

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

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 5 – Young Offenders: Custodial Sentences Available to Service Courts

427. This Chapter provides for the custodial sentences that are available to service courts (instead of imprisonment) for offenders aged under 18.

Restriction on imposing imprisonment on persons under 18

Section 208: Prohibition on imposing imprisonment on persons under 18

428. This section ensures that service courts cannot pass a sentence of imprisonment on an offender who is aged under 18 at the date of conviction. This mirrors the equivalent provision for criminal courts in section 89(1) of the Sentencing Act. The minimum age set by that section is currently 21. It is reduced to 18 by the Criminal Justice and Court Services Act 2000, but that amendment is not yet in force. Section 373 allows transitory provision to be made for offenders aged between 18 and 20 if the amendment to the Sentencing Act is still not in force when the Act comes into force.

Detention for certain serious offences

Section 209: Offenders under 18 convicted of certain serious offences: power to detain for specified period

429. Where a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct), this section enables the court in certain circumstances to pass a sentence of detention for any period up to the maximum term of imprisonment that would have been available in the case of an adult. This power is available if the offence is punishable with at least 14 years' imprisonment, or the corresponding civilian offence is one of certain specified offences under the Sexual Offences Act 2003 or an offence under the Firearms Act 1968 to which a minimum sentence applies. The power cannot be exercised unless the court considers that no other available sentence is suitable.

430. A sentence under this section corresponds broadly to the civilian sentence of detention under section 91 of the Sentencing Act.

Section 210: Detention under section 209: place of detention etc

431. This section allows a person sentenced under section 208 to be detained in a place determined by, or under the authority of, the Secretary of State.

Detention and training orders

Section 211: Offenders under 18: detention and training orders

432. This section enables the Court Martial and the SCC to pass a sentence resembling the detention and training order available to civilian courts under section 100 of the Sentencing Act. This sentence consists of a period of detention and training followed by a period of supervision. It replaces the “custodial order” which is available under the SDAs for offenders aged 17 (and at present also for offenders aged between 18 and 20, though in their case it will no longer be available when the Criminal Justice and Court Services Act 2000 is fully in force). A detention and training order can be made only if the court considers that the offence is so serious that only a custodial sentence can be justified, or the offender will not agree to a requirement which the court had proposed to include in a community punishment.
433. If the offender is aged under 15 when convicted, the court cannot make an order under this section unless it is of the opinion that he is a persistent offender.
434. If the offender is under 12 when convicted, no order can be made until provision has been made under section 100(2) of the Sentencing Act enabling civilian courts to make orders for offenders of that age. The court must also be of the opinion that only a custodial sentence would be adequate to protect the public from the offender.

Section 212: Term of detention and training order: general

435. This section restricts the period for which a detention and training order can be made under section 211. The period must be 4, 6, 8, 10, 12, 18 or 24 months, and cannot exceed the maximum term of imprisonment that would be available in the case of an adult. Where the offence is under section 42 (criminal conduct) and the corresponding civilian offence is a summary offence punishable with 51 weeks’ imprisonment, the order can only be for 4 or 6 months.

Section 213: Application of provisions relating to civilian detention and training orders

436. This section applies to orders made under section 211 many of the provisions governing detention and training orders made by civilian courts under section 100 of the Sentencing Act, so that both kinds of order work in much the same way. In particular, the section enables a civilian court in the UK (but not a service court) to deal with an offender who, following his release from custody, fails to comply with the supervision requirements imposed by the order.

Section 214: Offences during currency of detention and training order

437. Where a person is convicted by a civilian court in England and Wales of an offence punishable with imprisonment which he committed during the supervision period of a detention and training order made by a civilian court, section 105 of the Sentencing Act enables the court convicting him to make an order for his detention for a further period, up to the period of supervision that remained outstanding at the date of the new offence. One effect of section 213 is that a civilian court in England and Wales has the same powers in the case of a person subject to a detention and training order made by a service court. Section 214 confers similar powers on the Court Martial and the SCC where they convict a person of a service offence punishable with imprisonment and committed during the supervision period of a detention and training order made by a service court.
438. The Court Martial can also exercise these powers if the offender was convicted of the new offence by a civilian court anywhere in the British Islands, or at a summary hearing. In this case the court can issue a summons or a warrant for the offender’s arrest, so that it can consider whether to exercise its powers.

Section 215: Section 214: definitions etc

439. This section enables two or more detention and training orders made under section 211 to be treated as a single order for the purpose of determining whether a further offence by the offender was committed during the term of such an order, and an order can therefore be made under section 214. It also ensures that the accommodation in which a person can be detained under section 214 is the same as that in which he could be detained under section 105 of the Sentencing Act.

Section 216: Appeals against orders under section 214

440. This section enables the offender to appeal against an order for his detention under section 214 as if it were a new sentence for the original offence.