



Armed Forces Act 1991

1991 CHAPTER 62

PART II

AMENDMENTS RELATING TO THE ARMED FORCES AND OTHER PERSONS SUBJECT TO PROVISIONS OF THE SERVICES ACTS

Young offenders

2 Young offenders: custodial sentences

- (1) Section 71A of each of the 1955 Acts (juveniles) and, subject to the modifications in subsection (6) below, section 43A of the 1957 Act (juveniles) shall each be amended in accordance with subsections (2) to (5) below.
- (2) In subsection (1B)—
 - (a) after the words “imprisonment for life” there shall be inserted “then, subject to subsection (1E) below”; and
 - (b) paragraph (a) shall be omitted.
- (3) After subsection (1C) there shall be inserted the following subsections—

“(1D) Subject to subsections (3) and (4) below, the only custodial sentences that a court may award where a person under 21 years of age is convicted or found guilty of an offence are—

 - (a) a custodial order under section 71AA of this Act or under paragraph 10 of Schedule 5A to this Act; and
 - (b) a sentence of custody for life under subsection (1A) or (1B) above.
- (1E) A court may not—
 - (a) make a custodial order under section 71AA of this Act; or
 - (b) pass a sentence of custody for life under subsection (1B) above;unless it is satisfied—

- (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
 - (ii) that he qualifies for a custodial sentence.
- (1F) An offender qualifies for a custodial sentence if—
- (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
 - (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
 - (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”
- (4) In subsection (4)—
- (a) for the words “A person under 17 years of age” there shall be substituted “In any case where—
 - (a) a person aged 14 or over but under 17 years of age is”;
 - (b) for the words “may be sentenced by the court, if it” there shall be substituted “or
 - (b) a person under 14 years of age is found guilty of manslaughter,
 and, in either case, the court”; and
 - (c) after the word “suitable” there shall be inserted “the court may sentence that person”.
- (5) After subsection (6) there shall be inserted the following subsection—
- “(7) A sentence of detention under section 71(1)(e) of this Act shall be treated for the purposes of this section as a non-custodial sentence and references in this section to a custodial sentence shall be construed accordingly.”
- (6) The modifications of the amendments in subsections (2) to (5) above in their application to section 43A of the 1957 Act are—
- (a) for “section 71AA”, in each place where it occurs in the amendment in subsection (3) above, there shall be substituted “section 43AA”;
 - (b) for “Schedule 5A” in the amendment in subsection (3) above there shall be substituted “Schedule 4A”; and
 - (c) for “section 71(1)(e)” in the amendment in subsection (5) above there shall be substituted “section 43(1)(e)”.

3 Young service offenders: minimum period of custodial orders etc

- (1) In section 71AA of each of the 1955 Acts and in section 43AA of the 1957 Act (young service offenders: custodial orders), in subsection (1) the words “subject to subsection (1A) below” shall be omitted and after the words “period to be specified in the order” there shall be inserted “being not less than 21 days and”.
- (2) Subsection (1A) of each of those sections shall be omitted.
- (3) Subject to subsection (4) below, in subsection (1B) of each of those sections for the words from “there is” to “in respect of him” there shall be substituted “it is satisfied

as mentioned in sub-paragraphs (i) and (ii) of subsection (1E) of section 71A of this Act with respect to any person”.

- (4) In the application of subsection (3) above to section 43AA of the 1957 Act, for “section 71A” there shall be substituted “section 43A”.

4 Reasons to be given where custodial sentence awarded to young offender

- (1) After section 71AA of each of the 1955 Acts there shall be inserted the following section—

“71AB Reasons to be given where custodial sentence awarded to young offender

- (1) This section applies where a court—
- (a) makes a custodial order under section 71AA of this Act, or
 - (b) passes a sentence of custody for life under section 71A(1B) of this Act.
- (2) It shall be the duty of the court—
- (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 71A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and
 - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.”

- (2) After section 43AA of the 1957 Act there shall be inserted the following section—

“43AB Reasons to be given where custodial sentence awarded to young offender

- (1) This section applies where a court—
- (a) makes a custodial order under section 43AA of this Act, or
 - (b) passes a sentence of custody for life under section 43A(1B) of this Act.
- (2) It shall be the duty of the court—
- (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 43A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and
 - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

- (3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the committal order.”

5 Young civilian offenders: custodial orders

- (1) In Schedule 5A to each of the 1955 Acts and Schedule 4A to the 1957 Act (powers of court on trial of civilian), paragraph 10 (custodial orders) shall be amended in accordance with the following provisions of this section.

- (2) Subject to subsection (9) below, in sub-paragraph (1)—

- (a) for the words “subsection (1A) below” there shall be substituted “sub-paragraphs (1A) and (1AA) below”; and
 (b) for the words from “in accordance” to the end of paragraph (b) there shall be substituted—

“for a period, to be specified in the order, which—

- (a) shall not be less than 21 days;
 (b) shall not exceed the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21; and
 (c) if the order is made by a Standing Civilian Court, shall not exceed six months”.

- (3) In sub-paragraph (1A) the words from the beginning to “appropriate and” shall be omitted.

- (4) After sub-paragraph (1A) there shall be inserted the following sub-paragraphs—

“(1AA) The court may not make a custodial order unless it is satisfied—

- (a) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
 (b) that he qualifies for a custodial sentence.

(1AB) An offender qualifies for a custodial sentence if—

- (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
 (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
 (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”

- (5) In sub-paragraph (1B) for the words from “there is” to “in respect of him” there shall be substituted “it is satisfied as mentioned in paragraphs (a) and (b) of sub-paragraph (1AA) above with respect to an offender”.

- (6) Subject to subsection (10) below, for sub-paragraphs (3A) and (3B) there shall be substituted the following sub-paragraphs—

“(3A) Where the court makes a custodial order it shall be its duty—

- (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under

- one or more of the paragraphs of sub-paragraph (1AB) above, the paragraph or paragraphs in question, and why it is so satisfied; and
- (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (3B) Where the court makes a custodial order and, in accordance with its duty under sub-paragraph (3A) above, makes the statement required by paragraph (a) of that sub-paragraph, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.”
- (7) For sub-paragraph (4) there shall be substituted the following sub-paragraphs—
- “(4) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.
- (4A) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this paragraph.”
- (8) In sub-paragraph (6), in each of paragraphs (a), (b) and (c) after the words “where the offender is” there shall be inserted “in or”.
- (9) In the application of subsection (2) above to paragraph 10 of Schedule 4A to the 1957 Act, for paragraph (b) there shall be substituted—
- “(b) for the words from “in accordance” to the end of paragraph (b) there shall be substituted “for a period to be specified in the order, being not less than 21 days and not exceeding the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21”.”
- (10) In the application of subsection (6) above to paragraph 10 of Schedule 4A to the 1957 Act, for the words from “order (made under” onwards there shall be substituted “committal order”.

6 Abolition of reception orders

In Schedule 5A to each of the 1955 Acts and in Schedule 4A to the 1957 Act the following provisions (which refer to reception orders made in respect of civilians under 17 found guilty of certain offences) shall cease to have effect—

- (a) in paragraph 2 the definition of “reception order”;
- (b) paragraphs 6 to 9; and
- (c) in paragraph 15(3), in the third column of the Table, paragraph 2.

Stoppages and compensation orders

7 Stoppages under the 1955 Acts: personal injuries and limits

- (1) In section 71 of each of the 1955 Acts (scale of punishments and supplementary provisions)—

- (a) in subsection (1), in paragraph (k) after the word “expense” there shall be inserted “personal injury”; and
- (b) after subsection (5) there shall be inserted the following subsections—

“(6) Unless the Secretary of State by order provides that this subsection shall no longer apply, the stoppages awarded by a court-martial in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) In section 225 of the Army Act 1955 and section 223 of the Air Force Act 1955 (general provisions as to interpretation) in subsection (1) in the definition of “stoppages” the words from “for any expense” onwards shall be omitted.

8 Stoppages under the 1957 Act: personal injuries and limits

- (1) In section 43 of the 1957 Act (scale of punishments and supplementary provisions)—
 - (a) in subsection (1), in paragraph (l) after the word “expense”, in both places where it occurs, there shall be inserted “personal injury”; and
 - (b) after subsection (6) there shall be inserted the following subsections—

“(7) Unless the Secretary of State by order provides that this subsection shall no longer apply, the stoppages awarded in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.

(8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) In section 49 of the 1957 Act (summary trial), after subsection (5) there shall be inserted the following subsection—

“(6) The reference in the proviso to subsection (5) above to stoppages does not include a reference to stoppages for personal injury.”

9 Compensation orders for personal injuries on trial of civilians

- (1) In the following enactments relating to the powers of a court on the trial of a civilian—
 - (a) Schedule 5A to each of the 1955 Acts, and
 - (b) Schedule 4A to the 1957 Act,
 paragraph 11 (compensation orders) shall be amended in accordance with the following provisions of this section.
- (2) In sub-paragraph (1) for the words “loss or damage, other than personal injury” there shall be substituted “personal injury, loss or damage”.

- (3) Subject to subsection (6) below, after sub-paragraph (1) there shall be inserted the following sub-paragraph—

“(1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made by a court-martial for any personal injury shall not exceed such sum as is for the time being specified in sub-paragraph (2) below or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (4) In sub-paragraph (4) the words from “and no such order” onwards shall be omitted and after that sub-paragraph there shall be inserted the following sub-paragraphs—

“(4A) A compensation order may only be made in respect of injury, loss or damage which was due to an accident arising out of the presence of a motor vehicle on a road if—

- (a) it is in respect of damage which is treated by sub-paragraph (3) above 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 specified by the Secretary of State for the purposes of this paragraph;

and, where a compensation order is made in respect of injury, loss or damage due to such an accident, 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.

- (4B) For the purposes of sub-paragraph (4A) above, 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 or paragraph (2) or paragraph (3) of Article 90 of the Road Traffic (Northern Ireland) Order 1981.”

- (5) After sub-paragraph (5) there shall be inserted the following sub-paragraph—

“(6) Where the court considers—

- (a) that it would be appropriate both to impose a fine and to make a compensation order, but
- (b) that the person concerned has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).”

- (6) Subsection (3) above shall not apply in relation to paragraph 11 of Schedule 4A to the 1957 Act; but after sub-paragraph (1) of that paragraph there shall be inserted the following sub-paragraph—

“(1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made for any personal injury shall not exceed such sum as is for the time being specified in paragraph 11(2) of Schedule 5A to the Army Act 1955 or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

Courts-martial

10 Compensation for miscarriages of justice

- (1) Subject to subsection (2) below, when—
 - (a) a person has been convicted by a court-martial, and
 - (b) subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice,

the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.
- (3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.
- (4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.
- (5) In this section “reversed” shall be construed as referring to a conviction having been quashed—
 - (a) on an appeal out of time; or
 - (b) on a reference under section 34 of the Courts-Martial (Appeals) Act 1968.
- (6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.
- (7) Schedule 1 to this Act shall have effect.

11 Withdrawal of election to be tried by court-martial under the 1955 Acts: officers, warrant officers and civilians

- (1) In section 79 of each of the 1955 Acts (further proceedings on charges against officers and warrant officers), in subsection (6) after the words “so elects” there shall be inserted “and does not subsequently in accordance with Queen’s Regulations withdraw his election”.

- (2) In section 209 of each of those Acts (application of Acts to civilians), in subsection (3) (modifications), in paragraph (d) after the words “so elects” there shall be inserted “and does not subsequently in accordance with Rules of Procedure withdraw his election”.

12 Powers of naval courts-martial

- (1) In section 90 of the 1957 Act (suspension of sentences), in subsection (1) for the words “any such case” there shall be substituted “any case where a sentence is suspended under this subsection” and after that subsection there shall be inserted the following subsection—

“(1A) Where any person has been sentenced under this Act by a court-martial to imprisonment or detention, the court-martial may itself exercise the power under subsection (1) above to order the suspension of the sentence.”

- (2) In Schedule 4A to the 1957 Act (powers of courts-martial on trial of civilian), in paragraph 4(7) (offences relating to community supervision orders to be treated as offences against provisions of Part II of that Act) for the words “Part II” there shall be substituted “Part I”.

13 Damage to public or service property etc

- (1) In the Army Act 1955, in Schedule 3 (alternative offences of which accused may be convicted by court-martial), after the paragraphs in the first and second columns numbered 7B there shall be inserted—

“7C. Wilfully damaging public or service property or property belonging to another person subject to military law.

7C. By wilful neglect causing damage to public or service property or property belonging to another person subject to military law.”

- (2) The paragraphs set out in subsection (1) above shall also be inserted in the first and second columns of Schedule 3 to the Air Force Act 1955 after the paragraphs numbered 7B, but with the substitution for the words “military law”, in each place where they occur, of the words “air-force law”.

Deduction of maintenance payments etc. from pay

14 Deductions from pay in respect of liabilities for maintenance: the 1955 Acts

- (1) Section 150 of each of the 1955 Acts (enforcement of maintenance and affiliation orders by deduction from pay) shall be amended in accordance with subsections (2) to (4) below.
- (2) In subsection (1), in paragraph (a) the words “or child” shall be omitted and after that paragraph there shall be inserted the following paragraph—
- “(aa) the maintenance of any child of his or his wife or of any other child who has been treated by them both as a child of their family; or”.
- (3) After subsection (1) there shall be inserted the following subsection—

“(1A) Without prejudice to any enactment or rule of law relating to adoption or legitimation, in subsection (1)(aa) above any reference to a child of the defendant or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.”

(4) In subsection (5)—

- (a) in the paragraph beginning “references to a wife” the words “or child”, in both places where they occur, shall be omitted; and
- (b) the paragraph beginning “references to a child” shall be omitted.

(5) At the end of section 151 of each of the 1955 Acts (deductions from pay for maintenance of wife or child) there shall be added, and be deemed always to have been added, the following subsection—

“(6) Without prejudice to any enactment or rule of law relating to adoption or legitimation, references in this section to a child of any person shall be construed without regard to whether the father and mother of the child have or had been married to each other at any time.”

(6) The amendments made by the preceding provisions of this section do not affect the operation,—

- (a) in England and Wales, of section 1 of the Family Law Reform Act 1987; or
- (b) in Scotland, of section 1 of the Law Reform (Parent and Child) (Scotland) Act 1986.

15 Deductions from naval and marine pay in respect of liabilities for maintenance

(1) In the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947, section 1 (deductions from pay in respect of liabilities for maintenance etc.) shall be amended in accordance with subsections (2) to (4) below.

(2) In subsection (1)—

- (a) for paragraph (a) there shall be substituted the following paragraphs—
 - “(a) for the maintenance of the wife of that person;
 - (aa) for the maintenance of any child of that person or his wife or of any other child who has been treated by them both as a child of their family;”;
- (b) in paragraph (b) for the words from “and any such children” onwards there shall be substituted “or any such child as is mentioned in paragraph (aa) above”; and
- (c) after paragraph (b) there shall be added the following paragraph—
 - “(c) for the payment of any sum adjudged as costs, or awarded as expenses, incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order or decree.”

(3) After subsection (2) there shall be inserted the following subsections—

“(2A) For the purposes of this section—

- (a) if, in proceedings in connection with the dissolution or annulment of a marriage, an order has been made for the payment of any periodical

or other sum in respect of the maintenance of the person who, if the marriage had subsisted, would have been the wife of any such person as is mentioned in subsection (1) above, references in this section to that person's wife include references to the person in whose favour the order was made;

- (b) any reference to an order or decree of any court in Her Majesty's dominions includes a reference to an order registered in a court in the United Kingdom under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or registered under Part I of the Civil Jurisdiction and Judgments Act 1982 in a court in any territory to which that Act for the time being extends; and
- (c) without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of a person or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.

(2B) In relation to women members of Her Majesty's naval forces, within the meaning of the Naval Discipline Act 1957, references in this section to a wife shall be construed as references to a husband."

(4) Subsections (3) and (5) shall be omitted.

(5) In section 101 of the 1957 Act (service of proceedings for maintenance etc.), in subsection (5) (definition of "maintenance order") for paragraphs (a) and (b) there shall be substituted the following paragraphs—

- “(a) the maintenance of the wife of the person against whom the order is made; or
- (b) the maintenance of any child of that person or his wife or of any other child who has been treated by them both as a child of their family; or”.

(6) After subsection (5) of section 101 of the 1957 Act there shall be inserted the following subsections—

“(5A) In subsection (5) above—

- (a) references to the wife of a person include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been his wife if the marriage had subsisted; and
- (b) without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of a person or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.

(5B) In relation to women members of Her Majesty's naval forces, references in this section to a wife shall be construed as references to a husband."

(7) The amendments made by the preceding provisions of this section do not affect the operation,—

- (a) in England and Wales, of section 1 of the Family Law Reform Act 1987; or
- (b) in Scotland, of section 1 of the Law Reform (Parent and Child) (Scotland) Act 1986.

Naval and marine pay and pensions

16 New provisions as to assignments, charges and court orders in respect of naval and marine pay, pensions etc

(1) In the 1957 Act, after section 128F there shall be inserted the following section—

“128G Avoidance of assignment of or charge on naval pay and pensions etc

- (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, pensions, bounty, grants or other allowances in the nature thereof payable to any person in respect of his or any other person’s service in Her Majesty’s naval forces shall be void.
- (2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.
- (3) Nothing in this section—
 - (a) shall apply to the making or variation of attachment of earnings orders; or
 - (b) shall prejudice any enactment providing for the payment of any sum to a bankrupt’s trustee in bankruptcy for distribution among creditors.
- (4) In the application of this section to Northern Ireland at any time before the coming into operation of the Insolvency (Northern Ireland) Order 1989, for the reference in subsection (3) above to a bankrupt’s trustee in bankruptcy there shall be substituted a reference to an assignee in bankruptcy.”

- (2) Subsection (1) above has effect in place of sections 4 and 5 of the Naval and Marine Pay and Pensions Act 1865.
- (3) In section 2 of the Naval Pensions Act 1884 (application of 1865 Act etc. to Greenwich Hospital pensions) after the words “Act 1865”, in the second place where they occur, there shall be inserted “or section 128G of the Naval Discipline Act 1957”.
- (4) In section 59(3) of the Reserve Forces Act 1980 (which applies sections 3 and 5 of the Naval and Marine Pay and Pensions Act 1865 in relation to pay, bounty and allowances payable as mentioned in that provision)—
 - (a) for the words “Sections 3 and 5” there shall be substituted “Section 3”; and
 - (b) after “1865” there shall be inserted “and section 128G of the Naval Discipline Act 1957”.