

ARMED FORCES ACT 2006

EXPLANATORY NOTES

OVERVIEW OF THE ACT

16. The main purpose of the Act therefore is to replace the three separate systems of service law with a single, harmonised system governing all members of the armed forces. The key elements of the discipline systems will remain, in particular a jurisdiction for COs to deal with less serious offences, with more serious offences being required to be tried by court-martial. Accordingly it should not be assumed that the provisions of the Act are new. Most of it is based on existing provisions, but updated, and modified to achieve harmonisation between the Services.
17. In brief, the Act creates offences and provides for the investigation of alleged offences, the arrest, holding in custody and charging of individuals accused of committing an offence, and for them to be dealt with summarily by their CO or tried by court-martial. Instead of (as at present) courts-martial being set up to deal with particular cases, the Act provides for a standing court-martial, called the Court Martial. Rather like the Crown Court, the court may sit in more than one place at the same time, and different judge advocates and service personnel will make up the court for different trials.
18. More serious cases must be notified to the service police and passed direct to the independent Director of Service Prosecutions (“DSP”) for a decision on whether to prosecute. In other cases the CO will consider whether to deal with the matter summarily (if it is within his jurisdiction) or to refer the case to the DSP with a view to proceeding to a trial by the Court Martial. In all cases which it is intended should be tried by the Court Martial, it will be the DSP who takes the decision to prosecute and determines the charge or charges. Those facing charges with which the CO intends to deal summarily have a right to elect trial by the Court Martial, or, if they agree to be dealt with summarily and the charge is found proved, to appeal to the Summary Appeal Court. A person convicted by the Court Martial will be able to appeal to the Court Martial Appeal Court.
19. The Act provides for certain offices and organisations which are currently single-service to be replaced by a tri-service equivalent. The aim is to enhance efficiency and to support consistency in the application of the Act. These are:
 - the appointment of the Director of Service Prosecutions to replace the existing three single-service prosecuting authorities;
 - a standing court, called the Court Martial, to replace the current courts-martial which are set up for each case;
 - a tri-Service Summary Appeal Court (“SAC”) to replace the existing single-service Summary Appeal Courts;
 - the Service Civilian Court (“SCC”), to replace the existing Standing Civilian Courts;
 - the merger of the two offices of Judge Advocate General and Judge Advocate of the Fleet; and

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

- a single court administration officer for the Court Martial, the SAC and the SCC.