These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 12 – Service and Effect of Certain Sentences

Commencement of sentence

Section 289: Commencement of sentences of the Court Martial and Service Civilian Court

564. This section provides that a sentence passed by the Court Martial or the SCC takes effect from the beginning of the day on which it is passed, unless some other provision enables the court to direct otherwise. The rule does not apply to suspended sentences (which take effect only when subsequently activated) or to sentences passed by the Court Martial on appeal from the SCC (which under section 287(2) take effect from the beginning of the day on which the SCC passed sentence, unless the Court Martial otherwise directs).

Section 290: Commencement of term of service detention awarded by CO

565. This section postpones the point at which an award of service detention made by a CO takes effect (even if the CO does not suspend the award under section 189(3). Unless the offender elects to start the sentence immediately, it does not take effect until the time allowed for bringing an appeal (the "appeal period") expires or, if an appeal is brought, the appeal is disposed of (unless the SAC disposes of it by quashing the award or substituting another punishment).

566. Even if the offender does elect to start the sentence immediately, he can withdraw the election during the appeal period. In that case the sentence ceases to have effect, and resumes only when the appeal period expires or any appeal is disposed of. Similarly, if the sentence has already come into effect and an appeal is brought, the sentence ceases to have effect and resumes only when the appeal is disposed of.

Section 291: Commencement of consecutive term of service detention awarded by CO

567. This section adapts the rules in section 189 for the case where a CO makes an award of service detention consecutive to an existing award. Unless the offender elects to start the new sentence as soon as the old one expires, the new one does not take effect until the old one has expired and the appeal period has expired or any appeal has been disposed of.

568. If the offender does elect to start the new sentence at the end of the old one, he can withdraw the election during the appeal period. If he withdraws the election before the end of the old sentence, the new one does not take effect until the old one has expired and the appeal period has expired or any appeal has been disposed of. If he withdraws

the election when the old sentence has expired and the new one has begun, the new one ceases to have effect, and resumes only when the appeal period expires or any appeal is disposed of.

569. If an appeal is brought before the old sentence expires, the new one does not take effect until the old one has expired and the appeal has been disposed of. If an appeal is brought after the old sentence has expired and the new one has taken effect, the new one ceases to have effect and resumes only when the appeal is disposed of.

Section 292: Commencement of suspended sentence activated by CO

570. This section provides that the rules in sections 290 and 291 shall apply (with modifications) where an officer makes an order activating a suspended sentence of service detention under section 193. Unless the officer orders that the suspended sentence is to take effect from the end of another sentence, the rules in section 290 apply; if the order does provide that the suspended sentence is to take effect from the end of another sentence, then the rules in section 291 apply.

Effect of custodial sentence or detention on rank or rate

Section 293: Effect on rank or rate of WOs and NCOs of custodial sentence or sentence of service detention

571. Under this section, where a warrant officer or NCO is given a custodial sentence for a service offence or is sentenced to service detention, his rank or rate is automatically reduced as far as the Court Martial could reduce it under section 164. The extent to which the Court Martial could reduce it will depend whether any relevant restrictions are imposed by regulations made under section 164(4).

572. If the offender is also sentenced to dismissal or dismissal with disgrace, this section does not apply: section 295(4) applies instead.

Section 294: Rank or rate of WOs and NCOs while in custody pursuant to custodial sentence etc

573. Under this section, a warrant officer or NCO serving a custodial sentence (including one passed by a civilian court) or a sentence of service detention is to be treated as holding the lowest rank or rate for the Service to which he belongs—or, if he belongs to the air forces, the highest rank he has held as an airman (see the note on section 135 (paragraph 287)).

Effect of dismissal

Section 295: Effect of sentence of dismissal

574. This section applies where an offender is sentenced to dismissal or dismissal with disgrace. If he is an officer, his commission is forfeit and he automatically ceases to be a member of the forces. Otherwise, the competent authority must discharge him (but may delay doing so until any sentence of service detention has been served). If he is a warrant officer or NCO, his rank or rate is reduced to the lowest in his Service, or, if he belongs to the air forces, the highest rank he has held as an airman.

Service of sentence

Section 296: Service detention

575. This section applies where a person is sentenced to service detention. It provides that he may be detained in service custody (but not in a prison) for the duration of his sentence, and that during that period he shall be deemed to be in legal custody.

576. Service detention is carried out either at the Military Corrective Training Centre (MCTC) at Colchester in Essex or in licensed unit facilities. There are no longer any service prisons.

577. The MCTC is an Army unit, but it accommodates people from all three Services and has some naval and RAF personnel on its staff. It provides a dedicated facility which holds three different classes of people:

- people who are serving a sentence of service detention. Within this category, those who are to return to normal duty undergo a regime of service training designed to improve their service efficiency, discipline and morale and make them better service personnel. Those who are dismissed from the service undergo a separate regime of corrective training designed to enhance their potential for self-sufficiency and responsible citizenship.
- people who are in service custody pre-trial and pre-sentence.
- people who have been sentenced to imprisonment or, in the case of young people, a custodial sentence, while their transfer to the civilian institution in which they will serve their sentence is arranged.

578. Unit detention facilities are for those who are in custody pre-charge or pre-sentence or for persons who have been sentenced to a short period of service detention (typically less than 14 days).

Section 297: Detention in service custody following passing of custodial sentence etc

579. This section applies where a person is sentenced to a custodial sentence for a service offence, or an order has been made in respect of him under section 214 (the detention of an offender who has committed an offence during the currency of a detention and training order). Such a person must serve his sentence in a civilian institution; this section makes lawful his detention in service custody until he is committed to the appropriate civilian institution in which he will serve his sentence.

Section 298: Removal to England and Wales following passing of custodial sentence etc

580. Currently persons sentenced to custodial sentences under the SDAs may be committed to a civilian institution in England and Wales, Scotland or Northern Ireland. Under the Act (and rules made under it) all persons sentenced to custodial sentences, or subject to orders under section 213, will be committed into an institution in England and Wales (via the MCTC). Like other prisoners, they may after committal be transferred to institutions in other parts of the UK under the Crime (Sentences) Act 1997.

581. This section provides that if a person is outside the UK when a custodial sentence is passed against him, or when an order under section 214 made in respect of him, he must be removed to England and Wales as soon as practicable.

Section 299: Duty to receive prisoners

582. This section confers a duty upon the governor of a civilian prison in England or Wales to receive and confine, for the duration of their sentence, any person who has been sent to the prison in accordance with the service custody rules to be made under section 300.

Section 298: Service custody etc rules

583. This section empowers the Secretary of State to make rules about service custody and the service of sentences imposed by service courts.

584. The section specifies certain matters in particular for which these rules may contain provision. They include:

- the provision, classification, regulation and management of service custody premises (which will include both the MCTC and smaller facilities, such as guardrooms, which are used for the temporary accommodation of persons in service custody);
- the creation of disciplinary offences, and the award of additional days to be served by a person guilty of such an offence;
- the determination of any matter by a judge advocate, and appeals against such determinations; and
- the application (with or without modifications) of those sections of the Prison Act 1952 dealing with offences by persons other than prisoners, and those sections of the Criminal Justice Act 1961 dealing with the harbouring of escaped prisoners.

585. Subsection (3) provides that the rules may confer on any person a power to use reasonable force where necessary for the purpose of searching a service custody establishment or a person in service custody, and a power to seize and detain unauthorised property.

Section 301: Duration of sentences: persons unlawfully at large or on temporary release

586. This section provides for the duration of a sentence to be adjusted where the sentenced person spends any period of the sentence unlawfully at large or on temporary release. It provides that any period during which the person is unlawfully at large or has been temporarily released on compassionate grounds shall not count against sentence.

587. This provision applies to sentences of service detention and applies to custodial sentences where the period of absence occurs before the person arrives at the custodial establishment. The effect of the section is to extend the period of the sentence by the number of days that the person is absent, calculated according to the rules in subsection (5).

Section 302: Remission of certain sentences on passing of custodial sentence etc

588. This section applies where a person is already serving a relevant sentence (defined as a sentence of service detention, a service supervision and punishment order or a minor punishment) and, during that sentence, is sentenced in separate proceedings to a custodial sentence, either in respect of a service offence or by a civilian criminal court. Where this occurs, the unserved balance of the relevant sentence is to be remitted. This means that the person will cease to serve the relevant sentence and will instead immediately commence the new custodial sentence in the appropriate establishment. The person does not remain liable to serve any unserved part of their sentence, which is effectively cancelled.

Section 303: Power of service policeman to arrest person unlawfully at large

589. This section empowers a service policeman to arrest a person sentenced to service detention who is unlawfully at large, and provides that the arrested person may be taken to the place where he is required to be detained (subsection (1)).

590. Subsection (2) applies the definition of "unlawfully at large" at section 299(4) for the purposes of this section. Subsection (3) permits the use of reasonable force when arresting a person, or taking him to the place where he is to be detained, under subsection (1).

Supplementary

Section 304: Sentences passed by civilian courts

591. This section makes clear that references in Part 12 of the Act to custodial sentences, and the references in sections 297(2) and 298(2) to orders activating suspended sentences of imprisonment, apply only to sentences and orders of service courts, not civilian courts.