

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 11 – the Service Civilian Court

543. At present civilians subject to service law who commit offences under the SDAs may be dealt with summarily by an officer (the appropriate superior authority), who has very limited powers of punishment, or by court-martial. In addition, the Armed Forces Act 1976 established Standing Civilian Courts for the trial, outside the UK, of civilians under the Army and Air Force Acts 1955 (but not the Naval Discipline Act 1957). The Secretary of State can direct areas outside the UK where trials may take place. Two such areas have been established: Germany, Belgium and Holland (as the first area); and the republic of Cyprus and the Sovereign Base Areas of Dhekelia and Akrotiri (as the second area) on the island of Cyprus. A judge advocate is appointed as magistrate to sit in a Standing Civilian Court.
544. Standing Civilian Courts generally have jurisdiction to try civilians for offences committed outside the UK where the offence is one for which a court-martial can try a civilian. The exceptions are offences under section 57 of the Army and Air Force Acts 1955 (offences in relation to courts, including contempt) and civil offences under the law of England and Wales that are triable only in the Crown Court.
545. Standing Civilian Courts act in similar ways to a magistrates' court in England and Wales. They have similar powers of punishment: they can award a maximum sentence of imprisonment for a term not exceeding six months (12 months if consecutive sentences are awarded) but cannot award imprisonment or a fine for a civil offence where a magistrates' court in England and Wales would not have power to make such an award.
546. The sections in this Part create the Service Civilian Court to replace the Standing Civilian Courts and make provision for the court and its proceedings. The main changes are the replacement of the power to direct areas where trial can take place with provisions for the court to sit anywhere outside the British Islands; and the creation of a power, analogous to the power of a magistrates' court, for the court to decide whether it or the Court Martial should try a charge.

The Service Civilian Court: court and proceedings

Section 277: The Service Civilian Court

547. This section establishes a court to be known as the Service Civilian Court ("SCC") which may sit anywhere outside the British Islands.
548. **Section 278:** Constitution and proceedings of the Service Civilian Court

549. This section provides that the SCC is to consist of a single judge advocate, to be specified by or on behalf of the Judge Advocate General. Unlike the present situation, the judge advocate will not be called a “magistrate” when he sits on the SCC. The section also introduces Schedule 10, which contains provision about proceedings of the SCC.

Section 279: Court must consider whether trial by Court Martial more appropriate

550. This section provides that, before the charge is put and a plea entered, the SCC must decide whether it or the Court Martial should try the charge. Before making this decision the SCC must give the prosecution the opportunity to inform it of any previous convictions the defendant has, and it must give the prosecution and the defendant an opportunity to make representations about which court should try the charge; this corresponds to the position to be introduced in the civilian system pursuant to amendments to the Magistrates’ Courts Act 1980 made by the Criminal Justice Act 2003.
551. The matters that the SCC must take into account in making a decision are specified in this section and mirror those matters that the magistrates’ court must take into account when deciding whether to decline jurisdiction. Where the SCC declines jurisdiction it must refer the charge to the Court Martial.

Section 280: Right to elect trial by Court Martial instead of by SCC

552. This section provides that where the SCC decides that it should try a charge, the defendant must be given the opportunity before arraignment to elect to be tried by the Court Martial. If the defendant (or any defendant if a charge is charged jointly) elects to be tried by the Court Martial, the charge must be referred to the Court Martial (and where there are two or more charges against the defendant, an election in respect of one or more of the charges is deemed to be an election for all of them). Otherwise the SCC must try the charge. The practical effect of this section, section 279 and Part 5 is that the SCC will try a charge only where the DSP, the court and the defendant are content that it should do so.

Section 281: Power of SCC to convict of offence other than that charged

553. This section applies to the SCC the provisions of section 161 which provides the Court Martial with a power to convict a person of an offence other than the one charged, where it finds the person not guilty of the charge in the charge sheet and where the allegations in the charge sheet amount to or include an allegation of another service offence.

Punishments available to Service Civilian Court

Section 282: Punishments available to Service Civilian Court

554. This section provides that the punishments available to the Court Martial when it is dealing with civilians are also available to the SCC subject to some restrictions. The restrictions that apply are listed in section 282, for example, the SCC’s power to make a service community order is restricted in the same way that section 164(5) restricts the corresponding power of the Court Martial. It is supplemented by Chapters 4 and 5 of Part 8, which respectively provide for sentences of imprisonment for less than 12 months and custodial sentences for young offenders.

Section 283: Imprisonment: maximum term

555. This section prevents the SCC from passing a sentence of imprisonment for more than 12 months in respect of a single offence, or consecutive sentences for a total of more than 65 weeks.

Section 284: Fines and compensation orders: maximum amounts

556. Subsection (1) prevents the SCC from imposing a fine of more than the prescribed sum (currently £5,000) for any one offence. In the case of a criminal conduct offence, subsection (2) further prevents the court from imposing a fine greater than that which a magistrates' court could impose for the corresponding offence under the law of England and Wales.
557. Under subsection (3) the SCC cannot make a service compensation order for an amount greater than the maximum compensation that a magistrates' court can award (currently £5,000). In the case of offences taken into consideration, under subsection (4) the amount awarded must not exceed the difference between the maximum that the court could have awarded (for the offences of which the offender is convicted) and the amount that it does in fact award.

Appeals from Service Civilian Court

Section 285: Right of appeal from SCC

558. This section provides that a person convicted by the SCC may appeal to the Court Martial. Appeal may be against sentence if the person pleaded guilty, or against conviction or sentence if he did not plead guilty. The respondent to any appeal is the DSP.
559. An appeal must be brought within an initial period of 28 days, beginning on the date the person was sentenced, or within such longer period as the Court Martial may allow. For these purposes "sentence" includes any order made by a court when dealing with an offender.

Section 286: Hearing of appeals from SCC

560. An appeal against conviction is to be by way of rehearing of the charge (including a rehearing in respect to sentence), so that all of the evidence is reheard by the Court Martial. An appeal against sentence is to be by way of a rehearing as respects sentence, so that only evidence relevant to sentencing will be reheard. The section stipulates which judge advocates are not permitted to be a member of the court hearing an appeal because of prior involvement in a case.
561. The section also provides that those parts of the Act that are concerned with Court Martial trial and sentencing apply to appeals as they do to trials by the Court Martial, subject to any modification contained in Court Martial rules. Furthermore, the Court Martial may only pass a sentence that the SCC had the power to pass in respect of the offence, although this may be a more severe sentence than that actually imposed by the SCC. This power mirrors that of the Crown Court on appeal from a magistrates' court.

Section 287: Findings made and sentences passed by Court Martial on appeal from SCC

562. This section provides that any finding made or sentence passed by the Court Martial on an appeal replaces the finding or sentence of the SCC. It also provides that a sentence passed on an appeal runs from the time from which it would have run if it had been imposed by the SCC, unless the Court Martial directs otherwise. Where a sentence is passed on an appeal against sentence, the person is to be treated (for the purposes of enabling him to appeal against sentence) as if he had been convicted by the Court Martial of the offence for which the sentence was passed. This is because there is a right of appeal against sentence under the 1968 Act only for persons convicted by the Court Martial.

SCC Rules

Section 288: SCC rules

563. This section gives the Secretary of State power to make rules in relation to the SCC. These rule-making powers are broadly similar to those for the SAC and the Court Martial.