



Armed Forces Act 2006

2006 CHAPTER 52

First Group of Parts Discipline

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

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.
- (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—

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- (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.

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.

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—

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

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.

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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—
 - (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.

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;

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- (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.
- (3) In the following provisions of the 2003 Act “community order” includes a service community order under this Act—
- section 177(3) 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.

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.
- (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).

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- (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.

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), 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).

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.

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); and

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- (b) not specifying anywhere as an area where the offender resides or will reside.
- (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.
- (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—
 - (a) the provisions mentioned in the paragraphs of section 177(2) of that Act; and
 - (b) Schedule 6 to this Act (special provisions for young offenders).
- (4) Subject to section 183 below, in the following provisions of the 2003 Act “community order” includes an overseas order—
 - section 177(5) and (6) (provision about the making of community orders);
 - Chapter 4 of Part 12 (further provision about orders).
- (5) In those provisions 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—
 - (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.

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—
 - section 197(1) and (2) (meaning of “the responsible officer”);
 - section 207(3)(a)(ii) (condition for mental health treatment requirement);
 - sections 210 and 211 (periodic review of drug rehabilitation requirement);
 - section 215 (electronic monitoring requirement);
 - section 216 (requirement to specify local justice area);
 - section 218 (availability of arrangements in local justice area etc).
- (2) The references in sections 201(7) and 202(7) of the 2003 Act to the local probation board for the area in which the premises are situated are to be read in relation to an overseas community order as references to a local probation board.
- (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.

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- (4) For the purposes of Part 12 of the 2003 Act “the responsible officer”, in relation to an offender to whom an overseas community order relates, means the officer of a local probation board who, as respects the offender, is for the time being responsible for discharging the functions conferred by that Part on the responsible officer.
- (5) The power conferred on the Secretary of State by section 197(3)(a) of the 2003 Act includes power to amend subsection (4) above.

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.

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.

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.
- (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,

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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.

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.