



# Armed Forces Act 2006

## 2006 CHAPTER 52

### First Group of Parts Discipline

#### PART 13

##### DISCIPLINE: MISCELLANEOUS AND SUPPLEMENTARY

#### CHAPTER 1

##### TESTING FOR ALCOHOL AND DRUGS

### 305 Testing for drugs

- (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 or an investigation of an incident within section 306(1)(a).
- (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.

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- (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 or service detention imposed in respect of the offence must not exceed 51 weeks.

### **306 Testing for alcohol and drugs after serious incident**

- (1) This section applies where—
- (a) an incident has occurred which in the opinion of an officer resulted in, or created a risk of, death or serious injury to any person or serious damage to any property; and
  - (b) in the opinion of the officer, it is possible that a person within subsection (3) (“A”) may have caused or in any way contributed to—
    - (i) the occurrence of the incident;
    - (ii) any death or serious injury to any person, or serious damage to any property, resulting from it; or
    - (iii) the risk of any such death, injury or damage.
- (2) The officer may, in order for it to be ascertained whether or to what extent A has or has had alcohol or drugs in his body, require A to provide a sample for analysis.
- (3) A person is within this subsection if—
- (a) he is a person subject to service law or a civilian subject to service discipline; and
  - (b) the officer mentioned in subsection (1) is his commanding officer.
- (4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under subsection (2).
- (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 or service detention imposed in respect of the offence must not exceed 51 weeks.
- (6) The Defence Council may by regulations provide for the delegation by an officer of—
- (a) functions conferred by this section;
  - (b) functions conferred by regulations under section 308 so far as relating to the obtaining of samples under subsection (2) of this section.

### **307 Definitions etc for purposes of section 306**

- (1) This section applies for the purposes of section 306.
- (2) “Drug” means—
- (a) a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38); or
  - (b) any other drug specified, or of a description specified, in an order made by the Secretary of State for the purposes of this paragraph.
- (3) “Sample” means—
- (a) where the sample is required in order for it to be ascertained whether or to what extent a person has or has had alcohol in his body, a sample of urine or breath;

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- (b) where the sample is required in order for it to be ascertained whether or to what extent a person has or has had drugs in his body, a sample of urine; and
  - (c) in either case, any other sample specified by the Secretary of State in an order made for the purposes of this paragraph.
- (4) The power conferred by subsection (3)(c) does not include power to specify a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person's body orifice (other than the mouth).
- (5) Any reference to a person being required to provide a sample includes, in relation to a sample within subsection (3)(c), a reference to a person being required to consent to the taking from him of a sample.

### **308 Sections 305 and 306: supplementary**

- (1) The Defence Council may by regulations make provision about the obtaining of samples under sections 305(1) and 306(2) 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;
  - (b) as to the circumstances in which a person may be required under section 306(2) to provide more than one type of sample;
  - (c) enabling the person imposing a requirement under section 305(1) or 306(2) to specify the way in which the sample is to be provided;
  - (d) prescribing circumstances in which a requirement under section 305(1) or 306(2) 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.
- (2) In subsection (1), any reference to a person being required to provide a sample includes, in relation to a sample within section 307(3)(c), a reference to a person being required to consent to the taking from him of a sample.
- (3) The results of any analysis of a sample provided pursuant to a requirement imposed under section 305(1) or section 306(2) 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—
- (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),
- or affects the admissibility in any proceedings of evidence obtained under those powers.

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## 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
    - (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.

#### **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

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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—
  - (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.

### **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—

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“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.

### **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).

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## 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.

#### *Arrest etc for desertion or absence without leave*

#### **314 Arrest by civilian police of deserters and absentees without leave**

- (1) An officer of a UK police force or British overseas territory police force 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.
- (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.

#### **315 Deserters and absentees without leave surrendering to civilian police**

- (1) Where—

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- (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.
- (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.
- (5) In this section “civilian policeman” means an officer of a UK police force or British overseas territory police force.
- (6) In this section “relevant territory” has the same meaning as in section 314.

### **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
    - (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;



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- (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.

### **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.
- (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.

#### *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 an officer of a UK police force or British overseas territory police force; 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.

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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.

#### **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.

## **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.

## **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;

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- (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;
  - (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 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.

*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—

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- (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).

### **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)).

#### *Other supplementary provisions*

### **325 Evidential burden as respects excuses**

- (1) This section applies to an offence under any of sections 1 to 41, 107, 229, 266 and 306 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.

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- (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.

**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.

**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.
- (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.”