Armed Forces Act 1971

1971 CHAPTER 33

PART V

MISCELLANEOUS AMENDMENTS

63 Minimum age for enlistment or entry without parental etc consent

(1) The following subsection shall be substituted for subsection (5) of section 2 of the Army Act 1955 and also for subsection (5) of section 2 of the Air Force Act 1955 (under which the " appropriate minimum age " , being the age below which a person may not be enlisted without certain consents, means the age of seventeen years and six months or, in such classes of case as may be prescribed, the age of seventeen years):—

> "(5) In this Part of this Act the expression ' appropriate minimum age' means the age of eighteen or, in a case falling within any class for which a lower age is for the time being prescribed, that lower age.".

(2) Section 9(3) of the Armed Forces Act 1966 (which defines " appropriate minimum age " similarly for the purposes of entry into the Royal Navy) shall be amended so as to correspond with the provision set out in subsection (1) above, that is to say, by substituting for the words from " the age of seventeen years and six months " to the end the words " the age of eighteen or, in a case falling within any class for which a lower age is for the time being prescribed by regulations of the Defence Council, that lower age ".

(3) Paragraph 9 of Schedule 7 to the Army Act 1955 (which substitutes references to the age of 17 for references to the appropriate minimum age in Part I of that Act as it applies to marines) shall cease to have effect.

64 Purchase of discharge from army and air force

(1) Regulations made under section 2 of the Armed Forces Act 1966 and conferring, subject to any conditions and restrictions specified in the regulations, a right on persons enlisted in the regular army to claim their discharge within a specified time after attestation may repeal section 14 of the Army Act 1955 (which also confers such

a right) together with the enactments amending that section; and regulations under the said section 2 making the like provision with respect to persons enlisted in the regular air force may repeal section 14 of the Air Force Act 1955 and the enactments amending that section.

(2) In section 2 of the Navy, Army and Air Force Reserves Act 1964 (liability of certain former soldiers to recall for service), in subsection (1)(b) (no liability in the case of persons discharged under section 14 of the Army Act 1955), the reference to section 14 of the Army Act 1955 shall include a reference to regulations under section 2 of the Armed Forces Act 1966 conferring a right to discharge by purchase.

65 Forfeiture of service for naval deserters

The following provision (being one corresponding to section 17 of the Army Act 1955 and section 17 of the Air Force Act 1955) shall be inserted in the Naval Discipline Act 1957 after the provision inserted therein as section 129C by section 57 of this Act:

"**129D Forfeiture of service for desertion, and restoration of forfeited service.**

(1) Where a rating of Her Majesty's naval forces other than a reserve force is convicted of desertion, the period of his service as respects which he is convicted of having been a deserter shall be forfeited.

(2) Where any of a rating's service is forfeited by virtue of subsection (1) above, any provision governing his terms of service other than one relating to discharge by purchase shall apply to him, and he shall be liable to serve, in like manner as if the appropriate date were the date of his entry or, as the case may be, attestation and he had on the appropriate date been duly entered or enlisted to serve for the like term (both as respects duration and as respects liability to serve in Her Majesty's naval forces and any liability to serve in any reserve) as that for which he was in fact serving at the date of his conviction:

Provided that where at the date of his conviction the rating was serving a term ending with the expiration of the period beginning with the date of his attaining the age of eighteen years and he had attained that age when he was convicted (whether or not he had attained it when the offence was committed) the duration of the term for which he is liable to serve shall be equal to that period, and the time for which he is required to serve in Her Majesty's naval forces shall be reduced accordingly.

(3) In subsection (2) above ' the appropriate date' means in relation to any person a date earlier than the date of his conviction for desertion by the length of his service which is not forfeited.

(4) The Defence Council may by regulations make provision for the restoration in whole or in part of any forfeited service to a rating in consideration of good service or on other grounds justifying the restoration of service forfeited; and any service restored to a rating under this subsection shall be credited to him for the purpose of determining for the purposes of any provision governing his terms of service the amount of service in Her Majesty's naval forces or in any reserve which he has served or is liable to serve.

(5) Nothing in this section shall apply to a person who deserts at a time when he is, under regulations made in pursuance of section 2 of the Armed Forces Act 1966 or under any enactment repealed by any such regulations, continued in service after twenty-two years' service.”

66 Redress of complaints

(1) The following provision shall be substituted for section 130 of the Naval Discipline Act 1957 (under which a Person subject to that Act may complain of oppression, injustice or other ill-treatment to the authority specified for that purpose by Queen's Regulations, and, if dissatisfied, may carry the complaint to the next superior authority, and so on):—

“**130 Redress of complaints.**

(1) If a person subject to this Act thinks that he has suffered any personal oppression, injustice or other ill-treatment, he may make a complaint in accordance with the procedure laid down in Queen's Regulations and, if he does not obtain the redress to which he thinks he is entitled, a complaint to the Defence Council.

(2) On receiving any complaint made by virtue of subsection (1) above, it shall be the duty of the Defence Council to investigate the complaint and to grant any redress which appears to them to be necessary, or, if the complainant is an officer and so requires, to make a report to Her Majesty through the Secretary of State in order to receive the directions of Her Majesty thereon”.

(2) Section 181 of the Army Act 1955 and section 181 of the Air Force Act 1955 (complaints by warrant officers and below) shall each be amended as follows—

(a) in subsection (2) (under which a person who has complained to his commanding officer and has not received satisfactory redress, or who thinks himself wronged by his commanding officer for any other reason, may complain to a superior officer under whom he is serving), for all the words from " he may make a complaint with respect thereto " to the end there shall be substituted the words " he may, in accordance with the procedure laid down in Queen's Regulations, make a complaint with respect thereto to the Defence Council ", and

(b) in subsection (3) (duty of a commanding or other officer to have any complaint received by him investigated, and to give any redress appearing to him to be necessary), for the words " a commanding or other officer " there shall be substituted the words " a commanding officer or, as the case may be, the Defence Council ", and the words " or them " shall be inserted after the words " by him " and after the words " to him ".

67 Naval billeting and requisitioning

(1) At any time when section 154 of the Army Act 1955 (issue of billeting requisitions by military officers having a command in the United Kingdom) is in operation by virtue of an order of the Secretary of State under section 174 of that Act, a billeting requisition may be issued under this subsection by any flag officer having a command in the United Kingdom; and at any time when section 165 of that Act (issue of requisitioning

orders by military officers having a command as aforesaid) is so in operation, any such flag officer as aforesaid may issue a requisitioning order under this subsection.

(2) For the purposes of Part IV of the said Act of 1955, a billeting requisition or requisitioning order issued under subsection (1) above shall have effect as if issued under the said section 154 or, as the case may be, the said section 165 ; but, in relation to any such requisition or order, the said Part IV and Schedule 4 to that Act shall have effect subject to such adaptations as the Defence Council may by regulations prescribe, being adaptations appearing to the Defence Council necessary for adapting the said Part IV and Schedule to the naval forces.

(3) The Naval Billeting &c. Act 1914 (under which the issue of a billeting requisition or requisitioning order by naval officers depends upon the existence of a proclamation calling out the naval reserves) shall cease to have effect; and in sections 32(a), 33(1)(a) and 33(2)(a) of the Naval Discipline Act 1957 (which relate to billeting and requisitioning offences) for the words "issued by virtue of subsection (1) of section 1 of the Naval Billeting &c. Act 1914" there shall be substituted the words " issued under section 67(1) of the Armed Forces Act 1971 ".

68 Reductions in rank under Army Act 1955 and Air Force Act 1955

Section 201 of the Army Act 1955 (under which the Defence Council may not authorise an officer to impose reductions in rank on warrant officers or non-commissioned officers unless he is of or above the rank of brigadier, flag officer, or air commodore) shall be amended by substituting, for the words, " brigadier, flag officer or air commodore ", the words " colonel, of captain in the Royal Navy or of group captain " ; and section 201 of the Air Force Act 1955 (which is to the like effect) shall be amended by substituting, for the words " air commodore, flag officer or brigadier, " the words " group captain, of captain in the Royal Navy or of colonel ".

69 Assisting deserters from reserve forces

(1) Section 15(1) of the Army Reserve Act 1950 and section 15(1) of the Air Force Reserve Act 1950 (which relate to deserters from the army reserve and the air force reserve respectively) shall each be amended so as to correspond with section 192(1) of the Army Act 1955 and section 192(1) of the Air Force Act 1955 (which relate to deserters from the regular forces), that is to say, by substituting the following paragraph for paragraph (c) (offence of concealing, employing, or assisting in the rescue of, a known deserter):—

> "(c) knowing any such man to be a deserter, procures or persuades or assists him to remain a deserter, or assists in his rescue from custody".

(2) Section 27(2) of the Auxiliary Forces Act 1953 (which relates to deserters from the Territorial Army and the Royal Auxiliary Air Force) shall also be amended so as to correspond with the provisions of the Acts of 1955 above referred to, that is to say, by substituting the following paragraph for paragraph (c):—

> "(c) knowing any such man to be a deserter contrary to subsection (1) of this section, procures or persuades or assists him to remain such a deserter, or assists in his rescue from custody."

70 Taking of affidavits and declarations abroad

(1) Section 204 of the Army Act 1955, section 204 of the Air Force Act 1955 and section 10 of the Emergency Laws (Miscellaneous Provisions) Act 1953 (under which certain military, air-force and naval officers may take affidavits and declarations abroad, but only from persons belonging to or connected with the same .service) shall have effect subject to the amendments specified in subsections (2) to (4) below (being amendments extending those sections, so that an officer of one service may take affidavits and declarations from persons belonging to or connected with another service).

(2) The following subsection shall be added at the end of the said section 204 of the Army Act 1955:—

"(3) The power conferred by subsection (1) above may also be exercised by any officer empowered to take affidavits and declarations by section 204(1) of the Air Force Act 1955 or section 10(1) of the Emergency Laws (Miscellaneous Provisions) Act 1953.".

(3) The following subsection shall be added at the end of the said section 204 of the Air Force Act 1955:—

"(3) The power conferred by subsection (1) above may also be exercised by any officer empowered to take affidavits or declarations by section 204(1) of the Army Act 1955 or section 10(1) of the Emergency Laws (Miscellaneous Provisions) Act 1953.".

(4) The following subsection shall be added at the end of the said section 10 of the Emergency Laws (Miscellaneous Provisions) Act 1953 :—

"(4) The power conferred by subsection (1) above may also be exercised by any officer empowered to take affidavits and declarations by section 204(1) of the Army Act 1955 or section 204(1) of the Air Force Act 1955.".

71 Addition to Naval Discipline Act 1957 of provision indemnifying prison officers, etc.

The following provision (being one corresponding to section 142 of the Army Act 1955 and section 142 of the Air Force Act 1955) shall be inserted in the Naval Discipline Act 1957 after section 130:—

"**130A Indemnity for prison officers etc.**

No action shall lie in respect of anything done by any person in pursuance of a sentence of imprisonment or detention awarded under this Act if the doing thereof would have been lawful but for a defect in any instrument made for the purposes of that sentence.".

72 Application of Army Act 1955 and Air Force Act 1955 to passengers in H.M. ships and aircraft

(1) The following provision (which corresponds to section 117 of the Naval Discipline Act 1957) shall be inserted in the Army Act 1955 after section 208, and also (but modified for that purpose by the substitution of " air-force law " for " military law " and " military law " for " air-force law ") in the Air Force Act 1955 after section 208 :—

"**208A Application of Act to passengers in H.M. ships and aircraft.**

Part II of this Act shall, to such extent and subject to such modifications as may be prescribed by regulations made by the Defence Council, apply to persons embarked as passengers on board Her Majesty's ships or aircraft (not being persons who are subject to military law by virtue of any of the foregoing provisions of this Act, or persons who are subject to air-force law or to the Naval Discipline Act 1957) as it applies to persons subject to military law.".

(2) Section 209 of the Army Act 1955 and section 209 of the Air Force Act 1955 (application of those Acts to civilians) shall each be amended by adding the following subsection at the end:—

"(5) This section does not apply to any person to whom section 208A above applies.".

73 Appeal against sentence by civilians

(1) The Courts-Martial (Appeals) Act 1968 (under which appeals to the Courts-Martial Appeal Court are confined to appeals against conviction) shall be amended in accordance with subsections (2) and (3) below.

(2) In section 8—

(a) at the end of subsection (1) (which confers the right of appeal) there shall be added the words " and, if he was a civilian (as defined in subsection (5) below) both at the time of his conviction and when the offence was committed, may also with the leave of the Court appeal against his sentence, unless it is one fixed by law ", and

(b) the following subsection shall be added after subsection (4)—

"(5) In this section ' civilian' means any person who is not subject to service law (meaning military law, air-force law and the Naval Discipline Act) and any person within section 208A or 209 of the Army Act, section 208A or 209 of the Air Force Act or section 117 or 118 of the Naval Discipline Act (which apply certain provisions of those Acts to passengers in Her Majesty's ships and aircraft, persons employed by or accompanying Her Majesty's forces, families of members of those forces etc.)."

(3) The following section shall be inserted after section 16:—

"**16A Powers on appeals against sentence.**

On an appeal against sentence the Appeal Court, if they consider that the sentence is not appropriate for the case, may quash the sentence and pass in substitution for it such sentence as they think is appropriate, being a sentence which the court-martial had power to pass and which is not of greater severity than that for which it is substituted".

(4) The provisions of Schedule 2 to this Act shall have effect, being provisions making in the said Act of 1968 and the other enactments there specified amendments consequential on, or otherwise connected with, the preceding provisions of this section.

74 Meaning of " active service " in Naval Discipline Act 1957

Section 134 of the Naval Discipline Act 1957 (under which a force is on active service when engaged in operations against an enemy, when situated in an area in which such operations are taking place, or when landed elsewhere than in the United Kingdom for the protection of life or property) shall be numbered as section 134(1) of that Act, and shall be amended by substituting for the words " landed elsewhere than in the United Kingdom " the words " engaged elsewhere than in the United Kingdom in operations ", and by adding at the end the following subsections:—

"(2) Where any of Her Majesty's naval forces is serving outside the United Kingdom, and it appears to the appropriate authority that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the force should be deemed to be on active service, the appropriate authority may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein that force shall be deemed to be on active service.

(3) Where it appears to the appropriate authority that it is necessary for the public service that the period specified in a declaration under subsection (2) above should be prolonged or, if previously prolonged under this subsection, should be further prolonged, the appropriate authority may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any force is deemed to be on active service by virtue of the foregoing provisions of this section it appears to the appropriate authority that there is no necessity for the force to continue to be treated as being on active service, the appropriate authority may declare that as from the coming into operation of the declaration the force shall cease to be deemed to be on active service.

(5) Before any declaration is made under this section, the appropriate authority shall, unless satisfied that it is not possible to communicate with sufficient speed with the Secretary of State, obtain the consent of the Secretary of State to the declaration ; and in any case where that consent has not been obtained before the making of a declaration under this section, the appropriate authority shall report the making thereof to the Secretary of State with the utmost practicable speed.

(6) The Secretary of State may, if he thinks fit, direct that any declaration whereby any force is deemed to be, or to continue, on active service shall cease to have effect as from the coming into force of the direction; but any direction under this subsection shall be without prejudice to anything done by virtue of the declaration before the coming into force of the direction.

(7) A declaration under this section shall have effect not only as respects the members of the force to which it relates but also as respects other persons the application to whom of any provisions of this Act depends on whether that force is on active service.

(8) In this section the expression 'the appropriate authority' means, in relation to any force, the Commander-in-Chief or flag officer in operational command of that force.

(9) Any declaration or direction under this section shall come into operation on being published in local orders."

75 Amendments for introducing naval rate, and marine rank, of warrant officer

The enactments specified in Schedule 3 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments connected with the introduction of the naval rate, and the marine rank, of warrant officer.

76 Sufficiency of evidence in Scottish courts

Section 214 of the Army Act 1955 and section 212 of the Air Force Act 1955 (application to Scotland) shall each be amended by inserting the following subsection after subsection (8):—

"(9) Where by virtue of this Act a document is admissible in evidence or is evidence of any matter stated in it in proceedings before a civil court in England, it shall be sufficient evidence of the matter so stated in such proceedings in Scotland.";

and the like subsection shall also be inserted in section 123 of the Naval Discipline Act 1957 as subsection (10), in section 21 of the Army Reserve Act 1950 as subsection (3), in section 21 of the Air Force Reserve Act 1950 as subsection (3) and in section 34 of the Auxiliary Forces Act 1953 as subsection (4).