



Armed Forces Act 2021

2021 CHAPTER 35

Sentencing and rehabilitation

14 Deprivation orders

- (1) AFA 2006 is amended as follows.
- (2) In section 132(1) (punishments available to commanding officer), in the table, after row 8 insert—

“9	a deprivation order (defined by section 177B)	only if section 177C permits”.
----	--	-----------------------------------

- (3) In section 164(1) (punishments available to Court Martial), in the table, after row 12 insert—

“13	a deprivation order (defined by section 177B)	only if section 177C permits”.
-----	--	-----------------------------------

- (4) After section 177A insert—

“Deprivation orders

177B Deprivation orders: interpretation

- (1) A deprivation order is an order made under this Act which—
- is made in respect of an offender for an offence, and
 - deprives the offender of any rights in the property to which the order relates.
- (2) In sections 177C and 177E “the decision maker”, in relation to an offender, means—
- the court by which the person is convicted, or

Status: This is the original version (as it was originally enacted).

- (b) the commanding officer who records a finding that the charge has been proved.
- (3) Nothing in subsection (2) prevents section 376 from applying in relation to this section and sections 177C to 177F.

177C Deprivation order: availability

- (1) Where an offender is convicted of a service offence, the decision maker may make a deprivation order relating to any property to which subsection (2) applies.
- (2) This subsection applies to property which—
 - (a) has been lawfully seized from the offender, or
 - (b) was in the offender’s possession or under the offender’s control when the offender was apprehended for, or charged with, the offence,if subsection (3) or (5) applies.
- (3) This subsection applies if the decision maker is satisfied that the property—
 - (a) has been used for the purpose of committing, or facilitating the commission of, a service offence, or
 - (b) was intended by the offender to be used for that purpose.
- (4) For the purposes of subsection (3), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of—
 - (a) disposing of any property to which the offence relates, or
 - (b) avoiding apprehension or detection.
- (5) This subsection applies if—
 - (a) the offence mentioned in subsection (1), or
 - (b) an offence which is taken into consideration by the decision maker in determining the offender’s sentence,consists of unlawful possession of the property.
- (6) Where a deprivation order is made, the property to which it relates is to be taken into the possession of an appropriate authority (if it is not already in the possession of such an authority).
- (7) In subsection (6) “appropriate authority” means—
 - (a) a member of a service police force, or
 - (b) if no relevant body has been involved in the matter, the offender’s commanding officer.
- (8) In subsection (7) “relevant body” means a service police force or the tri-service serious crime unit.

177D Vehicle to be treated as used for purposes of certain offences

- (1) This section applies where a person—
 - (a) commits an offence to which subsection (2) applies by driving, attempting to drive, or being in charge of a vehicle, or

- (b) as the driver of a vehicle, commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 170(4) of the Road Traffic Act 1988 (duty to stop, report accident and give information or documents).
- (2) This subsection applies to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—
 - (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment,
 - (b) an offence of manslaughter, or
 - (c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).
- (3) The vehicle is to be regarded for the purposes of [section 177C\(3\)](#) (and [section 94A\(3\)\(b\)\(ii\)](#)) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).

177E Exercise of power to make deprivation order

- (1) In considering whether to make a deprivation order in respect of any property, the decision maker must have regard to—
 - (a) the value of the property, and
 - (b) the likely financial and other effects on the offender of making the order (taken together with any other order that the decision maker contemplates making).
- (2) Where a deprivation order is available for an offence, the decision maker may make such an order whether or not it deals with the offender in any other way for the offence.

177F Application of proceeds of property subject to deprivation order

- (1) This section applies where the Court Martial or the Service Civilian Court makes a deprivation order in relation to any property and—
 - (a) the offence was one which resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence.
- (2) The court may also make an order that any proceeds which—
 - (a) arise out of the disposal of the property, and
 - (b) do not exceed a sum specified by the court,are to be paid to the person.
- (3) A court may make an order under this section only if satisfied that, but for the inadequacy of the offender's means, it would have made a service compensation order under which the offender would have been required to pay compensation of an amount not less than the amount specified under subsection (2)(b).
- (4) An order under this section has no effect—

Status: This is the original version (as it was originally enacted).

- (a) before the end of the 6 month period mentioned in section 94A(3)(a),
or
 - (b) if a successful claim by a person claiming to be the owner of the property has been made by virtue of section 94(2)(a).”
- (5) After section 94 (property in possession of service police or CO) insert—

“94A Property subject to deprivation order: modification of section 94

- (1) This section applies to property to which a deprivation order relates which is in the possession of—
 - (a) a commanding officer, or
 - (b) a member of a service police force,
 by virtue of section 177C(6) (including any such property that was already in the possession of the commanding officer or a member of a service police force when the order was made).
- (2) Regulations under section 94(1) must ensure that a judicial authority or a commanding officer may make an order by virtue of section 94(2)(a) or (b) (respectively) on an application which—
 - (a) relates to property to which this section applies, and
 - (b) is made by a person claiming to be the owner of the property, only if the conditions in subsection (3) are met.
- (3) Those conditions are that—
 - (a) the application is made before the end of the period of 6 months beginning with the day on which the deprivation order is made, and
 - (b) the claimant satisfies the judicial authority or the commanding officer (as the case may be)—
 - (i) that the claimant did not consent to the offender’s possession of the property, or
 - (ii) if the deprivation order was made by virtue of subsection (3) of section 177C (property used for the purpose of offence etc), that the claimant did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in that subsection.
- (4) Regulations under section 94(1) may enable a judicial authority or a commanding officer to make any order for disposal of property to which this section applies that the judicial authority or commanding officer (as the case may be) thinks appropriate (but this is subject to subsection (6)).
- (5) In subsection (4) the reference to disposal includes disposal by way of transferring the property into the ownership of the Secretary of State; but regulations made by virtue of subsection (4) may not provide for the Secretary of State to become the owner of property which is the subject of an order under section 177F (application of proceeds of property subject to deprivation order).
- (6) Subsection (4) applies only in relation to cases where no application by virtue of section 94(2)(a) or (b) made during the 6 month period mentioned in

Status: This is the original version (as it was originally enacted).

subsection (3)(a) by a person claiming to be the owner of the property was successful.

(7) In this section “judicial authority” means the Court Martial, the Service Civilian Court or a judge advocate.”

(6) In [Schedule 3](#) (civilians etc: modifications of Court Martial sentencing powers)—

(a) in paragraph 1(1), in the table, after row 7 insert—

“8	a deprivation order (defined by section 177B)	only if section 177C permits”;
----	--	-----------------------------------

(b) in paragraph 3(1), in the table, after row 10 insert—

“11	a deprivation order (defined by section 177B)	only if section 177C permits”.
-----	--	-----------------------------------
