

ARMED FORCES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 17: Service sexual offences prevention orders

Extended prohibitions orders

71. As explained above, the new section 232A empowers a service court to make an order (a service SOPO) related to the protection of the service community outside the United Kingdom when it makes a SOPO for the protection of the public within the United Kingdom. This does not allow a risk to the service community outside the United Kingdom to be dealt with where the offender has been dealt with by a civilian court, as a civilian court can only impose a SOPO. Nor does it deal with the situation where a service court has imposed a SOPO and it subsequently becomes apparent that the offender may be a danger to members of the service community outside the United Kingdom.
72. In response to this problem, section 17(1) also adds a new section 232E to AFA 2006. The new section empowers the Court Martial to make extended prohibitions orders (“EPOs”) in respect of members of the armed forces or civilians subject to service discipline. The orders can be made where such a person is subject to a SOPO, whether this has been made by a civilian or service court. In these circumstances the Court Martial’s discretion is limited. On application by a Provost Marshal the Court Martial must make the EPO if it is satisfied that the person is subject to a SOPO and that there are members of the service community outside the United Kingdom who would be protected by the SOPO if they were in the United Kingdom. The EPO can then only include prohibitions which are substantially the same as those in the SOPO, subject only to such modifications as are necessary to secure that the prohibitions work for the protection of relevant persons outside the United Kingdom.
73. An EPO is a mirror order which stands or falls with the SOPO. It lasts until the expiry of the SOPO; if the SOPO is varied or revoked, the extended prohibitions order lapses.
74. Section 232F provides for an appeal against the making of an EPO. The section enables the Secretary of State to make provision by order governing the powers of the Judge Advocate General in respect of these appeals. As the EPO largely stands or falls with the SOPO, and a SOPO can be appealed against, it is envisaged that the right of appeal against an EPO will be limited to matters specific to it, such as whether the court was right to be satisfied that there were members of the service community outside the United Kingdom who would be protected by the SOPO if in the United Kingdom. This would not, for example, be the case if the SOPO was made to protect only a particular person, and that person has not left the United Kingdom.
75. Under section 232G a breach of a service SOPO or of an EPO without reasonable excuse is a service offence punishable with five years’ imprisonment. This is the same maximum penalty as applies for conviction on indictment for breach of a SOPO (section 113 of SOA 2003).