



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of PartsDiscipline

### PART 6

#### SUMMARY HEARING AND APPEALS AND REVIEW

#### CHAPTER 1

##### SUMMARY HEARING

##### *Right to elect Court Martial trial*

#### **129 Right to elect Court Martial trial**

- (1) Before hearing a charge summarily the commanding officer must, in the way specified by rules under section 153, give the accused the opportunity of electing Court Martial trial of the charge.
- (2) If the accused elects Court Martial trial of the charge—
  - (a) the commanding officer must refer the charge to the Director of Service Prosecutions; and
  - (b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.
- (3) Where two or more charges against the accused are to be heard summarily together, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.
- (4) Where, after the start of a summary hearing—
  - (a) a charge is amended under section 123(2)(a),
  - (b) a charge is substituted for another charge under section 123(2)(b), or
  - (c) an additional charge is brought under section 123(2)(c),

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

this section applies in relation to the amended, substituted or additional charge as if the reference in subsection (1) to hearing a charge summarily were a reference to proceeding with the hearing.

### **130 Further consequences of election for Court Martial trial**

- (1) This section applies where the accused has elected Court Martial trial of a charge.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused refer to a commanding officer, under section 125(2)(e)—
  - (a) that charge (whether or not amended by the Director), or
  - (b) any charge substituted under section 125(2)(b) or additionally brought under section 125(2)(c).
- (3) Where a charge mentioned in subsection (2) is referred under section 125(2)(e), the accused may not elect Court Martial trial of the charge (and accordingly section 129(1) does not apply in respect of the charge); but this does not apply if the charge is amended after referral.

### *Summary hearing*

### **131 Summary hearing**

- (1) This section applies where a commanding officer hears a charge summarily.
- (2) The commanding officer may dismiss the charge at any stage of the hearing; but this is subject to subsection (4) and to any provision of rules under section 153.
- (3) If the commanding officer determines that the charge has not been proved, he must dismiss the charge.
- (4) If the commanding officer determines that the charge has been proved, he must—
  - (a) record a finding that the charge has been proved; and
  - (b) award one or more of the punishments authorised by section 132.
- (5) Where the commanding officer records findings that two or more charges against a person have been proved, the award he must make under subsection (4) is a single award (consisting of one or more of those punishments) in respect of the charges taken together.
- (6) Nothing in this section authorises a commanding officer to include in an award two or more punishments within the same row of the Table in section 132, except where those punishments are—
  - (a) different minor punishments which regulations made under row 7 of the Table permit to be awarded together; or
  - (b) service compensation orders.

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

*Punishments available to commanding officer*

**132 Punishments available to commanding officer**

- (1) The second column of the following Table lists the punishments that may be awarded by a commanding officer who has heard a charge summarily, subject in the case of each punishment to any limitation shown in the third column opposite it.

*TABLE*

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
1	detention for a term not exceeding the maximum allowed by section 133	only if the person being punished is of or below the rank of— (a) leading rate; (b) lance corporal or lance bombardier; (c) corporal in any of Her Majesty's air forces
2	forfeiture of a specified term of seniority or of all seniority	only if the person being punished is an officer, and only in accordance with section 134
3	reduction in rank, or disrating	only if the person being punished is a warrant officer or non-commissioned officer, only in accordance with section 135, and not to an extent prohibited by regulations under section 135(4)
4	a fine not exceeding the maximum amount allowed by section 136	
5	a severe reprimand or a reprimand	only if the person being punished is an officer, warrant officer or non-commissioned officer
6	a service supervision and punishment order (defined by section 173)	only if the person being punished is an able rate, marine, soldier or airman
7	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
8	a service compensation order (defined by section 175) of an amount not exceeding	

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
	the maximum allowed by section 137	

- (2) Subsection (1) is subject to (in particular)—
- (a) section 138 (prohibited combinations of punishments) and any regulations made under that section;
  - (b) Chapter 1 of Part 9 (general provisions about sentencing).
- (3) Where regulations under row 7 of the Table authorise a minor punishment, they may—
- (a) confer on the offender's commanding officer a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;
  - (b) confer on the offender's commanding officer the function of deciding the details of the punishment;
  - (c) provide for the delegation by the commanding officer of any of his functions under the regulations.

### **133 Detention: limits on powers**

- (1) The maximum term of detention that a commanding officer may award under row 1 of the Table in section 132 to an able rate, marine, soldier or airman is—
- (a) 90 days if the commanding officer has extended powers for the purposes of this subsection;
  - (b) otherwise, 28 days.
- (2) A commanding officer may not award detention under row 1 of the Table in section 132 to a person of any of the following ranks—
- (a) leading rate,
  - (b) lance corporal or lance bombardier,
  - (c) corporal in any of Her Majesty's air forces,
- unless the commanding officer has extended powers for the purposes of this subsection; and the maximum term of detention that a commanding officer may (if he has those powers) award such a person is 90 days.
- (3) A commanding officer has extended powers for the purposes of subsection (1) or (2) if he has, before the summary hearing of the charge or charges—
- (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (4) A commanding officer also has extended powers for the purposes of subsection (1) or (2) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **134 Forfeiture of seniority: requirement for approval**

- (1) A commanding officer may not award forfeiture of seniority under row 2 of the Table in section 132 unless he has extended powers for the purposes of this section.
- (2) A commanding officer has extended powers for the purposes of this section if he has, before the summary hearing of the charge or charges—

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (a) applied to higher authority for extended powers for the purposes of this section; and
  - (b) been notified by higher authority that his application has been granted.
- (3) A commanding officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **135 Reduction in rank: limits on powers**

- (1) A commanding officer may not award reduction in rank, or disrating, under row 3 of the Table in section 132 unless—
  - (a) he has extended powers for the purposes of this subsection; or
  - (b) the person being punished is a lance corporal or lance bombardier.
- (2) The reduction in rank or disrating that a commanding officer may award is reduction or disrating—
  - (a) by one acting rank or rate; or
  - (b) if the person being punished has no acting rank or rate, by one substantive rank or rate.
- (3) Where the person being punished is a corporal in any of Her Majesty's air forces, the reduction in rank authorised by subsection (2)(a) (if he is an acting corporal) or (2)(b) (if he is not) is reduction to the highest rank he has held in that force as an airman.
- (4) The Defence Council may by regulations provide that persons of a trade or branch specified in the regulations may not be reduced or disrated under section 132 below a rank or rate so specified.
- (5) A commanding officer has extended powers for the purposes of subsection (1) if he has, before the summary hearing of the charge or charges—
  - (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (6) A commanding officer also has extended powers for the purposes of subsection (1) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **136 Fine: maximum amount**

- (1) The maximum amount of a fine that a commanding officer may award is—
  - (a) 28 days' pay unless paragraph (b) applies;
  - (b) if the person being punished is an officer or warrant officer and the commanding officer does not have extended powers for the purposes of this paragraph, 14 days' pay.
- (2) A commanding officer has extended powers for the purposes of paragraph (b) of subsection (1) if he has, before the summary hearing of the charge or charges—
  - (a) applied to higher authority for extended powers for the purposes of that paragraph; and
  - (b) been notified by higher authority that his application has been granted.
- (3) A commanding officer also has extended powers for the purposes of that paragraph if he is of or above the rank of rear admiral, major-general or air vice-marshal.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (4) For the purposes of this section a day's pay is—
  - (a) subject to paragraph (b), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded;
  - (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate.
- (5) If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of subsection (4) he is to be taken to have been on duty then.
- (6) In subsection (4) “special member” and “ordinary member” have the same meanings as in the Reserve Forces Act 1996 (c. 14).

### **137 Service compensation orders: maximum amount**

- (1) Where an award by a commanding officer consists of or includes one service compensation order, the compensation to be paid under the order must not exceed £1,000.
- (2) Where an award by a commanding officer consists of or includes two or more service compensation orders, the total compensation to be paid under the orders must not exceed £1,000.
- (3) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in subsections (1) and (2) such other sum as appears to him justified by the change.
- (4) In subsection (3) “the relevant date” means—
  - (a) the date of the coming into force of this section; or
  - (b) where the sum for the time being specified in subsections (1) and (2) was substituted for a sum previously so specified, the date of the substitution.

### **138 Prohibited combinations of punishments**

- (1) Subsections (2) to (6) apply where a commanding officer awards punishment in respect of an offender.
- (2) If he awards detention, other than a suspended sentence of service detention, the only additional punishment he may award is a service compensation order.
- (3) If he awards a suspended sentence of service detention, the only additional punishments he may award are—
  - (a) reduction in rank or disrating (subject to subsection (8));
  - (b) a service compensation order.
- (4) If he awards forfeiture of seniority, the only additional punishments he may award are—
  - (a) a severe reprimand or a reprimand;
  - (b) a service compensation order.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (5) If he awards reduction in rank or disrating, the only additional punishments he may award are—
  - (a) a suspended sentence of service detention (subject to subsection (8));
  - (b) a service compensation order.
- (6) If he awards a fine, he may not also award a service supervision and punishment order.
- (7) Regulations under row 7 of the Table in section 132 may make provision, as respects any punishment authorised by those regulations, prohibiting that punishment from being awarded with any other punishment (whether or not so authorised) specified by the regulations.
- (8) Nothing in this section authorises a commanding officer to award a particular punishment where the award of that punishment is prohibited otherwise than by this section.
- (9) References in this section to a service compensation order include references to two or more such orders.

### **139 Savings for maximum penalties for offences**

- (1) Where a commanding officer awards punishment in respect of a single offence, nothing in sections 131 to 138 authorises him—
  - (a) to award a punishment of a kind which the Court Martial could not award for that offence;
  - (b) if the offence is under section 42 (criminal conduct), to award a fine exceeding the maximum allowed by section 42(4).
- (2) Where a commanding officer awards punishment in respect of two or more offences—
  - (a) nothing in sections 131 to 138 authorises him to award a punishment of a particular kind unless it is one which the Court Martial could award for at least one of the offences; and
  - (b) if all the offences are under section 42 and the maximum fine allowed by section 136 exceeds the permitted maximum, nothing in sections 131 to 138 authorises him to award a fine exceeding the permitted maximum.
- (3) The permitted maximum is the total of the fines that under section 42(4) the commanding officer could award in respect of the offences if he had power to make separate awards in respect of them.

## **CHAPTER 2**

### **THE SUMMARY APPEAL COURT**

### **140 The Summary Appeal Court**

- (1) There shall be a court, to be known as the Summary Appeal Court.
- (2) The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

## **141 Right of appeal**

- (1) A person in respect of whom—
  - (a) a charge has been heard summarily, and
  - (b) a finding that the charge has been proved has been recorded,
 may appeal to the Summary Appeal Court against the finding or against the punishment awarded.
- (2) Subject to subsection (3), any appeal under this section must be brought—
  - (a) within the period of 14 days beginning with the date on which the punishment was awarded (“the initial period”); or
  - (b) within such longer period as the court may allow by leave given before the end of the initial period.
- (3) The court may at any later time give leave for an appeal to be brought within such period as it may allow.
- (4) The respondent to an appeal under this section is the Director of Service Prosecutions.

## **142 Constitution of the SAC for appeals**

- (1) For the purpose of hearing an appeal under section 141, the Summary Appeal Court is to consist of—
  - (a) a judge advocate;
  - (b) an officer qualified for membership under section 143 and not ineligible by virtue of section 144; and
  - (c) a third person who is an officer or warrant officer so qualified and not so ineligible.
- (2) Subsection (1) is subject to any provision made by SAC rules.
- (3) The judge advocate for an appeal under section 141 is to be specified by or on behalf of the Judge Advocate General.
- (4) The other members of the court for an appeal under section 141 are to be specified by or on behalf of the court administration officer.

## **143 Officers and warrant officers qualified for membership of the SAC**

- (1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Summary Appeal Court if he is subject to service law.
- (2) An officer is not qualified for membership of the court unless—
  - (a) he has held a commission in any of Her Majesty’s forces for at least three years, or for periods amounting in the aggregate to at least three years; or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.
- (4) An officer or warrant officer is not qualified for membership of the court if—
  - (a) he is a member of the Military Court Service;
  - (b) he is a member of or on the staff of the Service Prosecuting Authority;



---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (c) he is a service policeman;
  - (d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;
  - (e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (f) he is an advocate or solicitor in Scotland;
  - (g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (5) In this section “relevant territory” means—
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### **144 Officers and warrant officers ineligible for membership in particular circumstances**

- (1) An officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if—
- (a) he was the commanding officer of the appellant at any time in the period beginning with the date of commission of the offence which is the subject of the finding against the appellant and ending with the start of the appeal hearing;
  - (b) before the summary hearing, he took part in investigating the subject matter of any finding against the appellant;
  - (c) he is a higher authority who dealt with an application made before the summary hearing for permission under section 54 or for extended powers for the purposes of any provision of section 133, 134, 135, 136 or 194;
  - (d) he serves under the command of a person within paragraph (c);
  - (e) he serves under the command of the officer who conducted the summary hearing; or
  - (f) before the summary hearing, he conducted (whether alone or with other persons) an inquiry into the subject matter of any finding against the appellant.
- (2) A warrant officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if he falls within subsection (1)(b), (d), (e) or (f).
- (3) Where there is more than one finding against the appellant, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.
- (4) SAC rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Summary Appeal Court.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

## **145 Open court**

Subject to any provision made by SAC rules, the Summary Appeal Court must sit in open court.

## **146 Hearing of appeals**

- (1) An appeal under section 141 against a finding is to be by way of—
  - (a) a rehearing of the charge; and
  - (b) except where section 147(2) applies, a rehearing as respects punishment.
- (2) An appeal under section 141 against punishment is to be by way of a rehearing as respects punishment.
- (3) In the case of the hearing of an appeal under section 141, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (4) Any rulings or directions given under subsection (3) are binding on the court.

## **147 Powers of the SAC**

- (1) At a rehearing of a charge by virtue of section 146(1)(a), the Summary Appeal Court may—
  - (a) confirm or quash the finding concerned; or
  - (b) substitute for the finding concerned a finding that another charge has been proved.
- (2) Where the court quashes the finding, or (if there is more than one finding) every finding, made in respect of the appellant, it must quash the punishment which relates to that finding or, as the case may be, to those findings.
- (3) At a rehearing as respects punishment by virtue of section 146(1)(b) or (2), the Summary Appeal Court may—
  - (a) confirm the punishment awarded; or
  - (b) quash that punishment and award in substitution for it any punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary hearing to award; and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (4) SAC rules may make provision in connection with the exercise of the power under subsection (1)(b) (including provision restricting the exercise of the power).
- (5) In determining—
  - (a) whether to substitute a term of detention, or
  - (b) the length of any such substituted term,
 the court must take account of any period of the original term of detention that the appellant served.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

## **148 Effect of substituted punishment**

- (1) Unless it otherwise directs, any punishment substituted by the Summary Appeal Court has effect as if awarded on the day on which the original punishment was awarded, but this is subject to subsection (2).
- (2) Where the court substitutes a term of detention (other than a suspended sentence of service detention), the substituted term takes effect—
  - (a) if the court makes a direction under section 189(3), in accordance with the direction;
  - (b) otherwise, from the beginning of the day on which the punishment is substituted.

## **149 Making of, and appeals from, decisions of the SAC**

- (1) Subject to section 146(3), any decision of the Summary Appeal Court when constituted as mentioned in section 142(1) must be determined by a majority of the votes of the members of the court.
- (2) The appellant or respondent may question any decision of the Summary Appeal Court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Summary Appeal Court to have a case stated for the opinion of the High Court in England and Wales.

## **150 Privileges of witnesses and others**

A witness before the Summary Appeal Court or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

## **151 SAC rules**

- (1) The Secretary of State may by rules (referred to in this Act as “SAC rules”) make provision with respect to the Summary Appeal Court.
- (2) SAC rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) the hearing of appeals and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the appellant.
- (3) Without prejudice to the generality of subsections (1) and (2), SAC rules may make provision—
  - (a) as to oaths and affirmations for members of the court, witnesses and other persons;
  - (b) as to objections to, and the replacement of, members of the court;
  - (c) as to the constitution of the court;
  - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
    - (i) the payment of expenses to persons summoned to attend the court;
    - (ii) the issue by the court of warrants for the arrest of persons;
  - (f) enabling an uncontested appeal to be determined without a hearing;
  - (g) as to the bringing or abandonment of appeals;
  - (h) for the discharge of a court (including provision as to rehearings following discharge);
  - (i) as to notifications and references under section 152;
  - (j) for the making and retention of records of the proceedings of the court;
  - (k) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (l) conferring functions in relation to the court on the court administration officer;
  - (m) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
- (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) SAC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.
- (7) In this section “appeal” means an appeal under section 141.

### CHAPTER 3

#### REVIEW OF SUMMARY FINDINGS AND PUNISHMENTS

## 152 Review of summary findings and punishments

- (1) Where—
  - (a) a charge has been heard summarily, and
  - (b) a finding that the charge has been proved has been recorded,
 the finding or the punishment awarded may be reviewed at any time.
- (2) A review under this section may be carried out by—
  - (a) the Defence Council; or
  - (b) any officer appointed by the Defence Council to carry out the review or any class of review which includes the review.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (3) Subsection (4) applies where—
- (a) a review has been carried out under this section in respect of a finding or punishment; and
  - (b) the person to whom the review relates has not brought an appeal under section 141 within the period provided by subsection (2) of that section.
- (4) The person who carried out the review may, with the leave of the Summary Appeal Court, refer the finding or punishment to the court to be considered by it as on an appeal.
- (5) Subsections (6) and (7) apply where—
- (a) a review has been carried out under this section in respect of a finding or punishment; and
  - (b) the person to whom the review relates has brought an appeal under section 141.
- (6) If—
- (a) the Summary Appeal Court has not completed the hearing of the appeal, and
  - (b) the person who carried out the review considers that any matter arising at or from the summary hearing should be brought to the notice of the court,
- he may notify the court of that matter.
- (7) If—
- (a) the Summary Appeal Court has completed the hearing of the appeal, and
  - (b) the person who carried out the review considers that any matter arising at or from the summary hearing of which the court was not aware should have been brought to the notice of the court,
- he may, with the leave of the court, refer the finding or punishment, including any finding or punishment substituted or awarded by the court, to the court to be considered by it as on an appeal.
- (8) A reference to the Summary Appeal Court under subsection (4) or (7) shall be treated for the purposes of this Act as an appeal under section 141 brought by the person to whom the finding or punishment relates against the finding or punishment.

## CHAPTER 4

### SUMMARY HEARINGS ETC RULES

#### 153 Summary hearings etc rules

- (1) The Secretary of State may by rules make provision with respect to—
- (a) the summary hearing of charges by commanding officers;
  - (b) hearings as regards the making of orders under section 193 (activation of suspended sentence of service detention).
- (2) Rules under this section may in particular make provision—
- (a) as to the practice and procedure to be followed at hearings;
  - (b) as to evidence at hearings;
  - (c) for the delegation by a commanding officer of any of his functions;

---

**Status:** This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

---

- (d) as to applications for extended powers;
  - (e) as to applications for permission to hear summarily charges of a kind mentioned in section 54;
  - (f) requiring prescribed persons to be notified of prescribed matters.
- (3) In subsection (2) “prescribed” means prescribed by rules under this section.