



# Armed Forces Act 2006

## 2006 CHAPTER 52

### Second Group of Parts Miscellaneous Matters

#### 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;
  - (b) the Isle of Man; or
  - (c) a British overseas territory.

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- (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.

### **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—
  - (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;

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- (b) otherwise, 6 months.

### **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.

### **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.

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### **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;
  - (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).

#### *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.

### **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.

#### *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.

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### **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.

#### *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.

#### *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.

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### **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.

### **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 permanent trustee in a sequestration under the Bankruptcy (Scotland) Act 1985 (c. 66),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.

### **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—

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- (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.

### **358 Amendments relating to reserve forces**

Schedule 14 (amendments relating to the reserve forces) has effect.

### **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)—
    - (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.