and Wales.
- (3) Where this section applies, the court may specify a longer period as the maximum term to which the person is liable to be committed to prison for default if an enforcement order is made.
- (4) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be specified under this section for service compensation orders of the amounts set out in that Table.
- (5) In this section “enforcement order” has the same meaning as in section 269A.]

#### Textual Amendments

**F258** Ss. 269A-269C inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 16(1)**, 32(3); S.I. 2013/2501, art. 3(c)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F258</sup> **269C Orders under section 269A or 269B against service parents or service guardians: appeals**

- (1) This section applies where—
  - (a) the Court Martial makes an order under section 268 in respect of a fine or service compensation order (fine or compensation to be paid by service parent or service guardian); and
  - (b) the court also makes an order under section 269A or 269B (“a default term order”) in respect of the parent or guardian (“P”).
- (2) For the purposes of the Court Martial Appeals Act 1968—
  - (a) the default term order is to be treated as a sentence passed on P for the offence in respect of which the fine or service compensation order was imposed; and
  - (b) P is to be treated, for the purpose of enabling P to appeal against the default term order, as if P had been convicted of the offence by the Court Martial.
- (3) For the purposes of any appeal against the default term order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal against the default term order, the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order; but this is subject to subsection (5).
- (5) If the default term order was made under section 269A, the power under subsection (4) may only be exercised if the court also quashes the order under section 268.]

**Textual Amendments**

**F258** Ss. 269A-269C inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 16\(1\)](#), 32(3); S.I. 2013/2501, art. 3(c)

*Community punishments*

**270 Community punishments: general restrictions etc**

- (1) A court must not award a community punishment in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a punishment.
  - (2) Where a court awards a community punishment—
    - (a) the particular requirement (or requirements) included in the order must be such as the court considers the most suitable for the offender; and
    - (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- [<sup>F259</sup> (2A) Subsection (2) is subject to section 177(2A) of the 2003 Act (community orders: punitive elements) as applied by section 178(3) and section 182(3A).]
- (3) In forming any such opinion as is mentioned in subsection (1) or (2)(b), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) In forming an opinion for the purposes of subsection (2)(a) the court may take into account any information about the offender which is before it.
- (5) In determining the restrictions on liberty to be imposed by a community punishment in respect of an offence, the court may have regard to any period for which the offender has, since being charged with the offence or any related offence, been kept in service custody in connection with the offence or any related offence.
- (6) In subsection (5) “related offence” has the meaning given by section 247.
- [<sup>F260</sup>(6A) The fact that by virtue of any provision of this section—
- (a) a community punishment may be awarded in respect of an offence, or
  - (b) particular restrictions on liberty may be imposed by a community punishment,
- does not require a court to award such a punishment or to impose those restrictions.]
- [<sup>F261</sup>(7) Subsections (1) and (2)(b) are subject to section 270A.]

#### Textual Amendments

- F259** S. 270(2A) inserted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 34](#) (with [Sch. 16 para. 35](#)); [S.I. 2013/2981](#), art. 2(e)
- F260** S. 270(6A) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 26\(2\)](#); [S.I. 2009/1028](#), art. 2(b)
- F261** S. 270(7) substituted for s. 270(7)(8) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 20\(1\)](#); [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

- I526** S. 270 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I527** S. 270 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### [<sup>F262</sup>270A] Exception to restrictions on community punishments

- (1) If the conditions in subsection (2) are met, the power to award a community punishment in respect of an offence (“the current offence”) may be exercised even though the court would not otherwise regard—
- (a) the current offence, or
  - (b) the combination of the current offence and one or more offences associated with it,
- as serious enough to warrant a community punishment (despite the effect of section 238(1)(b)).
- (2) The conditions referred to in subsection (1) are—
- (a) that the offender was aged 16 or over when convicted of the current offence;
  - (b) that on three or more previous occasions the offender has been awarded a relevant financial penalty; and
  - (c) that the court, having regard to all the circumstances, considers that it would be in the interests of justice to award a community punishment.
- (3) In subsection (2)(b) a “relevant financial penalty” means a sentence consisting only of a fine—



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- (a) passed on the offender in respect of a service offence, or member State service offence, committed by the offender when aged 16 or over;
  - (b) passed on the offender on conviction by a civilian court in the British Islands of an offence so committed; or
  - (c) passed on the offender on conviction by a civilian court in another member State of a relevant offence so committed.
- (4) For the purposes of subsection (2)(b) it is immaterial whether the offender has on other previous occasions been awarded a sentence other than a relevant financial penalty.
- (5) The circumstances which must be had regard to under subsection (2)(c) include—
- (a) the nature of the offences for which the relevant financial penalties were awarded;
  - (b) the relevance of those offences to the current offence; and
  - (c) the time that has elapsed since those penalties were awarded.
- (6) For the purposes of subsection (3), none of the following forms part of an offender's sentence—
- (a) a service compensation order;
  - (b) a compensation order under—
    - (i) section 130 of the Sentencing Act;
    - (ii) section 249 of the Criminal Procedure (Scotland) Act 1995; or
    - (iii) Article 14 of the Criminal Justice (Northern Ireland) Order 1994;
  - (c) a surcharge under section 161A of the 2003 Act <sup>[F263]</sup>;
  - (d) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.]
- (7) This section does not limit the extent to which a court may, in accordance with section 238, treat previous convictions of the offender as increasing the seriousness of an offence.
- (8) In this section—
- (a) “member State service offence” means an offence which—
    - (i) was the subject of proceedings under the law governing all or any of the naval, military or air forces of a member State other than the United Kingdom; and
    - (ii) would constitute a service offence or an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom, by a person subject to service law, at the time of the conviction of the current offence;
  - (b) “relevant offence” means an offence which would constitute an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom at the time of the conviction of the current offence.]

#### Textual Amendments

**F262** S. 270A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 20\(2\)](#); S.I. 2012/669, [art. 4\(d\)](#) (with [art. 13](#))

**F263** S. 270A(6)(d) inserted (15.10.2013 for E., 5.11.2013 for W.) by [Prevention of Social Housing Fraud Act 2013 \(c. 3\)](#), s. 12, [Sch. para. 31](#); S.I. 2013/2622, [art. 2](#); S.I. 2013/2861, [art. 2](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### CHAPTER 3

#### SUPPLEMENTARY

#### 271 Civilian courts dealing with service offences

- (1) Nothing in this Part affects a civilian court dealing with an offender for a service offence.
- (2) The Secretary of State may by regulations modify—
  - (a) any provision of Chapter 1 of Part 12 of the 2003 Act (sentencing principles etc for civilian courts),
  - (b) any other enactment that confers functions on sentencing courts, in its application to a civilian court dealing with an offender for a service offence.

#### Commencement Information

- I528** S. 271 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I529** S. 271 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## PART 10

### COURT MARTIAL DECISIONS: APPEALS AND REVIEW

#### CHAPTER 1

##### APPEALS FROM COURT MARTIAL

#### 272 Appeals to the Court Martial Appeal Court

- (1) The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court.
- (2) Schedule 8 (amendment of the Courts-Martial (Appeals) Act 1968) has effect.

#### Commencement Information

- I530** S. 272 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I531** S. 272 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### CHAPTER 2

##### REVIEW OF COURT MARTIAL SENTENCE

#### 273 Review of unduly lenient sentence by Court Martial Appeal Court

- (1) If the Attorney General considers—

*Status: Point in time view as at 02/12/2019.*

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- (a) that a sentence passed by the Court Martial in respect of an offence under section 42 (criminal conduct) is unduly lenient, and
  - (b) that condition A or B is satisfied,
- he may refer the case to the Court Martial Appeal Court for it to review the sentencing of the offender.
- (2) Condition A is that the corresponding offence under the law of England and Wales is under that law an offence which, if committed by an adult, is triable only on indictment.
  - (3) Condition B is that the case is of a description specified for the purposes of this subsection in an order made by the Secretary of State.
  - (4) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court.
  - (5) On a reference under subsection (1), the Court Martial Appeal Court may—
    - (a) quash the sentence passed by the Court Martial; and
    - (b) pass in substitution for it any sentence which the Court Martial Appeal Court thinks appropriate and which is a sentence that the Court Martial had power to pass in respect of the offence.
  - (6) For the purposes of subsection (1)(a), the Attorney General may consider that a sentence passed by the Court Martial is unduly lenient if he considers—
    - (a) that the Court Martial erred in law as to its powers of sentencing; or
    - (b) that the sentence is not that required by [<sup>F264</sup>section [<sup>F265</sup>224A,] 225(2) or 226(2) of the 2003 Act (as applied by section [<sup>F266</sup>218A,] 219(2) or 221(2) of this Act) or by section 225, 226 [<sup>F267</sup>, 227 or 227A] of this Act];but nothing in this subsection limits subsection (1)(a).
  - [<sup>F268</sup>(7) Where a reference under subsection (1) relates to a case in which the Court Martial made an order specified in subsection (7A), the Court Martial Appeal Court may not, in deciding what sentence is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time.
  - (7A) The orders specified in this subsection are—
    - (a) an order under section 269(2) of the 2003 Act (determination of minimum term in relation to mandatory life sentence);
    - (b) an order under section 82A(2) of the Sentencing Act (determination of minimum term in relation to discretionary life sentences and certain other sentences).]
  - (8) The reference in subsection (1)(a) to a sentence passed by the Court Martial does not include one passed on an appeal under section 285 (appeal from Service Civilian Court).
  - (9) In this section and section 274 “sentence” includes any order made by a court when dealing with an offender.

#### Textual Amendments

**F264** Words in s. 273(6)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 23](#); S.I. 2009/1028, art. 2(b)

**F265** Word in s. 273(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 36\(a\)](#); S.I. 2012/2906, art. 2(t)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F266** Word in s. 273(6)(b) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 36\(b\)](#); S.I. 2012/2906, art. 2(t)

**F267** Words in s. 273(6)(b) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 26 para. 29](#); S.I. 2012/2770, art. 2(f)

**F268** S. 273(7)(7A) substituted for s. 273(7) (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 28](#); S.I. 2009/1028, art. 2(b)

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

**C64** S. 273(1)(a) modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\), art. 1, s. 166](#)

#### Commencement Information

**I532** S. 273 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I533** S. 273 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 274 Reference of point of law to Supreme Court

- (1) Where the Court Martial Appeal Court has concluded its review of a case referred to it under section 273(1), the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed on the offender in the proceedings.
- (2) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court or the Supreme Court.
- (3) Such leave may not be given unless—
  - (a) the Court Martial Appeal Court has certified that the point of law is of general public importance; and
  - (b) it appears to the Court Martial Appeal Court or the Supreme Court (as the case may be) that the point is one which should be considered by the Supreme Court.
- (4) The Supreme Court must give its opinion on any point of law referred to it under subsection (1) and must—
  - (a) remit the case to the Court Martial Appeal Court to be dealt with; or
  - (b) deal with the case itself.
- (5) For the purposes of dealing with a case itself the Supreme Court may exercise any powers of the Court Martial Appeal Court.

#### Commencement Information

**I534** S. 274 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I535** S. 274 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## 275 Power to make supplementary provision about review of sentence

- (1) The Secretary of State may by regulations make supplementary provision with respect to references under section 273(1) or 274(1) (including provision with respect to applications, proceedings and other matters in connection with such references).

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The regulations may in particular include provision which is equivalent to that made by, or capable of being made under, any provision of—
- (a) this Act,
  - (b) the Court Martial Appeals Act 1968 (c. 20), or
  - (c) Schedule 3 to the Criminal Justice Act 1988 (c. 33) (reviews of sentencing; supplementary),
- subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

**I536** S. 275 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I537** S. 275 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 3

### COMPENSATION FOR MISCARRIAGES OF JUSTICE

#### 276 Compensation for miscarriages of justice

- (1) Where—
- (a) a person has been convicted by the Court Martial, and
  - (b) subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice,
- the Secretary of State shall pay compensation for the miscarriage of justice to him or, if he is dead, to his personal representatives; but this is subject to <sup>F269</sup>subsections (2) to (3A)].
- (2) Compensation under this section is not payable if the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (3) Compensation under this section is not payable unless an application for such compensation has been made to the Secretary of State <sup>F270</sup>before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.
- (3A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.]
- (4) The question whether there is a right to compensation under this section is to be determined by the Secretary of State.
- (5) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation is to be assessed by an assessor appointed by the Secretary of State.

<sup>F271</sup>(6) Section 276A applies in relation to the assessment of the amount of the compensation.]

*Status: Point in time view as at 02/12/2019.*

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(7) The reference in subsection (1) to a conviction having been reversed is to be read as a reference to a conviction having been quashed—

- (a) on an appeal out of time;
- (b) on a reference under section 34 of the Court Martial Appeals Act 1968 (c. 20);  
or
- (c) on a reference under section 12A of the Criminal Appeal Act 1995.

[<sup>F272</sup>(7A) But in a case where—

- (a) a person's conviction for an offence is quashed on an appeal out of time, and
- (b) the person is to be subject to a retrial,

the conviction is not to be treated for the purposes of subsection (1) as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.]

(8) Schedule 9 (provision with regard to assessors) has effect.

#### Textual Amendments

- F269** Words in s. 276(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(2\)](#); S.I. 2009/1028, art. 2(b)
- F270** S. 273(3A) and preceding words at the end of subsection (3) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(3\)](#) (with [Sch. 25 para. 34\(1\)](#)); S.I. 2009/1028, art. 2(b)
- F271** S. 276(6) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(4\)](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)
- F272** S. 276(7A) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 29\(5\)](#) (with [Sch. 25 para. 34\(3\)\(4\)](#)); S.I. 2009/1028, art. 2(b)

#### Commencement Information

- I538** S. 276 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I539** S. 276 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

#### [<sup>F273</sup>276A Miscarriages of justice: amount of compensation

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 276 for a miscarriage of justice.
- (2) In assessing so much of any compensation payable under section 276 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
  - (a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction, and
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 276 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
  - (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and

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- (b) any other convictions of the person and any punishment resulting from them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 276 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 276 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—
- (a) £1 million in a case to which section 276B applies, and
  - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 276 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.
- That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.
- (7) The Secretary of State may by order amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

#### Textual Amendments

**F273** Ss. 276A, 276B inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 30](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)

### **276B Cases where person has been detained for at least 10 years**

- (1) For the purposes of section 276A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
- (a) the conviction is reversed, or
  - (b) the pardon is given,
- as mentioned in section 276(1).
- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) by virtue of a sentence passed in respect of the relevant offence,
  - (b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—

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- (a) in qualifying detention, and
  - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
  - (b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with an offence for which P was subsequently convicted other than—
    - (i) the relevant offence, or
    - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.
- (6) In this section—
- “kept in service custody” means—
    - (a) kept in service custody under section 105(2) of the Armed Forces Act 2006, or
    - (b) kept in military, air-force or naval custody under section 75A(2) of the Army Act 1955 or of the Air Force Act 1955 or section 47G(2) of the Naval Discipline Act 1957 (as the case may be);
  - “mental health legislation” means—
    - (a) Part 3 of the Mental Health Act 1983, or
    - (b) the provisions of any earlier enactment corresponding to Part 3 of that Act;
  - “the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));
  - “remanded for mental health purposes” means remanded or admitted to hospital under section 35, 36 or 38 of the Mental Health Act 1983 or under any corresponding provision of any earlier enactment;
  - “reversed” has the same meaning as in section 276 of this Act.
- (7) If, as a result of the miscarriage of justice—
- (a) two or more convictions are reversed, or
  - (b) a pardon is given in respect of two or more offences,
- “the relevant offence” means any of the offences concerned.]

#### **Textual Amendments**

**F273** Ss. 276A, 276B inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 30](#) (with [Sch. 25 para. 34\(2\)](#)); S.I. 2009/1028, art. 2(b)



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## PART 11

### THE SERVICE CIVILIAN COURT

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

**C65** Pts. 11-13 applied (with modifications) (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(3\)\(4\)](#)

#### *The Service Civilian Court: court and proceedings*

### 277 The Service Civilian Court

(1) There shall be a court, to be known as the Service Civilian Court.

[<sup>F274</sup>(2) The Service Civilian Court may sit in any place, whether within or outside the United Kingdom.]

#### Textual Amendments

**F274** S. 277(2) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 18, 32(3); S.I. 2012/669, art. 4(a)

#### Commencement Information

**I540** S. 277 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I541** S. 277 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

### 278 Constitution and proceedings of the Service Civilian Court

(1) In any proceedings, the Service Civilian Court is to consist of a single judge advocate.

(2) The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General.

(3) Schedule 10 (proceedings of the Service Civilian Court) has effect.

#### Commencement Information

**I542** S. 278 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I543** S. 278 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

### 279 Court must consider whether trial by Court Martial more appropriate

(1) Before arraignment, the Service Civilian Court must decide whether it or the Court Martial should try the charge.

(2) Before making a decision under this section, the court must—

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- (a) give the Director of Service Prosecutions (“the Director”) an opportunity to inform the court of the defendant's previous convictions (if any); and
  - (b) give the Director and the defendant an opportunity to make representations as to whether the Service Civilian Court or the Court Martial should try the charge.
- (3) In making a decision under this section, the court must consider—
- (a) the nature of the case;
  - (b) the seriousness of the offence;
  - (c) whether its powers of punishment in respect of the offence would be adequate;
  - (d) any other circumstances it considers to be relevant; and
  - (e) any representations made by the Director and the defendant.
- (4) If the court decides that the charge should be tried by the Court Martial—
- (a) it must refer the charge to that court; and
  - (b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.
- (5) Section 238(3) (meaning of “previous conviction”) applies for the purposes of subsection (2)(a) above.

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

**C66** S. 279(1) restricted (31.10.2009) by [The Armed Forces \(Service Civilian Court\) Rules 2009 \(S.I. 2009/1209\)](#), [art. 1](#), [rule 34](#)

**Commencement Information**

**I544** S. 279 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I545** S. 279 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**280 Right to elect trial by Court Martial instead of by SCC**

- (1) This section applies where the Service Civilian Court decides (under section 279) that it should try a charge.
- (2) Before arraignment the court must, in the way specified by SCC rules, give the defendant the opportunity of electing Court Martial trial of the charge.
- (3) If the defendant or (if more than one person is jointly charged) any of the defendants elects Court Martial trial of the charge—
  - (a) the Service Civilian Court must refer the charge to the Court Martial; and
  - (b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.
- (4) If subsection (3) does not apply, the Service Civilian Court must try the charge (but this is subject to the exercise by the Director of Service Prosecutions of the power under section 126(2)(b), (d) or (e)).
- (5) Where the Service Civilian Court is, in accordance with SCC rules, to try together two or more charges against the defendant, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.

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#### Commencement Information

- I546** S. 280 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I547** S. 280 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 281 Power of SCC to convict of offence other than that charged

Section 161 (power of Court Martial to convict of offence other than that charged) applies in relation to the Service Civilian Court as it applies in relation to the Court Martial.

#### Commencement Information

- I548** S. 281 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I549** S. 281 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Punishments available to Service Civilian Court*

### 282 Punishments available to Service Civilian Court

- (1) Section 164 and Schedule 3 (punishments available to Court Martial) apply in relation to the Service Civilian Court as they apply in relation to the Court Martial.
- (2) Subsection (1) is subject to—
  - (a) sections 283 and 284 (maximum imprisonment, fine or compensation order that may be awarded by SCC); and
  - (b) subsection (3).
- (3) Where the Service Civilian Court sentences an offender to whom Part 2 of Schedule 3 applies, it may not award a punishment mentioned in any of rows 2 to 5 or 8 of the Table in section 164 (as modified by that Part of that Schedule).

#### Commencement Information

- I550** S. 282 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I551** S. 282 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 283 Imprisonment: maximum term

- (1) The Service Civilian Court may not impose imprisonment for more than 12 months in respect of any one offence.
- (2) Where the Service Civilian Court imposes two or more terms of imprisonment to run consecutively their aggregate must not exceed 65 weeks.

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#### Commencement Information

- I552** S. 283 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I553** S. 283 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 284 Fines and compensation orders: maximum amounts

- (1) The Service Civilian Court may not in respect of any one offence impose a fine exceeding the prescribed sum.
- (2) Where the Service Civilian Court convicts a person of an offence under section 42 (criminal conduct), it may not impose a fine which a magistrates' court in England or Wales could not impose on him for the corresponding offence under the law of England and Wales.
- [<sup>F275</sup>(2A) The following subsections apply if (but only if) the Service Civilian Court has convicted a person aged under 18 (“the offender”) of an offence or offences.]
- (3) The compensation to be paid under a service compensation order made by the Service Civilian Court in respect of [<sup>F276</sup>the offence, or any one of the offences,] must not exceed the amount for the time being mentioned in section 131(1) of the Sentencing Act (limit on compensation order made by magistrates' court).
- (4) The compensation or total compensation to be paid under a service compensation order or service compensation orders made by the Service Civilian Court in respect of any offence or offences taken into consideration in determining sentence must not exceed the difference (if any) between—
  - (a) the amount or total amount which under subsection (3) is the maximum for the offence or offences of which the offender has been convicted; and
  - (b) the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

#### Textual Amendments

- F275** S. 284(2A) inserted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 36\(2\)](#) (with [Sch. 16 para. 36\(4\)](#)); [S.I. 2013/2981](#), art. 2(e)
- F276** Words in s. 284(3) substituted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 36\(3\)](#) (with [Sch. 16 para. 36\(4\)](#)); [S.I. 2013/2981](#), art. 2(e)

#### Commencement Information

- I554** S. 284 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I555** S. 284 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Appeals from Service Civilian Court*

### 285 Right of appeal from SCC

- (1) A person convicted by the Service Civilian Court may appeal to the Court Martial—
  - (a) if he pleaded guilty, against his sentence;

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- (b) if he did not plead guilty, against his conviction or sentence.
- (2) It is immaterial for the purposes of subsection (1)(a), and of subsection (1)(b) so far as relating to sentence, whether the sentence was passed on conviction or in subsequent proceedings.
- (3) Subject to subsection (4), any appeal under this section must be brought—
  - (a) within the period of 28 days beginning with the date on which the person was sentenced (“the initial period”); or
  - (b) within such longer period as the Court Martial may allow by leave given before the end of the initial period.
- (4) The Court Martial may at any later time give leave for an appeal to be brought within such period as it may allow.
- (5) The respondent to an appeal under this section is the Director of Service Prosecutions.
- (6) In this section “sentence” includes any order made by a court when dealing with an offender.

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

**C67** S. 285 extended by 1995 c. 35, s. 12B(2)(3) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 11 para. 2](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)

**Commencement Information**

**I556** S. 285 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))

**I557** S. 285 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

**286 Hearing of appeals from SCC**

- (1) This section applies in relation to appeals under section 285.
- (2) An appeal against conviction is to be by way of a rehearing of the charge (including, where the appellant is convicted, a rehearing as respects sentence).
- (3) An appeal against sentence is to be by way of a rehearing as respects sentence.
- (4) Subject to subsections (5) and (6) and to such modifications as may be contained in Court Martial rules, Parts 7 to 9 of this Act apply in relation to appeals as they apply in relation to trials by the Court Martial.
- (5) The following may not be a member of the court hearing the appeal—
  - (a) the judge advocate who tried or sentenced the appellant;
  - (b) any other judge advocate before whom there was (in the proceedings under appeal) a hearing.
- (6) The Court Martial may only pass a sentence that the Service Civilian Court had power to pass in respect of the offence.
- (7) In this section and section 287—
  - (a) “sentence” includes any order;

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- (b) references to the passing of a sentence include references to the making of an order.

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

**C68** S. 286(4) modified (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 14 para. 9](#); [S.I. 2015/778](#), art. 3, [Sch. 1 para. 80](#)

**Commencement Information**

**I558** S. 286 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I559** S. 286 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**287 Findings made and sentences passed by Court Martial on appeal from SCC**

- (1) Any finding made, or sentence passed, by the Court Martial on an appeal under section 285 replaces the finding or sentence of the Service Civilian Court.
- (2) Unless the Court Martial otherwise directs, any sentence passed on such an appeal takes effect from the beginning of the day on which the Service Civilian Court passed sentence.
- (3) Subsection (4) applies where a sentence is passed on a person on an appeal under section 285 against sentence.
- (4) The person is to be treated, for the purpose of enabling him to appeal under the Court Martial Appeals Act 1968 (c. 20) against the sentence, as if he had been convicted by the Court Martial of the offence in respect of which the sentence was passed.

**Commencement Information**

**I560** S. 287 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I561** S. 287 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*SCC rules*

**288 SCC rules**

- (1) The Secretary of State may by rules (referred to in this Act as “SCC rules”) make provision with respect to the Service Civilian Court.
- (2) SCC rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) trials and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the defendant.

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- (3) Without prejudice to the generality of subsections (1) and (2), SCC rules may make provision—
- (a) as to oaths and affirmations for judge advocates, witnesses and other persons;
  - (b) as to objections to, and the replacement of, judge advocates;
  - (c) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
    - (i) the payment of expenses to persons summoned to attend the court;
    - (ii) the issue by the court of warrants for the arrest of persons;
  - (d) as to the amendment of charges;
  - (e) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
  - (f) for the discharge of a court (including provision as to retrials and rehearings following discharge);
  - (g) for the making and retention of records of proceedings of the court;
  - (h) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (i) conferring functions in relation to the court on the court administration officer;
  - (j) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(c)(ii) includes provision—
- (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) SCC rules must secure that, after arraignment, charges may not be amended—
- (a) in circumstances substantially different from those in which charges may be amended in magistrates' courts in England and Wales; or
  - (b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which charges may be so amended.
- (7) SCC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.

#### Commencement Information

**I562** S. 288 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I563** S. 288 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## PART 12

### SERVICE AND EFFECT OF CERTAIN SENTENCES

#### *Commencement of sentence*

#### **289 Commencement of sentences of the Court Martial and Service Civilian Court**

- (1) A sentence passed by the Court Martial or the Service Civilian Court takes effect from the beginning of the day on which it is passed.
- (2) Subsection (1) does not apply to—
  - (a) a suspended sentence of imprisonment or service detention; or
  - (b) a sentence passed by the Court Martial on appeal from the Service Civilian Court.
- (3) Subsection (1) is subject to any power conferred by or under any Act (including this Act) to direct that a sentence shall take effect otherwise than as mentioned in subsection (1).

#### **Commencement Information**

**I564** S. 289 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I565** S. 289 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **290 Commencement of term of service detention awarded by CO**

- (1) This section applies where an officer—
  - (a) awards a term of service detention (other than a suspended sentence of service detention); and
  - (b) does not make a direction under section 189(3) in respect of the award (consecutive sentences of service detention).
- (2) If the offender so elects at the time of the award, the award takes effect from the beginning of the day on which the award is made.
- (3) If no election is made under subsection (2), the award—
  - (a) takes effect from the end of the appeal period (unless an appeal is brought within that period);
  - (b) if an appeal is brought within that period, takes effect from the beginning of the day when the appeal is abandoned or determined.
- (4) An election under subsection (2) may be withdrawn at any time until the end of the appeal period.
- (5) If an election is withdrawn, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—
  - (a) from the end of the appeal period (unless an appeal is brought within that period);
  - (b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.



*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) If an award takes or resumes effect under subsection (2), (3)(a) or (5)(a) and an appeal is subsequently brought, the remainder of the award—
  - (a) ceases to have effect from the beginning of the day when the appeal is brought; and
  - (b) resumes effect from the beginning of the day when the appeal is abandoned or determined.
- (7) In this section “appeal period” means the period mentioned in section 141(2) for the bringing of an appeal.
- (8) Nothing in subsection (3)(b), (5)(b) or (6)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

#### Commencement Information

**I566** S. 290 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I567** S. 290 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 291 Commencement of consecutive term of service detention awarded by CO

- (1) This section applies where an officer—
  - (a) awards a term of service detention; and
  - (b) directs under section 189(3) that the award shall take effect from the end of another sentence of service detention (“the initial sentence”).
- (2) The offender may at the time of the award make an election under this subsection.
- (3) Such an election may be withdrawn at any time until the end of the appeal period.
- (4) If the offender—
  - (a) makes an election under subsection (2), and
  - (b) does not withdraw the election, or bring an appeal, before the end of the initial sentence,the award takes effect from the end of the initial sentence.
- (5) If subsection (4) does not apply, the award—
  - (a) takes effect from the end of the initial sentence or (if later) the end of the appeal period (unless an appeal is brought before that time);
  - (b) if an appeal is brought before the end of the initial sentence or (if later) the end of the appeal period, takes effect from the end of the initial sentence or (if later) the beginning of the day when the appeal is abandoned or determined.
- (6) If an election is withdrawn after the end of the initial sentence, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—
  - (a) from the end of the appeal period (unless an appeal is brought within that period);
  - (b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.

*Status: Point in time view as at 02/12/2019.*

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- (7) If an award takes or resumes effect under subsection (4), (5)(a) or (6)(a) and an appeal is subsequently brought, the remainder of the award—
- (a) ceases to have effect from the beginning of the day when the appeal is brought; and
  - (b) resumes effect from the beginning of the day when the appeal is abandoned or determined.
- (8) In this section “appeal period” means the period mentioned in section 141(2) for the bringing of an appeal against the award mentioned in subsection (1)(a) above.
- (9) Nothing in subsection (5)(b), (6)(b) or (7)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

#### **Commencement Information**

**I568** S. 291 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I569** S. 291 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **292 Commencement of suspended sentence activated by CO**

- (1) This section applies where an officer makes an order (“the activation order”) under section 193(3) (activation of suspended award of service detention).
- (2) If the activation order does not provide that the suspended sentence shall take effect from the end of another sentence, section 290(2) to (8) apply, but with the following modifications—
- (a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;
  - (b) the reference in subsection (2) to the day on which the award is made is to be read as to the day on which the activation order is made;
  - (c) any other reference to “the award” in subsections (2) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);
  - (d) the reference in subsection (7) to an appeal is to an appeal against the activation order; and
  - (e) in subsection (8)—
    - (i) the reference to the award is to be read as to the activation order; and
    - (ii) the reference to another punishment is to be read as to another order under section 193(3).
- (3) If the activation order provides that the suspended sentence shall take effect from the end of another sentence (“the initial sentence”), section 291(2) to (9) apply, but with the following modifications—
- (a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;
  - (b) any reference to “the initial sentence” is to the initial sentence as defined by this subsection;

*Status: Point in time view as at 02/12/2019.*

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- (c) any reference to “the award” in subsections (4) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);
- (d) the reference in subsection (8) to the award mentioned in section 291(1)(a) is to be read as to the activation order; and
- (e) in subsection (9)—
  - (i) the reference to the award is to be read as to the activation order; and
  - (ii) the reference to another punishment is to be read as to another order under section 193(3).

#### Commencement Information

**I570** S. 292 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I571** S. 292 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Effect of custodial sentence or detention on rank or rate*

### <sup>F277</sup> **293 Effect on rank or rate of WOs and NCOs of custodial sentence or sentence of service detention**

#### Textual Amendments

**F277** S. 293 repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 13(2), 32(3), [Sch. 5](#) (with s. 13(3)); [S.I. 2012/669](#), [art. 4\(a\)\(f\)\(i\)](#) (with [art. 6\(1\)\(2\)](#))

### **294 Rank or rate of WOs and NCOs while in custody pursuant to custodial sentence etc**

- (1) While a warrant officer or non-commissioned officer is in custody in pursuance of a sentence or order to which this section applies, he is for all purposes to be treated as being—
  - (a) if he is a member of any of Her Majesty's air forces, of the highest rank he has held in that force as an airman;
  - (b) otherwise, of the rank or rate of able rate, marine or soldier (as the case may be).
- (2) The sentences to which this section applies are—
  - (a) a custodial sentence passed in respect of a service offence;
  - (b) a sentence of service detention;
  - (c) a sentence of imprisonment, or a sentence corresponding to any other custodial sentence, passed by a civilian court in the British Islands.
- (3) The orders to which this section applies are—
  - (a) an order under section 214 (detention for commission of offence during currency of order);

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- (b) an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements);
- (c) an order made by a civilian court in the British Islands corresponding to an order within paragraph (a) or (b).

#### **Commencement Information**

- I572** S. 294 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I573** S. 294 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Effect of dismissal*

### **295 Effect of sentence of dismissal**

- (1) This section applies where a sentence of dismissal or dismissal with disgrace is passed on an offender.
- (2) If the offender is a commissioned officer, his commission is forfeit with effect from the beginning of the day on which the sentence is passed.
- (3) If the offender is not a commissioned officer, the competent authority must discharge him from the regular or reserve force of which he is a member.
- (4) If the offender is a warrant officer or non-commissioned officer, his rank or rate is reduced from the beginning of the day on which the sentence is passed—
  - (a) if he is a member of any of Her Majesty's air forces, to the highest rank he has held in that force as an airman;
  - (b) otherwise, to able rate, marine or soldier (as the case may be).
- (5) Nothing in subsection (3) requires the offender to be discharged before he is released from any sentence of service detention—
  - (a) which is passed on him on the same occasion as the sentence mentioned in subsection (1); or
  - (b) to which he is subject when that sentence is passed.

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

- C69** S. 295 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), [regs. 1, 3\(2\)](#) (with [reg. 2\(c\)](#))

#### **Commencement Information**

- I574** S. 295 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I575** S. 295 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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### *Service of sentence*

#### **296 Service detention**

- (1) A person sentenced to service detention—
  - (a) may be detained in service custody; but
  - (b) may not be detained in a prison.
- (2) Subsection (1)(a) does not apply if—
  - (a) the sentence has not taken effect; or
  - (b) the sentence has ceased to have effect by virtue of section 290 or 291 and has not resumed effect.
- (3) A person detained in service custody in pursuance of a sentence of service detention is deemed to be in legal custody.

#### **Commencement Information**

**I576** S. 296 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I577** S. 296 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **297 Detention in service custody following passing of custodial sentence etc**

- (1) Where—
  - (a) a custodial sentence has been passed on a person in respect of a service offence, or
  - (b) an order under section 214 (detention for commission of offence during currency of order) has been made in respect of a person,the person may be detained in service custody until he is committed to the appropriate establishment.
- (2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.
- (3) A person in service custody under subsection (1) is deemed to be in legal custody.

#### **Commencement Information**

**I578** S. 297 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I579** S. 297 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **298 Removal to England and Wales following passing of custodial sentence etc**

- (1) If a person is outside England and Wales when—
  - (a) a custodial sentence is passed on him in respect of a service offence, or
  - (b) an order under section 214 (detention for commission of offence during currency of order) is made in respect of him,he must as soon as practicable be removed to England and Wales.

*Status: Point in time view as at 02/12/2019.*

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- (2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.

#### Commencement Information

- I580** S. 298 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I581** S. 298 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 299 Duty to receive prisoners

The governor of a prison in England or Wales must—

- (a) receive any person who, in accordance with rules under section 300, has been sent to the prison; and
- (b) confine that person until he is lawfully discharged or delivered over.

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

- C70** S. 299 extended by [S.I. 1999/1736](#), Sch. 8 para. 6(3) (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009](#) ([S.I. 2009/2054](#)), [art. 1\(2\)](#), [Sch. 1 para. 21\(6\)\(f\)](#))

#### Commencement Information

- I582** S. 299 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I583** S. 299 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 300 Service custody etc rules

- (1) The Secretary of State may make rules about service custody and the service of relevant sentences.
- (2) The rules may in particular contain provision about—
  - (a) the provision, classification, regulation and management of service custody premises;
  - (b) the appointment, powers and duties of inspectors and visitors of service custody premises and of persons who work at such premises;
  - (c) the classification, treatment, employment, discipline and control of persons in service custody;
  - (d) the places in which persons may be required to serve sentences of service detention;
  - (e) the removal of persons serving relevant sentences from one place or type of custody to another;
  - (f) the committal of persons under relevant sentences to the appropriate establishment;
  - (g) the circumstances in which persons serving relevant sentences who are unlawfully at large are to be treated as not being unlawfully at large;
  - (h) the release (including the temporary or early release) of persons serving sentences of service detention.

*Status: Point in time view as at 02/12/2019.*

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- (3) The rules may confer on any person—
  - (a) a power to use reasonable force where necessary for the purpose of carrying out a search of service custody premises or of a person in service custody;
  - (b) a power to seize and detain unauthorised property (as defined by the rules).
- (4) The rules may contain provision in respect of the award of additional days to a person guilty of a disciplinary offence created by the rules.
- (5) The rules may provide for the determination of any matter by a judge advocate, and may contain provision for and in connection with appeals against such determinations.
- (6) The rules may apply (with or without modifications), in relation to service custody premises and persons detained there, any of—
  - (a) sections 39 to 42 of the Prison Act 1952 (c. 52) (offences by persons other than prisoners etc);
  - (b) section 22(2) of the Criminal Justice Act 1961 (c. 39) (harbouring escaped prisoners etc).
- (7) In this section—

“relevant sentence” means—

  - (a) a custodial sentence passed in respect of a service offence;
  - (b) a sentence of service detention; or
  - (c) an order under section 214 (detention for commission of offence during currency of order);

“service custody premises” means premises under the control of the Secretary of State for the keeping of persons in service custody.

#### Commencement Information

- I584** S. 300 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I585** S. 300 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **301 Duration of sentences: persons unlawfully at large or on temporary release**

- (1) In calculating the period for which a person sentenced to service detention is liable to be detained, no account shall be taken of any period within subsection (3).
- (2) In calculating the period for which a person on whom a custodial sentence has been passed in respect of a service offence is liable to be detained, no account shall be taken of any period within subsection (3) occurring before the person is committed to the appropriate establishment.
- (3) The following periods are within this subsection—
  - (a) any period when the person is unlawfully at large;
  - (b) any period of temporary release on compassionate grounds (pursuant to rules under section 300).
- (4) A person who has been temporarily released pursuant to rules under section 300 is unlawfully at large for the purposes of this section if—

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) he was released subject to complying with a condition, and he fails to comply with the condition; or
- (b) he is at large after the end of the period for which he was released.

(5) In this section—

[<sup>F278cc</sup>“period when the person is unlawfully at large” means (subject to any rules made by virtue of section 300(2)(g))—

- (a) the period beginning with the day when the person becomes unlawfully at large and ending with the day when the person is taken back into custody (service or otherwise) or returns to the place where the sentence was being served; or
- (b) in relation to a person who is absent when sentenced, the period beginning with the day when the sentence is passed and ending with the day when the person is taken into custody (service or otherwise);]

“period of temporary release on compassionate grounds” means the period beginning with the day after the day when the person is released and ending with the day when he is required to return to custody (or, if earlier, the day when he returns to custody).

#### Textual Amendments

**F278** Words in s. 301(5) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 21](#); [S.I. 2012/669](#), art. 4(d)

#### Commencement Information

**I586** S. 301 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I587** S. 301 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 302 Remission of certain sentences on passing of custodial sentence etc

- (1) Any unserved part of any relevant sentence passed on a person is remitted by—
- (a) the passing on him of a custodial sentence in respect of a service offence; or
  - (b) the passing on him by a civilian court in the British Islands of a sentence of imprisonment or a sentence corresponding to any other custodial sentence.
- (2) In subsection (1) “relevant sentence” means—
- (a) a sentence of service detention;
  - (b) a service supervision and punishment order; or
  - (c) a minor punishment.
- (3) Subsection (1) applies in relation to—
- (a) the making of an order under section 214 (detention for commission of offence during currency of order),
  - (b) the making of an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements), or
  - (c) the making by a civilian court in the British Islands of an order corresponding to an order within paragraph (a) or (b),
- as it applies in relation to the passing of a sentence mentioned in subsection (1)(a).



*Status: Point in time view as at 02/12/2019.*

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- (4) For the purposes of subsection (1), a suspended sentence of imprisonment or a sentence corresponding to such a sentence is to be treated as passed when an order that the sentence shall take effect is made.

**Commencement Information**

- I588** S. 302 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))  
**I589** S. 302 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**303 Power of service policeman to arrest person unlawfully at large**

- (1) A person who has been sentenced to service detention and who is unlawfully at large—  
(a) may be arrested by a service policeman; and  
(b) may be taken to the place in which he is required in accordance with law to be detained.
- (2) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.
- (3) A person may use reasonable force, if necessary, in the exercise of a power conferred by subsection (1).

**Commencement Information**

- I590** S. 303 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))  
**I591** S. 303 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Supplementary*

**304 Sentences passed by civilian courts**

- (1) In this Part any reference to a custodial sentence passed in respect of a service offence excludes a sentence of imprisonment passed by a civilian court in respect of such an offence.
- (2) In each of sections 297(2) and 298(2) the reference to an order excludes an order made by a civilian court.

**Commencement Information**

- I592** S. 304 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))  
**I593** S. 304 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## PART 13

### DISCIPLINE: MISCELLANEOUS AND SUPPLEMENTARY

#### CHAPTER 1

#### [<sup>F279</sup>RANDOM DRUG TESTING]

##### Textual Amendments

**F279** Pt. 13 Ch. 1 heading substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 10](#); [S.I. 2013/2501](#), art. 3(d)

#### 305 [<sup>F280</sup>Random drug testing]

- (1) A drug testing officer may, in order for it to be ascertained whether or to what extent a person subject to service law has or has had drugs in his body, require the person to provide a sample of his urine for analysis.
- (2) A drug testing officer may not impose a requirement under subsection (1) if—
  - (a) he or his commanding officer is the person's commanding officer; or
  - (b) the sample is sought in connection with an investigation under this Act of an offence <sup>F281</sup>....
- (3) A person commits an offence if he fails to comply with a requirement imposed under subsection (1).
- (4) In this section—
 

“drug” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38); and

“drug testing officer” means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with regulations made by the Defence Council for the purpose of obtaining samples for analysis for drugs.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment <sup>F282</sup>... imposed in respect of the offence must not exceed 51 weeks.

##### Textual Amendments

**F280** S. 305 heading substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 11\(a\)](#); [S.I. 2013/2501](#), art. 3(d)

**F281** Words in s. 305(2)(b) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 11\(b\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)

**F282** Words in s. 305(5) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 15(1), 32(3), [Sch. 5](#); [S.I. 2012/669](#), art. 4(a)(f)(ii) (with art. 8)

##### Commencement Information

**I594** S. 305 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**I595** S. 305 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**F283 306 Testing for alcohol and drugs after serious incident**

.....

**Textual Amendments**

**F283** S. 306 repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 11(2), 32(3), **Sch. 5**; [S.I. 2013/2501](#), art. 3(b)(e)

**F284 307 Definitions etc for purposes of section 306**

.....

**Textual Amendments**

**F284** S. 307 repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 11(2), 32(3), **Sch. 5**; [S.I. 2013/2501](#), art. 3(b)(e)

**308** [<sup>F285</sup>**Section 305]: supplementary**

(1) The Defence Council may by regulations make provision about the obtaining of samples under [<sup>F286</sup>section 305(1)] and the analysis of such samples, including in particular provision—

- (a) as to the number of samples which a person may be required to provide;
- <sup>F287</sup>(b) .....
- (c) enabling the person imposing a requirement under section 305(1) <sup>F288</sup>... to specify the way in which the sample is to be provided;
- (d) prescribing circumstances in which a requirement under section 305(1) <sup>F289</sup>... may not be imposed;
- (e) as to the equipment to be used, and the procedures to be followed, in obtaining or analysing samples;
- (f) as to the qualifications and training of any persons engaged in obtaining or analysing samples.

<sup>F290</sup>(2) .....

(3) The results of any analysis of a sample provided pursuant to a requirement imposed under section 305(1) <sup>F291</sup>...are not admissible in evidence against any person in proceedings in respect of a service offence.

(4) Nothing in this Chapter limits the powers conferred by—

- <sup>F292</sup>(za) Chapter 3A of Part 3,
  - (a) any provision of the Road Traffic Act 1988 (c. 52), or
  - (b) any provision of an order under section 113(1) of PACE which makes provision equivalent to any provision of Part 5 of PACE (questioning and treatment of persons by police),

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or affects the admissibility in any proceedings of evidence obtained under those powers.

#### Textual Amendments

- F285** Words in s. 308 heading substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(2\)](#); [S.I. 2013/2501](#), art. 3(d)
- F286** Words in s. 308(1) substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(3\)\(a\)](#); [S.I. 2013/2501](#), art. 3(d)
- F287** S. 308(1)(b) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(3\)\(b\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)
- F288** Words in s. 308(1)(c) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(3\)\(c\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)
- F289** Words in s. 308(1)(d) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(3\)\(d\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)
- F290** S. 308(2) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(4\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)
- F291** Words in s. 308(3) repealed (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(5\)](#), [Sch. 5](#); [S.I. 2013/2501](#), art. 3(d)(e)
- F292** S. 308(4)(za) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 12\(6\)](#); [S.I. 2013/2501](#), art. 3(d)

#### Commencement Information

- I596** S. 308 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I597** S. 308 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 2

### CONTEMPT OF COURT

#### 309 Offences of misbehaviour in court etc

- (1) A qualifying service court has jurisdiction under this section to deal with any person (“the offender”) who at a time when he is within subsection (6)—
- (a) refuses to take an oath or make an affirmation when duly required by the court to do so;
  - (b) when a witness, refuses to answer any question which the court has lawfully required him to answer;
  - (c) when attending or brought before the court refuses to produce any document or other thing which is in his custody or under his control and which the court has lawfully required him to produce;
  - (d) intentionally interrupts the proceedings of the court or otherwise misbehaves in court; or
  - (e) intentionally insults or intimidates—
    - (i) any member of the court while that member is acting as such a member or is going to or returning from the court; or

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- (ii) any witness or other person whose duty it is to attend the court, while that witness or other person is attending the court or going to or returning from the court.
- (2) If the offender is a person subject to service law or a civilian subject to service discipline, the court may—
- (a) commit the offender to service custody for a specified period not exceeding 28 days;
  - (b) impose on him a fine not exceeding level 4 on the standard scale; or
  - (c) do both.
- (3) If the offender is not a person subject to service law or a civilian subject to service discipline, the court may impose on him a fine not exceeding level 4 on the standard scale.
- (4) A qualifying service court may at any time revoke an order of committal made by it under this section and, if the offender is in custody, order his discharge.
- (5) The following are qualifying service courts for the purposes of this section—
- (a) the Court Martial;
  - (b) the Summary Appeal Court;
  - (c) the Service Civilian Court.
- (6) A person is within this subsection at any time when—
- (a) he is in the United Kingdom; or
  - (b) he is outside the United Kingdom but is subject to service law or is a civilian subject to service discipline.

#### **Commencement Information**

**I598** S. 309 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I599** S. 309 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **310 Power to detain before dealing with section 309 offence**

- (1) Where a court with power to deal with a person under section 309 does not immediately exercise that power, it may order a service policeman, an officer of a UK police force or a member of court staff to take the offender into service custody and detain him in service custody until the rising of the court.
- (2) If at the end of that detention—
- (a) the court considers that a decision whether to exercise that power should not be taken without a further hearing, and
  - (b) any of the conditions in subsection (4) is satisfied,
- the court may give orders for the further detention of the offender in service custody.
- (3) An authorisation of detention under subsection (2) ends not more than 48 hours after the time when the offender was first detained under subsection (1).
- (4) The conditions referred to in subsection (2)(b) are—

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- (a) that the court is satisfied that there are substantial grounds for believing that the offender, if released from service custody, would—
    - (i) fail to attend any hearing in the proceedings against him;
    - (ii) commit an offence while released; or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) that the court is satisfied that he should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests;
  - (c) that the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of deciding whether the condition in paragraph (a) or (b) is met.
- (5) A person may use reasonable force, if necessary, in the exercise of any power arising from an order of a court under this section.

#### Commencement Information

**I600** S. 310 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I601** S. 310 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 311 Certification to civil courts

- (1) This section applies if, in relation to proceedings before a qualifying service court, a person within section 309(6) does any act (“the offence”) that would constitute contempt of court if the proceedings were before a court having power to commit for contempt.
- (2) The qualifying service court, unless it has exercised any power conferred by section 309 in relation to the offence, may certify the offence—
  - (a) if it took place in a part of the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt;
  - (b) if it took place outside the United Kingdom, to the High Court in England and Wales.
- (3) The court to which the offence is certified may inquire into the matter, and after hearing—
  - (a) any witness who may be produced against or on behalf of the person, and
  - (b) any statement that may be offered in defence,
 may deal with him in any way in which it could deal with him if the offence had taken place in relation to proceedings before that court.
- (4) Where under this section a qualifying service court certifies an offence, it may not exercise any power conferred by section 309 in relation to the offence.
- (5) In this section—
  - “qualifying service court” has the same meaning as in section 309;
  - “act” includes an omission and references to the doing of an act are to be read accordingly.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I602** S. 311 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I603** S. 311 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 312 Decisions of court under section 309: making and effect

- (1) Nothing in—
- (a) section 149 (findings etc of the SAC), or
  - (b) section 160 (findings etc of the Court Martial),
- applies in relation to a decision of the Summary Appeal Court or the Court Martial under any of sections 309 to 311.
- (2) Any such decision is to be taken by the judge advocate.
- (3) Where the Court Martial or the Service Civilian Court commits a person to service custody under section 309, it may direct that the committal shall take effect from the end of any sentence of service detention—
- (a) that has been passed on the person on a previous occasion; or
  - (b) (in the case of the Court Martial) that the court passes on the person on the same occasion.
- (4) Where the Summary Appeal Court commits a person to service custody under section 309 it may direct that the committal shall take effect from the end of any sentence of service detention that has been passed on the person on a previous occasion.
- (5) A court imposing a fine under section 309 may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.
- (6) In the provisions mentioned in subsection (7)—
- (a) any reference to a sentence of service detention includes a reference to a committal to service custody under section 309; and
  - (b) references to persons sentenced to service detention are to be read accordingly.
- (7) Those provisions are—
- section 294 (rank or rate while in custody pursuant to sentence);
  - section 296 (prohibition of detention in a prison, etc);
  - section 300 (service custody etc rules);
  - section 301 (duration of sentences: persons unlawfully at large);
  - section 302 (remission on passing of custodial sentence);
  - section 303 (arrest by service police of persons unlawfully at large);
  - section 318 (arrest by civilian police of persons unlawfully at large).

#### Commencement Information

- I604** S. 312 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

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**I605** S. 312 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## CHAPTER 3

### ARREST AND DETENTION BY CIVIL AUTHORITIES

#### *Arrest for service offences*

#### **313 Arrest by civilian police under warrant of judge advocate**

- (1) Where a judge advocate is satisfied by evidence given under oath or affirmation that there are reasonable grounds for doing so, he may issue a warrant for the arrest of a person who is reasonably suspected of having committed a service offence.
- (2) A warrant issued under this section—
  - (a) shall be addressed to an officer or officers of a UK police force or British overseas territory police force; and
  - (b) shall specify the name of the person for whose arrest it is issued and the offence which he is alleged to have committed.
- (3) The Secretary of State may make rules with respect to the practice and procedure which is to apply in connection with warrants issued under this section.
- (4) A person arrested under a warrant issued under this section must as soon as practicable be transferred to service custody.

#### **Commencement Information**

**I606** S. 313 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I607** S. 313 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

#### *Arrest etc for desertion or absence without leave*

#### **314 Arrest by civilian police of deserters and absentees without leave**

- (1) [<sup>F293</sup>A civilian policeman] may arrest without a warrant a person (“a relevant suspect”) who is reasonably suspected of being a person subject to service law who has deserted or is absent without leave.
- (2) If an authorised person is satisfied by evidence given under oath or affirmation that a relevant suspect is or is reasonably suspected of being within his jurisdiction, he may issue a warrant for the arrest of the relevant suspect.
- (3) In subsection (2) “authorised person” means a person who has authority in a relevant territory to issue a warrant for the arrest of a person suspected of an offence.
- (4) A person arrested under this section must as soon as practicable be brought before a court of summary jurisdiction in the relevant territory in which he was arrested.



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[<sup>F294</sup>(4A) In this section “civilian policeman” means an officer of a UK police force or British overseas territory police force, other than a force or body constituted in Gibraltar.]

(5) In this section “relevant territory” means—

- (a) England and Wales;
- (b) Scotland;
- (c) Northern Ireland;
- (d) the Isle of Man; or
- (e) a British overseas territory [<sup>F295</sup>other than Gibraltar].

#### Textual Amendments

- F293** Words in s. 314(1) substituted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 7\(2\)](#)
- F294** [S. 314\(4A\)](#) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 7\(3\)](#)
- F295** Words in s. 314(5)(e) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 7\(4\)](#)

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

- C71** Ss. 314-317 applied (with modifications) by 1952 c. 67, s. 13 (as amended (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 18\(2\)\(a\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C72** [S. 314\(1\)\(2\)](#) extended by [S.I. 1999/1736](#), Sch. 8 para. 6(1) (as amended) (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(6\)\(d\)](#)
- C73** [S. 314\(4\)](#) extended by [S.I. 1999/1736](#), Sch. 8 para. 6(3) (as amended) (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(6\)\(f\)](#)

#### Commencement Information

- I608** [S. 314](#) in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I609** [S. 314](#) in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 315 Deserters and absentees without leave surrendering to civilian police

(1) Where—

- (a) a person surrenders to a civilian policeman as being a person subject to service law who has deserted or is absent without leave, and
- (b) the surrender occurs at a place in a relevant territory which is not a police station,

he must be taken to a police station.

(2) Subsection (3) applies where a person—

- (a) is brought to a police station under subsection (1), or
- (b) surrenders to a civilian policeman, at a police station in a relevant territory, as being a person subject to service law who has deserted or is absent without leave.

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- (3) The person in charge of the police station, or a person authorised by him, must consider the case.
- (4) If it appears to the person considering the case that the person who has surrendered is a person subject to service law who has deserted or is absent without leave, he may—
- (a) arrange for him to be transferred to service custody;
  - (b) arrange for him to be brought, as soon as practicable, before a court of summary jurisdiction in the relevant territory in which the police station is situated; or
  - (c) release him subject to a condition that he reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling him to be taken into service custody.

<sup>F296</sup>(5) . . . . .

- (6) In this section [<sup>F297</sup>“civilian policeman” and “relevant territory” have] the same meaning as in section 314.

#### Textual Amendments

- F296** S. 315(5) omitted (12.5.2016) by virtue of [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 8\(2\)](#)
- F297** Words in s. 315(6) substituted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 8\(3\)](#)

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

- C71** Ss. 314-317 applied (with modifications) by 1952 c. 67, s. 13 (as amended (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 18\(2\)\(a\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C74** S. 315 extended by S.I. 1999/1736, Sch. 8 para. 6(2) (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(6\)\(e\)](#))

#### Commencement Information

- I610** S. 315 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059)
- I611** S. 315 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

### 316 Proceedings before civilian court where person suspected of illegal absence

- (1) This section applies where a person is brought before a court of summary jurisdiction in a relevant territory under section 314(4) or 315(4)(b).
- (2) Subsection (3) applies if—
- (a) the person admits to the court that he is a person subject to service law who has deserted or is absent without leave; or
  - (b) the court has in its possession evidence of a description prescribed by regulations made by the Secretary of State.
- (3) Where this subsection applies—
- (a) if the person is not in custody for some other cause, the court must either—
    - (i) arrange for him to be transferred to service custody; or

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- (ii) release him subject to a condition that he reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling him to be taken into service custody;
  - (b) if the person is in custody for some other cause, the court may arrange for him to be transferred to service custody.
- (4) Where subsection (3) does not apply—
  - (a) if the person is not in custody for some other cause, the court must release him;
  - (b) if the person is in custody for some other cause, the court may release him.
- (5) If there is likely to be a delay before a person can be transferred to service custody under subsection (3)(a)(i) or (b), the court may commit him to be held in custody pending his transfer—
  - (a) in a prison,
  - (b) in a police station, or
  - (c) in any other place provided for the confinement of persons in custody, which is situated in the relevant territory in which the court is situated.
- (6) The release of a person under subsection (4) does not prevent him from being subsequently arrested under section 67, or under a warrant issued under section 313, as a person who is reasonably suspected of having committed an offence under section 8 or 9.
- (7) In this section “relevant territory” has the same meaning as in section 314.

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

- C71** Ss. 314-317 applied (with modifications) by 1952 c. 67, s. 13 (as amended (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 18\(2\)\(a\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C75** S. 316 extended by S.I. 1999/1736, Sch. 8 para. 6(3) (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(6\)\(f\)](#))
- C76** S. 316 extended by S.I. 1999/1736, Sch. 8 para. 6(4) (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(6\)\(g\)](#))

#### **Commencement Information**

- I612** S. 316 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- I613** S. 316 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

### **317 Warrant for the arrest of persons released under section 315(4)(c) or 316(3)(a)(ii)**

- (1) Where a person who is released under section 315(4)(c) or 316(3)(a)(ii) fails to comply with the condition subject to which he was released, a warrant for his arrest may be issued—
  - (a) where he was released under section 315(4)(c), by a judge advocate;
  - (b) where he was released under section 316(3)(a)(ii), by a judge advocate or by a person who is authorised to issue the warrant by the court that imposed the condition.

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- (2) A warrant issued under this section—
- (a) shall be addressed to an officer or officers of a UK police force or British overseas territory police force; and
  - (b) shall specify the name of the person for whose arrest it is issued.
- (3) The Secretary of State may make rules with respect to the practice and procedure which is to apply in connection with warrants issued under this section by judge advocates.
- (4) A person arrested under a warrant issued under this section must as soon as practicable be transferred to service custody.

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

**C71** Ss. 314-317 applied (with modifications) by 1952 c. 67, s. 13 (as amended (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 18\(2\)\(a\)](#) (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)

#### **Commencement Information**

**I614** S. 317 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

**I615** S. 317 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

### *Arrest of persons unlawfully at large*

#### **318 Arrest by civilian police of persons unlawfully at large**

- (1) A person who has been sentenced to service detention and who is unlawfully at large—
- (a) may be arrested without a warrant by [<sup>F298</sup>a civilian policeman]; and
  - (b) may be taken to the place in which he is required in accordance with law to be detained.
- (2) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

[<sup>F299</sup>(3) In this section “civilian policeman” has the same meaning as in section 314.]

#### **Textual Amendments**

**F298** Words in s. 318(1)(a) substituted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 9\(2\)](#)

**F299** S. 318(3) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 9\(3\)](#)

#### **Commencement Information**

**I616** S. 318 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

**I617** S. 318 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

*Status: Point in time view as at 02/12/2019.*

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## Supplementary

### 319 Certificates in connection with transfer to service custody etc

- (1) The Secretary of State may by regulations make provision requiring a certificate to be supplied when a person—
  - (a) is transferred to service custody under this Chapter; or
  - (b) is released under section 315(4)(c) or 316(3)(a)(ii).
- (2) Regulations under this section may in particular make provision with respect to—
  - (a) the information to be included in a certificate;
  - (b) the person who is to sign a certificate;
  - (c) the person to whom a certificate is to be supplied;
  - (d) the payment of a fee for the supply of a certificate.

#### Commencement Information

**I618** S. 319 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I619** S. 319 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 320 Power to use reasonable force

Where a power of arrest is conferred on any person by virtue of this Chapter, he may use reasonable force, if necessary, in the exercise of the power.

#### Commencement Information

**I620** S. 320 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I621** S. 320 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 4

### POWERS OF THE CRIMINAL CASES REVIEW COMMISSION

### 321 Powers of the Criminal Cases Review Commission

Schedule 11 (powers of the Criminal Cases Review Commission) has effect.

#### Commencement Information

**I622** S. 321 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I623** S. 321 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F300</sup>CHAPTER 4A

### INSPECTION OF SERVICE POLICE INVESTIGATIONS

#### Textual Amendments

**F300** Pt. 13 Ch. 4A inserted (4.6.2014) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 4, 32(3)**; [S.I. 2014/1444](#), **art. 3**

#### **321A Inspection of service police investigations**

- (1) Her Majesty's Inspectors of Constabulary (“the inspectors”) are to inspect, and report to the Secretary of State on, the independence and effectiveness of investigations carried out by each service police force.
- (2) In this section “investigations” means investigations of matters where service offences have or may have been committed, and includes investigations outside the United Kingdom.
- (3) For the purposes of subsection (1) the inspectors may—
  - (a) undertake such number of inspections as they think appropriate;
  - (b) undertake inspections when they think it appropriate; and
  - (c) decide which aspects of, or matters related to, investigations by a service police force are to be the subject of a particular inspection;but this is subject to subsection (4).
- (4) The Secretary of State may at any time require the inspectors to inspect, and report to the Secretary of State on, any or all of the following—
  - (a) the independence of investigations carried out by a particular service police force;
  - (b) the effectiveness of such investigations;
  - (c) a particular aspect of, or matter related to, such investigations.

#### **321B Inspectors' reports to be laid before Parliament**

- (1) The Secretary of State must lay before Parliament each report made under section 321A.
- (2) The Secretary of State may exclude from a report laid before Parliament under this section any material whose publication, in the Secretary of State's opinion—
  - (a) would be against the interests of national security; or
  - (b) might jeopardise the safety of any person.]

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## CHAPTER 5

### SUPPLEMENTARY

#### *Financial penalty enforcement orders*

#### **322 Financial penalty enforcement orders**

- (1) The Secretary of State may by regulations make provision for the purpose of enabling the Defence Council, or persons authorised by them, to make orders for the enforcement of financial penalties by prescribed courts in England and Wales, Scotland, Northern Ireland or the Isle of Man.
- (2) Regulations under this section may in particular make provision—
  - (a) with respect to the cases in which such orders may be made;
  - (b) with respect to the form and content of such orders, including the matters to be certified in such orders;
  - (c) with respect to the effect of such orders;
  - (d) conferring functions in relation to such orders on the Defence Council;
  - (e) for the delegation by the Defence Council of any of their functions in relation to such orders.
- (3) Provision that may be made by the regulations by virtue of subsection (2)(c) includes provision—
  - (a) that a sum certified in such an order as outstanding is to be treated as if it had been a fine imposed on a conviction by a court specified in the order;
  - [<sup>F301</sup>(aa) about the effect, where a sum is certified in such an order, of an order made by the Court Martial under—
    - (i) section 269A (fines: fixing of term of imprisonment for default); or
    - (ii) section 269B (service compensation order: maximum term of imprisonment for default);]
    - (b) for prescribed enforcement procedures to cease to be available, or to become available, on the occurrence of prescribed events.
- (4) In this section—

“financial penalty” means—

  - (a) a fine or service compensation order imposed by virtue of this Act (including [<sup>F302</sup> a fine imposed by the Court Martial or the Service Civilian Court under paragraph 10(1)(aa) of Schedule 8 to the 2003 Act by virtue of section 184 and Part 2 of Schedule 5 (breach etc of overseas community order) or] a fine or service compensation order with respect to which an order under section 268 (order for service parent or guardian to pay fine or compensation) has been made);
  - (b) a sum adjudged to be paid under section 236(3) (forfeiture of recognizance);
  - (c) an order as to the payment of costs made by virtue of regulations under section 26, or made under section 27, of the Armed Forces Act 2001 (c. 19);

“prescribed” means prescribed, or of a description prescribed, by regulations under this section.

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#### Textual Amendments

- F301** S. 322(3)(aa) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 16(2)**, 32(3); S.I. 2012/669, art. 3(a)
- F302** Words in s. 322(4) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 78(5)**, 151(1); S.I. 2012/2906, art. 2(a)

#### Commencement Information

- I624** S. 322 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I625** S. 322 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

### *Power to make provision in consequence of criminal justice enactments*

## 323 Power to make provision in consequence of criminal justice enactments

- (1) The Secretary of State may make an order under this section if he considers it appropriate to do so in consequence of a criminal justice enactment (see section 324).
- (2) An order under this section may make provision in relation to—
  - (a) service policemen,
  - (b) service courts (see section 324),
  - (c) persons subject to service law,
  - (d) civilians subject to service discipline, or
  - (e) service law proceedings (see section 324),
 which is equivalent to that made by a relevant provision, subject to such modifications as the Secretary of State considers appropriate.
- (3) In this section “relevant provision” means—
  - (a) the criminal justice enactment;
  - (b) any enactment relating to a criminal justice matter (see section 324) which is amended by the criminal justice enactment; or
  - (c) any subordinate legislation made under—
    - (i) the criminal justice enactment; or
    - (ii) any Act which is amended by the criminal justice enactment.
- (4) An order under this section may make provision in such way as the Secretary of State considers appropriate and may, in particular—
  - (a) be made in relation to all or any cases to which the order-making power extends;
  - (b) apply the relevant provision (with or without modifications);
  - (c) amend, repeal or revoke any enactment or subordinate legislation (including the relevant provision and any provision of or made under this Act).

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

- C77** S. 323 applied by 2003 c. 44, s. 94(1) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 214(2)** (with



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s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)

#### Commencement Information

**I626** S. 323 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

**I627** S. 323 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

### 324 Section 323: definitions

- (1) In section 323 a “criminal justice enactment” means an enactment which—
  - (a) is contained in an Act passed after 1st January 2001; and
  - (b) amends the law of England and Wales relating to any criminal justice matter.
- (2) In section 323 and subsection (1) “criminal justice matter” means—
  - (a) the powers of the police in connection with the investigation of offences or the detection of offenders;
  - (b) powers of arrest and detention in connection with crime or criminal proceedings;
  - (c) the functions of any authority in relation to criminal prosecutions;
  - (d) remand in custody or on bail;
  - (e) the rights and duties of a defendant in relation to proceedings in civilian courts;
  - (f) evidence or procedure in civilian courts;
  - (g) the powers of civilian courts, including powers in relation to sentence;
  - (h) such other matters relating to criminal justice as the Secretary of State may by order prescribe for the purposes of this paragraph.
- (3) For the purposes of section 323, section 5 of the Criminal Justice (International Co-operation) Act 1990 (c. 5) (transfer of UK prisoner to give evidence etc overseas) is to be taken to be a criminal justice enactment.
- (4) In section 323 “service court” means—
  - (a) the Court Martial;
  - (b) the Summary Appeal Court;
  - (c) the Service Civilian Court;
  - (d) the Court Martial Appeal Court; or
  - (e) the Supreme Court on an appeal brought from the Court Martial Appeal Court.
- (5) In section 323 “service law proceedings” means proceedings under this Act or the Court Martial Appeals Act 1968 (c. 20) (and does not include proceedings relating to offences under sections 344 to 346 or under regulations made by virtue of section 328(4)(b) or 343(5)(b)).

#### Commencement Information

**I628** S. 324 in force at 28.3.2009 for specified purposes by S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

**I629** S. 324 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, art. 4

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### *Other supplementary provisions*

#### **325 Evidential burden as respects excuses**

- (1) This section applies to an offence under any of sections 1 to 41, [<sup>F303</sup>93A, 93E, 93G,] 107, 229, [<sup>F304</sup>232G and 266] which is such that a person who would otherwise commit the offence—
- (a) does not do so if he has a lawful excuse; or
  - (b) does not do so if he has a reasonable excuse.
- (2) In proceedings for an offence to which this section applies, the defendant is to be treated as not having had a lawful excuse or reasonable excuse (as the case may be) unless sufficient evidence is adduced to raise an issue as to whether he had such an excuse.

#### **Textual Amendments**

**F303** Words in s. 325(1) inserted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 13\(a\)](#); [S.I. 2013/2501](#), art. 3(d)

**F304** Words in s. 325(1) substituted (1.11.2013) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 13\(b\)](#); [S.I. 2013/2501](#), art. 3(d)

#### **Commencement Information**

**I630** S. 325 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I631** S. 325 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **326 Exclusion of enactments requiring consent of Attorney General or DPP**

Subject to section 61(2), no enactment requiring the consent of the Attorney General or the Director of Public Prosecutions in connection with any proceedings has effect in relation to proceedings under this Act for a service offence.

#### **Commencement Information**

**I632** S. 326 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I633** S. 326 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **327 Local probation boards**

For section 5A of the Criminal Justice and Court Services Act 2000 (c. 43) (inserted by Schedule 16 to this Act) substitute—

##### **“5A Local probation boards and service justice**

- (1) A local probation board may, in pursuance of arrangements made with the Secretary of State, carry out activities anywhere in the world in relation to persons who are or have been subject to proceedings before the Court Martial, the Summary Appeal Court or the Service Civilian Court.

*Status: Point in time view as at 02/12/2019.*

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- (2) Any activities carried out in relation to such persons must correspond to activities which the board is required or authorised to carry out in relation to persons who have been charged with or convicted of criminal offences.”

#### Commencement Information

- I634** S. 327 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I635** S. 327 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## SECOND GROUP OF PARTS

### MISCELLANEOUS MATTERS

#### PART 14

#### ENLISTMENT, TERMS OF SERVICE ETC

##### *Enlistment, terms of service etc*

#### **328 Enlistment**

- (1) The Defence Council may by regulations make provision with respect to the enlistment of persons in the regular forces (including enlistment outside the United Kingdom).
- (2) The regulations may in particular make provision—
- requiring the enlistment of persons in the regular forces to be undertaken by recruiting officers;
  - as to the persons, whether or not members of the regular forces, who may be appointed as recruiting officers;
  - prohibiting the enlistment of persons under the age of 18 without the consent of prescribed persons;
  - deeming a person, in prescribed circumstances, to have attained (or not to have attained) that age;
  - as to the procedure for enlistment (including requiring a recruiting officer to attest the enlistment);
  - creating offences relating to knowingly giving false answers during the enlistment procedure;
  - as to the approval for service of persons who have enlisted.
- (3) The regulations may also in particular make provision in connection with the validity of a person's enlistment, including provision—
- as to when, how and on what basis the validity of a person's enlistment may be challenged;
  - deeming a person, in prescribed circumstances, to have been validly enlisted;
  - conferring on a person a right to discharge in prescribed circumstances;
  - as to the status of a person until he is discharged.

*Status: Point in time view as at 02/12/2019.*

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- (4) Where the regulations create an offence they may provide—
- (a) that the offence is a service offence and is punishable by any punishment mentioned in rows 2 to 12 of the Table in section 164; or
  - (b) that the offence is an offence triable summarily by a civilian court in the United Kingdom and is punishable by a fine not exceeding level 1 on the standard scale.
- (5) In this section and sections 329 to 331 “prescribed” means prescribed by regulations made by the Defence Council.

#### Commencement Information

**I636** S. 328 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I637** S. 328 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 329 Terms and conditions of enlistment and service

- (1) The Defence Council may by regulations make provision with respect to the terms and conditions of enlistment and service of persons enlisting, or who have enlisted, in the regular forces.
- (2) The regulations may in particular make provision for the purposes of—
- (a) specifying the duration of the term for which a person is enlisted (whether by reference to a number of years or another criterion or both);
  - (b) requiring any such term to be one of service with a regular force, or to be in part service with a regular force and in part service with a reserve force;
  - (c) enabling a person to end his service with a regular force at a prescribed time, or to transfer at a prescribed time to a reserve force;
  - (d) restricting a person, in consideration of the acceptance by him of any benefit or advantage, from exercising any right referred to in paragraph (c);
  - (e) enabling a person enlisted for a term of service of a prescribed description to be treated as if he had enlisted for a term of service of a different description;
  - (f) enabling a person to extend or reduce the term of his service (whether with a regular force or a reserve force, or both);
  - (g) enabling a person to continue in service after completion of the term of his service;
  - (h) enabling a person in a reserve force to re-enter service with a regular force;
  - [<sup>F305</sup>(ha) enabling a person to serve with a regular force on a part-time basis;]
  - [<sup>F306</sup>(i) enabling a person's service with a regular force to be restricted to service in a particular area or to be subject to other geographic restrictions;
  - (j) requiring a person serving subject to a geographic restriction to serve without that restriction on a number of occasions not exceeding a prescribed maximum.]
- (3) The exercise of any right conferred on a person by virtue of subsection (2) may be made subject to prescribed conditions.
- [<sup>F307</sup>(3A) A right conferred on a person by virtue of subsection (2)(ha) to (j) may be varied, suspended or terminated in prescribed circumstances.]

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- (4) The Defence Council may also by regulations make provision enabling—
  - (a) a member of the regular army of or below the rank of warrant officer, or
  - (b) a member of the Army Reserve of or below the rank of warrant officer who is in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14),to be transferred between corps without his consent in prescribed circumstances.
- (5) Regulations under subsection (4) may in particular make provision for varying the terms and conditions of service of a person transferred between corps.
- (6) In this section “corps” means any body of the regular army that may from time to time be declared by Royal Warrant to be a corps.

#### Textual Amendments

- F305** S. 329(2)(ha) inserted (30.6.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\), ss. 1\(3\)\(a\), 3\(3\)](#); S.I. 2018/799, reg. 2
- F306** S. 329(2)(i)(j) substituted (30.6.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\), ss. 1\(3\)\(b\), 3\(3\)](#); S.I. 2018/799, reg. 2
- F307** S. 329(3A) inserted (30.6.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\), ss. 1\(4\), 3\(3\)](#); S.I. 2018/799, reg. 2

#### Commencement Information

- I638** S. 329 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I639** S. 329 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

### 330 Desertion and absence without leave: forfeiture of service etc

- (1) The Defence Council may by regulations make provision—
  - (a) with respect to the making of a confession by a member of the regular forces that he is guilty of an offence under section 8 (desertion);
  - (b) for the making of a determination as to whether a trial may be dispensed with in the case of a person who makes such a confession;
  - (c) for the forfeiture of a period of service of such a person where a trial is so dispensed with.
- (2) The Defence Council may also by regulations make provision for the forfeiture of a period of service of a member of the regular forces who is convicted of an offence under section 8.
- (3) Regulations under subsection (1) or (2) may include provision for enabling a determination to be made in prescribed circumstances restoring (in whole or in part) a forfeited period of service.
- (4) The Defence Council may also by regulations make provision with respect to—
  - (a) the issue of a certificate of absence in respect of a member of the regular forces absent without leave for more than a prescribed period;
  - (b) the effects of such a certificate (in particular in connection with the pay and allowances of the person in respect of whom it is issued).

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I640** S. 330 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I641** S. 330 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 331 Discharge etc from the regular forces and transfer to the reserve forces

- (1) The Defence Council may by regulations make provision with respect to—
  - (a) the discharge of members of the regular forces of or below the rank or rate of warrant officer;
  - (b) the transfer of such persons to the reserve forces.
- (2) The regulations may in particular make provision with respect to—
  - (a) authorisation of a person's discharge or transfer to a reserve force;
  - (b) the status of a person who is entitled to be, but has not yet been, discharged or transferred to a reserve force.
- (3) The regulations may also in particular make provision conferring on a warrant officer (other than an acting warrant officer) a right to be discharged—
  - (a) following his reduction in rank or rate; or
  - (b) following his reduction in rank or rate in prescribed circumstances.
- (4) The regulations may also in particular make provision enabling—
  - (a) the discharge of a person from the regular forces (including by virtue of subsection (3)), or
  - (b) the transfer of a person to a reserve force, to be postponed in prescribed circumstances.

#### Commencement Information

- I642** S. 331 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I643** S. 331 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 332 <sup>[F308]</sup> Administrative reduction in rank or rate

- <sup>[F309]</sup>(1) The rank or rate of a warrant officer or non-commissioned officer may be reduced only by an order made by that person's commanding officer.
- (2) An order of a commanding officer reducing the rank or rate of a warrant officer or non-commissioned officer (“an order reducing rank or rate”)—
    - (a) may not be made without the permission of higher authority (but this is subject to subsection (3));
    - (b) may not reduce the rank of a person in any of Her Majesty's air forces below the highest rank that person has held in that force as an airman.
  - (3) The permission of higher authority is not required for an order reducing rank or rate if—

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- (a) the person whose rank is to be reduced is a lance corporal or lance bombardier;  
or
  - (b) the commanding officer making the order is of or above the rank of rear admiral, major-general or air vice-marshal.]
- (5) Nothing in this section applies to a reduction in rank or rate by virtue of a sentence.
- (6) Nothing in this section applies in relation to the reversion of a person, otherwise than on account of his conduct, from his acting rank or rate to his substantive rank or rate.

#### Textual Amendments

**F308** S. 332 heading substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 19(2)**, 32(3); S.I. 2012/669, art. 4(a)

**F309** S. 332(1)-(3) substituted for s. 332(1)-(4) (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 19(1)**, 32(3); S.I. 2012/669, art. 4(a)

#### Commencement Information

**I644** S. 332 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I645** S. 332 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### 333 Pay, bounty and allowances

- (1) Her Majesty may by warrant make provision with respect to pay, bounty and allowances for members of the regular or reserve forces.
- (2) A Royal Warrant made under this section may in particular—
- (a) provide for the way in which pay, bounty and allowances are to be paid;
  - (b) impose conditions or restrictions on the making of such payments;
  - (c) confer a discretion on any person.
- (3) Provision that may be made by virtue of subsection (2)(b) includes in particular provision authorising the making of a deduction from a payment to a person—
- (a) in respect of anything (including any service) supplied to him;
  - (b) in order to recover any overpayment or advance; or
  - (c) in order to reclaim any relevant payment.
- (4) For the purposes of subsection (3)(c) a payment is “relevant” if—
- (a) it was made on condition that it would or might be repayable in specified circumstances; and
  - (b) any such circumstance has occurred.
- (5) A Royal Warrant under this section may not authorise the forfeiture of pay.
- (6) A Royal Warrant under this section may not make provision about money distributable under the Naval Agency and Distribution Act 1864 (c. 24).
- (7) Section 373(5) (power to make supplementary provision etc) applies in relation to Royal Warrants under this section.
- (8) A Royal Warrant under this section may be amended or revoked by a further Royal Warrant under this section.

*Status: Point in time view as at 02/12/2019.*

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(9) Nothing in this section prevents provision as to rates of allowances from being made otherwise than under this section.

**Commencement Information**

**I646** S. 333 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I647** S. 333 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

*Redress of individual grievances*

**F310 334 Redress of individual grievances: service complaints**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); [S.I. 2015/1957](#), **reg. 2** (with savings and transitional provisions in [S.I. 2015/1969](#))

**F310 335 Service complaints: role of Defence Council and service complaint panels**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); [S.I. 2015/1957](#), **reg. 2** (with savings and transitional provisions in [S.I. 2015/1969](#))

**F310 336 Composition and procedure of service complaint panels**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); [S.I. 2015/1957](#), **reg. 2** (with savings and transitional provisions in [S.I. 2015/1969](#))

**F310 336A Requirement to delegate to service complaint panel**

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**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

**F310 337 Reference of individual grievance to Her Majesty**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

*Role of Service Complaints Commissioner*

**F310 338 Referral by Service Complaints Commissioner of certain allegations**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

**F310 339 Reports by Commissioner on system for dealing with service complaints etc**

.....

**Textual Amendments**

**F310** Ss. 334-339 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(2)**, 7(1); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

*Restriction on aliens*

**340 Restriction on aliens in regular forces etc**

- (1) An alien may not be a member of—
- (a) the regular forces; or
  - (b) any of Her Majesty's forces raised under the law of a British overseas territory [F311 other than Gibraltar].

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- (2) But the Defence Council may make regulations providing for subsection (1) not to apply to an alien who satisfies prescribed conditions.
- (3) Such a condition may require the alien—
  - (a) to be of a prescribed nationality; and
  - (b) to serve in a prescribed unit.
- (4) Section 3 of the Act of Settlement (1700 c. 2) does not prevent any person from being a member of any of Her Majesty's forces.
- (5) In this section “prescribed” means prescribed by regulations made by the Defence Council.

#### Textual Amendments

**F311** Words in s. 340(1)(b) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), **Sch. para. 10**

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

**C78** S. 340(1) excluded (31.10.2009) by [The Armed Forces \(Aliens\) Regulations 2009 \(S.I. 2009/835\)](#), regs. 1, 2

#### Commencement Information

**I648** S. 340 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I649** S. 340 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## [<sup>F312</sup>PART 14A

### REDRESS OF SERVICE COMPLAINTS

#### Textual Amendments

**F312** Pt. 14A inserted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 2(1), 7(1)**; [S.I. 2015/1957](#), reg. 2 (with savings and transitional provisions in [S.I. 2015/1969](#))

### *Service complaints*

#### **340A Who can make a service complaint?**

- (1) If a person subject to service law thinks himself or herself wronged in any matter relating to his or her service, the person may make a complaint about the matter.
- (2) If a person who has ceased to be subject to service law thinks himself or herself wronged in any matter relating to his or her service which occurred while he or she was so subject, the person may make a complaint about the matter.
- (3) In this Part, “service complaint” means a complaint made under subsection (1) or (2).

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- (4) A person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State.

### **340B Procedure for making a complaint and determining admissibility**

- (1) The Defence Council may make regulations (referred to in this Part as “service complaints regulations”) about the procedure for making and dealing with a service complaint.
- (2) Service complaints regulations must make provision—
- (a) for a service complaint to be made to an officer of a specified description;
  - (b) about the way in which a service complaint is to be made (including about the information to be provided by the complainant);
  - (c) that a service complaint may not be made, except in specified circumstances, after the end of the specified period.
- “Specified” means specified in the regulations.
- (3) The period referred to in subsection (2)(c) must be at least three months beginning with the day on which the matter complained of occurred.
- (4) Service complaints regulations must make provision—
- (a) for the officer to whom a service complaint is made to decide whether the complaint is admissible and to notify the complainant of that decision;
  - (b) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision by the officer to whom a service complaint is made that the complaint is not admissible;
  - (c) for securing that the Ombudsman's decision in relation to admissibility, on such a review, is binding on the complainant and the officer to whom the complaint was made.
- (5) For the purposes of subsection (4), a service complaint is not admissible if—
- (a) the complaint is about a matter of a description specified in regulations made under section 340A(4),
  - (b) the complaint is made after the end of the period referred to in subsection (2)(c) and the case is not one in which circumstances referred to in that provision apply, or
  - (c) the complaint is not admissible on any other ground specified in service complaints regulations.
- (6) Nothing in this Part with respect to the provision that must or may be made by service complaints regulations is to be taken as limiting the generality of subsection (1).

### *Decisions and appeals*

### **340C Decisions on service complaints**

- (1) Service complaints regulations must provide for the Defence Council to decide, in the case of a service complaint that is found to be admissible, whether the complaint is to be dealt with—
- (a) by a person or panel of persons appointed by the Council, or

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- (b) by the Council themselves.
- (2) The regulations must provide for the person or panel appointed to deal with the complaint or (in a subsection (1)(b) case) the Defence Council—
  - (a) to decide whether the complaint is well-founded, and
  - (b) if the decision is that the complaint is well-founded—
    - (i) to decide what redress (if any), within the authority of (as the case may be) the person, the persons on the panel or the Defence Council would be appropriate, and
    - (ii) to grant any such redress.
- (3) The Defence Council must not appoint a person or panel to deal with a service complaint unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to decide the matters mentioned in subsection (2) and to grant appropriate redress, or
  - (b) the Council propose to authorise that person or those persons for those purposes.
- (4) Provision made by virtue of subsection (1) is subject to regulations made under section 340E(1) (eligibility for appointment, requirements relating to independent decision-making, etc).

### **340D Appeals**

- (1) Service complaints regulations must make provision enabling the complainant in relation to a service complaint to appeal to the Defence Council against a decision on the complaint, where the decision was taken by a person or panel appointed by virtue of section 340C(1)(a).
- (2) The regulations may make provision—
  - (a) about the way in which an appeal is to be brought (including about the information to be provided by the complainant);
  - (b) that an appeal may not be brought, except in circumstances specified in the regulations, after the end of the period so specified;
  - (c) requiring the Defence Council to decide any question relating to whether an appeal has been brought before the end of the period referred to in paragraph (b) or (if not) whether circumstances referred to in that paragraph apply;
  - (d) requiring the Defence Council to decide whether an appeal is to be determined—
    - (i) by a person or panel of persons appointed by the Council, or
    - (ii) by the Council themselves.
- (3) The period referred to in subsection (2)(b) must be at least six weeks beginning with the day on which the complainant received notification of the decision appealed against.
- (4) The Defence Council must not appoint a person or panel to determine an appeal unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to determine the appeal and to grant appropriate redress, or

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- (b) the Council propose to authorise that person or those persons for those purposes.
- (5) Provision made by virtue of subsection (2)(d) is subject to regulations made under section 340E(1) (eligibility for appointment, requirements relating to independent decision-making, etc).
- (6) Service complaints regulations must make provision—
  - (a) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision by the Defence Council that an appeal cannot be proceeded with because—
    - (i) it was not brought before the end of the period referred to in subsection (2)(b), and
    - (ii) the case is not one in which circumstances referred to in that provision apply;
  - (b) for securing that the decision of the Ombudsman, on such a review, is binding on the complainant and the Defence Council.

### **340E Further provision about persons and panels deciding service complaints etc**

- (1) The Secretary of State may by regulations—
  - (a) provide that persons of a specified description may not be appointed by virtue of section 340C(1)(a) or 340D(2)(d) (whether or not as part of a panel);
  - (b) require the Defence Council, in relation to any service complaint of a specified description, to act by virtue of section 340C(1)(a) or 340D(2)(d) so as to appoint—
    - (i) a person who is independent, or of a specified description, or both;
    - (ii) a panel that satisfies one or more of the requirements listed in subsection (2).
- (2) Those requirements are—
  - (a) all of the members of the panel must be independent;
  - (b) the panel must include at least a specified number or proportion of independent members;
  - (c) the panel must include a person of a specified description.
- (3) Where a requirement within subsection (2)(b) has effect, the regulations may also require specified functions of the panel to be exercised by the independent members of the panel.
- (4) For the purposes of this section, a person (including a member of a panel) is independent if the person—
  - (a) is not a member of the regular or reserve forces or employed in the civil service of the State, and
  - (b) is included in a list maintained for the purposes of this section by the Secretary of State.
- (5) In this section, “specified” means specified in the regulations.

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### *Investigation, delegation and time limits*

#### **340F Investigation of complaints and delegation of Defence Council functions**

- (1) The Defence Council may authorise a person to investigate a particular service complaint—
  - (a) on the Council's behalf, or
  - (b) on behalf of a person or panel of persons appointed to deal with a service complaint or to determine an appeal relating to a service complaint.
- (2) Service complaints regulations may authorise the Defence Council to delegate to any person, to such extent and subject to such conditions as the Council consider appropriate, any of the Council's functions under the preceding provisions of this Part.
- (3) Subsection (2) does not apply to—
  - (a) the Defence Council's function of making service complaints regulations,
  - (b) the Council's function of dealing with a service complaint or determining an appeal, or
  - (c) any function of the Council by virtue of section 340C(3)(b) or 340D(4)(b) in connection with authorising a person to make decisions or determinations and to grant redress.
- (4) Subsection (2) does not affect the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (discharge by Service Boards of Defence Council functions) in relation to the Defence Council's functions under the preceding provisions of this Part.

#### **340G Service complaints: other time limits**

- (1) Service complaints regulations may—
  - (a) impose time limits for taking any step (in addition to any time limit for which this Part provides);
  - (b) specify circumstances in which a time limit does not apply;
  - (c) make provision about the consequences of not taking a step within a time limit.
- (2) The provision that may be made by virtue of subsection (1)(c) in relation to a particular time limit includes provision authorising a person specified in the regulations to decide that a service complaint, or an appeal against a decision on a service complaint, cannot be proceeded with because of a failure to take a step within that time limit.
- (3) Where service complaints regulations make provision referred to in subsection (2), the regulations may also make provision—
  - (a) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision that a service complaint or an appeal cannot be proceeded with because of the failure to take the step within the time limit;
  - (b) for securing that the Ombudsman's decision on such a review is binding on the complainant and the person who made the decision to which the review relates.

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### *Investigations by Service Complaints Ombudsman*

#### **340H Ombudsman investigations**

- (1) The Service Complaints Ombudsman may, on an application to the Ombudsman by a person within subsection (2), investigate—
  - (a) a service complaint, where the Ombudsman is satisfied that the complaint has been finally determined;
  - (b) an allegation of maladministration in connection with the handling of a service complaint (including an allegation of undue delay), where the Ombudsman is satisfied that the complaint has been finally determined;
  - (c) an allegation of undue delay in the handling of a service complaint which has not been finally determined;
  - (d) an allegation of undue delay in the handling of a relevant service matter.
- (2) The following persons are within this subsection—
  - (a) in a case relating to a service complaint, the complainant;
  - (b) in a case relating to a matter in respect of which a service complaint has not been made, the person who raised the matter,and, in relation to a case mentioned in paragraph (b), references in the remainder of this Part to the complainant and to a service complaint are to be read respectively as references to the person and the matter mentioned in that paragraph.
- (3) For the purposes of subsection (1)(d)—
  - (a) “relevant service matter” means a matter of a kind about which a service complaint—
    - (i) may be made, whether or not at the time of the application to the Ombudsman such a complaint has been made, or
    - (ii) could have been made (but for provision made by virtue of section 340B(2)(c));
  - (b) the reference to the handling of a matter is to its handling before the making of a service complaint (if any) about the matter.
- (4) An application to the Ombudsman—
  - (a) must be made in writing,
  - (b) must specify the kind (or kinds) of investigation which the complainant wishes the Ombudsman to carry out (an investigation under a particular paragraph of subsection (1) being a “kind” of investigation for this purpose), and
  - (c) must contain any other information specified in regulations made by the Secretary of State.
- (5) For the purposes of this section, a service complaint has been finally determined where—
  - (a) a decision has been made, in accordance with service complaints regulations made by virtue of section 340C, on the complaint or the complaint to which the allegation of maladministration relates, and
  - (b) if the decision is one in respect of which service complaints regulations made by virtue of section 340D enable an appeal to be made, an appeal against the decision has been made and determined.
- (6) The purpose of an investigation is—

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- (a) in the case of an investigation under subsection (1)(a), to decide whether the complaint is well-founded and, if so, to consider what redress (if any) would be appropriate;
  - (b) in the case of an investigation under subsection (1)(b), (c) or (d), to decide—
    - (i) whether the allegation is well-founded, and
    - (ii) if so, whether the maladministration or undue delay to which the allegation relates has or could have resulted in injustice being sustained by the complainant.
- (7) The power to carry out an investigation under subsection (1)(a) or (b) includes power to investigate any maladministration in connection with the handling of the service complaint where it becomes apparent to the Ombudsman during the course of an investigation that any such maladministration may have occurred.
- (8) The Secretary of State may by regulations provide that an application in respect of a service complaint that has been finally determined may not be made to the Ombudsman, except in circumstances specified in the regulations, after the end of the period specified in the regulations.
- (9) The period referred to in subsection (8) must be at least six weeks beginning with the date on which the complainant is notified—
- (a) of the determination of an appeal against the decision on the complaint, or
  - (b) if the decision on the complaint is not one in respect of which service complaints regulations made by virtue of section 340D enable an appeal to be made, of that decision.
- (10) It is for the Ombudsman to determine whether an application has been made in accordance with this section.
- (11) Where the Ombudsman has carried out an investigation under subsection (1)(a) or (b) in relation to a service complaint, the Ombudsman may not investigate a subsequent application relating to the same complaint except in circumstances specified in regulations made by the Secretary of State.

### **340I Procedure on Ombudsman investigations**

- (1) It is for the Service Complaints Ombudsman to determine—
  - (a) whether to begin, continue or discontinue an investigation;
  - (b) whether to investigate a service complaint, or an allegation, as a whole or only in particular respects.
- (2) The Secretary of State may make regulations about the procedure to be followed in an investigation.
- (3) Subject to subsection (2), the procedure for carrying out an investigation is to be such as the Ombudsman considers appropriate in the circumstances.
- (4) In particular, the Ombudsman may make such inquiries as the Ombudsman considers appropriate.
- (5) The Secretary of State may by regulations—
  - (a) impose time limits for the taking by the Ombudsman or the complainant of any step specified in the regulations;
  - (b) specify circumstances in which a time limit does not apply.



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- (6) Where—
- (a) the Ombudsman carries out an investigation under section 340H(1)(b) in connection with the handling of a service complaint, and
  - (b) before the complaint was made, the matter to which it relates was considered in accordance with a process for dealing with matters of that kind,
- the Ombudsman may for the purposes of the investigation consider any alleged maladministration in connection with that process.

### **340J Power to require information, documents and evidence**

- (1) The Service Complaints Ombudsman may, for the purposes of an investigation, require a person to provide—
  - (a) documents in the person's possession or control, or
  - (b) other information in the person's possession or control.
- (2) The Ombudsman has the same powers as the High Court (or, in Scotland, the Court of Session), for the purposes of an investigation, in respect of—
  - (a) the attendance and examination of witnesses (including the examination of witnesses abroad), and
  - (b) the production of documents.
- (3) A person may not be required under this section to do anything that the person could not be compelled to do in civil proceedings before the High Court (or, in Scotland, the Court of Session).

### **340K Obstruction and contempt**

- (1) This section applies if a person—
  - (a) without lawful excuse, obstructs the discharge of any of the Service Complaints Ombudsman's functions relating to an investigation, or
  - (b) does any act in relation to an investigation that would constitute contempt of court if the investigation were proceedings in the High Court (or, in Scotland, the Court of Session).
- (2) The Ombudsman may certify the obstruction or act to the High Court (or, in Scotland, the Court of Session).
- (3) The court may inquire into the certified obstruction or act.
- (4) If the court, having heard any witness on behalf of or against the person and any statement in the person's defence, is satisfied that the person—
  - (a) without lawful excuse, obstructed the discharge of any of the Ombudsman's functions relating to the investigation, or
  - (b) did the act referred to in subsection (1)(b),it may deal with the person in any way in which it could deal with the person if he or she had committed contempt in relation to the court.
- (5) In this section, “act” includes an omission and references to the doing of an act are to be read accordingly.

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### *Reports of investigation*

#### **340L Report and recommendations**

- (1) The Service Complaints Ombudsman must, after carrying out an investigation, prepare a report setting out—
  - (a) the Ombudsman's findings, and
  - (b) any recommendations referred to in subsection (2).
- (2) Those recommendations are—
  - (a) on an investigation under section 340H(1)(a) where the Ombudsman finds that the service complaint to which the investigation relates is well-founded, the Ombudsman's recommendations (if any) on what redress would be appropriate;
  - (b) on an investigation under section 340H(1)(b), (c) or (d) where the Ombudsman finds that the allegation to which the investigation relates is well-founded, the Ombudsman's recommendations (if any) as a result of that finding;
  - (c) where, by virtue of section 340H(7), the Ombudsman finds maladministration in connection with the handling of a service complaint, the Ombudsman's recommendations (if any) as a result of that finding.
- (3) The Ombudsman may for the purposes of subsection (2)(b) or (c) make any recommendations that the Ombudsman considers appropriate, including recommendations for the purpose of remedying—
  - (a) the maladministration or undue delay to which the finding relates, and
  - (b) any injustice that the Ombudsman considers has or could have been sustained, in consequence of the maladministration or undue delay, by the complainant.
- (4) The report must include the Ombudsman's reasons for each of the findings and recommendations.
- (5) The Ombudsman must send a copy of the report to—
  - (a) the Defence Council,
  - (b) the complainant, and
  - (c) any other persons specified, or of a description specified, in regulations made by the Secretary of State.
- (6) The Ombudsman may send a copy of the report to any other persons the Ombudsman considers appropriate.
- (7) The Secretary of State may make regulations with respect to reports under this section; and the regulations may in particular include—
  - (a) further provision about the preparation of reports;
  - (b) provision for the correction of accidental errors in reports;
  - (c) provision about obligations (including obligations of confidentiality) that may be imposed on persons to whom reports are sent.

#### **340M Action following receipt of report**

- (1) The Defence Council must—
  - (a) consider a report under section 340L,

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- (b) notify the Service Complaints Ombudsman and the complainant, giving reasons in writing, of the action (if any) the Council decide to take in response to the findings and any recommendations contained in the report, and
  - (c) where the Council decide to reject a recommendation, notify the Ombudsman and the complainant, giving reasons in writing for the rejection.
- (2) Where the Defence Council decide that a service complaint should be reconsidered to any extent, they must decide whether the reconsideration is to be carried out—
  - (a) by a person or panel of persons appointed by the Council, or
  - (b) by the Council themselves;but this is subject to any provision made by virtue of subsection (6).
- (3) The Defence Council must not appoint a person or panel to reconsider a service complaint unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to make the decisions required in connection with the reconsideration and to grant any appropriate redress, or
  - (b) the Council propose to authorise that person or those persons for those purposes.
- (4) The Defence Council may give such directions as they consider appropriate in connection with the reconsideration of a service complaint by a person or panel appointed under subsection (2)(a).
- (5) The power of the Defence Council under subsection (4) is subject to any provision made in service complaints regulations about—
  - (a) the procedure to be followed in connection with the reconsideration of a service complaint;
  - (b) the persons to be notified of the decision on reconsideration.
- (6) The power of the Secretary of State to make regulations under section 340E(1) includes power—
  - (a) to provide that persons of a specified description may not be appointed under subsection (2)(a) (whether or not as part of a panel);
  - (b) to require the Defence Council, in relation to any service complaint of a specified description, to act under subsection (2)(a) so as to appoint—
    - (i) a person who is independent, or of a specified description, or both;
    - (ii) a panel that satisfies one or more of the requirements listed in subsection (7);
  - (c) in a case where a requirement within subsection (7)(b) has effect, to require specified functions of a panel to be exercised by the independent members of the panel.
- (7) These are the requirements mentioned in subsection (6)(b)(ii)—
  - (a) all of the members of the panel must be independent;
  - (b) the panel must include at least a specified number or proportion of independent members;
  - (c) the panel must include a person of a specified description.
- (8) The Defence Council may delegate to any person any of the Council's functions under this section, other than—
  - (a) the Council's function of reconsidering a service complaint, or

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- (b) any function of the Council by virtue of subsection (3)(b) in connection with authorising a person to make decisions and to grant redress.
- (9) Subsection (8) does not affect the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (discharge by Service Boards of Defence Council functions) in relation to the Defence Council's functions under this section.
- (10) Section 340E(4) and (5) apply for the purposes of subsections (6) and (7).

*Service Complaints Ombudsman's function of referring allegations*

**340N Referral of certain allegations**

- (1) Where the Service Complaints Ombudsman considers that a communication made to the Ombudsman alleges that a person named in the communication—
  - (a) is subject to service law and has been wronged in any matter relating to his or her service, or
  - (b) was wronged in any matter relating to his or her service which occurred while the person was subject to service law,
 the Ombudsman may refer the allegation to the appropriate officer.
- (2) “The appropriate officer” is the officer whom the Ombudsman considers to be the officer to whom a service complaint made by the person in respect of the alleged wrong is (under service complaints regulations) to be made.
- (3) If an allegation is referred under subsection (1), the appropriate officer must as soon as is reasonably practicable—
  - (a) inform the person that the allegation has been so referred,
  - (b) ensure that the person is aware of—
    - (i) the procedure for making a service complaint, and
    - (ii) the effect on the making of service complaints of provision made by virtue of section 340B(2)(c) (time limit), and
  - (c) ascertain whether the person wishes to make a service complaint in respect of the alleged wrong.
- (4) Regulations made by the Secretary of State must make provision—
  - (a) about matters that must be notified to the Ombudsman where an allegation is referred under subsection (1), and
  - (b) about the time by which notification must be given.

*Annual report by Service Complaints Ombudsman*

**340O Annual report on system for dealing with service complaints**

- (1) The Service Complaints Ombudsman must, for each calendar year, prepare a report covering the following matters.
- (2) Those matters are—
  - (a) the efficiency, effectiveness and fairness with which the system for dealing with service complaints has operated during that year,

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- (b) the exercise by the Ombudsman during that year of the Ombudsman's functions under this Part, and
  - (c) such other aspects of the system mentioned in paragraph (a), and such matters relating to the functions mentioned in paragraph (b), as the Ombudsman considers appropriate or the Secretary of State may direct.
- (3) The Ombudsman must give the report to the Secretary of State as soon as practicable after the end of the calendar year to which the report relates.
- (4) The Secretary of State must, on receiving a report under subsection (1), lay it before Parliament.
- (5) The Secretary of State may exclude from any report laid under subsection (4) any material whose publication the Secretary of State considers—
- (a) would be against the interests of national security, or
  - (b) might jeopardise the safety of any person.
- (6) The Secretary of State may require the Ombudsman to prepare and give to the Secretary of State a report on—
- (a) any aspect of the system mentioned in subsection (2)(a);
  - (b) any matter relating to any of the Ombudsman's functions under this Part.]

## PART 15

### FORFEITURES AND DEDUCTIONS

#### **341 Forfeitures and deductions: general provisions**

- (1) No forfeiture of the pay of a person subject to service law may be imposed unless authorised by or under this Act or any other Act.
- (2) No deduction from the pay of a person subject to service law may be made unless authorised by or under this Act or any other Act.
- (3) Subsections (1) and (2) do not prevent the making by a Royal Warrant under section 333, or by any regulation, order or instruction of the Defence Council, of provision—
- (a) for the imposition of any forfeiture authorised by or under an Act;
  - (b) for the making of any deduction so authorised;
  - (c) for the time at which and the way in which amounts may be deducted from pay to give effect to authorised deductions;
  - (d) as to the appropriation of amounts deducted;
  - (e) for the determination of questions relating to forfeitures and deductions.
- (4) A person subject to service law 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 regulations made by the Defence Council.
- (5) Notwithstanding the forfeiture of the pay of a person subject to service law for any period, he may remain in receipt of pay at such minimum rate as may be prescribed by regulations made by the Defence Council; but the amount received for that period may be recovered from him by deduction from pay.

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- (6) Any amount authorised to be deducted from the pay of a person subject to service law may also be deducted from any bounty, allowance or grant which may be due to him; and references in this section and section 342 to the making of deductions from pay are to be read accordingly.

#### **Commencement Information**

**I650** S. 341 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I651** S. 341 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **342 Permitted forfeitures and deductions**

- (1) The Secretary of State may by regulations make provision for the purpose of enabling the Defence Council, or officers authorised by them, to make orders—
- (a) authorising the pay of a person subject to service law to be forfeited for or in respect of any period of prescribed absence from duty;
  - (b) authorising deductions to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of any amount paid by or on behalf of a service authority to meet the whole or part of a sum that the person has been ordered to pay by a civilian court (anywhere);
  - (c) authorising deductions to be made from the pay of a relevant person and to be appropriated as or towards compensation for any loss of, or damage to, public or service property which a prescribed person is satisfied has been caused by the relevant person's wrongful act or negligence;
  - (d) authorising deductions to be made from the pay of a person subject to service law and to be appropriated in or towards satisfaction of any payment which he is required to make in respect of a financial penalty;
  - (e) authorising deductions to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of—
    - (i) any prescribed payment which he is required to make under, or in connection with, a prescribed maintenance order;
    - (ii) any obligation on his part to make periodical payments in accordance with a prescribed maintenance assessment or maintenance calculation; or
    - (iii) any amount required to be paid by him by virtue of any judgment or order enforceable by a court in the United Kingdom;
  - (f) authorising deductions to be made from the pay of a relevant person and to be appropriated towards the maintenance of a spouse, civil partner, former spouse, former civil partner, child or prescribed person.
- (2) Regulations under this section may in particular make provision—
- (a) with respect to the duration, variation, revocation, continuation or suspension of such orders;
  - (b) conferring functions in relation to such orders on the Defence Council;
  - (c) for the delegation by the Defence Council of any of their functions in relation to such orders;
  - (d) limiting the amount which may be deducted from a person's pay;

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- (e) requiring prescribed persons to provide prescribed information, or to supply copies of prescribed documents, to the Defence Council or persons authorised by them;
  - (f) with respect to the computation of time for the purposes of orders made by virtue of subsection (1)(a);
  - (g) with respect to the carrying out of investigations in connection with orders made by virtue of subsection (1)(c);
  - (h) with respect to the standard of proof which is to apply in connection with orders made by virtue of subsection (1)(c);
  - (i) for any prescribed forfeiture of a person's pay to apply only to so much of his pay as remains after any deduction from that pay in accordance with an order made by virtue of subsection (1)(e) or (f);
  - (j) with respect to the procedure which is to apply in connection with orders made by virtue of subsection (1)(f).
- (3) Any forfeiture or deduction imposed by virtue of subsection (1)(a), (b) or (c) may be remitted—
- (a) by the Defence Council; or
  - (b) by an officer authorised by the Defence Council.
- (4) In this section—
- “financial penalty” means—
- (a) a fine or service compensation order imposed by virtue of this Act (including a fine or service compensation order with respect to which an order under section 268 (order for service parent or guardian to pay fine or compensation) has been made);
  - (b) a sum adjudged to be paid under section 236(3) (forfeiture of recognizance); or
  - (c) an order as to the payment of costs made by virtue of regulations under section 26, or made under section 27, of the Armed Forces Act 2001 (c. 19);
- “prescribed” means prescribed, or of a description prescribed, by regulations under this section;
- “public property” has the meaning given by section 26(2);
- “relevant person” means a person subject to service law by reason of section 367(1) or (2)(a), (b), (c) or (e);
- “service property” has the meaning given by section 26(3).
- (5) The reference in subsection (1)(e)(iii) to a judgment or order enforceable by a court in the United Kingdom includes a judgment enforceable by the Enforcement of Judgments Office.

#### Commencement Information

**I652** S. 342 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I653** S. 342 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## PART 16

### INQUIRIES

#### 343 Service inquiries

- (1) The Secretary of State may make regulations for causing inquiries, to be known as service inquiries, to be held (whether or not in the United Kingdom) in prescribed circumstances in relation to matters connected with any of Her Majesty's forces.
- (2) The regulations may in particular make provision with respect to—
  - (a) the persons, to be known as a service inquiry panel, who are to conduct a service inquiry;
  - (b) the functions of a service inquiry panel;
  - (c) the matters that may, or must, be referred to a service inquiry panel;
  - (d) the persons who may convene, and refer matters to, a service inquiry panel;
  - (e) the procedure of service inquiry panels;
  - (f) evidence, including the admissibility of evidence;
  - (g) the representation of witnesses and other persons.
- (3) Without prejudice to the generality of subsections (1) and (2), the regulations may make provision—
  - (a) conferring on a person designated for the purpose by the Secretary of State power to determine, in prescribed circumstances, that a matter of a kind that must be referred to a service inquiry panel need not be so referred (and as to the recording of such a determination);
  - (b) as to oaths and affirmations for witnesses and other persons;
  - (c) conferring on prescribed persons a right, subject to such exceptions as may be prescribed, to be present at proceedings of a service inquiry panel;
  - (d) for procuring the attendance of witnesses and other persons and the production of documents and other things (including the giving of notices by judge advocates);
  - (e) about the payment of expenses to persons attending proceedings of service inquiry panels;
  - (f) for the making and retention of records of the proceedings of service inquiry panels;
  - (g) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (h) for evidence given before service inquiry panels not to be admissible at a summary hearing or in proceedings before a court of a prescribed description, except in the case of proceedings for an offence of a prescribed description.
- (4) The regulations may also make provision which is equivalent to that made by any provision of section 35 of the Inquiries Act 2005 (c. 12) (offences in connection with inquiries), subject to such modifications as the Secretary of State considers appropriate.
- (5) Where the regulations create an offence they may provide—
  - (a) that the offence is a service offence and is punishable by any punishment mentioned in rows 7 to 12 of the Table in section 164; or



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- (b) that the offence is an offence triable summarily by a civilian court in the United Kingdom, the Isle of Man or a British overseas territory [<sup>F313</sup>other than Gibraltar] and is punishable by a fine not exceeding level 3 on the standard scale.

- (6) In this section “prescribed” means prescribed by regulations under this section.

#### Textual Amendments

**F313** Words in s. 343(5)(b) inserted (12.5.2016) by Armed Forces Act 2016 (c. 21), s. 19(2)(b), Sch. para. 11

#### Commencement Information

**I654** S. 343 in force at 1.10.2008 by S.I. 2008/1650, art. 2(a)

## [<sup>F314</sup>PART 16A

### ARMED FORCES COVENANT REPORT

#### Textual Amendments

**F314** Pt. 16A inserted (2.4.2012) by Armed Forces Act 2011 (c. 18), ss. 2, 32(3); S.I. 2012/669, art. 4(a)

### 343A Armed forces covenant report

- (1) The Secretary of State must in each calendar year—
- prepare an armed forces covenant report; and
  - lay a copy of the report before Parliament.
- (2) An armed forces covenant report is a report about effects of membership, or former membership, of the armed forces on service people, or particular descriptions of such people—
- in the fields of healthcare, education and housing;
  - in the operation of inquests; and
  - in such other fields as the Secretary of State may determine.
- (3) In preparing an armed forces covenant report the Secretary of State must have regard in particular to—
- the unique obligations of, and sacrifices made by, the armed forces;
  - the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and
  - the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (4) For the purposes of preparing an armed forces covenant report, the Secretary of State must obtain the views of any relevant government department, and seek the views of any relevant devolved administration, in relation to the effects to be covered by the report.

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- (5) An armed forces covenant report must—
  - (a) set out in full or summarise the views of a relevant government department or relevant devolved administration obtained pursuant to subsection (4); and
  - (b) where the views of a relevant devolved administration have been sought but not obtained, state that fact.
- (6) The Secretary of State may not include in an armed forces covenant report a summary under subsection (5)(a) unless the relevant government department or relevant devolved administration has approved the summary.
- (7) An armed forces covenant report must state whether, in the Secretary of State's opinion, any effects covered by the report are such that service people or particular descriptions of service people are at a disadvantage as regards the field or fields in question, when compared with other persons or such descriptions of other persons as the Secretary of State considers appropriate.
- (8) Where the Secretary of State's opinion is that service people or particular descriptions of service people are at a disadvantage as mentioned in subsection (7), the report must set out the Secretary of State's response to that.
- (9) As regards effects covered by an armed forces covenant report—
  - (a) the Secretary of State must consider whether the making of special provision for service people or particular descriptions of service people would be justified; and
  - (b) where the Secretary of State considers that such provision would be justified, the report must contain a reference to that fact.
- (10) In relation to any particular description of service people covered by a report, the reference in subsection (2)(a) to the fields of healthcare, education and housing is to such of those fields as the Secretary of State considers are ones in which people of that description are affected by membership or former membership of the armed forces.

### **343B Interpretation of Part**

- (1) In section 343A “service people” means—
  - (a) members of the regular forces and the reserve forces;
  - (b) members of British overseas territory forces who are subject to service law;
  - (c) former members of any of Her Majesty's forces who are ordinarily resident in the United Kingdom; and
  - (d) relevant family members.
- (2) In section 343A “relevant government department”, in relation to an effect to be covered by an armed forces covenant report, means a department of the Government of the United Kingdom (apart from the Ministry of Defence) which the Secretary of State considers has functions relevant to that effect.
- (3) In section 343A “relevant devolved administration”, in relation to an effect to be covered by an armed forces covenant report, means whichever of the following the Secretary of State considers to have functions relevant to that effect—
  - (a) the Scottish Executive;
  - (b) the Northern Ireland departments;
  - (c) the Welsh Assembly Government.

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(4) In this Part—

“British overseas territory force” means any of Her Majesty's forces that is raised under the law of a British overseas territory;

“membership or former membership” of a force, in relation to a person, includes any service in that force that that person is undertaking, undertook or may be expected to be called on to undertake;

“relevant family members” means such descriptions of persons connected with service members, or with persons who were service members, as the Secretary of State considers should be covered by a report or part of a report;

“service member” means a person who falls within any of paragraphs (a) to (c) of subsection (1).

(5) Any reference in this Part to membership or former membership of the armed forces is to be read, in relation to a person who is—

(a) a service member, or

(b) a relevant family member by reason of connection with a person who is or was a service member,

as a reference to the service member's membership or former membership of a force mentioned in subsection (1).]

## PART 17

### MISCELLANEOUS

#### *Offences relating to service matters punishable by civilian courts*

#### **344 Aiding or abetting etc desertion or absence without leave**

(1) A person commits an offence if he aids, abets, counsels or procures the commission by another person of an offence under section 8 (desertion) or 9 (absence without leave).

(2) A person commits an offence if—

(a) he knows that another person (“B”) is subject to service law;

(b) he does an act intending to cause B to be absent without leave; and

(c) it causes B to be absent without leave.

(3) A person (“A”) commits an offence if—

(a) another person (“B”) has committed an offence under section 8 or 9;

(b) A knows or believes B to be guilty of that offence; and

(c) A does an act intending to impede B's apprehension or prosecution.

(4) Subsections (1) to (3) apply to any aiding, abetting, counselling or procuring, or (as the case may be) any act, done—

(a) in a relevant territory;

(b) otherwise than in a relevant territory, by a United Kingdom national (see section 347) or a person resident in a relevant territory.

(5) In subsection (4) “relevant territory” means—

(a) the United Kingdom;

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- (b) the Isle of Man; or
  - (c) a British overseas territory.
- (6) In subsection (2) (and subsection (4) so far as relating to that subsection) “act” includes an omission, and the references to the doing of an act are to be read accordingly.
- (7) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (8) In subsection (7) “the relevant maximum” is—
- (a) in relation to England and Wales, 12 months;
  - (b) otherwise, 6 months.

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

**C79** S. 344 modified by S.I. 1999/1736, art. 18 (as substituted (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), art. 1(2), [Sch. 1 para. 21\(3\)](#) (with [Sch. 2 para. 14](#)))

#### **Commencement Information**

**I655** S. 344 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I656** S. 344 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **345 Aiding or abetting etc malingering**

- (1) A person commits an offence if he aids, abets, counsels or procures the commission by another person of an offence under section 16 (malingering).
- (2) A person commits an offence if—
- (a) he knows that a person (“B”) is subject to service law; and
  - (b) intending to cause B to avoid service, by any act—
    - (i) he causes B an injury; or
    - (ii) he aggravates or prolongs any injury of B's.
- (3) A person commits an offence if—
- (a) he knows that a person (“B”) is subject to service law; and
  - (b) intending to cause B to avoid service, by any act—
    - (i) he causes B to believe that B has an injury; or
    - (ii) he causes another person to believe that B has an injury.
- (4) Subsections (1) to (3) apply to any aiding, abetting, counselling or procuring, or (as the case may be) any act, done—
- (a) in a relevant territory;
  - (b) otherwise than in a relevant territory, by a United Kingdom national (see section 347) or a person resident in a relevant territory.
- (5) In subsection (4) “relevant territory” means—

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- (a) the United Kingdom;
  - (b) the Isle of Man; or
  - (c) a British overseas territory.
- (6) In this section “injury” and “service” have the same meanings as in section 16.
- (7) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (8) In subsection (7) “the relevant maximum” is—
- (a) in relation to England and Wales, 12 months;
  - (b) otherwise, 6 months.

#### Commencement Information

- I657** S. 345 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I658** S. 345 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 346 Obstructing persons subject to service law in course of duty

- (1) A person commits an offence if—
- (a) he intentionally obstructs a person (“B”);
  - (b) B is a person subject to service law acting in the course of his duty; and
  - (c) he knows or has reasonable cause to believe that B is subject to service law.
- (2) Subsection (1) applies to anything done in—
- (a) the United Kingdom;
  - (b) the Isle of Man; or
  - (c) a British overseas territory.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the relevant maximum, or to a fine not exceeding level 3 on the standard scale, or to both.
- (4) In subsection (3) “the relevant maximum” is—
- (a) in relation to England and Wales, 51 weeks;
  - (b) otherwise, 6 months.

#### Commencement Information

- I659** S. 346 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I660** S. 346 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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### **347 Sections 344 to 346: supplementary provisions**

- (1) If an offence under section 344 or 345 is committed in a British overseas territory—
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom or the Isle of Man (without prejudice to the right to take proceedings in that British overseas territory).
- (2) If an offence under section 344 or 345 is committed otherwise than in the United Kingdom, the Isle of Man or a British overseas territory—
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom, the Isle of Man or a British overseas territory.
- (3) In sections 344 and 345 a “United Kingdom national” means an individual who is—
  - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (4) In sections 344 to 346 any reference to a person knowing or having reasonable cause to believe that another person is subject to service law is a reference to—
  - (a) his knowing the circumstances by virtue of which that other person is subject to service law; or
  - (b) (as the case may be) his having reasonable cause to believe that those circumstances exist.

#### **Commencement Information**

**I661** S. 347 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I662** S. 347 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **348 British overseas territories: references to maximum penalties**

- (1) This section applies in relation to any provision of—
  - (a) section 344, 345 or 346, or
  - (b) regulations made by virtue of section 343(5)(b),
 specifying the maximum term of imprisonment, or the maximum fine, to which a person guilty of an offence under that section, or under those regulations, is liable.
- (2) In relation to any such provision as it extends to a British overseas territory, the law of the British overseas territory may—
  - (a) provide for the maximum term of imprisonment to be longer or shorter than that provided for by the provision;
  - (b) provide for the maximum fine to be higher or lower than that provided for by the provision;

*Status: Point in time view as at 02/12/2019.*

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- (c) specify the amount of the local currency that is to be treated as equivalent to the maximum fine provided for by the provision or provided for by virtue of paragraph (b).

#### Commencement Information

- I663** S. 348 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I664** S. 348 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Exemptions from certain civil matters*

#### **349 Exemption from tolls and charges**

- (1) No toll or charge within subsection (2) is payable in respect of a vehicle which—
- (a) belongs to any of Her Majesty's forces; or
  - (b) is in use for the purposes of any of those forces.
- (2) A toll or charge is within this subsection if it is payable—
- (a) for passing over a road or bridge, or through a tunnel, in the United Kingdom or the Isle of Man; or
  - (b) under a scheme for imposing charges in respect of the keeping or use of vehicles on particular roads in the United Kingdom or the Isle of Man.

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

- C80** S. 349(1)(a) modified by [S.I. 1999/1736](#), Sch. 6 (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), [art. 1\(2\)](#), [Sch. 1 para. 21\(4\)\(b\)](#))

#### Commencement Information

- I665** S. 349 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I666** S. 349 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **350 Exemption of property used for service purposes from execution**

A judgment or order given or made by a court in—

- (a) any part of the United Kingdom,
- (b) the Isle of Man, or
- (c) a British overseas territory,

against a member of any of Her Majesty's forces may not be enforced by the levying of execution on, or (in Scotland) the execution of diligence on, any weapon, equipment, instrument or clothing of his which is used by him in the course of his service in that force.

#### Commencement Information

- I667** S. 350 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

*Status: Point in time view as at 02/12/2019.*

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**I668** S. 350 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *Powers of officers etc*

#### **351 Detention etc of persons in overseas service hospitals**

Schedule 12 (powers to admit persons to and detain them in overseas service hospitals etc) has effect.

#### **Commencement Information**

**I669** S. 351 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(b)** (with transitional provisions in [S.I. 2009/1059](#))

#### **352 Power to take affidavits and declarations**

- (1) An authorised officer may, at a place outside the British Islands, take an affidavit or declaration from a person subject to service law or a civilian subject to service discipline.
- (2) An authorised officer before whom such an affidavit or declaration is taken must state in the jurat or attestation his full name and rank and the date on which and the place at which the affidavit or declaration was taken.
- (3) A document containing such a statement and purporting to be signed by an authorised officer shall be admitted in evidence without proof of the signature or of the facts set out in the statement.
- (4) For the purposes of this section an officer is “authorised” if he is subject to service law and—
  - (a) is of or above the rank of lieutenant commander, major or squadron leader; or
  - (b) is of the rank of naval lieutenant, military or marine captain or flight lieutenant and—
    - (i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
    - (ii) is an advocate or solicitor in Scotland;
    - (iii) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
    - (iv) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (5) In this section “relevant territory” means—
  - (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.



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#### Commencement Information

- I670** S. 352 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I671** S. 352 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Protection of children of service families*

#### **353 Protection of children of service families**

Schedule 13 (amendments relating to protection of children of service families) has effect.

#### Commencement Information

- I672** S. 353 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I673** S. 353 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Miscellaneous*

#### **354 Extension of powers of command dependent on rank or rate**

An officer, warrant officer or non-commissioned officer of a regular or reserve force who is subject to service law (“A”) has, over members of any other such force who are of inferior rank or rate to A, such powers of command as are dependent on rank or rate.

#### Commencement Information

- I674** S. 354 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I675** S. 354 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **355 Service of process**

- (1) The Secretary of State may by regulations make provision with respect to the service of process on a relevant person in connection with proceedings of a description prescribed by the regulations.
- (2) Regulations under this section may in particular make provision—
  - (a) for any process served on a person's commanding officer to be treated as duly served on the person;
  - (b) with respect to cases in which service of process is to be of no effect.
- (3) In this section “relevant person” means—
  - (a) a person subject to service law by reason of section 367(1) or (2)(a), (b), (c) or (e); or
  - (b) a civilian subject to service discipline.

*Status: Point in time view as at 02/12/2019.*

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#### Commencement Information

- I676** S. 355 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I677** S. 355 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 356 Avoidance of assignment of or charge on pay and pensions etc

- (1) Each of the following shall be void—
- (a) every assignment (or, in Scotland, assignation) of any relevant pay or pension;
  - (b) every charge on any relevant pay or pension;
  - (c) every agreement to assign or charge any relevant pay or pension.
- (2) In this section “relevant pay or pension” means any pay, pension, benefit, bounty, grant or allowance payable to any person in respect of his or any other person's service in Her Majesty's forces.
- (3) No order may be made by a court the effect of which would be—
- (a) to prevent any person from receiving any relevant pay or pension; and
  - (b) to direct payment of it to another person.
- (4) Nothing in this section—
- (a) applies to the making or variation of attachment of earnings orders or of earnings arrestments; or
  - (b) prejudices any enactment or subordinate legislation providing for the payment of any sum to—
    - (i) a bankrupt's trustee in bankruptcy, or
    - (ii) a [<sup>F315</sup>trustee in the sequestration of a person's estate] under the Bankruptcy (Scotland) Act [<sup>F316</sup>2016],  
for distribution among creditors.
- (5) In this section—
- (a) “enactment” includes any provision of an Act of the Scottish Parliament or Northern Ireland legislation;
  - (b) the reference to subordinate legislation includes an instrument made under such an Act or under Northern Ireland legislation.

#### Textual Amendments

- F315** Words in [s. 356\(4\)\(b\)\(ii\)](#) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), [art. 1](#), [Sch. 1 para. 30\(a\)](#)
- F316** Word in [s. 356\(4\)\(b\)\(ii\)](#) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), [art. 1](#), [Sch. 1 para. 30\(b\)](#)

#### Commencement Information

- I678** S. 356 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I679** S. 356 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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### 357 Power of British overseas territory to apply Act, etc

Where any of Her Majesty's forces is raised under the law of a British overseas territory, any such law—

- (a) may make provision in relation to that force and its members so as to have effect when they are outside that territory (as well as when they are within it); and
- (b) may apply in relation to the force and its members all or any of the provisions of this Act, with or without modifications.

#### Commencement Information

**I680** S. 357 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I681** S. 357 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 358 Amendments relating to reserve forces

Schedule 14 (amendments relating to the reserve forces) has effect.

#### Commencement Information

**I682** S. 358 in force at 15.10.2007 for specified purposes by [S.I. 2007/2913](#), [art. 2](#)

**I683** S. 358 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I684** S. 358 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 359 Pardons for servicemen executed for disciplinary offences: recognition as victims of First World War

- (1) This section applies in relation to any person who was executed for a relevant offence committed during the period beginning with 4 August 1914 and ending with 11 November 1918.
- (2) Each such person is to be taken to be pardoned under this section in respect of the relevant offence (or relevant offences) for which he was executed.
- (3) In this section “relevant offence” means any of the following—
  - (a) an offence under any of the following provisions of the Army Act 1881 (c. 58)—
    - (i) section 4(2) (casting away arms etc);
    - (ii) section 4(7) (cowardice);
    - (iii) section 6(1)(b) (leaving post etc without orders);
    - (iv) section 6(1)(k) (sentinel sleeping etc on post or leaving post);
    - (v) section 7 (mutiny and sedition);
    - (vi) section 8(1) (striking etc superior officer);
    - (vii) section 9(1) (disobedience in defiance of authority);
    - (viii) section 12(1) (desertion or attempt etc to desert);
  - (b) an offence under any of the following provisions of the Indian Army Act 1911 (Indian Act, No 8 of 1911)—

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- (i) section 25(b) (casting away arms, cowardice, etc);
  - (ii) section 25(g) (sentry sleeping on post or quitting post);
  - (iii) section 25(i) (quitting guard etc);
  - (iv) section 27 (mutiny, disobedience, etc);
  - (v) section 29 (desertion or attempt to desert).
- (4) This section does not—
- (a) affect any conviction or sentence;
  - (b) give rise to any right, entitlement or liability; or
  - (c) affect the prerogative of mercy.
- (5) Any reference in this section to a provision of the Army Act 1881 (c. 58) includes a reference to that provision as applied by any enactment, wherever enacted.

### THIRD GROUP OF PARTS

#### GENERAL

#### PART 18

#### COMMANDING OFFICER AND OTHER PERSONS WITH FUNCTIONS UNDER ACT

#### *Officers*

#### **360 Meaning of “commanding officer”**

The officer who is the “commanding officer” of a person for the purposes of any provision made by or under this Act shall be determined by or under regulations made by the Defence Council.

#### **Commencement Information**

**I685** S. 360 in force at 15.10.2007 by [S.I. 2007/2913](#), [art. 2](#)

#### **361 Meaning of “higher authority”**

In this Act “higher authority”, in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer.

#### **Commencement Information**

**I686** S. 361 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I687** S. 361 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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## *Court officials*

### **362 Judge advocates**

In this Act “judge advocate” means—

- (a) the Judge Advocate General;
- (b) a person appointed under section 30(1)(a) or (b) or (2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (assistants to the Judge Advocate General); or
- (c) a puisne judge of the High Court in England and Wales who (following a request by the Judge Advocate General) is nominated by or on behalf of the Lord Chief Justice of England and Wales to sit as a judge advocate.

#### **Commencement Information**

**I688** S. 362 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I689** S. 362 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### **363 Court administration officer**

- (1) There shall be a court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court.
- (2) The court administration officer is to be appointed by the Defence Council.

#### **Commencement Information**

**I690** S. 363 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I691** S. 363 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## *Service Prosecuting Authority*

### **364 Director of Service Prosecutions**

- (1) Her Majesty may appoint a person as the Director of Service Prosecutions.
- (2) A person may be appointed as the Director of Service Prosecutions only if he—
  - (a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (b) is an advocate or solicitor in Scotland of at least ten years' standing;
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing; or
  - (d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least ten years, and is subject to punishment or disability for breach of professional rules.
- (3) The Director of Service Prosecutions shall hold and vacate office in accordance with the terms of his appointment.

*Status: Point in time view as at 02/12/2019.*

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- (4) In this section “relevant territory” means—
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### Commencement Information

**I692** S. 364 in force at 24.6.2008 by [S.I. 2008/1650, art. 4\(b\)](#)

### 365 Prosecuting officers

- (1) The Director of Service Prosecutions (“the Director”) may appoint [<sup>F317</sup>persons] to be prosecuting officers.
- (2) [<sup>F318</sup>A person] may be appointed as a prosecuting officer only if he—
  - (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland;
  - (c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (3) A prosecuting officer shall hold and vacate office in accordance with the terms of his appointment.
- (4) A prosecuting officer may, unless the Director otherwise directs, exercise any function of the Director.
- (5) In this section “relevant territory” has the same meaning as in section 364.

#### Textual Amendments

**F317** Word in [s. 365\(1\)](#) substituted (23.12.2016) by [Armed Forces Act 2011 \(c. 18\), ss. 21\(a\), 32\(3\)](#); [S.I. 2016/1232, art. 2](#)

**F318** Words in [s. 365\(2\)](#) substituted (23.12.2016) by [Armed Forces Act 2011 \(c. 18\), ss. 21\(b\), 32\(3\)](#); [S.I. 2016/1232, art. 2](#)

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

**C81** [S. 365\(4\)](#) excluded (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\), arts. 1, 27\(1\)](#) (with [art. 3](#))

#### Commencement Information

**I693** [S. 365](#) in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I694** [S. 365](#) in force at 6.5.2009 for specified purposes by [S.I. 2009/1167, art. 3\(a\)](#)

**I695** [S. 365](#) in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

*Status: Point in time view as at 02/12/2019.*

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### *[<sup>F319</sup>Provost Marshals*

#### **Textual Amendments**

**F319** S. 365A and cross-heading inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 5, 32(3)**; S.I. 2012/669, art. 4(a)

#### **365A Provost Marshals: appointment**

- (1) No appointment of a person to be Provost Marshal of a service police force may be made except by Her Majesty.
- (2) To be eligible for appointment as a Provost Marshal, a person must be a provost officer.]

### *[<sup>F320</sup>Service Complaints Ombudsman*

#### **Textual Amendments**

**F320** S. 365B and cross-heading inserted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 1(1), 7(1)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

#### **365B Service Complaints Ombudsman**

- (1) The office of Service Complaints Ombudsman is established.
- (2) The Ombudsman is to be appointed by Her Majesty on the recommendation of the Secretary of State.
- (3) A person may not be appointed as the Ombudsman if the person is—
  - (a) a member of the regular or reserve forces, or
  - (b) employed in the civil service of the State.
- (4) The Ombudsman holds and vacates office in accordance with the terms of his or her appointment.
- (5) The Ombudsman may authorise a person working for the Ombudsman to exercise any function of the Ombudsman on his or her behalf.
- (6) The Ombudsman is not to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.]

*Status: Point in time view as at 02/12/2019.*

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F321 ...

#### Textual Amendments

**F321** S. 366 and cross-heading omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), [ss. 1\(3\)](#), 7(1); [S.I. 2015/1957](#), [reg. 2](#) (with savings and transitional provisions in [S.I. 2015/1969](#))

### <sup>F321</sup>366 Service Complaints Commissioner

.....

## PART 19

### SUPPLEMENTARY

#### CHAPTER 1

#### APPLICATION OF ACT

#### *Persons subject to service law*

### 367 Persons subject to service law: regular and reserve forces

- (1) Every member of the regular forces is subject to service law at all times.
- (2) Every member of the reserve forces is subject to service law while—
  - (a) in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14) or under any other call-out obligation of an officer;
  - (b) in home defence service on call-out under section 22 of the Reserve Forces Act 1980;
  - (c) in full-time service under a commitment entered into under section 24 of the Reserve Forces Act 1996;
  - (d) undertaking any training or duty (whether or not in pursuance of an obligation); or
  - (e) serving on the permanent staff of a reserve force.

#### Commencement Information

**I696** S. 367 in force at 1.10.2008 for specified purposes by [S.I. 2008/1650](#), [art. 2\(c\)](#)  
**I697** S. 367 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))  
**I698** S. 367 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 368 References to members of the regular forces

- (1) Subsections (2) and (3) apply for the purposes of this Act.



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- (2) A person recalled to service under—
  - (a) any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or
  - (b) any other recall obligation of an officer,is to be regarded as being a member of the regular forces from acceptance into service to release or discharge.
- (3) Subject to subsection (2), an officer who is not on the active list is not to be regarded as being a member of the regular forces.
- (4) For the purposes of subsection (3), an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list—
  - (a) Queen's Regulations;
  - (b) Royal Warrant;
  - (c) an order under section 2 of the Air Force (Constitution) Act 1917 (c. 51).

### **369 Members of British overseas territories' forces serving with UK forces**

- (1) While a member of a British overseas territory force is undertaking any duty with or training with a regular or reserve force (“the relevant force”)—
  - (a) subsection (2) applies to him; and
  - (b) nothing in section 357 (power of British overseas territory to apply this Act, etc) applies in relation to him.
- (2) A person to whom this subsection applies—
  - (a) is subject to service law; and
  - (b) shall (subject to subsection (3)) be treated as if he were a member of the relevant force of relative rank or rate.
- (3) The Secretary of State may by order modify any provision of this Act in its application to a member of a British overseas territory force who is or has been within subsection (1).
- (4) In this section—

“British overseas territory force” means any of Her Majesty's forces that is raised under the law of a British overseas territory;

“relative rank or rate”, in relation to a person to whom subsection (2) applies, means such rank or rate of the relevant force as may be prescribed by Queen's Regulations for a person of his description.

#### *Civilians subject to service discipline*

### **370 Civilians subject to service discipline**

- (1) In this Act “civilian subject to service discipline” means a person who—
  - (a) is not subject to service law; and
  - (b) is within any paragraph of Part 1 of Schedule 15.
- (2) Part 2 of Schedule 15 (exclusion and definitions relating to Part 1) has effect.

*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Armed Forces Act 2006 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I699** S. 370 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3](#) (with transitional provisions in [S.I. 2009/1059](#))
- I700** S. 370 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *Naval chaplains*

#### **371 Naval chaplains**

- (1) The Secretary of State may by regulations provide that such references in this Act—
  - (a) to an officer, or
  - (b) to an officer of a particular description,
 as may be prescribed by the regulations include references to a naval chaplain or to a naval chaplain of a description prescribed by the regulations.
- (2) The regulations may make such modifications of this Act as appear appropriate in consequence of the fact that naval chaplains do not have a rank.
- (3) In this section “naval chaplain” means a chaplain in the Royal Navy, the Royal Fleet Reserve or the Royal Naval Reserve.

#### Commencement Information

- I701** S. 371 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I702** S. 371 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### *<sup>F322</sup>Protected prisoners of war*

#### Textual Amendments

- F322** S. 371A and cross-heading inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 23\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 3\(a\)](#)

#### **371A Power to make provision in relation to protected prisoners of war**

- (1) Her Majesty may by warrant make provision with respect to protected prisoners of war.
- (2) A Royal Warrant made under this section may in particular make provision in relation to protected prisoners of war which—
  - (a) applies any relevant provision, or
  - (b) is equivalent to that made by any relevant provision,
 subject to such modifications as may be contained in the Royal Warrant.
- (3) In subsection (2) “relevant provision” means any provision of or made under this Act (including any provision creating a service offence), other than any provision of or made under Part 14, 15 or 16.

*Status: Point in time view as at 02/12/2019.*

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- (4) The Secretary of State must publish a Royal Warrant made under this section in such a way as appears to the Secretary of State to be appropriate.
- (5) Section 373(5) (power to make supplementary provision etc) applies in relation to Royal Warrants under this section.
- (6) In this section “protected prisoner of war” means a person—
  - (a) who is a protected prisoner of war within the meaning given by section 7 of the Geneva Conventions Act 1957; and
  - (b) as respects whom the United Kingdom is the detaining power for the purposes of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (set out in the Third Schedule to that Act).]

## CHAPTER 2

### OTHER SUPPLEMENTARY PROVISIONS

#### 372 Evidence in proceedings before civilian courts

The Secretary of State may by regulations make provision with respect to evidence, including the admissibility of evidence, in proceedings for an offence created by or under this Act before a civilian court in—

- (a) any part of the United Kingdom;
- (b) the Isle of Man; or
- (c) a British overseas territory [<sup>F323</sup>other than Gibraltar].

#### Textual Amendments

**F323** Words in s. 372(c) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), [Sch. para. 12](#)

#### Commencement Information

**I703** S. 372 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I704** S. 372 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### 373 Orders, regulations and rules

- (1) Any power to make orders, regulations or rules conferred by this Act on the Secretary of State is exercisable by statutory instrument.

[<sup>F324</sup>(1A) The powers conferred by paragraphs 6 and 7 of Schedule 2A on the Lord Chancellor to make regulations are exercisable by statutory instrument.]

- (2) The powers conferred by sections [<sup>F325</sup>20A,] 36, [<sup>F326</sup>93AA,][<sup>F327</sup> 93F,] 132, 135, 164, 173, 174, 328 to 331 [<sup>F328</sup>, 340 and 340B] on the Defence Council to make regulations are exercisable by statutory instrument; and the Statutory Instruments Act 1946 (c. 36) applies in relation to those powers as if the Defence Council were a Minister of the Crown.

- (3) A statutory instrument containing—
  - (a) an order under section 53, 89, 113, [<sup>F329</sup>276A(7),] 324(2)(h), 379 or 381,

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- (b) an order under section 323 which by virtue of section 323(4)(c) makes any provision adding to, replacing or omitting any part of the text of an Act,
  - (c) regulations under section 128 which make provision of a kind mentioned in section 128(2)(c) or (e) or prescribe documents for the purposes of section 118(2)(b),
  - (d) regulations under section [<sup>F330</sup>20A, ][<sup>F331</sup>93AA(2),] 271, [<sup>F332</sup>340A(4), 340E(1) or 340N],
  - (e) regulations under section 328 which make provision of a kind mentioned in section 328(2)(c),
  - [<sup>F333</sup>(ea) regulations under section 329(1) which make provision of a kind mentioned in section 329(2)(ha), (i), or (j),
  - (eb) regulations under section 329(3A),]
  - (f) rules under section 163 which—
    - (i) by virtue of section 155 make provision about the constitution of the Court Martial, or
    - (ii) make provision authorised by section 165, or
  - (g) rules under section [<sup>F334</sup> 232F]<sup>F335</sup> ...,
- may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Any other statutory instrument under this Act, except one containing only an order under any of sections 382 to 384, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any order, regulations or rules made under this Act may—
- (a) contain incidental, supplemental, consequential, transitional, transitory and saving provision;
  - (b) make different provision for different cases.
- (6) Where a provision of this Act confers a power to make an order containing provision equivalent to a provision of PACE, the order may apply that provision of PACE with modifications.

#### Textual Amendments

- F324** S. 373(1A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), **Sch. 14 para. 7**; S.I. 2015/778, art. 3, Sch. 1 para. 80
- F325** Word in s. 373(2) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 4 para. 14(2)(a)**; S.I. 2012/669, art. 3(f)
- F326** Word in s. 373(2) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(8)(a)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F327** Word in s. 373(2) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 4 para. 14(2)(b)**; S.I. 2012/669, art. 3(f)
- F328** Words in s. 373(2) substituted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), s. 7(1), **Sch. para. 10(a)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)
- F329** Word in s. 373(3)(a) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), **Sch. 25 para. 31**; S.I. 2009/1028, art. 2(b)
- F330** Word in s. 373(3)(d) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 4 para. 14(3)(a)**; S.I. 2012/669, art. 3(f)

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- F331** Word in s. 373(3)(d) inserted (19.7.2018 for specified purposes, 1.1.2019 in so far as not already in force) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 2(8)(b)**, 19(1); S.I. 2018/876, reg. 2(a)(b)
- F332** Words in s. 373(3)(d) substituted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), s. 7(1), **Sch. para. 10(b)**; S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)
- F333** S. 373(3)(ea)(eb) inserted (30.6.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\)](#), **ss. 1(5)**, 3(3); S.I. 2018/799, reg. 2
- F334** Words in s. 373(3)(g) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), **Sch. 4 para. 14(4)**; S.I. 2012/669, art. 3(f)
- F335** Words in s. 373(3)(g) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 13 para. 4**; S.I. 2012/2906, art. 2(k)

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

- C82** S. 373(5) applied by 1984 c. 60, s. 113(14) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 105(10)** (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C83** S. 373(6) applied by 1984 c. 60, s. 113(14) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 105(10)** (with s. 385); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)

## **CHAPTER 3**

### **INTERPRETATION**

#### **374 Definitions applying for purposes of whole Act**

In this Act, unless the context otherwise requires—

“the 2003 Act” means the Criminal Justice Act 2003 (c. 44);

“absolute discharge” has the meaning given by section 185;

“additional duties commitment” means a commitment entered into under section 25 of the Reserve Forces Act 1996 (c. 14), and references to a person being subject to such a commitment are to be read in accordance with section 377(4) of this Act;

“aircraft” means any machine capable of flight (whether or not propelled by mechanical means), including any description of balloon;

“airman” means a person whose rank is junior technician, senior aircraftman, leading aircraftman or aircraftman;

“associated”, in relation to offences, is to be read in accordance with section 161(1) of the Sentencing Act;

“British overseas territory police force” has the meaning given by section 375;

“capable of being heard summarily”, in relation to a charge, is to be read in accordance with section 52;

“civilian court” means a court of ordinary criminal jurisdiction;

“civilian subject to service discipline” has the meaning given by section 370;

“commanding officer” is to be read in accordance with section 360;

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“Commonwealth country” means a country, other than the United Kingdom, that is a member of the Commonwealth;

“Commonwealth force” means a force of a Commonwealth country;

“community punishment” means—

- (a) a service community order; or
- (b) an overseas community order;

“conditional discharge” has the meaning given by section 185;

“the corresponding offence under the law of England and Wales”, in relation to an offence under section 42, has the meaning given by that section;

“the court administration officer” means the court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court appointed under section 363;

“Court Martial rules” has the meaning given by section 163(1);

“the Crown Court” means the Crown Court in England and Wales;

“custodial sentence” means—

- (a) a sentence of imprisonment (as to which, see section 208);
- (b) a sentence of detention under section 209 (certain young offenders);
- (c) an order under section 211 (detention and training for young offenders);
- (d) a sentence of detention during Her Majesty's pleasure under section 218;
- (e) a sentence of detention for public protection under section 226 of the 2003 Act passed as a result of section 221 of this Act;
- (ea) [<sup>F336</sup>a sentence of detention under section 226B of that Act passed as a result of section 221A of this Act;] or
- (f) a sentence of detention under section 228 of that Act passed as a result of section 222 of this Act;

“deserting” has the meaning given by section 8, and references to desertion are to be read accordingly;

“the Director of Service Prosecutions” means the person appointed under section 364;

“enemy” includes—

- (a) all persons engaged in armed operations against any of Her Majesty's forces or against any force co-operating with any of Her Majesty's forces;
- (b) all pirates; and
- (c) all armed mutineers, armed rebels and armed rioters;

“an ex-regular reserve force” means the Royal Fleet Reserve, the Army Reserve or the Royal Air Force Reserve;

“fit to stand trial” is to be read in accordance with section 166(2);

“guardian” has the same meaning as in the Children and Young Persons Act 1933 (c. 12);

“Her Majesty's air forces”, “Her Majesty's forces” and “Her Majesty's military forces” do not include any Commonwealth force;

“higher authority” has the meaning given by section 361;

“judge advocate” has the meaning given by section 362;

“mental disorder” has the same meaning as in the Mental Health Act 1983 (c. 20) and “mentally disordered” is to be read accordingly;

“minor punishment” means a punishment under row 7 of the Table in section 132 or row 11 of the Table in section 164;

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“non-commissioned officer” includes a person whose rate is chief petty officer, petty officer or leading rate;

“officer” includes a midshipman;

“overseas community order” has the meaning given by section 182;

“overseas police force” has the meaning given by section 375;

“PACE” means the Police and Criminal Evidence Act 1984 (c. 60);

“the prescribed sum” has the meaning given by section 32(9) of the Magistrates' Courts Act 1980 (c. 43);

“property” includes—

(a) real property in England, Wales or Northern Ireland;

(b) heritable property in Scotland;

(c) property outside the United Kingdom in the nature of real property;

“provost officer” means an officer who is a service policeman;

“the regular army” means any of Her Majesty's military forces other than—

(a) the Army Reserve;

(b) the Territorial Army; and

(c) forces raised under the law of a British overseas territory;

“the regular forces” means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force, and references to “a regular force” are to be read accordingly;

“the reserve forces” means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to “a reserve force” are to be read accordingly;

“SAC rules” has the meaning given by section 151(1);

“SCC rules” has the meaning given by section 288(1);

“the Sentencing Act” means the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

“service community order” has the meaning given by section 178;

“service compensation order” has the meaning given by section 175;

F337  
...

[<sup>F338</sup>“the Service Complaints Ombudsman” means the person appointed under section 365B;]

“service detention” means detention under row 1 of the Table in section 132 or row 4 of the Table in section 164;

“service offence” has the meaning given by section 50;

“service police force” and “service policeman” have the meanings given by section 375;

“the Service Prosecuting Authority” means the Director of Service Prosecutions and the persons appointed under section 365 (prosecuting officers);

“service supervision and punishment order” has the meaning given by section 173;

“ship” includes a hovercraft and any description of vessel;

“standard scale” is to be read in accordance with section 377(5) and (7);

“statutory maximum” is to be read in accordance with section 377(6) and (7);

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“subject to service law” is to be read in accordance with sections 367 to 369 of this Act and section 4(3)(a) (attached Commonwealth personnel) of the Visiting Forces (British Commonwealth) Act 1933 (c. 6);

“superior officer”, in relation to a person (“A”), means an officer, warrant officer or non-commissioned officer who is subject to service law and—

(a) is of superior rank or rate to A; or

(b) is of equal rank or rate to A and is exercising authority as A's superior;

“suspended sentence of imprisonment” means a sentence to which an order under section 189(1) of the 2003 Act relates;

“suspended sentence of service detention” has the meaning given by section 190;

“UK police force” has the meaning given by section 375;

“unfit to stand trial” is to be read in accordance with section 166(2);

“a volunteer reserve force” means the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army or the Royal Auxiliary Air Force.

#### Textual Amendments

**F336** Words in s. 374 inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 22 para. 37](#); S.I. 2012/2906, art. 2(t)

**F337** Words in s. 374 omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015](#) (c. 19), s. 7(1), [Sch. para. 11\(a\)](#); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

**F338** Words in s. 374 inserted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015](#) (c. 19), s. 7(1), [Sch. para. 11\(b\)](#); S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

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

**C84** S. 374 definition excluded (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009](#) (S.I. 2009/826), regs. 1, [4\(1\)\(2\)](#) (with reg. 2(c))

**C85** S. 374 definition extended (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by S.I. 2009/1059, art. 1, Sch. 2 para. 16 (as amended (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012](#) (S.I. 2012/2824), regs. 1, [5\(4\)](#))

#### Commencement Information

**I705** S. 374 in force at 1.10.2008 for specified purposes by [S.I. 2008/1650](#), [art. 2\(b\)](#)

**I706** S. 374 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**I707** S. 374 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

### 375 Definitions relating to police forces

(1) In this Act “service police force” means—

- (a) the Royal Navy Police;
- (b) the Royal Military Police; or
- (c) the Royal Air Force Police;

and “service policeman” means a member of a service police force.

(2) In this Act “UK police force” means—



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- (a) the Ministry of Defence Police;
  - (b) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London);
  - (c) the metropolitan police force;
  - (d) the City of London police force;
  - [<sup>F339</sup>(e) the Police Service of Scotland;]
  - (f) the Police Service of Northern Ireland; or
  - (g) the Isle of Man Constabulary.
- (3) In this Act “British overseas territory police force” means any force or body which—
- (a) is constituted in a British overseas territory; and
  - (b) is engaged in the carrying on of activities similar to any carried on by a service police force or UK police force.
- (4) In this Act “overseas police force” means any force or body which—
- (a) is constituted outside the United Kingdom and the Isle of Man; and
  - (b) is engaged in the carrying on of activities similar to any carried on by a service police force or UK police force.
- <sup>F340</sup>(5) .....

**Textual Amendments**

**F339** S. 375(2)(e) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 56](#)

**F340** S. 375(5) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 22](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)

**Commencement Information**

**I708** S. 375(2)-(4) in force at 1.10.2008 by [S.I. 2008/1650](#), [art. 2\(d\)](#)

**376 “Conviction”, “sentence” etc in relation to summary hearings and the SAC**

- (1) Where a charge against a person in respect of an offence is heard summarily by an officer, subsections (2) to (4) apply for the purposes of references in this Act to conviction, acquittal, sentence or passing sentence, or to any related expressions.
- (2) If the officer records a finding that the charge has been proved, or the Summary Appeal Court substitutes a finding that a charge in respect of another offence has been proved, that shall be treated as a conviction.
- (3) Any punishment awarded by the officer, or by the Summary Appeal Court, shall be treated as a sentence.
- (4) If the officer dismisses the charge under section 131, or the Summary Appeal Court quashes a finding that the charge has been proved, that shall be treated as an acquittal.
- (5) In this Act “in open court”, in relation to a summary hearing by an officer, means in the presence of the offender.

*Status: Point in time view as at 02/12/2019.*

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

- C86** S. 376(1) applied by 1984 c. 60, s. 113(12A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 105\(9\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C87** S. 376(1)-(3) applied by [S.I. 1978/1908 \(N.I. 27\)](#), art. 4(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 85](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)
- C88** S. 376(2) applied by 1984 c. 60, s. 113(12A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 105\(9\)](#) (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)

#### Commencement Information

- I709** S. 376 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))
- I710** S. 376 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

### 377 Further interpretive provisions

- (1) For the purposes of any provision of this Act which requires the determination of the age of a person by the court, an officer or a judge advocate, his age is to be taken to be that which it appears to the court, officer or judge advocate to be after considering any available evidence.
- (2) Any reference in this Act to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed on the imprisonment of young offenders.
- (3) The question whether a member of a regular or reserve force (“force A”) is for the purposes of any provision of this Act of inferior, equal or superior rank or rate to a member of any other such force (“force B”) is to be decided by reference to any provision made by Queen's Regulations which lays down how the ranks or rates in force A relate to the ranks or rates in force B.
- (4) For the purposes of this Act, a person is subject to an additional duties commitment if—
  - (a) he has entered into such a commitment; and
  - (b) the commitment is still in force.
- (5) Any reference in this Act to a specified level on the standard scale is to the amount specified, in relation to that level, in the standard scale for the time being set out in section 37 of the Criminal Justice Act 1982 (c. 48).
- (6) Any reference in this Act to the statutory maximum is to the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).
- (7) But subsections (5) and (6) do not apply in relation to any offence in Scotland or Northern Ireland under—
  - (a) section 344, 345 or 346; or
  - (b) regulations made by virtue of section 328(4)(b) or 343(5)(b).

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#### Commencement Information

- I711** S. 377 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I712** S. 377 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 4

### FINAL PROVISIONS

#### 378 Minor and consequential amendments and repeals

- (1) Schedule 16 (minor and consequential amendments) has effect.
- (2) The provisions specified in Schedule 17 are hereby repealed or revoked to the extent specified there.

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

- C89** S. 378(1) extended (Guernsey) (with modifications) (10.12.2009) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) Order 2009 \(S.I. 2009/3215\)](#), [arts. 1\(2\), 5](#),
- C90** S. 378(1) extended (Isle of Man) (with modifications) (18.3.2010) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) Order 2010 \(S.I. 2010/764\)](#), [arts. 1\(2\), 5](#)
- C91** S. 378(1) extended (Jersey) (with modifications) (18.3.2010) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) Order 2010 \(S.I. 2010/765\)](#), [arts. 1\(2\), 5](#)

#### Commencement Information

- I713** S. 378 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I714** S. 378 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)
- I715** S. 378(1) in force at 4.6.2007 for specified purposes by [S.I. 2007/1442](#), [art. 2\(1\)](#)
- I716** S. 378(1) in force at 15.10.2007 for specified purposes by [S.I. 2007/2913](#), [art. 2](#)
- I717** S. 378(1) in force at 1.1.2008 for specified purposes by [S.I. 2007/2913](#), [art. 3](#)
- I718** S. 378(2) in force at 1.1.2008 for specified purposes by [S.I. 2007/2913](#), [art. 3](#)
- I719** S. 378(2) in force at 24.6.2008 for specified purposes by [S.I. 2008/1650](#), [art. 4\(c\)](#)
- I720** S. 378(2) in force at 1.10.2008 for specified purposes by [S.I. 2008/1650](#), [art. 2\(e\)](#)

#### 379 Power to make further amendments and repeals

- (1) The Secretary of State may by order—
  - (a) amend or repeal any enactment passed before or in the same session as this Act;
  - (b) amend or revoke subordinate legislation made before the passing of this Act.
- (2) In subsection (1)—
  - (a) “enactment” includes an Act of the Scottish Parliament and Northern Ireland legislation;
  - (b) the reference to subordinate legislation includes an instrument made under such an Act or under Northern Ireland legislation.

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- (3) An order under subsection (1) may be made only for the purposes of—
- (a) supplementing or giving full effect to this Act; or
  - (b) making provision consequential on the passing of this Act.

**Commencement Information**

**I721** S. 379 in force at 4.6.2007 by [S.I. 2007/1442](#), [art. 2\(2\)](#)

**380 Power to make transitional and transitory provision**

- (1) The Secretary of State may by order make transitional provision in connection with the coming into force of any provision made by or under this Act, including savings from the effect of any repeal or revocation so made.
- (2) An order under subsection (1) may in particular make provision—
- (a) about the effect of liabilities incurred and other things done before commencement, including provision for and about the investigation, trial and punishment of offences committed before commencement;
  - (b) for and about the continuation of any proceedings begun before commencement;
  - (c) about the punishments and orders available to courts or other persons before whom proceedings take place in respect of offences committed before commencement;
  - (d) about the effect of punishments awarded and orders made in respect of offences committed before commencement.
- (3) An order under subsection (1) may—
- (a) confer jurisdiction on any court;
  - (b) confer functions on a person's commanding officer, the Director of Service Prosecutions, the prosecuting authority within the meaning of any of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53), or on service policemen;
  - (c) confer powers of arrest, search and entry;
  - (d) authorise the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (4) The Secretary of State may by order provide that—
- (a) until the coming into force of any enactment specified in the order, or
  - (b) in relation to any offence committed or other thing done before the coming into force of such an enactment,
- any provision of this Act or amended by or under this Act has effect with such modifications as may be specified by the order.
- (5) In subsection (4)(a) and (b) “enactment” includes any provision of this Act.
- (6) If any provision made by or under this Act is to come into force before the day on which section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) (abolition of certain custodial sentences for young offenders) comes into force (or fully into force), an order under subsection (4) may provide for custodial punishments specified in the

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order to be available in respect of offenders who are convicted aged 18 or over but under 21.

(7) The powers conferred by this section may not be exercised so as to allow the imposition in respect of an offence of a punishment more severe than that which was applicable when the offence was committed.

(8) An order under this section may modify, exclude or apply (with or without modifications) any enactment or subordinate legislation, including—

- (a) any provision of or made under this Act;
- (b) any provision of or made under an enactment repealed by this Act.

[<sup>F341</sup>(8A) The power under subsection (1) to make transitional provision in connection with the coming into force of any provision made by or under this Act includes power, where this Act or any provision made under it is amended, to amend any earlier order under this section [<sup>F342</sup>(whether the amendment relates to a subject already dealt with in the earlier order or a new subject)].]

<sup>F343</sup>(9) . . . . .

(10) In this section “commencement” means the commencement of such provisions of this Act as may be specified by the order.

#### Textual Amendments

**F341** S. 380(8A) inserted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 23](#); S.I. 2012/669, art. 3(e)

**F342** Words in s. 380(8A) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(c)(6)

**F343** S. 380(9) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 15](#), [Sch. 5](#); S.I. 2012/669, art. 4(f)(i)

#### Commencement Information

**I722** S. 380 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I723** S. 380 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 381 Alignment of SDAs etc with this Act

(1) The Secretary of State may by order amend or repeal any provision of an enactment within subsection (3) for the purpose of reducing or eliminating any difference between the effect of the enactments within that subsection and the effect of this Act.

(2) An order under subsection (1) may amend an enactment within subsection (3) in such a way as to confer on any person a power to make subordinate legislation.

(3) The enactments are—

- (a) the Army Act 1955;
- (b) the Air Force Act 1955;
- (c) the Naval Discipline Act 1957;
- (d) the Army and Air Force Act 1961 (c. 52);
- (e) the Armed Forces Act 1966 (c. 45);
- (f) such provisions of the following Acts as are repealed by this Act—
  - (i) the Armed Forces Act 1976 (c. 52);

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- (ii) the Reserve Forces Act 1980 (c. 9);
- (iii) the Armed Forces Act 1981 (c. 55);
- (iv) the Armed Forces Act 1991 (c. 62);
- (v) the Reserve Forces Act 1996 (c. 14);
- (vi) the Armed Forces Act 2001 (c. 19).

#### Commencement Information

**I724** S. 381 in force at 4.6.2007 by [S.I. 2007/1442](#), [art. 2\(2\)](#)

#### <sup>F344</sup>**382 Duration of this Act**

- (1) This Act expires at the end of one year beginning with the day on which the Armed Forces Act 2016 is passed (but this is subject to subsection (2)).
- (2) Her Majesty may by Order in Council provide that, instead of expiring at the time it would otherwise expire, this Act shall expire at the end of a period of not more than one year from that time.
- (3) Such an Order may not provide for the continuation of this Act beyond the end of the year 2021.
- (4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (2) unless a draft of the Order has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F344** S. 382 substituted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), [ss. 1\(1\)](#), [19\(2\)\(a\)](#)

#### **383 Commencement**

- (1) This section and sections 359, 373, 382, 384 and 386, and the repeal by this Act of section 1 of the Armed Forces Act 2001 (c. 19), come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint (and different days may be appointed for different purposes).

#### **384 Extent to Channel Islands, Isle of Man and British overseas territories**

- (1) Her Majesty may by Order in Council provide for all or any of the provisions of this Act to extend to any of the Channel Islands with such modifications as may be specified in the Order.
- (2) This Act extends to—
  - (a) the Isle of Man, and
  - (b) the British overseas territories<sup>F345</sup> except Gibraltar],
 subject to such modifications as Her Majesty may by Order in Council specify.

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[<sup>F346</sup>(3) Paragraph 5(ba) of Schedule 9 does not extend to the Isle of Man or the British overseas territories.]

#### Textual Amendments

- F345** Words in s. 384(2)(b) inserted (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 13(3)**, 19(2)(b)  
**F346** S. 384(3) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 59(2)** (with art. 5)

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

- C92** S. 384 modified (8.5.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 152(9)**, 153(1)(g)  
**C93** S. 384 applied by 2003 c. 44, s. 337(12A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 233(3)** (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)  
**C94** S. 384 applied by 1991 c. 62, s. 24(4) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 122** (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)  
**C95** S. 384 applied by 1995 c. 35, s. 33(6) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 11 para. 11** (with s. 385); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4)  
**C96** S. 384 modified (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 181(8)**, 182(1)(f) (with s. 180)  
**C97** S. 384 modified (1.5.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 151(2)(c)**, **153(4)**  
**C98** S. 384 modified (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), **ss. 19(2)(c)**, **21(1)(3)**  
**C99** S. 384(1) modified (28.1.2016) by [Psychoactive Substances Act 2016 \(c. 2\)](#), **ss. 62(3)**, 63(1)(a)  
**C100** S. 384(1) modified (8.2.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\)](#), s. 3(2)(7)  
**C101** S. 384(1) power extended (16.5.2019) by [Offensive Weapons Act 2019 \(c. 17\)](#), **ss. 69(8)**, 70(5)(o)  
**C102** S. 384(2) modified (28.1.2016) by [Psychoactive Substances Act 2016 \(c. 2\)](#), **ss. 62(4)**, 63(1)(a)  
**C103** S. 384(2) modified (12.5.2016) by [Armed Forces Act 2016 \(c. 21\)](#), s. 19(2)(b), **Sch. para. 2** (with Sch. para. 5)  
**C104** S. 384(2) modified (8.2.2018) by [Armed Forces \(Flexible Working\) Act 2018 \(c. 2\)](#), s. 3(2)(6)  
**C105** S. 384(2) power extended (16.5.2019) by [Offensive Weapons Act 2019 \(c. 17\)](#), **ss. 69(9)**, 70(5)(o)

### 385 Extent of applied enactments

- (1) Where a provision of or made under an Act is applied by or under this Act (by whatever words), the extent of the provision as so applied is not affected by anything that limits the extent of the provision as it applies apart from this Act.
- (2) The provision as so applied is to be treated for the purposes of section 384 as if it were contained in this Act.

#### Commencement Information

- I725** S. 385 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#))  
**I726** S. 385 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), art. 4

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### **386 Short title**

This Act may be cited as the Armed Forces Act 2006.



**Status:**

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**Changes to legislation:**

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