Armed Forces Act 2016

2016 CHAPTER 21

An Act to continue the Armed Forces Act 2006; to make provision about service discipline; to make provision about war pensions committees established under section 25 of the Social Security Act 1989; to make provision about Ministry of Defence fire-fighters; and for connected purposes. [12th May 2016]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Duration of Armed Forces Act 2006

[F1]1 Duration of Armed Forces Act 2006

. . . . . .

Textual Amendments

F1 S. 1 omitted (15.12.2021) by virtue of Armed Forces Act 2021 (c. 35), **ss. 1(2)**, 24(2)(a)

Alcohol and drugs

2 Commanding officer's power to require preliminary alcohol and drugs tests

(1) In the heading of Chapter 3A of Part 3 of AFA 2006 (testing for alcohol and drugs on suspicion of offence), for "on suspicion of offence" substitute " in connection with a suspected offence or accident ".

(2) In section 93A of AFA 2006 (commanding officer's power to require preliminary tests) —

(a) before subsection (1) insert—

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Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

"(A1) This section applies in the situations described in subsections (1) to (3C).",

(b) in subsection (1), for "This section applies" substitute " The first situation is ",

(c) in subsection (1)(a), for "relevant offence" substitute " safety-critical duty offence ",

(d) in subsection (1)(b), for "a relevant" substitute " such an ",

(e) omit subsection (2),

(f) in subsection (3), for "This section also applies" substitute " The second situation is ",

(g) after subsection (3) insert—

"(3A) The third situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

(a) there has been an accident involving an aircraft or a ship; and

(b) at the time of the accident, the person was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship.

(3B) The fourth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

(a) there has been an accident involving an aircraft or a ship;

(b) before the accident, the person carried out an aviation function in relation to the aircraft or a marine function in relation to the ship; and

(c) it is possible that the carrying out of the function by the person may have caused or contributed to—

(i) the occurrence of the accident;

(ii) any death, injury to a person, damage to property or environmental harm resulting from the accident; or

(iii) any risk of death or of such injury, damage or harm created by the accident.

(3C) The fifth situation is where the commanding officer of a person subject to service law or of a person who is a civilian subject to service discipline has reasonable cause to believe that—

(a) there has been an accident which resulted in or created a risk of—

(i) death;

(ii) serious injury to any person;

(iii) serious damage to property; or

(iv) serious environmental harm;

(b) the person—

(i) was carrying out a safety-critical function at the time of the accident; or

(ii) carried out a safety-critical function before the accident; and

(c) it is possible that the carrying out of the safety-critical function by the person may have caused or contributed to—

(i) the occurrence of the accident;

(ii) the death, injury, damage or harm; or

(iii) the risk of death, injury, damage or harm.", and

(h) in subsection (4)—

(i) at the beginning insert " Where this section applies, ", and

(ii) for "subsection (1) or (3) ("the suspected person")" substitute " subsection (1), (3), (3A), (3B) or (3C) ("the affected person") ".

(3) After that section insert—

"**93AA Section 93A: interpretation**

(1) In section 93A(1), "safety-critical duty offence" means—

(a) an offence under section 20A; or

(b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined in section 93I).

(2) In section 93A(3A) and (3B)—

"aviation function" means a role or activity in connection with aviation that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections;

"marine function" means a role or activity in connection with a ship or ships that is specified, or of a description specified, by regulations made by the Defence Council for the purposes of those subsections.

(3) The Defence Council may specify a role or activity (or description of role or activity) under subsection (2) only if carrying it out with ability impaired by alcohol or drugs would result in a risk of—

(a) death,

(b) serious injury to any person,

(c) serious damage to property, or

(d) serious environmental harm,

but this is subject to subsection (4).

(4) The Defence Council's powers under subsection (2) include power to specify a role or activity that is undertaken in preparation for, or in connection with, the carrying out of a role or activity (or description of role or activity) that satisfies the test in subsection (3), either by specifying such a role or activity generally or by specifying a particular role or activity.

(5) For the purposes of section 93A(3A) and (3B), an accident does not involve an aircraft or a ship simply because it takes place on an aircraft or ship.

(6) In section 93A(3C), references to the carrying out of a safety-critical function are to—

(a) the performance by a person subject to service law of a duty specified, or of a description specified, by regulations under section 20A(2) or of any other safety-critical duty (as defined in section 93I); or

(b) the carrying out by a person who is a civilian subject to service discipline, in the course of the person's employment, of a role or

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activity which, if it were carried out by a person subject to service law in the course of his or her duty, would be a safety-critical duty.

(7) References in section 93A and this section to a person carrying out a function include a failure by the person to carry out a function at a time when the person is responsible for carrying it out (and related expressions are to be read accordingly).”

(4) In section 93B of AFA 2006 (preliminary breath test)—

(a) in subsection (1), at the beginning insert “ In a situation described in section 93A(1) or (3), ”,

(b) in subsection (1)(a), for “suspected” substitute “ affected ”,

(c) after subsection (1) insert—

“(1A) In a situation described in section 93A(3A), (3B) or (3C), a preliminary breath test is a procedure administered by a service policeman under which—

(a) the affected person provides a specimen of breath; and

(b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication of the proportion of alcohol in the person's breath or blood.”, and

(d) in subsection (3), for “93A(2)” substitute “ 93A(1)(a) ”.

(5) In section 93C of AFA 2006 (preliminary impairment test), in subsection (1)(a) and (b), for “suspected” substitute “ affected ”.

(6) In section 93D of AFA 2006 (preliminary drug test), in subsection (1)(a), for “suspected” substitute “ affected ”.

(7) In section 93I of AFA 2006 (definitions for the purposes of Chapter 3A of Part 3), in the definition of “safety-critical duty”, after “93A(1)” insert “ , 93AA(6)(a) ”.

(8) In section 373 of AFA 2006 (regulations etc)—

(a) in subsection (2) (regulations made by Defence Council), after “36,” insert “ 93AA, ”, and

(b) in subsection (3)(d) (affirmative procedure), after “20A,” insert “ 93AA(2), ”.

Commencement Information

I1 S. 2 in force at 19.7.2018 for specified purposes by S.I. 2018/876, **reg. 2(a)**

I2 S. 2 in force at 1.1.2019 in so far as not already in force by S.I. 2018/876, **reg. 2(b)**

Investigation and charging

3 Duty of service policeman following investigation

(1) In section 116(2) of AFA 2006 (cases that must be referred to the Director of Service Prosecutions following investigation by service or civilian police)—

(a) in paragraph (a), for “a Schedule 2 offence” substitute “ a service offence that is not a CO offence ”, and

(b) in paragraph (b), for “any other service offence” substitute “ a service offence that is a CO offence ”.

(2) In section 116(3) of AFA 2006 (cases that must be referred to the commanding officer following investigation by service or civilian police)—

(a) omit "and" at the end of paragraph (a), and

(b) after paragraph (b) insert ", and

(c) section 117(5) (referral of connected cases to DSP) does not apply,".

(3) In section 116(4) of AFA 2006 (obligation to consult the Director of Service Prosecutions about certain cases)—

(a) in paragraph (a), for "a Schedule 2 offence has or might have been committed" substitute " a person has committed, or might have committed, a service offence which is not one that may be dealt with at a summary hearing (see section 53) ", and

(b) in the words after paragraph (b), at the end insert " or section 117(5) ".

(4) In section 116(5) of AFA 2006 (interpretation of section 116)—

(a) for "For the purposes of subsections (2) and (3)" substitute "For the purposes of this section—

(a)",

and

(b) at the end insert ", and

(b) a service offence committed by a person is a "CO offence" if a charge against the person in respect of the offence is capable of being heard summarily by the person's commanding officer (see section 52)."

(5) In section 117 of AFA 2006 (section 116: position where investigation is of multiple offences or offenders), for subsection (3) substitute—

"(3) Subsections (4) and (5) apply if—

(a) at least one of the cases has been, or must be, referred to the Director of Service Prosecutions ("the Director") under section 116(2),

(b) a service policeman considers that there is sufficient evidence to charge a person with a service offence in another of the cases,

(c) that case is not required to be referred to the Director under section 116(2), and

(d) the service policeman considers that there is, or may be, a connection between a case falling within paragraph (a) and the case falling within paragraph (c), whether direct or indirect, that makes it appropriate for both cases to be referred to the Director.

(4) The service policeman must consult the Director about the existence and nature of the connection between those cases.

(5) Following that consultation, if the service policeman considers that there is a connection described in subsection (3)(d), the service policeman must refer the case falling within subsection (3)(c) to the Director.

(6) The reference in this section to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5)(a)."

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(6) In section 118 of AFA 2006 (duty of service policeman to notify commanding officer of referral to the Director of Service Prosecutions)—

(a) in subsection (1), after "116(2)" insert " or 117(5) ",

(b) for subsection (3) substitute—

"(3) A notification under subsection (2)(a) must specify the service offence that the service policeman considers there is sufficient evidence to charge A with.

(3A) Where that offence is a CO offence, the notification must—

(a) specify whether the case is referred under section 116(2) or 117(5), and

(b) if the case is referred under section 116(2), specify the circumstances that bring the case within section 116(2)(b).",

(c) in subsection (4)(a), for "section 116(5)" substitute " section 116(5)(a) ",

(d) in subsection (4), after paragraph (a) insert—

"(aa) any reference to a CO offence is to be read in accordance with section 116(5)(b);", and

(e) omit subsection (5).

(7) In section 121(1) of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc), after paragraph (a) (but before "or") insert—

"(aa) section 117(5) (referral of connected cases);".

(8) In Schedule 2 to AFA 2006 (Schedule 2 offences for the purposes of Part 5), in the shoulder reference, for "Sections 113, 116" substitute " Section 113 ".

(9) In consequence of the substitution of section 117(3) of AFA 2006, omit paragraph 5(2) of Schedule 3 to the Armed Forces Act 2011.

Commencement Information

I3 S. 3 in force at 22.5.2019 for specified purposes by S.I. 2019/961, **reg. 2(1)(a)** (with reg. 3)

I4 S. 3 in force at 1.7.2019 in so far as not already in force by S.I. 2019/961, **reg. 2(1)(b)** (with reg. 3)

4 Power of commanding officer to charge etc

(1) In section 120 of AFA 2006 (power of commanding officer to charge etc), in subsection (5) (referral of certain cases to the Director of Service Prosecutions)—

(a) for the words before paragraph (a) substitute " Where an officer has referred a case under subsection (3), the officer must also refer to the Director of Service Prosecutions any other case— ", and

(b) omit the words following paragraph (b).

(2) In section 121(1) of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc), in paragraph (b), after "120(3)" insert " or (5) ".

Commencement Information

I5 S. 4 in force at 22.5.2019 for specified purposes by S.I. 2019/961, **reg. 2(1)(a)** (with reg. 3)

I6 S. 4 in force at 1.7.2019 in so far as not already in force by S.I. 2019/961, **reg. 2(1)(b)** (with reg. 3)

5 Power of Director of Service Prosecutions to charge etc

(1) In section 121 of AFA 2006 (power of the Director of Service Prosecutions to direct bringing of charges etc)—

(a) in subsection (1), for "subsections (2) to (5)" substitute " subsections (1A) to (5) ",

(b) after subsection (1) insert—

"(1A) The Director may bring a charge or charges against the person concerned in respect of the case.

(1B) If—

(a) the Director brings a charge under subsection (1A), and

(b) the Service Civilian Court has jurisdiction to try the charge,

the Director may allocate the charge for trial by that court.",

(c) in subsection (4), after "appropriate" insert " to bring a charge under subsection (1A) or ",

(d) in subsection (5), after "could" insert " bring a charge under subsection (1A) or ", and

(e) in the heading, after "to" insert " charge or ".

(2) In section 122 of AFA 2006 (charges brought at the direction of the Director of Service Prosecutions)—

(a) in subsection (2), for "brought as a result of such a direction" substitute " brought by the Director of Service Prosecutions ("the Director") under section 121(1A) or by an officer as a result of a direction under section 121(2) ",

(b) in subsection (2)(a), for "the Director of Service Prosecutions allocated it (under section 121(3))" substitute " the Director allocated it (under section 121(1B) or (3)) ", and

(c) in the heading, after "brought" insert " by or ".

(3) In the Youth Justice and Criminal Evidence Act 1999—

(a) in section 45A(15)(b) (reporting restrictions: when proceedings in a service court commence), for "section 122" substitute " section 121(1A) or 122 ", and

(b) in paragraph 6(6)(a) of Schedule 7 (reporting restrictions: transitional provision), for "section 122" substitute " section 121(1A) or 122 ".

Commencement Information

I7 S. 5 in force at 22.5.2019 for specified purposes by S.I. 2019/961, **reg. 2(1)(a)** (with reg. 3)

I8 S. 5 in force at 1.7.2019 in so far as not already in force by S.I. 2019/961, **reg. 2(1)(b)** (with reg. 3)

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Suspended sentences of service detention

6 Period for which sentence of service detention may be suspended

(1) In section 190 of AFA 2006 (suspension of sentence of service detention), for subsection (2) (length of period of suspension) substitute—

"(2) The operational period must be a period of not less than 3 months beginning with the date of the order made under this section.

(2A) The maximum length of the operational period is—

(a) where subsection (2B) applies, 24 months; and

(b) otherwise, 12 months.

(2B) This subsection applies where the order under this section is made by—

(a) the Court Martial,

(b) the Court Martial Appeal Court, or

(c) the Supreme Court on an appeal brought from the Court Martial Appeal Court,

except where the order is made in circumstances in which Schedule 3A applies (sentencing powers in cases involving election under section 129 for trial by Court Martial) or on an appeal arising out of a case in which that Schedule applied."

(2) The amendment made by this section applies only in relation to an order relating to a sentence of service detention for an offence committed on or after the day on which it comes into force.

(3) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (2) to have been committed on the first of those days.

Commencement Information

I9 S. 6 in force at 1.7.2019 by S.I. 2019/961, **reg. 2(2)**

Offenders assisting investigations and prosecutions

PROSPECTIVE

7 Immunity from prosecution

In AFA 2006, after Part 12 insert—

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"PART 12A

OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS

304A **Immunity from prosecution**

(1) If the Director of Service Prosecutions ("the Director") thinks that, for the purposes of the investigation or prosecution of a relevant service offence, it is appropriate to offer a person immunity from prosecution for a service offence, the Director may give the person a written notice under this subsection (an "immunity notice").

(2) "Relevant service offence" means—

(a) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an indictable offence under that law; or

(b) any other service offence which, if committed by a person aged 18 or over and tried by the Court Martial, is punishable with imprisonment for more than 2 years.

(3) If a person is given an immunity notice, the person may not be tried for a service offence of a description specified in the notice except in circumstances specified in the notice.

(4) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice."

PROSPECTIVE

8 Undertakings as to use of evidence

After section 304A of AFA 2006 insert—

"304B Undertakings as to use of evidence

(1) If the Director of Service Prosecutions ("the Director") thinks that, for the purposes of the investigation or prosecution of a relevant service offence, it is appropriate to offer a person an undertaking that information will not be used against the person in service proceedings, the Director may give the person a written notice under this subsection (a "restricted use undertaking").

(2) If a person is given a restricted use undertaking, the information described in the undertaking must not be used against that person in service proceedings except in the circumstances specified in the undertaking.

(3) In subsections (1) and (2), the references to the use of information in service proceedings are to its use—

(a) at a summary hearing in respect of a service offence, or

(b) in proceedings in respect of a service offence before—

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(i) the Court Martial;
(ii) the Service Civilian Court;
(iii) the Summary Appeal Court;
(iv) the Court Martial Appeal Court; or
(v) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

(4) A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.

(5) In this section "relevant service offence" has the same meaning as in section 304A."

PROSPECTIVE

9 Reduction in sentence

After section 304B of AFA 2006 insert—

"**304C Reduction in sentence**

(1) This section applies if a defendant—
(a) is convicted of a service offence following a plea of guilty in proceedings in the Court Martial; and
(b) has, pursuant to a written agreement made with the Director of Service Prosecutions, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.

(2) In determining what sentence to pass on the defendant, the Court Martial may take into account the extent and nature of the assistance given or offered.

(3) Subsection (2) does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining the sentence.

(4) The power of a court to act under subsection (2) is not affected by any enactment which requires that a minimum sentence is passed in respect of an offence or an offence of a particular description or by reference to the circumstances of an offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances).

(5) The power of a court to act under subsection (2) is not affected by any enactment which, in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines, or has the effect of determining, the minimum period of imprisonment or detention which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances).

(6) In this section, references to assisting the prosecutor are to assisting the Director or any other prosecutor."

10 Review of sentence following offer of assistance

After section 304C of AFA 2006 insert—

"304D Review of sentence following offer of assistance

(1) This section applies if—
- (a) the Court Martial has passed a sentence on a person in respect of a service offence;
- (b) the sentence for the offence is not fixed by law or, if it is, the person pleaded guilty; and
- (c) the person falls within subsection (2) or (3).

(2) A person falls within this subsection if the person—
- (a) received a discounted sentence in consequence of having offered, in accordance with a written agreement with the Director of Service Prosecutions ("the Director"), to give assistance to the investigator or prosecutor of an offence; and
- (b) having given the assistance in accordance with the agreement, in accordance with another written agreement with the Director gives or offers to give further assistance to the investigator or prosecutor of an offence.

(3) A person falls within this subsection if the person—
- (a) received a sentence which was not discounted; and
- (b) in accordance with a written agreement with the Director subsequently gives or offers to give assistance to the investigator or prosecutor of an offence.

(4) The Director may at any time refer the case back to the Court Martial if—
- (a) the person is still serving the sentence; and
- (b) the Director thinks it is in the interests of justice to do so.

(5) The Court Martial dealing with a referral under this section must, if possible, consist of the people who were the members of the Court Martial when it passed the sentence to which the referral relates.

(6) The Court Martial may—
- (a) take into account the extent and nature of the assistance given or offered; and
- (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

(7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a lesser sentence imposed under this section has been served.

(8) A person in respect of whom a referral is made under this section may, with the leave of the Court Martial Appeal Court, appeal to that court against a decision of the Court Martial under this section.

(9) The Director may, with the leave of the Court Martial Appeal Court, appeal to that court against such a decision.

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(10) In relation to any proceedings under this section, the Secretary of State may make regulations containing provision corresponding to any provision in Parts 2 to 4 of the Court Martial Appeals Act 1968, with or without modifications (but this is subject to subsection (11)).

(11) Regulations under subsection (10)—

(a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;

(b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(12) Section 1(4) of the Court Martial Appeals Act 1968 (limitation on appeal from the Court Martial Appeal Court) does not prevent an appeal to the Supreme Court in accordance with regulations made under this section.

(13) Subsections (3) to (5) of section 304C apply for the purposes of this section as they apply for the purposes of that section but as if the references to subsection (2) of that section were references to subsection (6) of this section.

(14) In this section—

(a) "discounted sentence" means a sentence passed in accordance with section 304C or this section;

(b) references to assisting the prosecutor are to assisting the Director or any other prosecutor."

Commencement Information

I10 S. 10 in force at 17.4.2024 for specified purposes by S.I. 2024/562, **reg. 2(a)**

11 Review of sentence following failure to assist

After section 304D of AFA 2006 insert—

"304E Review of sentence following failure to assist

(1) This section applies if—

(a) the Court Martial has passed a sentence on a person in respect of a service offence;

(b) the sentence for the offence is not fixed by law or, if it is, the person pleaded guilty;

(c) the person received a discounted sentence in consequence of having offered, in accordance with a written agreement with the Director of Service Prosecutions ("the Director"), to give assistance to the investigator or prosecutor of an offence; and

(d) the person fails to any extent to give assistance in accordance with the agreement.

(2) The Director may at any time refer the case back to the Court Martial if—

(a) the person is still serving the sentence; and

(b) the Director thinks it is in the interests of justice to do so.

(3) The Court Martial dealing with a referral under this section must, if possible, consist of the people who were the members of the Court Martial when it passed the sentence to which the referral relates.

(4) If the Court Martial is satisfied that the person knowingly failed to give the assistance, it may substitute for the sentence to which the referral relates such greater sentence as it thinks appropriate.

(5) A greater sentence imposed under this section must not exceed the sentence which the court would have passed but for the agreement to give assistance.

(6) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater sentence imposed under this section has been served.

(7) A person in respect of whom a referral is made under this section may, with the leave of the Court Martial Appeal Court, appeal to that court against a decision of the Court Martial under this section.

(8) The Director may, with the leave of the Court Martial Appeal Court, appeal to that court against such a decision.

(9) In relation to any proceedings under this section, the Secretary of State may make regulations containing provision corresponding to any provision in Parts 2 to 4 of the Court Martial Appeals Act 1968, with or without modifications (but this is subject to subsection (10)).

(10) Regulations under subsection (9)—

(a) may not make provision corresponding to provision which may be included in regulations made by the Lord Chancellor under section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968;

(b) may confer power to make regulations corresponding to the power in section 31A, 33, 33A, 46A or 47 of the Court Martial Appeals Act 1968 only if they provide that a statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(11) Section 1(4) of the Court Martial Appeals Act 1968 (limitation on appeal from the Court Martial Appeal Court) does not prevent an appeal to the Supreme Court in accordance with regulations made under this section.

(12) In this section—

(a) "discounted sentence" means a sentence passed in accordance with section 304C or 304D;

(b) references to assisting the prosecutor are to assisting the Director or any other prosecutor."

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Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

Commencement Information

I11 S. 11 in force at 17.4.2024 for specified purposes by S.I. 2024/562, **reg. 2(b)**

PROSPECTIVE

12 Supplementary provision

After section 304E of AFA 2006 insert—

"304F Sections 304C to 304E: statements in open court

(1) Subsections (2) and (3) apply if, in accordance with section 304C or 304D, a court passes or substitutes a lesser sentence than it would have passed if the assistance mentioned in those sections had not been given or offered (a "discounted sentence").

(2) The court must state in open court—
- (a) that it has passed or substituted a discounted sentence; and
- (b) what the greater sentence would have been.

(3) If the court thinks that it would not be in the public interest to disclose that the sentence is a discounted sentence—
- (a) subsection (2) does not apply;
- (b) the court must give written notice of the matters specified in paragraphs (a) and (b) of that subsection to both the prosecutor and the defendant; and
- (c) section 252 (duty to give reasons and explain sentence) does not apply to the extent that it would require the court to disclose that it has passed or substituted a discounted sentence.

(4) Subsection (5) applies if a court—
- (a) substitutes a sentence in accordance with section 304E; and
- (b) thinks that it would not be in the public interest to disclose that the person received a discounted sentence under section 304C or 304D.

(5) Section 252 (duty to give reasons and explain sentence) does not apply to the extent that it would require the court to disclose that the person received a discounted sentence.

304G Sections 304D and 304E: exclusion of public from review proceedings

(1) This section applies to—
- (a) proceedings relating to a referral made under section 304D or 304E; and
- (b) any other proceedings arising in consequence of such proceedings.

(2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate—

(a) to exclude a person from the proceedings;
(b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the referral has been made).

(3) The power under subsection (2)(a) does not include power to exclude—
(a) a member or officer of the court;
(b) a party to the proceedings;
(c) a prosecuting officer dealing with the proceedings;
(d) counsel or a solicitor for a party to the proceedings;
(e) a person otherwise directly concerned with the proceedings.

(4) An order under subsection (2) may be made only to the extent that the court thinks—
(a) that it is necessary to do so to protect the safety of any person; and
(b) that it is in the interests of justice.

(5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
(a) to exclude a person from proceedings; or
(b) to restrict the publication of matters relating to proceedings.

304H Meaning of "sentence"

In this Part—
(a) "sentence" includes any order made by a court when dealing with an offender in respect of an offence; and
(b) a reference to a greater or lesser sentence must be interpreted accordingly."

Armed Forces Act 2006 outside the UK

13 AFA 2006: Isle of Man and British overseas territories

(1) On the day on which this section comes into force ("the commencement day"), AFA 2006 comes into force in—
(a) the Isle of Man, and
(b) the British overseas territories except Gibraltar,
(that Act having previously expired there under section 382 of that Act as originally enacted).

(2) The reference in subsection (1) to AFA 2006 is a reference to that Act as it is in force in England and Wales, Scotland and Northern Ireland immediately before the commencement day.

(3) In section 384(2)(b) of AFA 2006 (extent to British overseas territories), at the end insert " except Gibraltar ".

(4) The Schedule to this Act makes further provision about AFA 2006 and the Isle of Man and British overseas territories.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

Repeals relating to discharge for homosexual acts

14 Repeals relating to discharge for homosexual acts

(1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(2) In section 146(4) (homosexual acts as grounds for discharge from the armed forces etc), omit the words "discharging a member of Her Majesty's armed forces from the service or".

(3) In section 147(3) (homosexual acts as grounds for discharge from the armed forces etc: Northern Ireland), omit the words "discharging a member of Her Majesty's armed forces from the service or".

War pensions committees

15 War pensions committees and armed and reserve forces compensation schemes

(1) Section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees) is amended as follows.

(2) After subsection (1) insert—

"(1A) The regulations may give the committees functions relating to one or more of the following—
(a) war pensions;
(b) war pensioners;
(c) AFCS benefits;
(d) AFCS benefit recipients."

(3) In subsection (2)—
(a) omit the words from the beginning to the second "and",
(b) for "it shall be their function" substitute " it is a function of a committee ",
(c) in paragraph (a), for "connected with war pensions or affecting war pensioners in their area and, where they think" substitute " connected with war pensions or AFCS benefits or affecting people in its area who are war pensioners or AFCS benefit recipients and, where it thinks ",
(d) in paragraph (b), for "to them by persons receiving or claiming war pensions and, if they think" substitute " to it by people receiving or claiming war pensions or AFCS benefits and, if it thinks ",
(e) in paragraph (c)—
(i) for "them" substitute " it ", and
(ii) for "they" substitute " it ", and
(f) in paragraph (d), for "war pensioners in their area" substitute " people in its area who are war pensioners or AFCS benefit recipients ".

(4) After subsection (3) insert—

"(3A) The regulations may provide for the committees to have names specified in the regulations (as well as being known as war pensions committees)."

(5) In subsection (4), before the definition of "war pension" insert—

""AFCS benefit" means a benefit payable under an armed and reserve forces compensation scheme established by order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004;

"AFCS benefit recipient" means a person in receipt of an AFCS benefit, in the person's capacity as such;".

Commencement Information
I12 S. 15 in force at 21.11.2017 by S.I. 2017/1131, **reg. 2**

Ministry of Defence fire-fighters

16 Powers of Ministry of Defence fire-fighters in an emergency

(1) A Ministry of Defence fire-fighter who is authorised in writing by the Secretary of State for the purposes of this section may do anything the fire-fighter reasonably believes to be necessary—

(a) if the fire-fighter reasonably believes a fire to have broken out or to be about to break out, for the purpose of extinguishing or preventing the fire or protecting life or property;

(b) if the fire-fighter reasonably believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm;

(c) for the purpose of preventing or limiting damage to property resulting from action taken as mentioned in paragraph (a) or (b).

(2) In particular, a fire-fighter may under subsection (1)—

(a) enter premises or a place, by force if necessary, without the consent of the owner or occupier of the premises or place;

(b) move or break into a vehicle without the consent of its owner;

(c) close a road;

(d) stop and regulate traffic;

(e) restrict the access of persons to premises or a place.

(3) In this section—

"Ministry of Defence fire-fighter" means a person whose duties as an employee or servant of the Crown, or as an employee of a government contractor, include—

(a) extinguishing fires on defence property,

(b) protecting life and property in the event of a fire on defence property, and

(c) rescuing people or protecting them from serious harm in the event of a road traffic accident on defence property;

"defence property" means property used—

(a) for the purposes of the Secretary of State with responsibility for defence,

(b) for the purposes of Her Majesty's forces (within the meaning of the Armed Forces Act 2006) or a visiting force, or

(c) for other defence purposes;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

"government contractor" means a person who provides services to the Secretary of State with responsibility for defence under contract (and includes a sub-contractor);

"road"—

(a) in England and Wales means a highway;

(b) in Scotland has the meaning given in Part 4 of the New Roads and Street Works Act 1991;

(c) in Northern Ireland has the meaning given by Article 2(2) of the Road Traffic Regulation (Northern Ireland) Order 1997 (N.I. 2);

"visiting force" means a body, contingent or detachment of the forces of a country that is a visiting force for the purposes of any provision of the Visiting Forces Act 1952.

(4) The Emergency Workers (Obstruction) Act 2006 is amended as follows.

(5) In section 1(2) (obstructing or hindering certain emergency workers)—

(a) after paragraph (a) insert—

"(aa) that of a Ministry of Defence fire-fighter (as defined in section 16 of the Armed Forces Act 2016);", and

(b) in paragraph (b), after "paragraph (a)" insert " or (aa) ".

(6) In section 7 (extent etc) at the end insert—

"(4) The following extend to Scotland—

(a) sections 1 to 4 so far as they relate to obstructing or hindering a Ministry of Defence fire-fighter or a person assisting such a fire-fighter, and

(b) this section."

17 Minor amendments

(1) In section 102(4) of the Transport Act 1968 (exemption for fire brigades etc to rules on drivers' hours), at the end insert " or for purposes relating to the functions of Ministry of Defence fire-fighters (as defined in section 16 of the Armed Forces Act 2016) ".

(2) In section 15(7)(a)(i) of the Greater London Council (General Powers) Act 1974 (exception for fire and rescue vehicles to offence of parking on footways etc), at the end insert " or for purposes relating to the functions of Ministry of Defence fire-fighters (as defined in section 16 of the Armed Forces Act 2016) ".

(3) In section 62(2)(a) of the Control of Pollution Act 1974 (exception for fire brigades etc to prohibition on use of loud-speakers in streets), after "purposes" insert " or for purposes relating to the functions of Ministry of Defence fire-fighters (as defined in section 16 of the Armed Forces Act 2016) ".

(4) In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for "employer of fire-fighters" substitute " person who employs or engages fire-fighters ".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

Final provisions

18 Meaning of "AFA 2006"

In this Act "AFA 2006" means the Armed Forces Act 2006.

19 Commencement and transitional provision

(1) The provisions of this Act come into force on such day as the Secretary of State may appoint by regulations, subject to subsections (2) and (3).

(2) The following come into force on the day on which this Act is passed—
  (a) section 1 (duration of AFA 2006);
  (b) section 13 and the Schedule to this Act (AFA 2006 outside the UK);
  (c) section 18, this section and sections 20 to 22.

(3) The following come into force at the end of the period of two months beginning with the day on which this Act is passed—
  (a) section 14 (repeals relating to discharge for homosexual acts);
  (b) sections 16 and 17 (Ministry of Defence fire-fighters).

(4) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

(5) Regulations under this section—
  (a) are to be made by statutory instrument, and
  (b) may make different provision for different purposes.

(6) In section 380(8A) of AFA 2006 (power to amend orders that made transitional provision in connection with the coming into force of that Act), at the end insert " (whether the amendment relates to a subject already dealt with in the earlier order or a new subject) ".

20 Extent in the United Kingdom

(1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsection (2).

(2) The amendments made by the following sections have the same extent as the provisions to which they relate—
  (a) section 14 (repeals relating to discharge for homosexual acts);
  (b) section 17 (Ministry of Defence fire-fighters: minor amendments).

21 Extent in the Channel Islands, Isle of Man and British overseas territories

(1) The power under section 384(1) of AFA 2006 may be exercised so as to extend to any of the Channel Islands any amendment or repeal made by this Act of a provision of AFA 2006 (with or without modifications).

(2) This Act, with the exception of sections 5(3), 14, 15, 16, 17 and 20, extends to—
  (a) the Isle of Man, and
  (b) the British overseas territories except Gibraltar.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

(3) The power under section 384(2) of AFA 2006 may be exercised so as to modify any provision of AFA 2006 as amended by this Act as it extends to the Isle of Man or a British overseas territory other than Gibraltar.

22 Short title

This Act may be cited as the Armed Forces Act 2016.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

SCHEDULE

Section 13

ISLE OF MAN AND BRITISH OVERSEAS TERRITORIES: FURTHER PROVISION

The commencement day

1 In this Schedule "the commencement day" has the same meaning as in section 13.

Pre-commencement amendments of AFA 2006 and provisions applied by AFA 2006

2 (1) In section 384(2) of AFA 2006 (as amended by section 13(3) of this Act) (extent to the Isle of Man and British overseas territories other than Gibraltar) the reference to AFA 2006 includes—

(a) a pre-commencement amendment of AFA 2006,

(b) a provision of, or made under, an Act that is applied (by whatever words) by AFA 2006 by virtue of a pre-commencement amendment of AFA 2006, and

(c) a pre-commencement amendment or repeal of a provision of, or made under, an Act that is applied (by whatever words) by or under AFA 2006 (whether by virtue of a pre-commencement amendment of AFA 2006 or otherwise).

(2) For the purposes of this Schedule, an amendment or repeal is a "pre-commencement" amendment or repeal if it is contained in an Act or instrument passed or made before the commencement day (whether or not it is in force on that day).

Instruments made under AFA 2006 or under Acts applied by AFA 2006

3 (1) An instrument made under AFA 2006, or under a provision of an Act applied by AFA 2006, that is in force in England and Wales immediately before the commencement day—

(a) extends to the Isle of Man and the British overseas territories except Gibraltar, and

(b) comes into force there on the commencement day,

subject to sub-paragraph (2).

(2) Regulations made under section 322 of AFA 2006 (financial penalty enforcement orders) do not extend to a British overseas territory by virtue of sub-paragraph (1).

Removal of powers to extend provisions to Gibraltar

4 (1) The powers under the sections listed in sub-paragraph (2) (powers to extend provisions outside the United Kingdom) may not be exercised so as to provide for a pre-commencement amendment or repeal described in paragraph 2(1)(a) to (c) to extend to Gibraltar.

(2) Those provisions are—

(a) section 33(1) of the Armed Forces Act 2011;

(b) section 61(21) of the Crime and Courts Act 2013;

(c) section 23(5) of the Offender Rehabilitation Act 2014;

(d) section 5(3) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015;

(e) section 97(5) of the Criminal Justice and Courts Act 2015.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

Effect of paragraphs 2 to 4

5 (1) Paragraphs 2 and 3 have effect despite any provision in an Act or instrument passed or made before the commencement day which provides (by whatever words) that a provision does not extend to the Isle of Man or a British overseas territory other than Gibraltar (including any provision disapplying section 385 of AFA 2006), subject to sub-paragraph (2).

(2) Subsection (2) of section 384 of AFA 2006 continues to have effect subject to subsection (3) of that section (extent of paragraph 5(ba) of Schedule 9 to that Act).

(3) Paragraphs 2 and 3 have effect despite any provision in an Act or instrument passed or made before the commencement day which provides (by whatever words) that a provision extends to Gibraltar.

(4) The references in paragraph 2(1) to a pre-commencement amendment or pre-commencement repeal include any provision which brings the amendment or repeal into force and any provision which confers (by whatever words) a power by order or regulations to make provision about, or in connection with, the coming into force of the amendment or repeal.

(5) Nothing in paragraph 2 affects whether references to AFA 2006, other than the reference in section 384(2) of that Act, include an amendment, repeal or provision described in that paragraph.

(6) Paragraph 3 does not prevent the exercise of any power (whether express or implied) to make further instruments amending or revoking an instrument described in that paragraph (including the instrument as it extends to the Isle of Man and British overseas territories other than Gibraltar).

Consequential amendments of AFA 2006

6 AFA 2006 is amended as follows.

7 (1) Section 314 (arrest by civilian police of deserters and absentees without leave) is amended as follows.

(2) In subsection (1), for "An officer of a UK police force or British overseas territory police force" substitute " A civilian policeman ".

(3) After subsection (4) insert—

"(4A) In this section "civilian policeman" means an officer of a UK police force or British overseas territory police force, other than a force or body constituted in Gibraltar."

(4) In subsection (5)(e), at the end insert " other than Gibraltar ".

8 (1) Section 315 (deserters and absentees without leave surrendering to civilian police) is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), for " "relevant territory" has" substitute " "civilian policeman" and "relevant territory" have".

9 (1) Section 318 (arrest by civilian police of persons unlawfully at large) is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Armed Forces Act 2016. (See end of Document for details)*

(2) In subsection (1)(a), for "an officer of a UK police force or British overseas territory police force" substitute " a civilian policeman ".

(3) At the end insert—

"(3) In this section "civilian policeman" has the same meaning as in section 314."

10 In section 340(1)(b) (restriction on aliens in regular forces etc), at the end insert " other than Gibraltar ".

11 In section 343(5)(b) (power in regulations about service inquiries to create offences), after "British overseas territory" insert " other than Gibraltar ".

12 In section 372 (evidence in proceedings before civilian courts), at the end of paragraph (c) insert " other than Gibraltar ".

Status:
This version of this Act contains provisions that are prospective.

Changes to legislation:
There are currently no known outstanding effects for the Armed Forces Act 2016.