

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 7 – Court Orders Other Than Sentences

456. This Chapter provides for certain orders which the Court Martial and the SCC may make on convicting a person of an offence, but which are not punishments within the meaning of the Act. One of these orders, the service restraining order, is available even if the defendant is acquitted.

Service restraining orders

Section 229: Service restraining orders

457. This section enables the Court Martial and the SCC to make an order similar to a restraining order under the Protection from Harassment Act 1997, on convicting or acquitting a person of an offence. The order prohibits the defendant from doing specified things for a fixed period or until further order. It can only be made for the purpose of protecting a person from harassment. Breach of the order (without reasonable excuse) is a service offence punishable with five years' imprisonment.

Section 230: Service restraining orders: supplementary

458. Subsection (1) applies the interpretation provisions of the Protection from Harassment Act 1997 for the purposes of section 229.
459. Subsection (2) applies section 12 of that Act, which prevents conduct from being treated as a breach of a restraining order if it is certified to have related to national security, the UK's economic well-being or the prevention or detection of serious crime. "Serious crime" is extended for this purpose so as to include serious service offences and serious crime under the law of other countries.
460. Subsection (3) enables the CMAC, on allowing an appeal against conviction, to send the case back to the Court Martial so that that court can consider whether to make a restraining order.

Section 231: Service restraining orders: appeals

461. This section enables a person to appeal against the making of a service restraining order where he was acquitted, or where the order was made after he had successfully appealed against conviction. The section does not deal with cases where the order is made on conviction, since there is a right of appeal in such cases in any event.

Section 232: Service restraining orders: variation and revocation

462. This section enables the Court Martial to vary or revoke a service restraining order on an application, and enables the Court Martial or the SCC to do so on convicting the person against whom it was made of an offence under section 229.

Order for parent or guardian to enter into recognizance

Section 233: Order for service parent or service guardian to enter into recognizance

463. This section enables, and in some cases requires, the Court Martial or the SCC to exercise powers similar to those conferred on civilian courts by section 150 of the Sentencing Act. These powers can be exercised where a person is convicted of an offence when aged under 18, is a civilian subject to service discipline, and has a parent or guardian who is subject to service law or is a civilian subject to service discipline. The court can ask the parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him. This involves undertaking to pay a specified sum if the offender commits another offence within a specified period. If the parent or guardian unreasonably refuses to enter into a recognizance, the court can fine him.
464. If the offender is under 16 when convicted, the court must exercise these powers if satisfied that this would be desirable in the interests of preventing him from committing more offences, and must state its reasons if it does not do so.

Section 234: Recognizances and fines under section 233: further provision

465. Subsection (1) restricts the amount for which a parent or guardian may be required to enter into a recognizance, and subsection (2) restricts the period for which he may be entered to do so.
466. Subsection (3) requires the court to take into account the parent or guardian's means, in the same way as when imposing a fine (see section 249).
467. If the court has also passed an overseas community order on the offender, subsection (4) allows the recognizance to require his parent or guardian to ensure that he complies with that order.
468. Subsection (5) applies other provisions of the Act, relating to fines imposed on offenders, to a fine imposed on a parent or guardian for refusing to enter into a recognizance.

Section 235: Recognizances: appeals, variation and revocation

469. Subsections (1) and (2) enable a parent or guardian to appeal against an order requiring him to enter into a recognizance or to pay a fine for refusing to do so.
470. Subsection (4) enables the Court Martial to vary or revoke such an order.

Section 236: Forfeiture of recognizance

471. This section allows a recognizance to be forfeited if the offender commits another service offence during the period of the recognizance. Provided that the parent or guardian is still subject to service law or a civilian subject to service discipline, the Court Martial or the SCC on convicting the offender of the new offence can require the parent or guardian to pay any sum up to the full amount of the recognizance, or remit that amount.
472. When declaring that a recognizance is to be forfeited, the court can make an order under section 251 allowing the parent or guardian time to pay, or directing that he pay in instalments.