

ARMED FORCES ACT 2006

EXPLANATORY NOTES

STRUCTURE OF THE ACT

First Group of Parts: Discipline

21. **Part 1:** Offences. This Part sets out most service offences. (There are a few offences in other Parts of the Act and in other Acts.)
22. **Part 2:** Jurisdiction and time limits. This Part defines the jurisdiction of COs, the Court Martial and the SCC. It lays down time limits for prosecutions under the Act. It also provides for the effect of proceedings under service law on further service or civilian proceedings, and the effect of civilian proceedings on further service proceedings.
23. **Part 3:** Powers of arrest, search and entry. This Part defines the powers of arrest in relation to service offences. It also defines powers to search arrested persons, to stop and search persons and vehicles, and to enter premises for the purpose of search and seizure. For the most part, these powers are to be exercised by the service police.
24. **Part 4:** Custody. This Part sets out the regime governing the holding in custody (before or after charge) of a person arrested under the Act. It covers such matters as time limits for custody and review of custody. The requirements include review of that custody by a judge advocate.
25. **Part 5:** Investigation, charging and mode of trial. This Part sets out the duties of COs in respect of the investigation of service offences and the involvement of the service police. It also provides for the powers of the CO and the Director of Service Prosecutions in determining whether a charge should be brought, and if so for what offence.
26. **Part 6:** Summary hearing and appeals and review. This Part provides a right for the accused to elect trial by the Court Martial instead of being dealt with summarily by the CO. It sets out the punishments that a CO may award summarily. It establishes a single Summary Appeal Court (“SAC”) for the Services, gives a right of appeal to the SAC against both the finding and punishment at a summary hearing, and sets out the procedures and sentencing powers of the SAC. It provides for a separate review of the CO’s decisions, with a power for the reviewer to refer the matter to the SAC.
27. **Part 7:** Trial by the Court Martial. This Part establishes the Court Martial and provides for its constitution, proceedings and powers in respect of finding and sentence. It provides powers to deal with accused persons who are unfit to stand trial or who are found to be not guilty by reason of insanity.
28. **Part 8:** Sentencing powers and mandatory etc sentences. This Part makes further provision in relation to certain sentences. It provides for consecutive sentences, the suspension of sentences of detention, sentences of imprisonment for under 12 months, custodial sentences for young offenders, mandatory and minimum sentences, and certain court orders which are not sentences.

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

29. **Part 9:** Sentencing: principles and procedures. This Part sets out, for the first time, the principles that service courts and COs should apply when sentencing, and the procedures they should adopt when determining the sentence. It reflects the principles and procedures that apply to the civilian courts of England and Wales, which are mostly to be found in the Powers of Criminal Courts (Sentencing) Act 2000 (“the Sentencing Act”) and the Criminal Justice Act 2003 (“the 2003 Act”).
30. **Part 10:** Court Martial decisions: appeals and review. This Part renames the Courts-Martial Appeal Court as the Court Martial Appeal Court, and comprehensively amends the 1968 Act. It makes provision for the Attorney General to refer to the CMAC a sentence passed by the Court Martial which he considers unduly lenient. It also creates a regime for compensation for miscarriages of justice.
31. **Part 11:** The Service Civilian Court. This Part establishes the SCC. The jurisdiction of the SCC is provided for in Part 2. Part 11 provides for the court to sit anywhere outside the British Islands, and for its constitution, proceedings and powers in respect of finding and sentence. It sets out the right of an accused to elect trial by the Court Martial, and to appeal to the Court Martial against a finding or sentence of the court.
32. **Part 12:** Service and effect of certain sentences. This Part makes provision for the commencement of sentences and their effect on the offender in various respects, such as his rank. It makes a number of provisions with respect to custodial sentences passed under the Act and to service custody. These include provision for a sentence of service detention, but not one of imprisonment, to be served in a service establishment. They also include a power to make rules about service custody (both before and after sentence).
33. **Part 13:** Discipline: miscellaneous and supplementary. This Part provides for a number of miscellaneous matters relating to discipline, including:
 - drug and alcohol testing in specified circumstances and offences for non-compliance;
 - powers of service courts to deal with contempt of court;
 - arrest and detention by civilian authorities of persons subject to service law who desert or are absent without leave;
 - the extension in relation to the Court Martial and the SCC of the powers of the Criminal Cases Review Commission; and
 - orders (called financial penalty enforcement orders) by means of which financial penalties under the Act may be enforced through magistrates’ courts.