

# **ARMED FORCES ACT 2001**

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## **EXPLANATORY NOTES**

### **THE ACT - COMMENTARY ON SECTIONS**

#### **Part 3 – Trial and Punishment of Offences**

##### ***Section 21: Review of sentences by Courts-Martial Appeal Court***

72. In the civilian criminal justice system, certain sentences imposed by the Crown Court may be referred by the Attorney General for review by the Court of Appeal, on the basis that he considers the sentence to be unduly lenient (section 36 of the Criminal Justice Act 1988). There was no corresponding power in relation to the sentences of courts-martial.
73. **Section 21** confers such a power on the Attorney General. It inserts in each of the SDAs provisions enabling him, with the leave of the Courts-Martial Appeal Court (CMAC), to refer certain cases to that court. The main function at present of the CMAC, which comprises civilian judges from the Court of Appeal or its Scottish or Northern Irish equivalents, is to hear appeals on finding or sentence from courts-martial.
74. The new power largely mirrors that in the Criminal Justice Act 1988. It applies in respect of any offence tried by court-martial which could be tried by a civilian court only on indictment (i.e. by the Crown Court) and also to any offences specified by order. In cases referred to it, the CMAC will be able to substitute another sentence that would have been available to the court-martial.
75. One consideration in the Service system that does not apply in the civilian courts is that court-martial sentences are subject to review by the Service chain of command. The reviewing authority may not increase a sentence, but it may substitute one equivalent to or less severe than that imposed by the court-martial. This then becomes the sentence of the court and, under the amendments made by section 21, this (rather than the original sentence) would be subject to referral by the Attorney General in relevant cases.
76. **Section 21** also provides that the outcome of the review by the CMAC may be the subject of an application to the House of Lords, by either the Attorney General or the accused, on a point of law.