

ARMED FORCES ACT 2006

EXPLANATORY NOTES

THIRD GROUP OF PARTS – GENERAL

Part 18 – Commanding Officer and Other Persons With Functions under Act

Officers

Section 360: Meaning of “commanding officer”

734. This section provides the Defence Council with the power to make regulations defining who the CO of another person is for the purposes of any provision of the Act. These regulations are not made by statutory instrument as they are administrative documents. They will allow the Defence Council to provide for matters such as the rank a CO must hold if he is to hear a charge against another officer of a particular rank.

Section 361: Meaning of “higher authority”

735. This section defines higher authority in relation to a CO for the purposes of the Act as anyone superior to the CO in his disciplinary chain of command. Hence, when a CO requires higher authority approval to award particular punishments at a summary hearing it is clear from whom he must seek this approval.

Section 362: Judge Advocates

736. This section provides that for the purposes of this Act references to “judge advocate” mean the Judge Advocate General, those people who have been appointed to the office of judge advocate under the provisions of the Courts-Martial (Appeals) Act 1951 or a High Court judge. This latter category will allow the Judge Advocate General to select High Court judges for certain trials when particular expertise is required.

Court officials

Section 363: Court administration officer

737. This section creates the post of the court administration officer for the Court Martial, the SCC and the SAC. This officer is responsible for administrative matters such as listing cases and notifying witnesses of hearings in respect of proceedings before the three Service courts.
738. To establish his independence from the chain of command, the power to appoint the court administration officer is vested in the Defence Council.

Service Prosecuting Authority

Section 364: Director of Service Prosecutions

739. This section provides for the appointment of the DSP and the legal qualifications required for appointment. There is no requirement that the DSP be a member of HM Forces.

Section 365: Prosecuting officers

740. This section enables the DSP to appoint officers to be prosecuting officers, and provides for the legal qualifications required for appointment. A prosecuting officer can exercise any of the DSP's functions unless the DSP directs otherwise.

Section 366: Service Complaints Commissioner

741. This section provides for there to be a Service Complaints Commissioner, appointed by the Secretary of State (The Commissioners functions are provided for in sections 338 and 339). The section also provides that the Commissioner must not be a member of Armed Forces or the civil service, shall be subject to terms of appointment and will not have Crown status.