

2009 No. 1168

DEFENCE

**The Armed Forces (Review of Court Martial Sentence) Order
2009**

<i>Made</i>	- - - -	<i>5th May 2009</i>
<i>Laid before Parliament</i>		<i>7th May 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Secretary of State in exercise of the powers conferred on him by section 273(3) of the Armed Forces Act 2006(a) makes the following Order:

Citation and commencement

1. This Order may be cited as the Armed Forces (Review of Court Martial Sentence) Order 2009 and shall come into force on 31st October 2009.

Interpretation

2. In this Order—

“the Act” means the Armed Forces Act 2006;

“the corresponding civil offence”, in relation to an offence under section 70 of the Army Act 1955(b), section 70 of the Air Force Act 1955(c) or section 42 of the Naval Discipline Act 1957(d), means—

- (a) the act or omission punishable by the law of England; or
- (b) where the act or omission is not punishable by the law of England, the equivalent act or omission which if committed in England would be punishable by that law.

Application

3. Any case of a description specified in the Schedule shall be specified for the purposes of section 273(3) of the Act.

5th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

(a) 2006 c. 52.
(b) 1955 c. 18.
(c) 1955 c. 19.
(d) 1957 c. 53.

Description of cases specified for the purposes of section 273(3) of the Act

1. Any case where the corresponding offence under the law of England and Wales is—
- (a) an offence under section 16 of the Offences Against the Person Act 1861(a) (threats to kill);
 - (b) an offence under section 1 of the Children and Young Persons Act 1933(b) (cruelty to persons under 16);
 - (c) an offence under section 4(2) or (3) (production or supply of a controlled drug), section 5(3) (possession of a controlled drug with intent to supply) or section 6(2) (cultivation of a cannabis plant) of the Misuse of Drugs Act 1971(c);
 - (d) an offence under section 50(2) or (3) (improper importation of goods), section 68(2) (exportation of prohibited or restricted goods) or section 170(1) or (2) (fraudulent evasion of duty) of the Customs and Excise Management Act 1979(d), insofar as those offences are in connection with a prohibition or restriction on importation or exportation of either—
 - (i) a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971, such prohibition or restriction having effect by virtue of section 3 of that Act; or
 - (ii) an article prohibited by virtue of section 42 of the Customs Consolidation Act 1876(e) but only insofar as it relates to or depicts a person under the age of 16;
 - (e) an offence under any of sections 29 to 32 (racially or religiously aggravated assaults; racially or religiously aggravated criminal damage; racially or religiously aggravated public order offences; racially or religiously aggravated harassment etc) of the Crime and Disorder Act 1998(f);
 - (f) an offence under one of the following sections of the Sexual Offences Act 2003(g)—
 - (i) section 3 (sexual assault);
 - (ii) section 4 (causing a person to engage in sexual activity without consent);
 - (iii) section 7 (sexual assault of a child under 13);
 - (iv) section 8 (causing or inciting a child under 13 to engage in sexual activity);
 - (v) section 9 (sexual activity with a child);
 - (vi) section 10 (causing or inciting a child to engage in sexual activity);
 - (vii) section 11 (engaging in sexual activity in the presence of a child);
 - (viii) section 12 (causing a child to watch a sexual act);
 - (ix) section 14 (arranging or facilitating commission of a child sex offence);
 - (x) section 15 (meeting a child following sexual grooming etc);
 - (xi) section 25 (sexual activity with a child family member);
 - (xii) section 47 (paying for sexual services of a child);
 - (xiii) section 48 (causing or inciting child prostitution or pornography);
 - (xiv) section 49 (controlling a child prostitute or a child involved in pornography);

(a) 1861 c. 100.
(b) 1933 c. 12.
(c) 1971 c. 38.
(d) 1979 c. 2.
(e) 1876 c. 36.
(f) 1998 c. 37.
(g) 2003 c. 42.

- (xv) section 50 (arranging or facilitating child prostitution or pornography);
- (xvi) section 52 (causing or inciting prostitution for gain);
- (xvii) section 57 (trafficking into the UK for sexual exploitation);
- (xviii) section 58 (trafficking within the UK for sexual exploitation);
- (xix) section 59 (trafficking out of the UK for sexual exploitation);
- (xx) section 61 (administering a substance with intent).

2. Any case where the corresponding offence under the law of England and Wales consists of attempting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f) or is an offence under section 44 or 45 of the Serious Crime Act 2007 consisting of encouraging or assisting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f).

3. References in paragraphs 1 or 2 to “the corresponding offence under the law of England and Wales” are to be read as including references to “the corresponding civil offence”.

4. For the purposes of paragraph 2 “is an offence under section 44 or 45 of the Serious Crime Act 2007(a) consisting of encouraging or assisting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f)” includes “consists of inciting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f)”.

(a) 2007 c. 27.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 273 of the Armed Forces Act 2006 (“the Act”) empowers the Attorney General to refer cases to the Court Martial Appeal Court, with the leave of that court, if he considers that the sentence imposed by the Court Martial was unduly lenient and if the corresponding offence under the law of England and Wales would be indictable only or if the case is of a description specified for the purposes of section 273(3).

Article 3 of this Order provides that any case of a description specified in the Schedule to this Order shall be specified for the purposes of section 273(3) of the Act.

Paragraph 1 of the Schedule specifies any case where the corresponding offence under the law of England and Wales is one of the offences listed. Subject to paragraph 3, “the corresponding offence under the law of England and Wales” has the same meaning in this Order as in section 42(8) of the Act.

Paragraph 2 of the Schedule specifies any case where the corresponding offence under the law of England and Wales consists of attempting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f) or is an offence under section 44 or 45 of the Serious Crime Act 2007 consisting of encouraging or assisting the commission of an offence set out in paragraph 1(a) to (d) or paragraph 1(f).

Paragraphs 3 and 4 of the Schedule make transitional provisions.

The provisions in this Order are broadly equivalent to those applied in the civilian court which are set out in Part 4 (Review of Sentencing) of the Criminal Justice Act 1988 (c. 33) and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (S.I. 2006/1116).

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