

Status: Point in time view as at 01/04/2016.

Changes to legislation: Armed Forces Act 2006, Part 12 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Armed Forces Act 2006

2006 CHAPTER 52

PART 12

SERVICE AND EFFECT OF CERTAIN SENTENCES

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\(3\)\(4\)](#)

Commencement of sentence

289 Commencement of sentences of the Court Martial and Service Civilian Court

- (1) A sentence passed by the Court Martial or the Service Civilian Court takes effect from the beginning of the day on which it is passed.
- (2) Subsection (1) does not apply to—
- (a) a suspended sentence of imprisonment or service detention; or
 - (b) a sentence passed by the Court Martial on appeal from the Service Civilian Court.
- (3) Subsection (1) is subject to any power conferred by or under any Act (including this Act) to direct that a sentence shall take effect otherwise than as mentioned in subsection (1).

Commencement Information

- I1** S. 289 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. 289 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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290 Commencement of term of service detention awarded by CO

- (1) This section applies where an officer—
 - (a) awards a term of service detention (other than a suspended sentence of service detention); and
 - (b) does not make a direction under section 189(3) in respect of the award (consecutive sentences of service detention).
- (2) If the offender so elects at the time of the award, the award takes effect from the beginning of the day on which the award is made.
- (3) If no election is made under subsection (2), the award—
 - (a) takes effect from the end of the appeal period (unless an appeal is brought within that period);
 - (b) if an appeal is brought within that period, takes effect from the beginning of the day when the appeal is abandoned or determined.
- (4) An election under subsection (2) may be withdrawn at any time until the end of the appeal period.
- (5) If an election is withdrawn, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—
 - (a) from the end of the appeal period (unless an appeal is brought within that period);
 - (b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.
- (6) If an award takes or resumes effect under subsection (2), (3)(a) or (5)(a) and an appeal is subsequently brought, the remainder of the award—
 - (a) ceases to have effect from the beginning of the day when the appeal is brought; and
 - (b) resumes effect from the beginning of the day when the appeal is abandoned or determined.
- (7) In this section “appeal period” means the period mentioned in section 141(2) for the bringing of an appeal.
- (8) Nothing in subsection (3)(b), (5)(b) or (6)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

Commencement Information

- I3** S. 290 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. 290 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

291 Commencement of consecutive term of service detention awarded by CO

- (1) This section applies where an officer—
 - (a) awards a term of service detention; and
 - (b) directs under section 189(3) that the award shall take effect from the end of another sentence of service detention (“the initial sentence”).

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- (2) The offender may at the time of the award make an election under this subsection.
- (3) Such an election may be withdrawn at any time until the end of the appeal period.
- (4) If the offender—
 - (a) makes an election under subsection (2), and
 - (b) does not withdraw the election, or bring an appeal, before the end of the initial sentence,the award takes effect from the end of the initial sentence.
- (5) If subsection (4) does not apply, the award—
 - (a) takes effect from the end of the initial sentence or (if later) the end of the appeal period (unless an appeal is brought before that time);
 - (b) if an appeal is brought before the end of the initial sentence or (if later) the end of the appeal period, takes effect from the end of the initial sentence or (if later) the beginning of the day when the appeal is abandoned or determined.
- (6) If an election is withdrawn after the end of the initial sentence, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—
 - (a) from the end of the appeal period (unless an appeal is brought within that period);
 - (b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.
- (7) If an award takes or resumes effect under subsection (4), (5)(a) or (6)(a) and an appeal is subsequently brought, the remainder of the award—
 - (a) ceases to have effect from the beginning of the day when the appeal is brought; and
 - (b) resumes effect from the beginning of the day when the appeal is abandoned or determined.
- (8) In this section “appeal period” means the period mentioned in section 141(2) for the bringing of an appeal against the award mentioned in subsection (1)(a) above.
- (9) Nothing in subsection (5)(b), (6)(b) or (7)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

Commencement Information

- I5** S. 291 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. 291 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

292 Commencement of suspended sentence activated by CO

- (1) This section applies where an officer makes an order (“the activation order”) under section 193(3) (activation of suspended award of service detention).

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- (2) If the activation order does not provide that the suspended sentence shall take effect from the end of another sentence, section 290(2) to (8) apply, but with the following modifications—
- (a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;
 - (b) the reference in subsection (2) to the day on which the award is made is to be read as to the day on which the activation order is made;
 - (c) any other reference to “the award” in subsections (2) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);
 - (d) the reference in subsection (7) to an appeal is to an appeal against the activation order; and
 - (e) in subsection (8)—
 - (i) the reference to the award is to be read as to the activation order; and
 - (ii) the reference to another punishment is to be read as to another order under section 193(3).
- (3) If the activation order provides that the suspended sentence shall take effect from the end of another sentence (“the initial sentence”), section 291(2) to (9) apply, but with the following modifications—
- (a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;
 - (b) any reference to “the initial sentence” is to the initial sentence as defined by this subsection;
 - (c) any reference to “the award” in subsections (4) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);
 - (d) the reference in subsection (8) to the award mentioned in section 291(1)(a) is to be read as to the activation order; and
 - (e) in subsection (9)—
 - (i) the reference to the award is to be read as to the activation order; and
 - (ii) the reference to another punishment is to be read as to another order under section 193(3).

Commencement Information

- I7** S. 292 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. 292 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Effect of custodial sentence or detention on rank or rate

^{F1}293 Effect on rank or rate of WOs and NCOs of custodial sentence or sentence of service detention

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Textual Amendments

- F1** S. 293 repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 13(2), 32(3), [Sch. 5](#) (with s. 13(3)); [S.I. 2012/669](#), art. 4(a)(f)(i) (with art. 6(1)(2))

294 Rank or rate of WOs and NCOs while in custody pursuant to custodial sentence etc

- (1) While a warrant officer or non-commissioned officer is in custody in pursuance of a sentence or order to which this section applies, he is for all purposes to be treated as being—
- (a) if he is a member of any of Her Majesty's air forces, of the highest rank he has held in that force as an airman;
 - (b) otherwise, of the rank or rate of able rate, marine or soldier (as the case may be).
- (2) The sentences to which this section applies are—
- (a) a custodial sentence passed in respect of a service offence;
 - (b) a sentence of service detention;
 - (c) a sentence of imprisonment, or a sentence corresponding to any other custodial sentence, passed by a civilian court in the British Islands.
- (3) The orders to which this section applies are—
- (a) an order under section 214 (detention for commission of offence during currency of order);
 - (b) an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements);
 - (c) an order made by a civilian court in the British Islands corresponding to an order within paragraph (a) or (b).

Commencement Information

- I9** S. 294 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. 294 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Effect of dismissal

295 Effect of sentence of dismissal

- (1) This section applies where a sentence of dismissal or dismissal with disgrace is passed on an offender.
- (2) If the offender is a commissioned officer, his commission is forfeit with effect from the beginning of the day on which the sentence is passed.
- (3) If the offender is not a commissioned officer, the competent authority must discharge him from the regular or reserve force of which he is a member.

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- (4) If the offender is a warrant officer or non-commissioned officer, his rank or rate is reduced from the beginning of the day on which the sentence is passed—
- (a) if he is a member of any of Her Majesty's air forces, to the highest rank he has held in that force as an airman;
 - (b) otherwise, to able rate, marine or soldier (as the case may be).
- (5) Nothing in subsection (3) requires the offender to be discharged before he is released from any sentence of service detention—
- (a) which is passed on him on the same occasion as the sentence mentioned in subsection (1); or
 - (b) to which he is subject when that sentence is passed.

Modifications etc. (not altering text)

- C2** S. 295 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, **3(2)** (with reg. 2(c))

Commencement Information

- I11** S. 295 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. 295 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

Service of sentence

296 Service detention

- (1) A person sentenced to service detention—
- (a) may be detained in service custody; but
 - (b) may not be detained in a prison.
- (2) Subsection (1)(a) does not apply if—
- (a) the sentence has not taken effect; or
 - (b) the sentence has ceased to have effect by virtue of section 290 or 291 and has not resumed effect.
- (3) A person detained in service custody in pursuance of a sentence of service detention is deemed to be in legal custody.

Commencement Information

- I13** S. 296 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. 296 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

297 Detention in service custody following passing of custodial sentence etc

- (1) Where—
- (a) a custodial sentence has been passed on a person in respect of a service offence, or

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- (b) an order under section 214 (detention for commission of offence during currency of order) has been made in respect of a person,
the person may be detained in service custody until he is committed to the appropriate establishment.
- (2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.
- (3) A person in service custody under subsection (1) is deemed to be in legal custody.

Commencement Information

- I15** S. 297 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. 297 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

298 Removal to England and Wales following passing of custodial sentence etc

- (1) If a person is outside England and Wales when—
- (a) a custodial sentence is passed on him in respect of a service offence, or
- (b) an order under section 214 (detention for commission of offence during currency of order) is made in respect of him,
he must as soon as practicable be removed to England and Wales.
- (2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.

Commencement Information

- I17** S. 298 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. 298 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

299 Duty to receive prisoners

The governor of a prison in England or Wales must—

- (a) receive any person who, in accordance with rules under section 300, has been sent to the prison; and
- (b) confine that person until he is lawfully discharged or delivered over.

Modifications etc. (not altering text)

- C3** S. 299 extended by [S.I. 1999/1736](#), Sch. 8 para. 6(3) (as amended (31.10.2009) by [The Armed Forces Act 2006 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2054\)](#), [art. 1\(2\)](#), [Sch. 1 para. 21\(6\)\(f\)](#))

Commencement Information

- I19** S. 299 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. 299 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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300 Service custody etc rules

- (1) The Secretary of State may make rules about service custody and the service of relevant sentences.
- (2) The rules may in particular contain provision about—
 - (a) the provision, classification, regulation and management of service custody premises;
 - (b) the appointment, powers and duties of inspectors and visitors of service custody premises and of persons who work at such premises;
 - (c) the classification, treatment, employment, discipline and control of persons in service custody;
 - (d) the places in which persons may be required to serve sentences of service detention;
 - (e) the removal of persons serving relevant sentences from one place or type of custody to another;
 - (f) the committal of persons under relevant sentences to the appropriate establishment;
 - (g) the circumstances in which persons serving relevant sentences who are unlawfully at large are to be treated as not being unlawfully at large;
 - (h) the release (including the temporary or early release) of persons serving sentences of service detention.
- (3) The rules may confer on any person—
 - (a) a power to use reasonable force where necessary for the purpose of carrying out a search of service custody premises or of a person in service custody;
 - (b) a power to seize and detain unauthorised property (as defined by the rules).
- (4) The rules may contain provision in respect of the award of additional days to a person guilty of a disciplinary offence created by the rules.
- (5) The rules may provide for the determination of any matter by a judge advocate, and may contain provision for and in connection with appeals against such determinations.
- (6) The rules may apply (with or without modifications), in relation to service custody premises and persons detained there, any of—
 - (a) sections 39 to 42 of the Prison Act 1952 (c. 52) (offences by persons other than prisoners etc);
 - (b) section 22(2) of the Criminal Justice Act 1961 (c. 39) (harbouring escaped prisoners etc).
- (7) In this section—

“relevant sentence” means—

 - (a) a custodial sentence passed in respect of a service offence;
 - (b) a sentence of service detention; or
 - (c) an order under section 214 (detention for commission of offence during currency of order);

“service custody premises” means premises under the control of the Secretary of State for the keeping of persons in service custody.

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Commencement Information

- I21** S. 300 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. 300 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

301 Duration of sentences: persons unlawfully at large or on temporary release

- (1) In calculating the period for which a person sentenced to service detention is liable to be detained, no account shall be taken of any period within subsection (3).
- (2) In calculating the period for which a person on whom a custodial sentence has been passed in respect of a service offence is liable to be detained, no account shall be taken of any period within subsection (3) occurring before the person is committed to the appropriate establishment.
- (3) The following periods are within this subsection—
 - (a) any period when the person is unlawfully at large;
 - (b) any period of temporary release on compassionate grounds (pursuant to rules under section 300).
- (4) A person who has been temporarily released pursuant to rules under section 300 is unlawfully at large for the purposes of this section if—
 - (a) he was released subject to complying with a condition, and he fails to comply with the condition; or
 - (b) he is at large after the end of the period for which he was released.
- (5) In this section—

[^{F2}“period when the person is unlawfully at large” means (subject to any rules made by virtue of section 300(2)(g))—

- (a) the period beginning with the day when the person becomes unlawfully at large and ending with the day when the person is taken back into custody (service or otherwise) or returns to the place where the sentence was being served; or
- (b) in relation to a person who is absent when sentenced, the period beginning with the day when the sentence is passed and ending with the day when the person is taken into custody (service or otherwise);]

“period of temporary release on compassionate grounds” means the period beginning with the day after the day when the person is released and ending with the day when he is required to return to custody (or, if earlier, the day when he returns to custody).

Textual Amendments

- F2** Words in s. 301(5) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 21](#); [S.I. 2012/669](#), [art. 4\(d\)](#)

Commencement Information

- I23** S. 301 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. 301 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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302 Remission of certain sentences on passing of custodial sentence etc

- (1) Any unserved part of any relevant sentence passed on a person is remitted by—
 - (a) the passing on him of a custodial sentence in respect of a service offence; or
 - (b) the passing on him by a civilian court in the British Islands of a sentence of imprisonment or a sentence corresponding to any other custodial sentence.
- (2) In subsection (1) “relevant sentence” means—
 - (a) a sentence of service detention;
 - (b) a service supervision and punishment order; or
 - (c) a minor punishment.
- (3) Subsection (1) applies in relation to—
 - (a) the making of an order under section 214 (detention for commission of offence during currency of order),
 - (b) the making of an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements), or
 - (c) the making by a civilian court in the British Islands of an order corresponding to an order within paragraph (a) or (b),
 as it applies in relation to the passing of a sentence mentioned in subsection (1)(a).
- (4) For the purposes of subsection (1), a suspended sentence of imprisonment or a sentence corresponding to such a sentence is to be treated as passed when an order that the sentence shall take effect is made.

Commencement Information

- I25** S. 302 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](#))
- I26** S. 302 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

303 Power of service policeman to arrest person unlawfully at large

- (1) A person who has been sentenced to service detention and who is unlawfully at large—
 - (a) may be arrested by a service policeman; 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.
- (3) A person may use reasonable force, if necessary, in the exercise of a power conferred by subsection (1).

Commencement Information

- I27** S. 303 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](#))
- I28** S. 303 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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Supplementary

304 Sentences passed by civilian courts

- (1) In this Part any reference to a custodial sentence passed in respect of a service offence excludes a sentence of imprisonment passed by a civilian court in respect of such an offence.
- (2) In each of sections 297(2) and 298(2) the reference to an order excludes an order made by a civilian court.

Commencement Information

- I29** S. 304 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](#))
- I30** S. 304 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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