

ARMED FORCES DISCIPLINE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 25: Further amendments relating to the Summary Appeal Courts

57. This section introduces *Schedule 3* to the Act which makes further amendments to the SDAs in respect of the summary appeal court. These include:
- *Paragraphs 1,2 &3* amend the three SDAs to provide that offences which can be committed in relation to courts-martial in each of the Acts, such as failure to comply with a summons or the refusal of a witness to answer a question which the court requires him to answer, can also be committed in relation to the summary appeal courts. An offence committed in relation to the summary appeal court can be tried by court-martial or, in certain cases, by the summary appeal court itself.
 - *Paragraphs 4&5* amend the three SDAs to allow regulations in respect of summary dealing to include provisions dealing with the procedure for making and withdrawing election for court-martial trial.
 - *Paragraphs 6&7* amend the three SDAs to provide that offences which can be committed by civilians not subject to Service law, in relation to courts-martial, such as those mentioned above, shall also apply to summary appeal courts. In these cases, the summary appeal court cannot apply a sanction but can certify to a court with jurisdiction over the offender that he has committed a contempt of court. This will allow the latter court to investigate and punish the offender if appropriate. The paragraphs also make the necessary technical and drafting amendments which arise because of these changes.
 - *Paragraphs 8-11* amend the three SDAs to make new provisions about the commencement sentences of detention awarded by the CO. Currently they take effect immediately. In the new system, any sentence of detention will be suspended until the period in which an appeal can be brought has elapsed or, if an appeal is lodged within that period, until the appeal has been heard, unless the accused chooses to begin serving his sentence as soon as it is awarded. If an accused is serving his sentence and an appeal brought, the remainder of the sentence will be suspended until the appeal is decided.
 - *Paragraphs 12&13* insert new provisions in the three SDAs dealing with consecutive terms of detention. If the CO orders that a sentence of detention is to run from the expiry of any sentence of detention currently being served, the date of the award when the offender shall be deemed to have begun his sentence will be the date of the expiry of the current sentence. Where a sentence would normally begin once an appeal has been determined, the new sentence will be deemed to have begun at the date of the expiry of the current sentence if that is later.
 - *Paragraphs 14&15* amend the sections in the three SDAs which deal with limitations on total periods of detention. An individual cannot be continuously detained for more than two years maximum if serving consecutive sentences of

*These notes refer to the Armed Forces Discipline Act
2000 (c.4) which received Royal Assent on 25 May 2000*

detention. The amendments provide that for the purposes of this limit, two periods of detention which are interrupted by a period of suspension, (by virtue of the amendments made by paragraphs 6-9) are to be taken to be continuous. This ensures that a person whose sentence is suspended still benefits from the application of the limits.

- *Paragraph 16* amends the Army and Air Force Acts 1955 to reflect the introduction of the summary appeal court. *Section 131* of the Army and Air Force Acts 1955 currently allows an individual, who is no longer subject to Service jurisdiction, to be tried under the Acts for offences he is suspected of having committed whilst he was still subject to Service law. The section allows him to be retained for the purposes of, *inter alia*, arrest, custody or trial, and it is amended to include the period of an appeal to the summary appeal court.
- *Paragraphs 17&18* deal with membership of the summary appeal court when it is hearing an appeal by a civilian. They amend the SDAs to allow one or both of the officers on a court to be replaced by civilians in the service of the Crown who are themselves subject to Service law. The paragraphs also provide that these civilians are deemed to be qualified to sit on a court for the purposes of the provisions inserted by *section 16* above.
- *Paragraphs 19&20* amend the provisions in the three SDAs dealing with review of summary findings and awards. At the moment, an accused may request a review of the summary finding and/or sentence. This is done by the reviewing authority who will normally be an officer superior in rank to the CO. A review of the finding and sentence can also be carried out by the Services at any other time. The reviewing authority's current powers allow him to carry out the function of an appeal system. The amendments to the SDAs remove the provisions allowing the accused to request a review and amend the powers of the reviewing authority in relation to summary dealings. This is because a court is being put in its place and the reviewing authority no longer needs the powers to quash findings etc; these will rest with the court. This does not prevent the reviewing authority from examining the decision of the CO and, if it thinks there is a miscarriage of justice, but the accused has not brought an appeal himself, referring the case to the summary appeal court (with the leave of the court). Additionally, the reviewing authority can refer to the summary appeal court, with the leave of the court, a case which it has already heard on appeal if the authority thinks that there are matters worthy of further consideration which were not put before the court at the time of the appeal. The reviewing authority also retains the residual power to quash a finding and the related punishment, in exceptional circumstances, This power would be exercised in cases where it was in the Service interest to do so. An example of such a case would be where an individual with specialist skills is urgently required for operational reasons.
- *Paragraphs 21&22* make consequential amendments to provisions of the SDAs relating to the powers of the civil courts.
- *Paragraphs 23&24* insert a definition of the summary appeal court into the interpretation section of each of the SDAs.