



Armed Forces Act 2006

2006 CHAPTER 52

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

Modifications etc. (not altering text)

- C1** Pt. 8 applied (with modifications) (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(2\)](#)

CHAPTER 1

DEFINITION ETC OF CERTAIN SENTENCES

Service supervision and punishment orders

173 Service supervision and punishment orders

- (1) A service supervision and punishment order is an order that—
 - (a) imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe; and
 - (b) provides that one-sixth of his gross pay for that period is forfeit.
- (2) The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made.
- (3) The requirements that regulations under this section may prescribe include, in particular—
 - (a) requirements to perform activities of a prescribed description;
 - (b) requirements not to use entitlement to leave;and the descriptions of activities that may be prescribed include extra work and drill.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (4) A requirement included in regulations under this section may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may—
- (a) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when;
 - (b) provide for the delegation by the commanding officer of any of his functions under the regulations.
- (5) Regulations under this section may prescribe different requirements for different parts of the period of the order.
- (6) In this section “prescribed” means prescribed by regulations under this section.

Commencement Information

- I1** S. 173 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. 173 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

174 Review of service supervision and punishment orders

- (1) The commanding officer of a person subject to a service supervision and punishment order must, at times prescribed by regulations made by the Defence Council, consider whether the order should continue in force.
- (2) If on a review under subsection (1) the commanding officer decides that the order should not continue in force, he must order that it shall immediately cease to have effect.
- (3) Regulations made by the Defence Council may—
- (a) prescribe criteria to be applied by a commanding officer in deciding whether an order should continue in force;
 - (b) make provision about procedure in relation to orders under subsection (2).
- (4) Where a commanding officer makes an order under subsection (2), there remains forfeit one-sixth of the offender's gross pay for the period—
- (a) beginning with the day the service supervision and punishment order is made; and
 - (b) ending with the day before the date of the commanding officer's order.

Commencement Information

- I3** S. 174 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. 174 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status: Point in time view as at 30/06/2018.

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Service compensation orders

175 Service compensation orders

- (1) A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from—
 - (a) the offence of which he has been convicted; or
 - (b) where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration.
 - (2) A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor.
 - (3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of this section as having resulted from the offence, however and by whomever the damage was caused.
 - (4) No service compensation order may be made in respect of—
 - (a) bereavement;
 - (b) funeral expenses; or
 - (c) loss of any other kind suffered by the dependants of a person in consequence of his death.
 - (5) No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless—
 - (a) it is in respect of damage treated by subsection (3) as resulting from an offence of unlawfully obtaining any property; or
 - (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party.
 - (6) Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.
 - (7) For the purposes of subsection (5) a person is not uninsured in relation to the use of a vehicle if—
 - (a) the vehicle is in the public service of the Crown; or
 - (b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 (c. 52) or Article 90(2) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).
- [^{F1}(7A) The court must consider making a service compensation order in any case where it has power to do so.]
- (8) The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (9) References in this section to “the court” are references to the court or officer sentencing the offender.

Textual Amendments

- F1** S. 175(7A) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), **ss. 63(2)**, 151(1); S.I. 2012/2906, **art. 2(a)**

Commencement Information

- I5** S. 175 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. 175 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

176 Service compensation orders: appeals etc

- (1) A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (2) Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made.
- (3) Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Commencement Information

- I7** S. 176 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. 176 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

177 Review of service compensation orders

- (1) The appropriate court may, on the application of the person against whom a service compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) and (3).
- (2) The appropriate court may exercise a power conferred by subsection (1) only at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (3) The appropriate court may exercise a power conferred by subsection (1) only if it appears to the court—

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- (a) that the injury, loss or damage in respect of which the service compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order;
 - (b) in the case of a service compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
 - (c) that the person against whom the service compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.
- (4) In this section “the appropriate court” means—
- (a) if the service compensation order was awarded by an officer and subsection (5) applies, the commanding officer of the person against whom the service compensation order was made;
 - (b) in any other case, the Court Martial.
- (5) This subsection applies if the person against whom the service compensation order was made is for the time being—
- (a) subject to service law;
 - (b) a member of a volunteer reserve force; or
 - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

Commencement Information

- I9** S. 177 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. 177 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Service community orders (civilians and dismissed servicemen only)

178 Service community orders

- (1) A service community order is an order—
- (a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and
 - (b) specifying the local justice area in England and Wales, or (as the case may be) the locality in Scotland or the petty sessions district in Northern Ireland, where the offender resides or will reside.
- (2) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is subject to—
- (a) any restriction that section 177(1) imposes in relation to a particular requirement;
 - (b) the provisions of the 2003 Act mentioned in the paragraphs of section 177(2) of that Act; and
 - (c) section 218 of that Act.

Status: Point in time view as at 30/06/2018.

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- (3) In the following provisions of the 2003 Act “community order” includes a service community order under this Act—
 section [F2177(2A)] to (6) (provision about the making of community orders);
 section 178 (power to provide for court review of community orders);
 Chapter 4 of Part 12 (further provision about orders).
- (4) In those provisions in their application in relation to a service community order under this Act, “court” includes a relevant service court.
- (5) The following provisions of the 2003 Act do not apply in relation to a service community order under this Act—
 section 207(3)(a)(ii) (condition for mental health treatment requirement);
 section 219(3) (requirement to give copy of order to magistrates' court).
- (6) For the purposes of this section each of the following is a relevant service court—
 (a) the Court Martial;
 (b) the Service Civilian Court;
 (c) the Court Martial Appeal Court;
 (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

Textual Amendments

- F2** Word in s. 178(3) substituted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 32](#) (with [Sch. 16 para. 35](#)); [S.I. 2013/2981](#), art. 2(e)

Commencement Information

- I11** S. 178 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. 178 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

179 Periodic review etc of service community orders

- (1) In section 210 of the 2003 Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to a service community order under this Act—
 (a) “the court responsible for the order” means the Crown Court; and
 (b) subsections (2) to (4) shall be treated as omitted.
- (2) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if for subsections (3) to (5) there were substituted—
 “(3A) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may revoke the service community order and deal with him, for the offence in respect of which the order was made—
 (a) if that offence is an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment;
 (b) if it is not an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence not punishable with imprisonment.

Status: Point in time view as at 30/06/2018.

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- (3B) In dealing with the offender under subsection (3A) the court—
- (a) must take into account the extent to which the offender has complied with the requirements of the order, and
 - (b) where subsection (3A)(a) applies, may impose a sentence of imprisonment notwithstanding anything in section 152(2).
- (3C) A term of imprisonment or fine imposed under subsection (3A)—
- (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
 - (b) where the order was made by the Service Civilian Court, must not exceed—
 - (i) in the case of a term of imprisonment, 12 months;
 - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43)."
- (3) Where a sentence is passed under section 211(3A) of the 2003 Act as substituted by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

Commencement Information

- I13** S. 179 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. 179 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

180 Transfer of service community order to Scotland or Northern Ireland

- (1) In Schedule 9 to the 2003 Act (transfer of community orders to Scotland or Northern Ireland)—
- (a) “community order” includes a service community order under this Act; and
 - (b) in the provisions mentioned in subsection (2), “court” includes a relevant service court.
- (2) Those provisions are paragraphs 1(1) and (5), 2(1), 3(1) [^{F3}and (4A)], 4(1), 6, 9 (except 9(b)) and 10(c) and (d).
- (3) In its application to a service community order under this Act, that Schedule has effect as if—
- (a) the reference in paragraph 9(c) to the powers of the court making or amending the order were to the powers of the Crown Court;
 - (b) the reference in paragraph 11 to a community order made in England and Wales included a service community order made (anywhere) under this Act;
 - (c) the reference in paragraph 11 to the court which made the order or the court which last amended the order in England and Wales were to the Crown Court; and
 - (d) the reference in paragraph 15 to the court which made the order were to the Crown Court.
- (4) In this section “relevant service court” has the meaning given by section 178(6).

Status: Point in time view as at 30/06/2018.

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Textual Amendments

- F3** Words in [s. 180\(2\)](#) inserted (31.7.2014 only in relation to the South London local justice area for specified purposes until 31.3.2016, 1.4.2016 for specified local justice areas for all purposes other than application by the Armed Forces Act 2006 until 31.3.2018, 1.5.2017 in relation to specified local justice areas for specified purposes until the end of 30.4.2019) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 76\(11\)\(a\), 77, 151\(3\)](#); [S.I. 2014/1777](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (30.7.2015) by [S.I. 2015/1480](#), [arts. 1, 2](#) and (30.1.2016) by [S.I. 2016/1](#), [arts. 1, 2](#)); [S.I. 2016/286](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (31.3.2017) by [S.I. 2017/225](#), [arts. 1, 2](#)); [S.I. 2017/525](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#))

Commencement Information

- I15** S. 180 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. 180 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

181 Breach, revocation or amendment of service community order

Part 1 of Schedule 5 (application of Schedule 8 to the 2003 Act to service community orders) has effect.

Commencement Information

- I17** S. 181 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. 181 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Overseas community orders (civilians only)

182 Overseas community orders

- (1) An overseas community order is an order—
- (a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act) [^{F4}(but see subsection (1A) below)]; and
 - (b) not specifying anywhere as an area where the offender resides or will reside.
- [^{F5}(1A) The order may not include a requirement mentioned in section 177(1)(ga) (a foreign travel prohibition requirement) or (ja) (an alcohol abstinence and monitoring requirement).]
- (2) The order may include a particular requirement mentioned in section 177(1) of the 2003 Act only if the court is satisfied—
- (a) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and
 - (b) that arrangements will be made for the supervision of his compliance with the requirement.

Status: Point in time view as at 30/06/2018.

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- (3) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is also subject to—
- the provisions mentioned in the paragraphs of section 177(2) of that Act; and
 - Schedule 6 to this Act (special provisions for young offenders).
- [^{F6}(3A) In section 177(2A) and (2B) of the 2003 Act (community orders: punitive elements) “community order” includes an overseas community order if the offender is aged 18 or over when convicted of the offence in respect of which the overseas community order is made.]
- (4) Subject to section 183 below, in the following provisions of the 2003 Act “community order” includes an overseas order—
- section 177(5) [^{F7}, (5A), (5B)] and (6) (provision about the making of community orders);
 - Chapter 4 of Part 12 (further provision about orders).
- (5) In [^{F8}the provisions of the 2003 Act mentioned in subsections (3A) and (4)] in their application in relation to an overseas community order, “court” includes a relevant service court.
- (6) For the purposes of this section each of the following is a relevant service court—
- the Court Martial;
 - the Service Civilian Court;
 - the Court Martial Appeal Court;
 - the Supreme Court on an appeal brought from the Court Martial Appeal Court.

Textual Amendments

- F4** Words in s. 182(1)(a) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(2\)](#), 151(1); S.I. 2012/2906, art. 2(a)
- F5** S. 182(1A) inserted (3.12.2012 for specified purposes) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(3\)](#), 151(1); S.I. 2012/2906, art. 2(a)
- F6** S. 182(3A) inserted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 33\(2\)](#) (with [Sch. 16 para. 35](#)); S.I. 2013/2981, art. 2(e)
- F7** Words in s. 182(4) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 78\(4\)](#), 151(1); S.I. 2012/2906, art. 2(a)
- F8** Words in s. 182(5) substituted (11.12.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 33\(3\)](#) (with [Sch. 16 para. 35](#)); S.I. 2013/2981, art. 2(e)

Commencement Information

- I19** S. 182 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. 182 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

183 Overseas community orders: modifications of 2003 Act

- (1) The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to overseas community orders—

^{F9}
...

- section 207(3)(a)(ii) (condition for mental health treatment requirement);
- sections 210 and 211 (periodic review of drug rehabilitation requirement);

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section 215 (electronic monitoring requirement);
 section 216 (requirement to specify local justice area);
 section 218 (availability of arrangements in local justice area etc);
 [F10]section 220A(8) (duty to obtain permission before changing residence:
 definition of “the appropriate court”);]

[F11(1A) Section 198(1) (duties of responsible officer) has effect as if at the end there were inserted—

“(c) where appropriate, to take steps to enforce those requirements.”]

F12(2)

(3) The court by which an overseas community order is made must (as well as complying with so much as is applicable of section 219 of the 2003 Act) provide a copy of the order without delay—

- (a) to the offender's commanding officer;
- (b) if the offender is aged under 14, to his parent or guardian; and
- (c) if the order imposes an education requirement under Schedule 6 to this Act, to Service Children's Education.

[F13(3A) In section 220A of the 2003 Act (duty to obtain permission before changing residence), as it applies to an overseas community order, “the appropriate court” means the court that made the order.]

F14(4)

F15(5)

Textual Amendments

- F9** Words in s. 183(1) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(2\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F10** Words in s. 183(1) inserted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 8\(a\)](#) (with s. 23(4), [Sch. 7 para. 7](#)); S.I. 2015/40, art. 2(w)
- F11** S. 183(1A) inserted (1.6.2014) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(3\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F12** S. 183(2) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F13** S. 183(3A) inserted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 8\(b\)](#) (with s. 23(4), [Sch. 7 para. 7](#)); S.I. 2015/40, art. 2(w)
- F14** S. 183(4) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)
- F15** S. 183(5) omitted (1.6.2014) by virtue of [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 4\(4\)](#) (with s. 23(4)); S.I. 2014/1287, art. 2(e)

Commencement Information

- I21** S. 183 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. 183 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status: Point in time view as at 30/06/2018.

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184 Breach, revocation or amendment of overseas community order

Part 2 of Schedule 5 (application of Schedule 8 to the 2003 Act to overseas community orders) has effect.

Commencement Information

- I23** S. 184 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. 184 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

Conditional or absolute discharge (civilians only)

185 Conditional or absolute discharge

- (1) A conditional discharge is an order discharging the offender subject to the condition that he commits no service offence during a period specified in the order.
- (2) The period specified in the order (“the period of conditional discharge”) must—
 - (a) begin with the date of the order; and
 - (b) not exceed the maximum period for the time being specified in section 12(1)(b) of the Sentencing Act (maximum period of civilian conditional discharge).
- (3) An absolute discharge is an order discharging the offender absolutely.
- (4) Where by virtue of Schedule 3 a court sentences an offender by conditionally or absolutely discharging him, the sentence must not include any other punishment except a service compensation order.

Commencement Information

- I25** S. 185 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. 185 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

186 Commission of further offence by person conditionally discharged

- (1) This section applies where a person who has been conditionally discharged by virtue of Schedule 3 is convicted by the Court Martial or the Service Civilian Court (“the convicting court”) of an offence committed during the period of conditional discharge.
- (2) If the convicting court is the Court Martial, it may deal with him for the offence for which he was conditionally discharged in any way in which the court that conditionally discharged him could deal with him if it had just convicted him of that offence.
- (3) If the convicting court is the Service Civilian Court, it may deal with him for the offence for which he was conditionally discharged in any way in which it could deal with him if it had just convicted him of that offence.
- (4) If a person conditionally discharged is subsequently dealt with under this section for the offence in respect of which the order conditionally discharging him was made, that order ceases to have effect.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (5) A person who—
- (a) is sentenced by a court under subsection (2) or (3) for an offence for which he was conditionally discharged, and
 - (b) was not convicted of that offence by that court,
- is to be treated, for the purpose of enabling him to appeal against the sentence under section 285 below or the Court Martial Appeals Act 1968 (c. 20), as if he had been so convicted.
- (6) Where subsection (3) applies and the offence for which the person was conditionally discharged is not one that the Service Civilian Court would have jurisdiction to try, it shall be assumed for the purposes of that subsection that it could have convicted him of the offence.

Commencement Information

- I27** S. 186 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. 186 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

187 Effect of discharge

- (1) A conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 186.
- (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently dealt with under section 186 for that offence, subsection (1) ceases to apply to the conviction.
- (3) Without prejudice to subsections (1) and (2), a conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made is in any event to be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability on convicted persons; or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) In subsection (3)—
- “enactment” includes an enactment contained in an Act of the Scottish Parliament, in Northern Ireland legislation or in a local Act;
- “instrument” means an instrument having effect by virtue of an Act or Northern Ireland legislation (and “Act” here includes an Act of the Scottish Parliament).
- (5) Subsections (1) to (4) do not affect—
- (a) any appeal, whether against conviction or otherwise;
 - (b) any right of the offender to rely on his conviction in bar of any subsequent proceedings for the same offence; or
 - (c) the restoration of any property in consequence of the conviction.

Status: Point in time view as at 30/06/2018.

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Modifications etc. (not altering text)

- C2** S. 187(1) excluded (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 158(3)(d)**, 182(5) (with s. 180); [S.I. 2010/816](#), art. 2, Sch. para. 11

Commencement Information

- I29** S. 187 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. 187 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

CHAPTER 2

CONSECUTIVE SENTENCES

188 Consecutive custodial sentences

- (1) This section applies where a court passes a qualifying custodial sentence on a person in respect of a service offence.
- (2) In this section “qualifying custodial sentence” means—
 - (a) a determinate sentence of imprisonment;
 - (b) a determinate sentence of detention under section 209; or
 - (c) a sentence of detention under section [F16226B] of the 2003 Act passed as a result of section [F17221A] of this Act.
- (3) The court may direct—
 - (a) that the sentence shall take effect from the end of any other qualifying custodial sentence that the court passes on the person on the same occasion;
 - (b) that the sentence shall take effect from the end of any sentence to which this paragraph applies that was passed on the person on a previous occasion; or
 - (c) that the sentence shall take effect from the date when the person is (or but for the direction would be) released from custody under any sentence to which this paragraph applies that was passed on him on a previous occasion.
- (4) Subsection (3)(b) applies to any of the following sentences, other than one from which the person has already been released early under Chapter 6 of Part 12 of the 2003 Act [F18] or under Part 2 of the Criminal Justice Act 1991—
 - (a) a determinate sentence of imprisonment passed in respect of a service offence or by a civilian court in England and Wales;
 - (b) a determinate sentence of detention under section 209 of this Act or section 91 of the Sentencing Act;
 - (c) a sentence of detention under section [F19226B or] 228 of the 2003 Act (whether or not passed as a result of section [F20221A or] 222 of this Act).
- (5) Subsection (3)(c) applies to any of the following sentences (wherever passed)—
 - (a) a determinate sentence of imprisonment not falling within paragraph (a) of subsection (4);
 - (b) a sentence not falling within paragraph (b) or (c) of subsection (4) but corresponding to a sentence so falling.

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(6) In subsection (1) “court” does not include a civilian court.

Textual Amendments

- F16** Word in s. 188(2)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 23\(2\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F17** Word in s. 188(2)(c) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 23\(2\)\(b\)](#); S.I. 2012/2906, art. 2(t)
- F18** Words in s. 188(4) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 11](#); S.I. 2009/1028, art. 2(b)
- F19** Words in s. 188(4)(c) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 23\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)
- F20** Words in s. 188(4)(c) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 23\(3\)\(b\)](#); S.I. 2012/2906, art. 2(t)

Commencement Information

- I31** S. 188 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](#))
- I32** S. 188 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

189 Consecutive sentences of service detention

- (1) A court which passes a sentence of service detention on a person may direct that the sentence shall take effect from the end of any other sentence of service detention—
- (a) that has been passed on him on a previous occasion; or
 - (b) that the court passes on him on the same occasion.
- (2) In subsection (1) “court” does not include the Summary Appeal Court.
- (3) Where an officer or the Summary Appeal Court awards a person a term of service detention, the officer or court may direct that the award shall take effect from the end of any other sentence of service detention that has been passed on him on a previous occasion.
- (4) This section is subject to section 244 (limit on combined term of sentences of service detention).

Commencement Information

- I33** S. 189 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](#))
- I34** S. 189 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status: Point in time view as at 30/06/2018.

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CHAPTER 3

SUSPENDED SENTENCE OF SERVICE DETENTION

190 Suspension of sentence of service detention

- (1) A court which, or officer who, passes a sentence of service detention may order that the sentence shall not have effect unless—
 - (a) during a period specified in the order (“the operational period”) the offender commits another service offence or [^{F21}an offence under the law of any part of the British Islands]; and
 - (b) a court or officer orders under section 191 or 193 that the sentence shall take effect.
- (2) The operational period must be a period of at least three months and not more than twelve months beginning with the date of the order made under this section.
- (3) In this Act “suspended sentence of service detention” means a sentence to which an order under this section relates.

Textual Amendments

F21 Words in s. 190(1)(a) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 14; S.I. 2012/669, art. 4\(d\)](#)

Commencement Information

I35 S. 190 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](#))

I36 S. 190 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

191 Activation by Court Martial of suspended sentence of service detention

- (1) The Court Martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of service detention passed on him.
- (2) The Court Martial may also make an order under subsection (3) if—
 - (a) the Court Martial has passed a suspended sentence of service detention on a person;
 - (b) the person has been convicted of another service offence, or [^{F22}an offence under the law of any part of the British Islands], committed during the operational period of the suspended sentence; and
 - (c) the person appears or is brought before the Court Martial following the issue of a summons or warrant under subsection (6).
- (3) An order under this subsection is an order—
 - (a) that the suspended sentence shall take effect with the original term unaltered; or
 - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—

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- (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.
- (5) Where—
- (a) by virtue of subsection (2) the Court Martial orders that a suspended sentence shall take effect, and
 - (b) the conviction mentioned in subsection (2)(b) is a conviction by an officer or the Summary Appeal Court,
- any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.
- (6) If it appears to the Court Martial—
- (a) that subsection (2)(a) and (b) apply, and
 - (b) that the offender has not been dealt with in respect of the suspended sentence,
- the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.
- (7) In subsection (2)(a) the reference to the Court Martial includes—
- (a) the Court Martial Appeal Court; and
 - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court.
- (8) This section is subject to section 244 (limit on combined term of sentences of service detention).

Textual Amendments

F22 Words in s. 191(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 14](#); [S.I. 2012/669](#), art. 4(d)

Commencement Information

I37 S. 191 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](#))

I38 S. 191 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

192 Activation by Court Martial: appeals

- (1) This section applies where an order under section 191 is made.
- (2) For the purposes of the Court Martial Appeals Act 1968 (c. 20)—
 - (a) the order is to be treated as a sentence passed on the offender by the Court Martial for the offence for which the suspended sentence was passed; and
 - (b) if the offender was not convicted of that offence by the Court Martial, he is to be treated for the purpose of enabling him to appeal against the order as if he had been so convicted.
- (3) For the purposes of any appeal against the order references in section 16A of that Act to passing a sentence include making an order.

Status: Point in time view as at 30/06/2018.

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- (4) 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.

Commencement Information

- I39** S. 192 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](#))
- I40** S. 192 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

193 Activation by CO of suspended sentence of service detention

- (1) This section applies in relation to a suspended sentence of service detention passed on an offender by an officer or the Summary Appeal Court.
- (2) If—
- (a) an officer records a finding that a charge against the offender in respect of an offence committed during the operational period of the suspended sentence is proved, or
 - (b) the offender is convicted of [^{F23}an offence under the law of any part of the British Islands] which was committed during that operational period, and subsequently appears before his commanding officer,
- the officer may (subject to section 194) make an order under subsection (3).
- (3) An order under this subsection is an order—
- (a) that the suspended sentence shall take effect with the original term unaltered; or
 - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
- (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the offender on a previous occasion or which the officer passes on the offender on the same occasion as he makes the order.
- (5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to section 292 (postponement of commencement of suspended sentence on activation by CO).

Textual Amendments

- F23** Words in s. 193(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 14](#); [S.I. 2012/669](#), [art. 4\(d\)](#)

Commencement Information

- I41** S. 193 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](#))
- I42** S. 193 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status: Point in time view as at 30/06/2018.

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194 Activation by CO: maximum term

- (1) The term of a suspended sentence as it takes effect by virtue of an order under section 193 must not exceed 28 days unless the officer has extended powers for the purposes of this section.
- (2) If—
 - (a) section 193(2)(a) applies and the officer awards a term of service detention in respect of the offence mentioned there (“the new sentence”), and
 - (b) the officer makes an order under section 193 and the order provides for the suspended sentence to take effect from the end of the new sentence,
 the aggregate of the terms of the two sentences must not exceed 28 days or, if the officer has extended powers for the purposes of this section, 90 days.
- (3) Nothing in subsection (2) affects section 133 (which determines the maximum length etc of the new sentence).
- (4) An officer has extended powers for the purposes of this section if he has, [^{F24}within the relevant time (defined by section 194A)] —
 - (a) applied to higher authority for extended powers for the purposes of this section; and
 - (b) been notified by higher authority that his application has been granted.
- (5) An officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.
- ^{F25}(6)
- (7) Section 193 is subject to section 244 (limit on combined term of sentences of service detention).

Textual Amendments

- F24** Words in s. 194(4) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 15\(2\)](#); [S.I. 2012/669](#), art. 4(d)
- F25** S. 194(6) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 15\(3\)](#), [Sch. 5](#); [S.I. 2012/669](#), art. 4(d)(f)(i)

Commencement Information

- I43** S. 194 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](#))
- I44** S. 194 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F26}194A Extended powers of activation: time for obtaining

- (1) In section 194(4) “within the relevant time” means—
 - (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
 - (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.
- (2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the hearing—

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- (a) a charge is amended under section 123(2)(a);
 - (b) a charge is substituted for another charge under section 123(2)(b); or
 - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
 - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of section 194(4) as made within the relevant time.]

Textual Amendments

F26 S. 194A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 16](#); [S.I. 2012/669](#), art. 4(d)

195 Suspended sentences: powers of SAC

- (1) For the purposes of Chapters 2 and 3 of Part 6 (appeals and reviews), an order under section 193 is to be treated as a punishment awarded for the offence for which the suspended sentence was awarded.
- (2) Where an order under section 193 was made by virtue of a finding within section 193(2)(a)—
 - (a) any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of it is for the purposes of Chapter 2 of Part 6 to be treated as also being an appeal or application for leave to appeal against the order;
 - (b) any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment.
- (3) Subsections (4) to (7) apply on an appeal to the Summary Appeal Court in a case in which section 193(2)(a) applied (power of CO to activate suspended sentence following finding of guilt).
- (4) If the officer made an order under section 193, the Summary Appeal Court may (as an alternative to confirming the order)—
 - (a) quash the order; or
 - (b) make, in substitution for the order, any order under that section that the officer could have made.
- (5) If the officer did not make an order under that section, the Summary Appeal Court may make any order under that section that the officer could have made.
- (6) Section 147(3) has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if paragraph (b)(ii) were omitted.
- (7) But the court may not exercise its powers under section 147(3) or subsection (4) or (5) above in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer.

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- (8) On an appeal against an order under section 193 made by virtue of section 193(2)(b), the Summary Appeal Court may (as an alternative to confirming the order)—
- (a) quash the order; or
 - (b) make, in substitution for the order, any order under section 193 that—
 - (i) the officer could have made; and
 - (ii) is no more severe than the order appealed against.
- (9) In determining in any case—
- (a) whether to substitute an order under section 193, or
 - (b) the terms of any such substituted order,
- the Summary Appeal Court must take account of any period of the suspended sentence that the appellants served.

Commencement Information

- I45** S. 195 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](#))
- I46** S. 195 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

CHAPTER 4

IMPRISONMENT FOR TERM OF UNDER 12 MONTHS

Application of provisions in the 2003 Act

196 Term of sentence etc

- (1) In the following provisions of the 2003 Act, “court” includes a relevant service court—
- ^{F27}
 ...
 sections 189 and 190 (suspended sentences of imprisonment);
 Chapter 4 of Part 12 (further provision about orders) in its application in relation to a ^{F28}...suspended sentence order.
- (2) For the purposes of this Chapter, each of the following is a relevant service court—
- (a) the Court Martial;
 - (b) the Service Civilian Court;
 - (c) the Court Martial Appeal Court;
 - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

Textual Amendments

- F27** Words in s. 196 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(2\)\(a\)](#); [S.I. 2012/2906](#), art. 2(h)
- F28** Words in s. 196 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(2\)\(b\)](#); [S.I. 2012/2906](#), art. 2(h)

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Commencement Information

- I47** S. 196 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](#))
- I48** S. 196 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Imprisonment with or without “custody plus” order

F29 197 Imprisonment with or without a custody plus order

.....

Textual Amendments

- F29** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); [S.I. 2012/2906](#), art. 2(h)

F29 198 Transfer to Scotland or Northern Ireland of custody plus order

.....

Textual Amendments

- F29** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); [S.I. 2012/2906](#), art. 2(h)

F29 199 Revocation and amendment of custody plus orders

.....

Textual Amendments

- F29** Ss. 197-199 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 41\(3\)](#); [S.I. 2012/2906](#), art. 2(h)

Suspended sentences of imprisonment

200 Suspended sentence orders ^{F30}...

- F31**(1)
- F31**(2)
- F31**(3)
- F31**(4)

(5) In section 189(1) of the 2003 Act (suspended sentence orders) as it applies to a relevant service court, paragraph [^{F32}(a)] (commission of UK offence in operational period of

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order) has effect as if for the words from “commits” to [^{F33} “imprisonment),”] there were substituted “commits—

[^{F34}(i)] another service offence (within the meaning of the Armed Forces Act 2006), or

[^{F34}(ii)] an offence [^{F35}under the law of any part of the British Islands],”.

(6) A relevant service court may not specify in a suspended sentence order with community requirements a requirement to be complied with outside the United Kingdom.

[^{F36}(7) In this Chapter “a suspended sentence order with community requirements” means a suspended sentence order that imposes one or more community requirements within the meaning of section 189(7)(c) of the 2003 Act.]

Textual Amendments

- F30** Words in s. 200 heading omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(2\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F31** S. 200(1)-(4) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(3\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F32** Word in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(4\)\(a\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F33** Words in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(4\)\(b\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F34** Word in s. 200(5) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(4\)\(c\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F35** Words in s. 200(5)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 3 para. 17](#); S.I. 2012/669, art. 4(d)
- F36** S. 200(7) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 15\(5\)](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

Commencement Information

- I49** S. 200 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](#))
- I50** S. 200 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

^{F37}201 Order without community requirements: provisions not applying

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Textual Amendments

- F37** S. 201 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 9 para. 16](#) (with s. 68(7)); S.I. 2012/2906, art. 2(g)

202 Order with community requirements: disapplication of certain provisions

The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to a suspended sentence order with community requirements made by a relevant service court—

section 207(3)(a)(ii) (condition for mental health treatment requirement);

Status: Point in time view as at 30/06/2018.

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section 219(3) (requirement to give copy of order to magistrates' court).

Commencement Information

- I51** S. 202 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](#))
- I52** S. 202 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

203 Review of order with community requirements

- (1) In section 191 of the 2003 Act (provision for periodic reviews of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
- “the court responsible for the order” means the Crown Court; and
 - subsections (3) to (5) shall be treated as omitted.
- (2) In section 210 of that Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to such an order—
- “the court responsible for the order” means the Crown Court; and
 - subsections (2) to (4) shall be treated as omitted.
- (3) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if—
- in subsection (3)(b) for the words from “he could have been dealt with” to the end there were substituted “ it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment ”;
 - in subsection (4)(b) the words in brackets were omitted; and
 - after subsection (4) there were inserted—
- “(4A) A term of imprisonment or fine imposed under subsection (3)(b)—
- must not exceed the maximum permitted for the offence in respect of which the order was made, and
 - where the order was made by the Service Civilian Court, must not exceed—
- in the case of a term of imprisonment, 12 months;
 - in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”
- (4) Where a sentence is passed under section 211(3)(b) of the 2003 Act as modified by subsection (3) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

Commencement Information

- I53** S. 203 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](#))
- I54** S. 203 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status: Point in time view as at 30/06/2018.

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204 Transfer to Scotland or Northern Ireland of order with community requirements

- (1) In paragraphs 1(1) and 6(1) of Schedule 13 to the 2003 Act (court making suspended sentence order with community requirements may require compliance in Scotland or Northern Ireland), “court” includes a relevant service court.
- (2) In paragraphs 1(5) and (6), 3, [^{F38}6(5)][^{F38}6(4A) and (5)] and 8 of that Schedule (ancillary provisions), “court” (where the context allows) includes a relevant service court.
- (3) Where Part 3 of that Schedule applies to a suspended sentence order made by a relevant service court—
 - (a) references in that Part to “the original court” are to be read as references to the Crown Court; and
 - (b) the following shall be treated as omitted—
 - (i) the definition of “original court” in paragraph 11;
 - (ii) paragraph 12(3).
- (4) Paragraph 20(6)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a suspended sentence order made by a relevant service court.

Textual Amendments

F38 Words in s. 204(2) substituted (31.7.2014 only in relation to the South London local justice area for specified purposes until 31.3.2016, 1.4.2016 for specified local justice areas for all purposes other than application by the Armed Forces Act 2006 until 31.3.2018, 1.5.2017 in relation to specified local justice areas for specified purposes until the end of 30.4.2019, 19.5.2020 in so far as not already in force) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 76\(11\)\(b\)](#), [77](#), [151\(3\)](#); [S.I. 2014/1777](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (30.7.2015) by [S.I. 2015/1480](#), [arts. 1, 2](#) and (30.1.2016) by [S.I. 2016/1](#), [arts. 1, 2](#)); [S.I. 2016/286](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)) (as amended (31.3.2017) by [S.I. 2017/225](#), [arts. 1, 2](#)); [S.I. 2017/525](#), [arts. 2, 3, 4\(1\)](#) (with [art. 4\(2\)](#)); [S.I. 2020/478](#), [art. 2](#)

Commencement Information

- I55** S. 204 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](#))
- I56** S. 204 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

205 Amendment of order with community requirements

- (1) In Part 3 of Schedule 12 to the 2003 Act (amendment of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
 - (a) “the appropriate court” means the Crown Court;
 - (b) the reference in paragraph 17 to the court responsible for the order is to be read as a reference to the Crown Court; and
 - (c) paragraphs 13(3), [^{F39}14(4)], 15(6), 16(4), 18(2) and 22(1)(b)(ii) and (d) and (2) shall be treated as omitted.
- (2) Paragraph 15 of that Schedule has effect in its application to such an order as if—

Status: Point in time view as at 30/06/2018.

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- (a) in sub-paragraph (4)(b) for the words “of the offence” there were substituted “of an offence punishable with imprisonment”; and
 - (b) after sub-paragraph (5) there were inserted—
 - “(5A) A term of imprisonment or fine imposed under sub-paragraph (4)(b)
—
 - (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
 - (b) where the order was made by the Service Civilian Court, must not exceed—
 - (i) in the case of a term of imprisonment, 12 months;
 - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”
- (3) Paragraphs 2(b) and 3 of that Schedule shall be treated as omitted for the purposes of Part 3 of that Schedule as it applies to such an order.
- (4) Where a sentence is passed under paragraph 15(4)(b) of Schedule 12 to the 2003 Act as modified by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

Textual Amendments

F39 Word in s. 205(1)(c) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\)](#), s. 22(1), [Sch. 6 para. 9](#) (with s. 23(4), [Sch. 7 para. 7](#)); [S.I. 2015/40](#), art. 2(w)

Commencement Information

I57 S. 205 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](#))

I58 S. 205 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

206 Suspended sentence: further conviction or breach of community requirement

Schedule 7 (modification of Schedule 12 to the 2003 Act in relation to suspended sentences passed by relevant service courts) has effect.

Commencement Information

I59 S. 206 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](#))

I60 S. 206 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Supplementary

207 Definitions for purposes of Chapter

In this Chapter—

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Status: Point in time view as at 30/06/2018.

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“relevant service court” has the meaning given by section 196(2) of this Act;
“suspended sentence order” means an order under section 189(1) of the 2003 Act;
“suspended sentence order with community requirements” has the meaning given by section [F41 200(7)] of this Act;
F42
...

Textual Amendments

- F40** Words in s. 207 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 10 para. 41(4)**; S.I. 2012/2906, art. 2(h)
- F41** Word in s. 207 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 9 para. 17(a)** (with s. 68(7)); S.I. 2012/2906, art. 2(g)
- F42** Words in s. 207 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 9 para. 17(b)** (with s. 68(7)); S.I. 2012/2906, art. 2(g)

Commencement Information

- I61** S. 207 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](#))
- I62** S. 207 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

CHAPTER 5

YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS

Prohibition on imposing imprisonment on persons under 18

208 Prohibition on imposing imprisonment on persons under 18

A person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

Commencement Information

- I63** S. 208 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](#))
- I64** S. 208 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

Detention for certain serious offences

209 Offenders under 18 convicted of certain serious offences: power to detain for specified period

- (1) Subsection (5) (power to pass sentence of detention) applies where—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) the case is within any of subsections (2) to (4).

Status: Point in time view as at 30/06/2018.

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- (2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—
 - (a) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and
 - (b) not an offence the sentence for which is fixed by law.
- (3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—
 - (a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);
 - (b) section 13 of that Act (child sex offences committed by children or young persons);
 - (c) section 25 of that Act (sexual activity with a child family member); or
 - (d) section 26 of that Act (inciting a child family member to engage in sexual activity).
- (4) The case is within this subsection if it falls within section 227(1) (certain firearms offences).
- (5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.
- (6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence.
- (7) Subsections (5) and (6) are subject to (in particular)—
 - [^{F43}[^{F44}sections 224A and 226(2)] of the 2003 Act (as applied by [^{F45}sections 218A and 221(2)] of this Act) and section 227 of this Act] (required custodial sentences for certain offences); and
 - sections 260 and 261 (general restrictions on custodial sentences).

Textual Amendments

- F43** Words in s. 209(7) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 12](#); S.I. 2009/1028, [art. 2\(b\)](#)
- F44** Words in s. 209(7) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 24\(a\)](#); S.I. 2012/2906, [art. 2\(t\)](#)
- F45** Words in s. 209(7) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 24\(b\)](#); S.I. 2012/2906, [art. 2\(t\)](#)

Commencement Information

- I65** S. 209 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](#))
- I66** S. 209 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

Status: Point in time view as at 30/06/2018.

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210 Detention under section 209: place of detention etc

- (1) A person sentenced to be detained under section 209 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

Commencement Information

- I67** S. 210 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](#))
- I68** S. 210 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Detention and training orders

211 Offenders under 18: detention and training orders

- (1) Where—
 - (a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and
 - (b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),

the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.
- (2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.
- (3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—
 - (a) it is of the opinion mentioned in subsection (2);
 - (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
 - (c) the offence was committed on or after such date as may be appointed under section 100(2)(b)(ii) of the Sentencing Act (appointed day for purposes of orders under that Act).
- (4) Subsection (1) is also subject to sections 209, 218, [^{F46}218A,] 221, [^{F47}221A] and 227 (other custodial sentences that may or must be imposed in particular cases).

Textual Amendments

- F46** Word in s. 211(4) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 25\(a\)](#); [S.I. 2012/2906](#), art. 2(t)
- F47** Word in s. 211(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 25\(b\)](#); [S.I. 2012/2906](#), art. 2(t)

Status: Point in time view as at 30/06/2018.

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Commencement Information

- I69** S. 211 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](#))
- I70** S. 211 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

212 Term of detention and training order: general

- (1) The term of an order made under section 211 in respect of an offence—
- shall be 4, 6, 8, 10, 12, 18 or 24 months; and
 - may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.
- (2) Where—
- the offence is an offence under section 42 (criminal conduct),
 - the corresponding offence under the law of England and Wales is under that law a summary offence, and
 - the maximum term of imprisonment with which that offence is punishable in the case of a person aged 18 or over is 51 weeks,
- the term of the order may not exceed 6 months.

Commencement Information

- I71** S. 212 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](#))
- I72** S. 212(1) in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

213 Application of provisions relating to civilian detention and training orders

- (1) In the following provisions of the Sentencing Act references to a detention and training order include an order under section 211 of this Act—
- section 101(3) to (10) and (13) (power to impose consecutive terms, duty of court to take account of remands, etc);
 - sections 102 to 105, ^[F48]106A to 107] (period of detention and training, period of supervision, breach of supervision requirements, etc).
- (2) In sections 101(3) to (10) and (13) ^[F49], 104B(1) ^[F50], 106(6) and 106A of the Sentencing Act “court” includes a relevant service court (within the meaning given by section 196(2)).
- (3) In section 101(8) and (9) of the Sentencing Act in their application to an order under section 211 of this Act, any reference to an offender's being “remanded in custody” is a reference to his being kept in service custody; and section 101(11) and (12) of that Act do not apply in relation to such an order.
- ^[F51](4) Subsection (5) applies where an order under section 104(3) (further period of detention or supervision) of the Sentencing Act is made against an offender for breach of supervision requirements—
- during a period of supervision under an order under section 211 of this Act,
 - during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or

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- (c) during one of a series of further periods of supervision—
 - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
 - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).
- (5) In the application of sections 104A and 104B of the Sentencing Act in relation to the offender, references to section 105 of that Act include section 214 of this Act.
- (6) In subsection (4)—
 - “further period of supervision” means a period of supervision imposed under section 104(3)(aa) of the Sentencing Act;
 - “supervision requirements” means requirements under section 103(6)(b) of that Act.
- (7) In section 104B of the Sentencing Act, references to a custodial sentence within the meaning of that Act include a custodial sentence within the meaning of this Act.]

Textual Amendments

- F48** Words in s. 213(1) substituted (1.2.2015) by [Offender Rehabilitation Act 2014 \(c. 11\), s. 22\(1\), Sch. 6 para. 2](#) (with s. 23(4), [Sch. 7 para. 2](#)); [S.I. 2015/40, art. 2\(w\)](#)
- F49** Word in s. 213(2) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 80\(9\)\(a\), 151\(1\)](#) (with s. 80(10)(11)); [S.I. 2012/2906, art. 2\(a\)](#)
- F50** Word in s. 213(2) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 18\(b\)](#); [S.I. 2012/669, art. 4\(d\)](#)
- F51** S. 213(4)-(7) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), ss. 80\(9\)\(b\), 151\(1\)](#) (with s. 80(10)(11)); [S.I. 2012/2906, art. 2\(a\)](#)

Commencement Information

- I73** S. 213 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](#))
- I74** S. 213 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

214 Offences during currency of detention and training order

- (1) This section applies to a person in respect of whom an order under section 211 has been made if—
 - (a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) (“the new offence”); and
 - (b) whether before or after that date, he is convicted of the new offence.
- (2) An offence is within this subsection if it is—
 - (a) a service offence which is punishable with imprisonment; or
 - (b) [^{F52}an offence under the law of any part of the British Islands] which is so punishable.
- (3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such [^{F53}youth detention accommodation] as the Secretary of State may determine for the whole or any part of the period which—
 - (a) begins with the date of the court's order; and

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- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1).
- (4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).
- (5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).
- (6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—
- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
- (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) If it appears to the Court Martial—
- (a) that this section applies to a person,
- (b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and
- (c) that no order under subsection (3) or under section 105 of the Sentencing Act has been made in respect of the new offence,
- the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.
- (8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

Textual Amendments

F52 Words in s. 214(2)(b) substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\), s. 32\(3\), Sch. 3 para. 19](#); [S.I. 2012/669, art. 4\(d\)](#)

F53 Words in s. 214(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\), s. 41\(1\), Sch. 3 para. 17\(2\)](#); [S.I. 2007/3001, art. 2\(1\)\(r\)](#)

Commencement Information

I75 S. 214 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](#))

I76 S. 214 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

215 Section 214: definitions etc

- (1) Section 101(13) of the Sentencing Act (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.
- (2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two

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or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.

- (3) In section 214 [^{F54}“youth detention accommodation”] has the meaning given by section 107 of the Sentencing Act.

Textual Amendments

F54 Words in s. 215(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\), s. 41\(1\), Sch. 3 para. 17\(3\)](#); [S.I. 2007/3001, art. 2\(1\)\(r\)](#)

Commencement Information

I77 S. 215 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](#))

I78 S. 215 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

216 Appeals against orders under section 214

- (1) This section applies where an order under section 214 (“the relevant order”) is made.
- (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 relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and
 - (b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.
- (3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.

Commencement Information

I79 S. 216 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](#))

I80 S. 216 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

Status: Point in time view as at 30/06/2018.

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CHAPTER 6

MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

Mandatory sentences

217 Mandatory life imprisonment

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
 - (a) murder; or
 - (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- (2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

Commencement Information

- I81** S. 217 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](#))
- I82** S. 217 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

- (1) This section applies if—
 - (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - (b) the corresponding offence under the law of England and Wales is under that law—
 - (i) murder; or
 - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
 - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.
- (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

Status: Point in time view as at 30/06/2018.

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Commencement Information

- I83** S. 218 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](#))
- I84** S. 218 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F55}Required or discretionary sentences for particular offences]

Textual Amendments

- F55** S. 219 cross-heading substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. [153\(7\)](#), [Sch. 25 para. 13\(4\)](#); [S.I. 2009/1028](#), [art. 2\(b\)](#)

[^{F56}218A] Life sentence for second listed offence

- (1) This section applies where—
 - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct);
 - (b) the corresponding offence under the law of England and Wales is an offence listed in Part 1 of Schedule 15B to the 2003 Act;
 - (c) the offence was committed after this section comes into force; and
 - (d) the sentence condition and the previous offence condition are met.
- (2) Section 224A(2) of the 2003 Act applies in relation to the offender.
- (3) In section 224A(2)(a) of that Act as applied by subsection (2)—
 - (a) the reference to “the offence” is to be read as a reference to the offence under section 42; and
 - (b) the reference to “the previous offence referred to in subsection (4)” is to be read as a reference to the previous offence referred to in subsection (5) of this section.
- (4) The sentence condition is that, but for this section, the Court Martial would, in compliance with sections 260(2) and 261(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A of the 2003 Act as applied by section 219A of this Act.
- (5) The previous offence condition is that—
 - (a) at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act (“the previous offence”); and
 - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section).
- (7) A sentence required to be imposed by section 224A(2) of that Act as a result of this section is not to be regarded as a sentence fixed by law.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

[Where an offence is found to have been committed over a period of two or more days,^{F57}(8) or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(c) and (5)(a) to have been committed on the last of those days.]]

Textual Amendments

- F56** S. 218A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 2](#); S.I. 2012/2906, art. 2(t)
- F57** S. 218A(8) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 5\(3\)](#), 95(1); S.I. 2015/778, art. 3, [Sch. 1 para. 5](#)

Modifications etc. (not altering text)

- C3** S. 218A modified by S.I. 2009/1059, Sch. 2 para. 9A(2) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(2\)](#))

219 [F58 Life sentence for certain dangerous] offenders aged 18 or over

- (1) This section applies where [F59—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct),
 - (b) the corresponding offence under the law of England and Wales is a serious offence, and
 - (c) the court is of the required opinion (defined by section 223).]

[F60(2) Section 225(2) of the 2003 Act applies in relation to the offender.]

- (3) In section 225(2) [F61... of the 2003 Act (as applied by subsection (2)), references to “the offence” are to be read as references to the offence under section 42 of this Act.
- (4) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

Textual Amendments

- F58** Words in s. 219 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 4](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F59** Words in s. 219(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 13\(2\)](#); S.I. 2009/1028, art. 2(b)
- F60** S. 219(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 3\(2\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F61** Words in s. 219(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 3\(3\)](#); S.I. 2012/2906, art. 2(t) (with art. 6)

Commencement Information

- I85** S. 219 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)
- I86** S. 219 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

Status: Point in time view as at 30/06/2018.

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[^{F62}219A Extended sentence for certain violent or sexual offenders aged 18 or over

- (1) This section applies where—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
 - (b) the corresponding offence under the law of England and Wales is a specified offence;
 - (c) the court is of the required opinion (defined by section 223);
 - (d) the court is not required to impose a sentence of imprisonment for life by section 224A(2) of the 2003 Act (as applied by section 218A of this Act) or section 225(2) of that Act (as applied by section 219 of this Act); and
 - (e) condition A or B is met.
- (2) Condition A is that, at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act.
- (3) Condition B is that, if the court were to impose an extended sentence of imprisonment under section 226A of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (4) Subsections (4) to (9) of section 226A of the 2003 Act apply in relation to the offender.
- (5) In section 226A(4) to (9) of the 2003 Act as applied by this section—
- (a) the reference in subsection (6) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
 - (b) the reference in subsection (7) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
 - (c) the reference in subsection (8)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
 - (d) the reference in subsection (8)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (6) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

Textual Amendments

F62 S. 219A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 5](#); S.I. 2012/2906, art. 2(t)

Modifications etc. (not altering text)

C4 S. 219A modified by S.I. 2009/1059, Sch. 2 para. 9A(3) (as inserted (E.W.) (3.12.2012) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential and Saving Provisions\) Regulations 2012 \(S.I. 2012/2824\)](#), regs. 1, [5\(2\)](#))

^{F63}220 Certain violent or sexual offences: offenders aged 18 or over

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Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

Textual Amendments

F63 S. 220 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 6](#); S.I. 2012/2906, art. 2(t) (with art. 6)

221 ^[F64]Life sentence for certain dangerous] offenders aged under 18

- (1) This section applies where ^[F65]—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct),
 - (b) the corresponding offence under the law of England and Wales is a serious offence, and
 - (c) the court is of the required opinion (defined by section 223).]

^[F66](2) Section 226(2) of the 2003 Act applies in relation to the offender.]

- (3) ^[F67]In section 226(2) of the 2003 Act (as applied ^[F68]by] subsection (2))—
- (a) references ^{F69}... to “the offence” are to be read as references to the offence under section 42 of this Act; and
 - (b) references ^{F70}... to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.

^{F71}(4)

- (5) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

Textual Amendments

- F64** Words in s. 221 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 8](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F65** Words in s. 221(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(2\)](#); S.I. 2009/1028, art. 2(b)
- F66** S. 221(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 7](#); S.I. 2012/2906, art. 2(t) (with art. 6)
- F67** Words in s. 221(3) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(4\)\(a\)](#); S.I. 2009/1028, art. 2(b)
- F68** Word in s. 221(3) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 26](#); S.I. 2012/2906, art. 2(t)
- F69** Words in s. 221(3)(a) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(4\)\(b\)](#), [Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F70** Words in s. 221(3)(b) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(4\)\(b\)](#), [Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)
- F71** S. 221(4) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 25 para. 15\(5\)](#), [Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

Commencement Information

I87 S. 221 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)

Status: Point in time view as at 30/06/2018.

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188 S. 221 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

[^{F72}221A Extended sentence for certain violent or sexual offenders aged under 18

- (1) This section applies where—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
 - (b) the corresponding offence under the law of England and Wales is a specified offence;
 - (c) the court is of the required opinion (defined by section 223);
 - (d) the court is not required by section 226(2) of the 2003 Act (as applied by section 221 of this Act) to impose a sentence of detention for life under section 209 of this Act; and
 - (e) if the court were to impose an extended sentence of detention under section 226B of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) Subsections (2) to (7) of section 226B of the 2003 Act apply in relation to the offender.
- (3) In section 226B(2) to (7) of the 2003 Act as applied by this section—
- (a) the reference in subsection (4) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
 - (b) the reference in subsection (5) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
 - (c) the reference in subsection (6)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
 - (d) the reference in subsection (6)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (4) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.]

Textual Amendments

F72 S. 221A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 9](#); [S.I. 2012/2906](#), art. 2(t)

[^{F73}222 Offenders aged under 18: certain violent or sexual offences

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Textual Amendments

F73 S. 222 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 10](#); [S.I. 2012/2906](#), art. 2(t) (with art. 6)

Status: Point in time view as at 30/06/2018.

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223 “The required opinion” for purposes of sections 219 to [F74 221A]

- (1) “The required opinion” for the purposes of sections [F75 219(1), [F76 219A(1)], 221(1)] and [F77 221A(1)] is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
 - (a) further specified offences; or
 - (b) further acts or omissions that would be specified offences if committed in England or Wales.
- (2) For the purposes of the court's decision whether it is of that opinion, [F78 section 229(2) and (2A)] of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.
- (3) In section 229(2) F79 ... of the 2003 Act as applied by this section—
 - (a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and
 - (b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.
- (4) In this section—

“serious harm” has the meaning given by section 224 of the 2003 Act;
“specified offence” has the meaning given by that section.

Textual Amendments

- F74** Word in s. 223 heading substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 28](#); S.I. 2012/2906, art. 2(t)
- F75** Words in s. 223(1) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(2\)](#); S.I. 2009/1028, art. 2(b)
- F76** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 27\(a\)](#); S.I. 2012/2906, art. 2(t)
- F77** Word in s. 223(1) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 27\(b\)](#); S.I. 2012/2906, art. 2(t)
- F78** Words in s. 223(2) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(3\)](#); S.I. 2009/1028, art. 2(b)
- F79** Words in s. 223(3) repealed (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 17\(4\), Sch. 28 Pt. 2](#); S.I. 2009/1028, art. 2(b)

Commencement Information

- I89** S. 223 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](#))
- I90** S. 223 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

[F80 224 Place of detention under certain sentences

Section 235 of the 2003 Act (detention under sections 226, 226B and 228) applies to a person sentenced to be detained under section 226(3), 226B or 228 of that Act as applied by section 221, 221A or 222 of this Act.]

Status: Point in time view as at 30/06/2018.

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Textual Amendments

F80 S. 224 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 29](#); S.I. 2012/2906, art. 2(t)

Commencement Information

I91 S. 224 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](#))

I92 S. 224 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

[^{F81} 224A Special custodial sentence for certain offenders of particular concern

- (1) This section applies where—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after this section comes into force),
 - (b) the corresponding offence under the law of England and Wales is an offence listed in Schedule 18A to the 2003 Act,
 - (c) the person was aged 18 or over when the offence was committed, and
 - (d) the court does not impose one of the following for the offence—
 - (i) a sentence of imprisonment for life, or
 - (ii) an extended sentence of imprisonment under section 226A of the 2003 Act (as applied by section 219A of this Act).
- (2) If the court imposes a sentence of imprisonment for the offence, section 236A(2) to (4) of the 2003 Act apply in relation to the term of the sentence.
- (3) The references in subsections (1)(d) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.
- (4) In Schedule 18A to the 2003 Act, as applied by this section, the reference in paragraph 24 to section 30 of the Counter-Terrorism Act 2008 is to be read as a reference to section 32 of that Act.]

Textual Amendments

F81 S. 224A inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 1 para. 8](#); S.I. 2015/778, art. 3, [Sch. 1 para. 72](#)

225 Third drug trafficking offence

- (1) This section applies where —
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.
- (2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

Commencement Information

- I93** S. 225 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](#))
- I94** S. 225 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

226 Third domestic burglary

- (1) This section applies where—
- (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.
- (2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
 - (b) would make it unjust to do so in all the circumstances.

Commencement Information

- I95** S. 226 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](#))
- I96** S. 226 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

227 Firearms offences

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
 - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.
- (2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- (3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

Commencement Information

- I97** S. 227 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](#))
- I98** S. 227 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

[^{F82}227A Offences of threatening with a weapon in public or on school premises

- (1) This section applies if—
- (a) a person aged 18 or over is convicted by a court of an offence under section 42 (criminal conduct); and
 - (b) the corresponding offence under the law of England and Wales is an offence under section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon in public or on school premises).
- (2) The court must impose a sentence of imprisonment for a term of at least 6 months unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) In relation to times before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000, the reference in subsection (2) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.]

Textual Amendments

- F82** S. 227A inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [s. 151\(1\)](#), [Sch. 26 para. 24](#); [S.I. 2012/2770](#), [art. 2\(f\)](#)

228 Appeals where previous convictions set aside

[^{F83}(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).

- (1B) The first case is where—
- (a) a sentence has been imposed on any person under section 224A of the 2003 Act (as applied by section 218A of this Act);
 - (b) a previous conviction of that person has been subsequently set aside on appeal; and
 - (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (1C) The second case is where—
- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);
 - (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
 - (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (1D) The third case is where—
- (a) a sentence has been imposed on any person under section 226A of the 2003 Act (as applied by section 219A of this Act);
 - (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
 - (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.
- (1E) The fourth case is where—
- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
 - (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
 - (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.]

(2) [^{F84}The fifth case is] where—

 - (a) a sentence has been imposed on any person by virtue of section 225 or 226 [^{F85}of this Act]; and
 - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.

(3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.

[^{F86}(3A) Subsection (3B) applies where—

 - (a) a sentence has been imposed on a person under section 224A of the 2003 Act (as applied by section 218A of this Act);
 - (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
 - (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.

(3B) An application for leave to appeal against the sentence mentioned in subsection (3A) (a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.]

(4) [^{F87}Subsections (3) and (3B) have] effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

Textual Amendments

- F83** S. 228(1A)-(1E) substituted for s. 228(1) (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(2)**; S.I. 2012/2906, art. 2(t)
- F84** Words in s. 228(2) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(3)(a)**; S.I. 2012/2906, art. 2(t)
- F85** Words in s. 228(2)(a) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(3)(b)**; S.I. 2012/2906, art. 2(t)
- F86** S. 228(3A)(3B) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(4)**; S.I. 2012/2906, art. 2(t)

Status: Point in time view as at 30/06/2018.

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F87 Words in s. 228(4) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 22 para. 30\(5\)](#); S.I. 2012/2906, art. 2(t)

Commencement Information

- I99** S. 228 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](#))
- I100** S. 228 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

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.
- (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).

Commencement Information

- I101** S. 229 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](#))
- I102** S. 229 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

Status: Point in time view as at 30/06/2018.

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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.

Commencement Information

I103 S. 230 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](#))

I104 S. 230 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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.

Commencement Information

I105 S. 231 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](#))

I106 S. 231 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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—

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (a) the Director of Service Prosecutions;
 - (b) the defendant; or
 - (c) any other person mentioned in the order.
- (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.

Commencement Information

- I107** S. 232 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](#))
- I108** S. 232 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

^{F88}Service sexual offences prevention orders etc

Textual Amendments

- F88** Ss. 232A-232G and cross-heading inserted (8.3.2012 for specified purposes) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 17\(1\), 32\(3\)](#); [S.I. 2012/669, art. 3\(d\)](#)

232A Service sexual offences prevention orders

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
- (a) it deals with a person within subsection (2) (“the defendant”) in respect of—
 - (i) a qualifying section 42 offence of which the defendant has been convicted; or
 - (ii) a relevant finding in relation to a qualifying section 42 offence; and
 - (b) it is satisfied that it is necessary to make an order under this section for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
 - (b) a member of the reserve forces (whether or not for the time being subject to service law);
 - (c) a civilian subject to service discipline;
 - (d) a person who the court is satisfied is intending to become, or likely to become, a civilian subject to service discipline.
- (3) An order under this section—
- (a) prohibits the defendant from doing anything described in the order; and
 - (b) has effect for a fixed period, of at least five years, specified in the order or until further order.

Status: Point in time view as at 30/06/2018.

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- (4) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (5) Where—
- (a) a court makes an order under this section, and
 - (b) the defendant is already subject to such an order (whether made by that court or another),
- the earlier order ceases to have effect.
- (6) In this section and sections 232B to 232E—
- (a) “protecting the service community outside the United Kingdom from serious sexual harm” from a person means protecting the service community outside the United Kingdom, or particular members of that community, from serious physical or psychological harm, caused by the person committing one or more offences under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 to SOA 2003;
 - (b) “qualifying section 42 offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 or 5 to SOA 2003;
 - (c) “relevant finding”, in relation to an offence, means—
 - (i) a finding that a person is not guilty of the offence by reason of insanity; or
 - (ii) a finding that a person is unfit to stand trial and has done the act charged;
 - (d) “service community” means persons subject to service law and civilians subject to service discipline;
 - (e) “SOA 2003” means the Sexual Offences Act 2003.
- (7) In construing subsection (6)(a) or (b), any condition subject to which an offence is listed in Schedule 3 to SOA 2003 that relates—
- (a) to the way in which a person is dealt with in respect of the offence or a relevant finding, or
 - (b) to the age of any person,
- is to be disregarded.

232B Service SOPOs: appeals

- (1) This section applies where the Court Martial makes an order under section 232A in respect of a relevant finding in relation to a qualifying section 42 offence.
- (2) For the purposes of the Court Martial Appeals Act 1968—
- (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 the defendant to appeal against the order as if the defendant 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.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

232C Service SOPOs etc: variation and revocation

- (1) The Court Martial may vary or revoke an order under section 232A on an application made by—
 - (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (2) If subsection (3) applies, the Court Martial may vary or revoke an order under section 104 of SOA 2003 (sexual offences prevention order) on an application made by—
 - (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (3) This subsection applies if the person subject to the order under section 104 of SOA 2003 (“the SOA order”) is also subject to an associated order under section 232A and either—
 - (a) the person is subject to service law or a civilian subject to service discipline; or
 - (b) the application is made together with an application for the variation or revocation of the associated order under section 232A.
- (4) An order may be varied under this section so as to extend the period for which it has effect, or so as to impose additional prohibitions, only if—
 - (a) in the case of an order under section 232A, the court is satisfied that the variation is necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the person subject to the order (in which case section 232A(4) applies accordingly);
 - (b) in the case of an order under section 104 of SOA 2003, the requirements of section 108(5) of that Act are met (protection of public in United Kingdom from serious sexual harm).
- (5) The Court Martial must not before the end of the relevant period revoke an order under section 232A, or an order under section 104 of SOA 2003, without the consent of—
 - (a) the person subject to the order; and
 - (b) a Provost Marshal.
- (6) In subsection (5) “the relevant period” means the period of five years beginning with the day on which the order was made.
- (7) For the purposes of this section an order under section 104 of SOA 2003 and an order under section 232A are “associated” if they were made by the Court Martial or the Service Civilian Court in dealing with the same offence or relevant finding.
- (8) This section is without prejudice to section 108 of SOA 2003 (application to civilian court for variation etc of a sexual offences prevention order).

232D Variation or revocation: appeals

- (1) A person may appeal to the Court Martial Appeal Court against—
 - (a) the variation under section 232C of an order to which the person is subject; or
 - (b) a decision by the Court Martial not to vary or revoke such an order on an application under that section.
- (2) On an appeal under subsection (1), the Court Martial Appeal Court may make—

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (a) such orders as may be necessary to give effect to its determination of the appeal; and
- (b) such incidental or consequential orders as appear to it to be just.

232E Extended prohibitions orders

- (1) On an application made by a Provost Marshal, the Court Martial must make an order under this section in respect of a person within subsection (2) if the relevant requirements are met.
- (2) The following are persons within this subsection—
 - (a) a member of the regular forces;
 - (b) a member of the reserve forces (whether or not for the time being subject to service law);
 - (c) a civilian subject to service discipline.
- (3) The relevant requirements are met if the Court Martial is satisfied—
 - (a) that the person is subject to an order under section 104 or 105 of SOA 2003 (“the principal order”); and
 - (b) that there are members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal order.
- (4) For the purposes of subsection (3)(b) a person (“P”) is “protected” by the principal order if one or more of the prohibitions included in the order are for the purposes of the protection of P, or of persons of a description within which P falls.
- (5) An order under this section—
 - (a) prohibits the person subject to the order from doing anything described in the order; and
 - (b) has effect—
 - (i) until the expiry of the principal order; or
 - (ii) if earlier, until the principal order is varied, renewed or discharged under section 108 of SOA 2003.
- (6) Only corresponding prohibitions may be included in an order under this section.
- (7) For the purposes of subsection (6) a “corresponding prohibition” is a prohibition in substantially the same terms as a prohibition in the principal order (“the principal prohibition”), subject to such modifications as are necessary to secure that the prohibition is for the purposes of the protection of members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal prohibition.
- (8) In subsection (7) “protected” is to be construed in accordance with subsection (4).

232F Extended prohibitions orders: appeals

- (1) A person may appeal to the Judge Advocate General against the making of an order under section 232E in respect of the person.
- (2) The Secretary of State may by rules make provision about appeals under this section, and the rules may in particular make provision—
 - (a) specifying the grounds on which an appeal may be brought;

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- (b) with respect to the procedure which is to apply in connection with an appeal;
- (c) with respect to the powers of the Judge Advocate General in relation to an appeal.

232G Offence: breach of order under section 232A or 232E

- (1) A person within subsection (2) (“P”) commits an offence if, without reasonable excuse, P does anything which P is prohibited from doing by an order under section 232A or 232E.
- (2) The following are persons within this subsection—
 - (a) a person subject to service law;
 - (b) a civilian subject to service discipline.
- (3) 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.
- (4) Where a person is convicted of an offence under this section, 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.

Status: Point in time view as at 30/06/2018.

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- (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.

Commencement Information

- I109** S. 233 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](#))
- I110** S. 233 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

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
 - (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.

Commencement Information

- I111** S. 234 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](#))
- I112** S. 234 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

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.

Status: Point in time view as at 30/06/2018.

Changes to legislation: Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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)

- (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.

Commencement Information

- I113** S. 235 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](#))
- I114** S. 235 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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 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.

Commencement Information

- I115** S. 236 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](#))
- I116** S. 236 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status:

Point in time view as at 30/06/2018.

Changes to legislation:

Armed Forces Act 2006, Part 8 is up to date with all changes known to be in force on or before 30 June 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.