

## **ARMED FORCES ACT 2006**

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### **EXPLANATORY NOTES**

#### **BACKGROUND**

5. The Royal Navy, the Army and the Royal Air Force operate within separate statutory frameworks of discipline which apply at all times wherever in the world members of each Service are serving. The respective bases for these systems are the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955. Collectively they are known as the Service Discipline Acts (“the SDAs”). The SDAs are concerned largely, but not exclusively, with discipline.
6. Although each of the Services has its own system, the general structure of these systems and many of their details are very similar. They all make provision so that members of the Services (including, in certain circumstances, members of each Service’s ex-regular and volunteer reserve forces) can be investigated, tried and punished for any criminal offence under the law of England and Wales, wherever in the world it is committed. These are referred to in these notes as criminal conduct offences. Each of the three service systems also provides for some offences which are peculiar to service in the armed forces. These offences mainly relate to discipline, for example insubordination and disobedience to lawful commands. They are referred to in these notes as disciplinary offences.
7. A commanding officer (CO) has a central role in maintaining discipline and every member of the armed forces has a CO for disciplinary purposes. Accordingly COs in all the services have defined disciplinary powers to deal with certain disciplinary and criminal conduct offences.
8. A CO’s powers of punishment are very restricted, but there are differences between the services in the range of offences with which a CO may deal summarily and his or her powers of punishment. Each of the Services’ systems provides an accused person with a right of election for trial by court-martial instead and for appeal from the finding and punishment of a CO to a Summary Appeal Court, comprising a civilian judge (called a “judge advocate”) and two members, of which one must be an officer.
9. The detailed provisions about courts-martial also vary between the Services, but key aspects are the same. The decision to bring a prosecution at court-martial rests with the Prosecuting Authority of each service. The Prosecuting Authority is a legally qualified officer appointed by Her Majesty the Queen and is independent of the chain of command. There are differences between the Services in the structure and membership of courts-martial, but all courts-martial have a civilian judge advocate and not less than three service members. These will be officers or warrant officers (though there are further rules about the ranks of those who may sit). The Army and RAF systems distinguish between “district” and “general” courts-martial. General courts-martial must have at least five service members (as well as the judge advocate). Naval courts-martial, and Army and RAF general courts-martial, have sentencing powers which are broadly comparable to those of the Crown Court in England and Wales. However, some of the sentencing powers available to a court-martial are peculiar to the service systems, such as detention served in a military establishment, reduction in rank, and dismissal. The procedures of all courts-martial are broadly similar to those of the Crown Court.

There is a right of appeal against conviction and sentence to the Courts-Martial Appeal Court. This court mostly comprises civilian judges from the Court of Appeal (Criminal Division).

10. Some civilians are also subject to one or other of the SDAs when overseas. These include the families of armed forces personnel living with them abroad and certain contractors working with the armed forces. There are only very limited powers to deal with civilians summarily. In Germany and Cyprus, where the armed forces have large permanent bases with a significant civilian population, there is a Standing Civilian Court, which has powers equivalent to those of a magistrates' court in England and Wales and is presided over by a civilian judge advocate. Or civilians may be tried by court-martial, in which case one or more civilian Crown servants may be a member of the court (depending on the type of court-martial).
11. Judge advocates are appointed as such by the Lord Chancellor but allocated to individual trials by the Judge Advocate General (for Army and RAF trials) or the Judge Advocate of the Fleet (for Royal Navy trials). The holders of these offices are appointed by Her Majesty the Queen on the recommendation of the Lord Chancellor. They must be a barrister, solicitor or advocate of at least 10 years' standing.
12. Each of the services includes a force of police (referred to in these notes as "service police"). One of their functions is to investigate alleged offences under the SDAs. Broadly speaking, their powers are exercisable on a tri-service basis; that is, they may exercise their powers in relation to anyone subject to any of the SDAs.

#### ***Other provisions in the SDAs***

13. The SDAs also contain provisions on other matters including recruitment to and discharge from the armed forces, the redress of complaints and armed forces' boards of inquiry.

#### ***Renewal of service law***

14. Since 1955 the Army and Air Force Acts (and, since 1971, the Naval Discipline Act) have been subject to renewal by primary legislation every five years and, in each of the intervening years, by an Order in Council approved in draft by both Houses of Parliament. This requirement for Parliamentary agreement for their continuation has its origins in the Bill of Rights 1688, which provides that the raising of a standing army is against the law unless Parliament consents to it. Since the 1950s the five-yearly Acts have been used primarily to make necessary and desirable amendments to the SDAs, often to reflect changes in the civilian criminal law of England and Wales. The last Armed Forces Act was passed in 2001.

#### ***The Strategic Defence Review 1998***

15. The Ministry of Defence Strategic Defence Review 1998<sup>1</sup> recognised the future importance of joint operations by the armed forces and put "jointery" at the centre of the defence planning process. It also concluded that combining the three SDAs into a single Act, and reducing the differences between the systems to the absolute minimum, would better support the armed forces, which increasingly train and operate jointly. The Act is the result of a comprehensive review of all the existing provisions in the SDAs, together with other legislation that relates to discipline in the armed forces such as the Courts-Martial (Appeals) Act 1968 ("the 1968 Act") and a number of free-standing provisions in the five-yearly Armed Forces Acts—for example, the provisions for Standing Civilian Courts in the Armed Forces Act 1976, and the powers of service police under the Armed Forces Act 2001.

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1 CM 3999, <http://www.mod.uk/issues/sdr/index.htm>