

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 6 – Other amendments

Marriages in Service Chapels

133. Section 68 of the Marriage Act 1949 details the categories of people who are eligible to be married in Service chapels. At least one of a couple wishing to be married in such a chapel must belong to one of these categories, the principal of which consists of serving and former members of the armed forces. Previously, daughters of eligible individuals were also eligible, but their sons were not. Moreover, the section expressly excluded step-daughters from eligibility.
134. Differentiating between members of the family in this way is no longer considered justifiable. Paragraph 31 amends section 68 of the 1949 Act to provide that sons, step-daughters and step-sons of qualifying personnel are also eligible to be married in Service chapels.

Retirement age for assistants to Judge Advocate General

135. [Paragraph 32](#) increases the retirement age for the Vice Judge Advocate General and Assistant Judge Advocates General from 65 to 70, to bring it into line with the retirement age for judges in civilian courts. The retirement age for the Judge Advocate General is already 70.

Sentence where penalty fixed by law as life imprisonment

136. The provisions in the SDAs which provided that persons convicted by courts-martial of Service offences corresponding to murder or genocide are liable to imprisonment for life did not make it clear that the sentence is a mandatory sentence of life imprisonment. Paragraphs 33 and 34 amend the provisions to make this clear.

Qualification for appointment as a judicial officer

137. Before this Act, the SDAs specified that a person might be appointed as a judicial officer if he was qualified to be appointed as a judge advocate or if he had had, for a minimum of five years, rights and duties in a Commonwealth country or colony similar to a barrister or solicitor in England or Wales and was subject to punishment for breach of professional rules. Paragraphs 35 and 36 widen the range of eligible persons to allow persons in Commonwealth countries and colonies with functions equivalent to certain types of judges in England and Wales to be appointed as judicial officers as well.

Evidence given before boards of inquiry

138. Boards of inquiry (BOIs) are used by the Services as a mechanism to help establish the cause of accidents. To encourage witnesses to give full and frank evidence without the worry of self-incrimination, the SDAs provide that evidence given before BOIs is

inadmissible in disciplinary proceedings (unless those proceedings are for perjury in relation to evidence given at the inquiry). Previously, this exclusion of evidence only applied where a person was giving evidence before a BOI set up by his own Service, even though members of one Service can find themselves giving evidence before a BOI set up by another of the Services. Paragraphs 37 and 38 amend the Army and Air Force Acts to ensure that evidence before any BOI cannot be used in disciplinary proceedings. There is no corresponding amendment to the Naval Discipline Act as the Navy provisions for BOIs are in regulations. It is intended to make an equivalent change to those regulations.

Compensation for loss

139. Paragraphs 39 and 40 amend the Army and Air Force Acts and the Naval Discipline Act respectively, so that the power to order Service personnel to pay compensation for damage to public or Service property caused by a wrongful act or negligence by that person only applies where that person is still a member of the Services. An order made during an individual's service would still apply after the conclusion of that service, but any attempt to recover compensation which was not the subject of an order made during service would have to be made through the civil courts.

Redress of Complaints

140. The SDAs allow a person subject to Service law to make a complaint (and seek redress) through his chain of command about any matter relating to his service. There are exceptions to this right where an alternative remedy is available, for example, where an appeal from a decision of a court-martial to the Courts-Martial Appeal Court may be made. Previously, the legislation did not exclude the right to complain in respect of the decisions of judicial officers and judge advocates when exercising their powers to authorise continuing custody or hearing cases before the summary appeal court or, under the provisions in Part 2 of this Act, granting search warrants. It was considered inappropriate for the chain of command to be able to review judicial decisions in such circumstances, so paragraphs 41 and 42 exclude such decisions from the redress provisions.
141. Paragraph 43 also applies to the redress procedure referred to above. It will give officers and other ranks attached to another Service the right to seek redress under the SDA of the host Service. As the Naval Discipline Act does not contain the same restriction on the right to redress, this amendment is only necessary in the Army and Air Force Acts.

Civilian contractors attached to or accompanying a force

142. The categories of civilians who are subject to Service law whilst overseas are set out in the SDAs and include civilian contractors. There was some doubt whether the definition included self-employed persons. Paragraphs 44(a) and 45(a) clarify the definition of contractors to include persons with their own businesses. Civilian contractors become subject to Service law when authorisation is granted by the Defence Council. To provide some flexibility, paragraphs 44(b) and 45(b) provide that the power to grant these authorisations may be delegated by the Defence Council.

Interpretation of references to “Royal Air Force Police”

143. In the Royal Air Force, commissioned officers exercising the powers of Service police are referred to as provost officers. Those persons referred to as RAF police do not hold a commission. However, the distinction is not clear to persons outside the RAF. Paragraphs 46 and 47 insert a definition of the Royal Air Force Police in the SDAs to clarify that it includes provost officers. Paragraph 48 makes a related amendment to the Armed Forces Act 1996.

Interpretation of references to a “constable”

144. The definition of “constable” in each of the SDAs includes persons having powers corresponding to those of a constable. Because Part 2 of the Act gives Service police certain powers similar to those of a constable, it could be argued that they would fall within this definition. Paragraph 49 therefore amends the definition of constable in the SDAs to make it clear that the expression does not include Service police (“provost officers” as they are termed in the SDAs).

Application to civilians

145. Paragraphs 50 to 53 make miscellaneous amendments to the SDAs in relation to civilians subject to Service law. Paragraph 50(2) changes the provisions of the Army and Air Force Acts which allowed civilians to be tried by Service courts for attempts to commit certain offences, so that they may also be tried for aiding and abetting any of those offences. The Royal Navy already has this provision. Paragraph 50(3) amends the provisions in the Army and Air Force Acts defining commanding officer in relation to civilians so they no longer apply only to provisions relating to custody and investigation of offences. Paragraph 50(4) and paragraphs 51 to 53 rectify an anomaly arising from a previous amendment to the SDAs. The intention at the time of that amendment was to disapply a time-limit in relation to breaches of a community supervision order, but its effect was to disapply the time-limit in relation to other offences as well. The new amendments give effect to the original intention.

Arrest of civilian whose sentence is deferred

146. Paragraph 54 amends paragraph 2A of Schedule 5A to the Army and Air Force Acts in relation to Standing Civilian Courts. Because directing officers no longer exist, the provisions referring to the powers of directing officers to order arrest are replaced with references to the magistrate hearing the case, as are other consequential references to the directing officer or his superiors. The paragraph also amends a reference to civilians being subject to Service law with wording to reflect the fact that they are only subject to certain provisions of that law.

Right of appeal to Courts-Martial Appeal Court

147. Paragraph 55 makes various amendments to the Courts-Martial (Appeals) Act 1968. It replaces a reference to “those Schedules”, which identified the relevant Schedules by reference to a now repealed provision, with wording which simply lists the relevant Schedules.
148. Paragraph 55 also clarifies the provisions dealing with timing of appeals to the Courts-Martial Appeal Court (CMAC). Court-martial decisions are automatically reviewed by an internal reviewing authority, although an accused may petition for a review as well. Previously, an appeal to the CMAC could not be submitted until the end of the prescribed period for petitioning for review or until the accused has been notified that the petition has not been granted, whichever was earlier. These provisions did not state what was to happen if the reviewing authority substituted an equivalent or lesser sentence on petition, before the end of the prescribed period. The amendment to section 8(2) makes it clear that an appeal may be brought. A further change relates to late appeals. The CMAC could allow an appeal to be brought outside the prescribed period, but only if the accused had already petitioned for a review. But all decisions are reviewed, even if the accused does not petition for review. If, after such an automatic review, a convicted person wished to appeal out of time, he had to make a fictitious petition for review. This anomaly is removed by paragraph 55.

Children in respect of whom protective orders may be made

149. Paragraphs 57 and 58 relate to sections 17 and 19 the Armed Forces Act 1991, which deal with the protection of children in families with the armed forces abroad. These

*These notes refer to the Armed Forces Act 2001
(c.19) which received Royal Assent on 11 May 2001*

provisions give certain officers power to make assessment and protection orders in respect of certain children in emergencies. However, the definition of which children may be made the subject of these orders appeared to exclude certain categories, for example, those who are staying with, rather than residing with, the families of persons subject to the SDAs. The new paragraphs apply the power to any child who is residing, or staying, with such a family abroad.

Amendment relating to abolition of naval disciplinary courts

150. [Paragraph 59](#) is consequential on the abolition by section 18 of naval disciplinary courts.

Section 35: Orders and regulations

151. The section deals with orders or regulations made by the Secretary of State under provisions of the Act. (It does not apply to new powers to make subordinate legislation which are added by the Act to the SDAs or other Acts). The section provides for orders and regulations to be made by statutory instrument. They may include incidental, consequential or transitional provisions. These instruments will, in most cases, be subject to the negative resolution procedure. The first exception is that orders under section 8(2) are subject to the affirmative resolution procedure. The other exceptions include certain orders under the power in section 30 to provide for release from custody pending an appeal and under the broad order-making power relating to criminal justice enactments (in section 31 of the Act). Orders under these powers which amend primary legislation and orders under section 31(2)(h) affecting the meaning of “criminal justice enactment” in section 31 will be subject to affirmative resolution procedure.

Section 36: Application to Channel Islands, Isle of Man, etc.

152. This section provides for an order making power to apply the various provisions in the Act which are not being incorporated into the SDAs to the Channel Islands and the Isle of Man. The amendments being made to the SDAs will automatically apply to the Islands by virtue of their inclusion in the SDAs.

Section 37: Interpretation

153. This section defines the terms “ the 1955 Acts ” and “the 1957 Act” for the purposes of the Act.

Section 38: Repeals

154. This section introduces [Schedule 7](#) which lists all the provisions to be repealed by this Act. Schedule 7 includes a number of repeals which are consequential on the abolition of naval disciplinary courts (section 18) and on the abolition of the death penalty (Schedule 6, Part 4).

Section 39: Short title and commencement

155. This section provides that in general the provisions of the Act (except sections 1, 35-37 and 39, Parts 4 and 5 of Schedule 6 and Parts 4 to 6 of Schedule 7, which came into force on Royal Assent) are to come into force on a day or days to be appointed by a commencement order by the Secretary of State. This commencement order may contain any transitional provisions thought necessary. The section also repeals section 1 of the Armed Forces Act 1996 on 1st September 2001.