



Armed Forces Act 2006

2006 CHAPTER 52

First Group of Parts Discipline

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

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.

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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 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).

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.

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.

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.

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- (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.

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.
- (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.

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

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- (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.

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
 - (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.

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

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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.