



Armed Forces Act 2001

2001 CHAPTER 19

PART 3

TRIAL AND PUNISHMENT OF OFFENCES

^{F1}17 Summary dealing or trial and functions of prosecuting authority

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Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

^{F1}18 Abolition of naval disciplinary courts

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Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

^{F1}19 Membership of courts-martial

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Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2001, Part 3. (See end of Document for details)

Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F1 20 Eligibility of warrant officers for membership of summary appeal courts

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Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F1 21 Review of sentences by Courts-Martial Appeal Court

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Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F1 22 Required custodial sentences

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Textual Amendments

F1 Ss. 14-22 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

23 Restriction of judicial review of courts-martial

- (1) Section 29 of the [^{F2}Senior Courts Act 1981] (c. 54) (orders of mandamus, prohibition and certiorari) is amended as follows.
- (2) In subsection (1) at the beginning there is inserted “ Subject to subsection (3A), ”.
- (3) After subsection (3) there is inserted—
 - “(3A) The High Court shall have no jurisdiction to make orders of mandamus, prohibition or certiorari in relation to the jurisdiction of a court-martial in matters relating to—
 - (a) trial by court-martial for an offence, or

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(b) appeals from a Standing Civilian Court;
and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

Textual Amendments

F2 Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, art. 2(d)

Commencement Information

I1 S. 23 in force at 28.2.2002 by [S.I. 2002/345](#), [art. 2](#) (with [art. 3](#))

F³24 Offences in relation to courts-martial etc

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Textual Amendments

F3 [S. 24](#) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

F⁴25 Powers to compel attendance of witnesses

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Textual Amendments

F4 [S. 25](#) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

26 Provision for orders as to costs

^{F5}(1) The Secretary of State may by regulations make provision empowering [^{F5}any of the Court Martial, the Summary Appeal Court, the Service Civilian Court and the Court Martial Appeal Court, in any case where the court is satisfied that one party to proceedings before that court] has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.

(2) Regulations under this section may, in particular—

- (a) allow the making of such an order as is mentioned in subsection (1) at any time during the proceedings,
- (b) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 (c. 34) or under any legal aid scheme operated by any of Her Majesty’s forces,

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- (c) make provision as to the account to be taken of such an order as is mentioned in subsection (1) in the making of any other order as to costs in respect of the proceedings,
 - ^{F6}(d) contain provision in relation to [^{F6}the Service Civilian Court] equivalent to that made by section 18(5) of the Prosecution of Offences Act 1985 (c. 23) in relation to a magistrates' court, subject to such modifications as the Secretary of State thinks fit, and
 - (e) make provision as to appeals against orders made by virtue of the regulations.
- (3) Regulations under this section shall provide—
- ^{F7}(a) that a person against whom an order is made by [^{F7}the Court Martial under the regulations may appeal to the Court Martial Appeal Court;]
 - ^{F8}(b) that a person against whom an order is made by [^{F8}the Summary Appeal Court or the Service Civilian Court] under the regulations may appeal to the High Court in England and Wales.
- ^{F9}(4)

Textual Amendments

- F5** Words in s. 26(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 192\(2\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F6** Words in s. 26(2)(d) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 192\(3\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F7** Words in s. 26(3)(a) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 192\(4\)\(a\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F8** Words in s. 26(3)(b) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 192\(4\)\(b\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F9** S. 26(4) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 192\(5\)](#), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Commencement Information

- I2** S. 26 in force at 14.10.2005 by [S.I. 2005/2861](#), [art. 2](#)

27 Costs against legal representatives etc

- ^{F10}(1) [^{F10}In any proceedings before—]
- ^{F10}(a) the Court Martial,
 - (b) the Summary Appeal Court,
 - (c) the Service Civilian Court, or
 - (d) the Court Martial Appeal Court,]
- [^{F10}the court may disallow], or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.
- (2) Regulations shall provide—

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2001, Part 3. (See end of Document for details)

- ^{F11}(a) that a legal or other representative against whom action is taken by [^{F11}the Court Martial under subsection (1) may appeal to the Court Martial Appeal Court;]
- ^{F12}(b) that a legal or other representative against whom action is taken by [^{F12}the Summary Appeal Court or the Service Civilian Court] under subsection (1) may appeal to the High Court in England and Wales.
- ^{F13}(3) In this section—
- “legal or other representative”, in relation to any proceedings, means—
- (a) a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or
- (b) [^{F13}a person appointed under section 365 of the Armed Forces Act 2006 (prosecuting officers);]
- “regulations” means regulations made by the Secretary of State;
- “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

Textual Amendments

- F10** Words in s. 27(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 193\(2\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F11** Words in s. 27(2)(a) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 193\(3\)\(a\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F12** Words in s. 27(2)(b) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 193\(3\)\(b\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F13** Words in s. 27(3) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 193\(4\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4

Commencement Information

- I3** S. 27 in force at 14.10.2005 by [S.I. 2005/2861](#), art. 2

28 Provisions supplementary to ss. 26 and 27

- ^{F14}^{F15}^{F16}(1) Where any of Her Majesty’s forces incurs costs in respect of the exercise by the [^{F14}Director of Service Prosecutions (“the Director”) of his] functions as a party to proceedings [^{F16}before a court mentioned in section 27(1)], those costs shall, subject to any provision made by virtue of subsection (2), be taken for the purposes of sections 26 and 27 to have been incurred by the [^{F15}Director].
- ^{F17}(2) Regulations under section 26 or 27 may make provision—
- (a) as to the costs incurred by any of Her Majesty’s forces which are or are not to be taken for the purposes of that section to have been incurred by the [^{F17}Director], and

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2001, Part 3. (See end of Document for details)

- (b) as to the person to whom, or account into which, any payment in respect of costs incurred by the ^{F17}Director] is to be made.

^{F18}(3)

^{F18}(4)

^{F18}(5)

Textual Amendments

- F14** Words in s. 28(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 16 para. 194\(2\)\(a\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F15** Word in s. 28(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 16 para. 194\(2\)\(c\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F16** Words in s. 28(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 16 para. 194\(2\)\(b\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F17** Word in s. 28(2) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 16 para. 194\(3\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F18** S. 28(3)-(5) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 16 para. 194\(4\)](#), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Modifications etc. (not altering text)

- C1** S. 28(1) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\), art. 1\(3\)](#), [Sch. 1 para. 49](#)

Commencement Information

- I4** S. 28 in force at 14.10.2005 by [S.I. 2005/2861, art. 2](#)

^{F19}29 Custody

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Textual Amendments

- F19** S. 29 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

30 Conditional release from custody

- ^{F20}(1) The Secretary of State may by order make provision enabling a person who has been sentenced by ^{F20}the Court Martial, the Summary Appeal Court or the Service Civilian Court] (in this section referred to as “the convicted person”) to be released from custody subject to conditions pending a relevant determination.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2001, Part 3. (See end of Document for details)

- (2) In subsection (1), “relevant determination” means—
- ^{F21}(a) in the case of a person sentenced by [^{F21}the Court Martial, the determination of an appeal to the Court Martial Appeal Court,]
 - ^{F22}(b) in the case of a person sentenced by [^{F22}the Summary Appeal Court, the determination of an appeal to the High Court under section 149(2) of the Armed Forces Act 2006] or of any appeal from the High Court to the [^{F23}Supreme Court] under section 1 of the Administration of Justice Act 1960 (c. 65), and
 - ^{F24}(c) in the case of a person sentenced by [^{F24}the Service Civilian Court, the determination of an appeal to the Court Martial or of an appeal from the Court Martial to the Court Martial Appeal Court.]
- (3) An order under this section may, in particular, make provision—
- (a) as to the court to which or person to whom any application for release from custody is to be made,
 - (b) as to the manner in which any such application is to be made,
 - (c) as to the criteria to be applied when making a decision under the order,
 - (d) as to the conditions that may be imposed,
 - (e) as to the enforcement of the attendance or return to custody of the convicted person,
 - (f) as to appeals against decisions taken under the order, and
 - (g) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject.
- (4) An order under this section may—
- (a) make provision equivalent to that made by any provision of the Bail Act 1976 (c. 63), the Magistrates’ Courts Act 1980 (c. 43) or the [^{F2}Senior Courts Act 1981] (c. 54) relating to bail in criminal proceedings, subject to such modifications as may be specified in the order,
 - (b) make different provision in relation to different courts,
 - (c) confer powers of arrest,
 - ^{F25}(d) create service offences punishable by any of the punishments mentioned in the Table in section 164 of the Armed Forces Act 2006,]
 - ^{F26}(e) make such amendments of the [^{F26}Court Martial Appeals Act 1968 or the Armed Forces Act 2006] as appear to the Secretary of State to be necessary or appropriate in consequence of the order.
- ^{F27}(5A) Where an order under this section creates an offence punishable with imprisonment, the maximum term it may authorise is two years.]
- (7) In section 42 of the Courts-Martial (Appeals) Act 1968 (bail) there are omitted—
- (a) in subsection (1), the words “to whom this section applies”, and
 - (b) subsection (2).

Textual Amendments

- F2** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

*Changes to legislation: There are currently no known outstanding effects
for the Armed Forces Act 2001, Part 3. (See end of Document for details)*

- F20** Words in s. 30(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(2)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F21** Words in s. 30(2)(a) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(3)(a)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F22** Words in s. 30(2)(b) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(3)(b)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F23** Words in s. 30(2)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 76**; S.I. 2009/1604, art. 2(d)
- F24** Words in s. 30(2)(c) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(3)(c)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F25** S. 30(4)(d) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(4)(a)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F26** Words in s. 30(4)(e) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(4)(b)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F27** S. 30(5A) substituted for s. 30(5)(6) (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 16 para. 195(5)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Commencement Information

- I5** S. 30 in force at 25.8.2006 by [S.I. 2006/2309](#), art. 2

Changes to legislation:

There are currently no known outstanding effects for the Armed Forces Act 2001, Part 3.