

## **ARMED FORCES ACT 2006**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

#### *First Group of Parts – Discipline*

#### **Part 6 – Summary Hearing and Appeals and Review**

#### *Chapter 2 – The Summary Appeal Court*

294. The Act establishes the Summary Appeal Court (“SAC”) for the Armed Services which will replace the single-service Summary Appeal Courts that were established under the Armed Forces Discipline Act 2000. The tri-service SAC will operate in a similar manner to the single-service Summary Appeal Courts.
295. The SAC is a standing court, which means the court will exist continuously, may consider more than one case at any one time and may sit in more than one place at any one time.
296. A judge advocate presides at sittings of the SAC. The SAC hears appeals against findings made and punishments awarded at summary hearings. There is a universal right to appeal to the SAC which supplements an accused person’s right to elect trial by the Court Martial before the start of a summary hearing. This offers those who have been dealt with summarily the opportunity to appeal to a court that is compliant with the European Convention on Human Rights, thereby making the entirety of the summary process ECHR-compliant.
297. An appeal against a finding takes the form of a re-hearing and is conducted in a similar manner as an appeal that is made to the Crown Court from a decision in the magistrates’ court in England and Wales. The respondent (the other party to the appeal) is the DSP. Consequently, the rules of evidence, with appropriate modifications, mirror those in the civilian system. Where the appeal relates to punishment alone the re-hearing is only in relation to sentence.

#### *Section 140: The Summary Appeal Court*

298. This section establishes the SAC and specifies that there are no geographical constraints on where it may sit. This means it could sit in the UK or, for example, in Germany or Iraq.

#### *Section 141: Right of appeal*

299. This section provides that anyone who has had a charge against him proven at a summary hearing can appeal to the SAC. The appeal can be in respect of the finding or the punishment. The section imposes an initial 14-day time limit for bringing an appeal, starting from the day on which the punishment is awarded. The Court may extend this time limit if an application to extend it is made within the initial fourteen days. The Court may also give permission to appeal to the SAC at any time after the 14-day time limit has expired.

***Section 142: Constitution of the SAC for appeals***

300. This section provides that for the purpose of an appeal the SAC will be made up of a judge advocate and two other members. The second member must be a commissioned officer but the third member can be either a warrant officer or a commissioned officer. The second and third members must be qualified and eligible to sit as members of the Court in accordance with sections 143 and 144.
301. The judge advocate hearing the appeal will be specified for the hearing by or on behalf of the Judge Advocate General and the other two members will be selected by the court administration officer.

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

302. This section provides that, subject to certain exceptions, an officer is qualified to act as a member if he has held a commission in HM Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in HM Forces immediately before receiving his commission. There is no length of service requirement for a warrant officer as a non-commissioned officer who has attained this rank has considerable service experience (an acting warrant officer is not qualified to sit). The exceptions to these general qualifications are listed and include lawyers and service policemen; this is in order to prevent any actual or perceived bias that could arise if a person connected with the service disciplinary process is appointed as a member.

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

303. This section sets out the categories of officers and warrant officers who, by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person, may not be members of the court for that particular appeal, despite being otherwise qualified to sit as members of the SAC.

***Section 145: Open court***

304. This section establishes the general principle that the SAC must sit in open court. Exceptions to this principle may be provided for in SAC rules.

***Section 146: Hearing of appeals***

305. This section provides that an appeal against finding will be a complete rehearing of the charge so that all of the evidence in the case will be heard again. If the SAC does not quash the finding (or every finding in a case where there is more than one finding being appealed against) it will go on to rehear the evidence relevant to punishment. However, appeals against sentence alone will be by way of a rehearing only of the evidence relevant to punishment.
306. Questions of law, procedure and practice will be decided by the judge advocate and will be binding on the court.

***Section 147: Powers of the SAC***

307. At an appeal against finding the SAC can confirm the finding, quash it or substitute it with a finding that another charge has been proved. Where the Court quashes the finding, it must also quash the accompanying punishment. SAC rules may set down the circumstances in which a Court may substitute a finding that another charge is proved.
308. After rehearing the evidence in respect of punishment, the SAC can confirm the punishment or quash it and substitute another punishment. A court cannot substitute a punishment unless the substituted punishment could have been awarded by the CO who awarded the original punishment at the summary hearing and the court considers that it is no more severe than the original punishment.

***Section 148: Effect of substituted punishment***

309. This section provides that unless the SAC directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the CO awarded his punishment. The exception to this general rule is when the SAC awards a punishment of detention, in which case it may either direct that the punishment is to take effect at the end of any other period of service detention that has been awarded to the accused on a previous occasion, or it takes effect from the day on which the SAC awards it.

***Section 149: Making of, and appeals from, decisions of the SAC***

310. This section provides for decisions of the SAC to be made on the basis of a majority of the votes of the members of the court. An appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the SAC on the ground that it is wrong in law or in excess of its jurisdiction. Under the SDAs, such an application could only be made by an appellant.

***Section 150: Privileges of witnesses and others***

311. This section provides that a witness (or anyone else who has a duty to attend the SAC) will have the same immunities and privileges as he would have had if called before the High Court in England and Wales.

***Section 151: SAC rules***

312. This section provides that the Secretary of State may make rules with respect to the SAC. Such rules can apply any domestic legislation, with or without modification. They are to be made by statutory instrument, subject to the “negative resolution” procedure.