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# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 11

#### THE SERVICE CIVILIAN COURT

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

- C1** 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>F1</sup>(2) The Service Civilian Court may sit in any place, whether within or outside the United Kingdom.]

##### Textual Amendments

- F1** 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

- I1** 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](#))
- I2** 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.

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- (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

- I3** 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](#))
- I4** 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—
  - (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)

- C2** 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

- I5** 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](#))
- I6** S. 279 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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## **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.

### **Commencement Information**

- I7** 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](#))
- I8** 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**

- I9** 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](#))
- I10** 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).

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- (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**

- I11** 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](#))
- I12** 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.

**Commencement Information**

- I13** 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](#))
- I14** 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.
- (3) The compensation to be paid under a service compensation order made by the Service Civilian Court in respect of any offence of which the court has convicted the offender 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.

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#### Commencement Information

- I15** 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](#))
- I16** 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;
  - (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)

- C3** 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

- I17** 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](#))
- I18** 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.

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- (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;
  - (b) references to the passing of a sentence include references to the making of an order.

#### **Commencement Information**

- I19** 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](#))
- I20** 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**

- I21** 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](#))
- I22** 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.

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- (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.
- (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.

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#### **Commencement Information**

- I23** 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](#))
- I24** 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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