

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 1 – Definition etc of Certain Sentences

353. This chapter defines, and makes further provision in relation to, some of the sentences that are available to the Court Martial for adult offenders (all of which are set out in the Table in section 164). Some of the sentences dealt with in this Chapter are also available to a CO (see section 132), the SCC (see section 282) or both. One of them (the service supervision and punishment order) is unique to service law and may be imposed only on an able rate, marine, soldier or airman. The rest are modelled on equivalent sentences available to civilian courts in England and Wales.

Service supervision and punishment orders

Section 173: Service supervision and punishment orders

354. This section defines the service supervision and punishment order. This order is based on the minor punishment of reduction to the second class for conduct, currently available only under the Naval Discipline Act 1957. However, it is more flexible in that it may be imposed for a period of 90, 60 or 30 days, whereas the current punishment can only be imposed for 90 days. As at present, the offender's CO is required to review the punishment at intervals and has power to terminate it before the expiry of the period for which it was made.
355. While the order is in force, it has two elements. First, the offender is subject to requirements prescribed in regulations made by the Defence Council. These requirements can include (for example) extra work and drill, or a restriction on the taking of leave. The regulations may give the CO, or another officer to whom he has delegated his functions in this respect, a discretion to determine the details of the activities that the offender must perform. Secondly, the offender forfeits 1/6th of his gross pay.

Section 174: Review of service supervision and punishment orders

356. This section requires a CO to review a service supervision and punishment order made in respect of a person under his command. The times at which such a review must be carried out are to be specified in Defence Council regulations. On a review, the CO must consider whether the order should remain in force. If he decides that it should not, he must order that it shall immediately cease to have effect.
357. Subsection (3) enables the Defence Council to make regulations about the criteria that a CO must apply when reviewing an order.

358. Subsection (4) ensures that, even if the CO terminates the order, the offender will still forfeit 1/6th of his gross pay for the period when the order was in force.

Service compensation orders

Section 175: Service compensation orders

359. One of the punishments available under the SDAs is “stoppages”. This is an order to pay compensation for personal injury, loss or damage resulting from the offence, and is enforced by deductions from the offender’s pay. A court-martial or Standing Civilian Court can also make a compensation order against a civilian offender. The Act replaces stoppages and the compensation order with the service compensation order, which is available for both service and civilian offenders and closely resembles the compensation order available to civilian courts in England and Wales. The order is enforceable in the same way as a fine, which in the case of serving personnel may include deductions from pay under regulations made by virtue of section 342.
360. This section defines the service compensation order and provides for the circumstances in which it can be made. The section is modelled on section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (“the Sentencing Act”).

Section 176: Service compensation orders: appeals etc

361. This section corresponds to section 132 of the Sentencing Act. Subsection (1) ensures that compensation awarded in favour of a person need not be paid to him until the expiry of the period allowed for an appeal.
362. Subsection (2) enables the Supreme Court to make a service compensation order if a conviction is quashed by the CMAC and restored by the Supreme Court.
363. Subsection (3) ensures that, where a service compensation order is made in respect of an offence taken into consideration when sentencing a person for an offence of which he has been convicted, and the conviction is quashed on appeal, the order ceases to have effect. It also enables the offender to appeal against such an order.

Section 177: Review of service compensation orders

364. This section corresponds to section 133 of the Sentencing Act. It enables a service compensation order to be reviewed, on application by the person against whom it is made, by the Court Martial or (in the case of an order made at a summary hearing) by the person’s CO. The court or CO can discharge the order or reduce the amount payable, but only on the grounds specified in subsection (3).

Service community orders (civilians and dismissed servicemen only)

Section 178: Service community orders

365. This section defines the service community order. This punishment is available only for offenders aged 18 or over on conviction who are civilians, or will be civilians when the punishment takes effect because they are also being sentenced to dismissal, and are expected to live in the UK. It is broadly equivalent to a community order made under section 177 of the Criminal Justice Act 2003 (“the 2003 Act”), and most of the provisions that apply to such orders are extended to service community orders.
366. A court making a service community order must impose requirements of the kind that can be included in a community order under the 2003 Act, and must specify the local justice area (in England and Wales), locality (in Scotland) or petty sessions district (in Northern Ireland) where the offender lives or will live.

367. Subsection (2) makes the power to include requirements in a service community order subject to broadly the same restrictions as the power to include them in a community order under the 2003 Act.
368. Subsections (3) to (6) apply further provisions of the 2003 Act on community orders to service community orders.

Section 179: Periodic review etc of service community orders

369. Section 210 of the 2003 Act enables, and in some cases requires, a community order imposing a drug rehabilitation requirement to provide for that requirement to be periodically reviewed by a court. This is one of the provisions extended to service community orders by section 178, but subsection (1) of this section modifies it so that the court required to review the requirement is the Crown Court.
370. Section 211 of the 2003 Act provides for the powers of a court reviewing a drug rehabilitation requirement under a community order. After considering the responsible officer's report, the court can amend the requirement. It can do so only if the offender agrees to the amendment, but if he does not agree to it the court can re-sentence him for the original offence. This section is extended to service community orders by section 178, but subsection (2) of this section modifies it so that the Crown Court can exercise its ordinary sentencing powers rather than those of the service court that made the order.
371. Subsection (3) ensures that an offender re-sentenced by the Crown Court under these provisions can appeal against the sentence.

Section 180: Transfer of service community order to Scotland or Northern Ireland

372. Parts 1 and 2 of Schedule 9 to the 2003 Act enable a civilian court in England and Wales to make a community order where the offender lives or will live in Scotland or Northern Ireland. This section extends those provisions so that in these circumstances a service court can make a service community order.
373. Part 3 of Schedule 9 to the 2003 Act provides for the operation of a community order which requires compliance in Scotland or Northern Ireland. In some circumstances a court in Scotland or Northern Ireland can send the offender back to be dealt with by a court in England and Wales, which might be either the Crown Court or a magistrates' court. In the case of a service community order, however, the effect of subsection (3) is that the court dealing with the matter in England and Wales will always be the Crown Court.

Section 181: Breach, revocation or amendment of service community order

374. Schedule 8 to the 2003 Act sets out the procedures relating to the enforcement, revocation and amendment of community orders. This section gives effect to Part 1 of Schedule 5 to the Act, which extends Schedule 8 to the 2003 Act so that, with some modifications, the procedures for a service community order are the same as those for a community order under the 2003 Act.

Overseas community orders (civilians only)

Section 182: Overseas community orders

375. This section defines the overseas community order, which is available only for civilian offenders living overseas. Like the service community order, it is broadly equivalent to a community order made under section 177 of the 2003 Act; but, whereas the service community order is enforceable through the civilian courts in the UK, the overseas community order is enforceable only through service courts.

376. An overseas community order made in respect of an offender aged 18 or over on conviction can include any of the requirements that can be included in a community order under the 2003 Act (except an electronic monitoring requirement, which is excluded by section 183). In the case of an offender aged under 18 on conviction, the requirements available are modified by Schedule 6 to the Act.

Section 183: Overseas community orders: modifications of 2003 Act

377. Chapter 4 of Part 12 of the 2003 Act contains general provisions applicable to (among other sentences) community orders. This section modifies that Chapter in its application to overseas community orders.
378. Subsection (1) prevents certain provisions of the 2003 Act from applying to an overseas community order. These provisions include one which prevents a court from imposing a mental health requirement where the offender's mental condition would warrant the making of a hospital order or guardianship order (which are not available on conviction by a service court), those relating to periodic review of a drug rehabilitation requirement, and the power to impose an electronic monitoring requirement.
379. Subsection (2) modifies certain provisions of the 2003 Act under which the offender can be required to attend at premises approved by the local probation board for the area in which the premises are situated, so that, in the case of a requirement under an overseas community order, the approval of any local probation board will suffice.
380. Subsection (3) requires a court making an overseas community order to provide a copy of the order to specified persons, in addition to those specified in section 219 of the 2003 Act.
381. Subsection (4) provides a definition of the "responsible officer", for the purposes of an overseas community order, which is broadly similar to that in section 197 of the 2003 Act, but omits the reference to the officer being appointed for or assigned to a local justice area. Subsection (5) enables the Secretary of State to amend this definition in the same way as he can amend the definition in the 2003 Act.

Section 184: Breach, revocation or amendment of overseas community order

382. Schedule 8 to the 2003 Act sets out the procedures relating to the enforcement, revocation and amendment of community orders. This section gives effect to Part 2 of Schedule 5, which extends Schedule 8 to the 2003 Act so that, with some modifications, it applies to overseas community orders.

Conditional or absolute discharge (civilians only)

Section 185: Conditional or absolute discharge

383. This section defines a conditional discharge and an absolute discharge. Conditional discharge is available only for civilian offenders (see Schedule 3, paragraph 1(1) for the sentencing powers of the Court Martial in relation to civilians, and section 282 for those of the SCC). Absolute discharge is available for civilians and also for persons previously subject to service law (under Schedule 3, paragraph 3(1)).
384. Subsection (1) defines a conditional discharge as an order discharging the offender on condition that he commits no further service offence during a specified period. Under subsection (2) the maximum period that can be specified is the same as that for which a civilian court in England and Wales can impose a conditional discharge (currently three years).
385. An absolute discharge is defined in subsection (3) as an order that discharges the offender absolutely (i.e. without conditions).

386. Subsection (4) prohibits a conditional or absolute discharge from being combined with any other punishment, except a service compensation order.

Section 186: Commission of further offence by person conditionally discharged

387. Where an offender has been conditionally discharged, and is then convicted by the Court Martial or the SCC of another offence committed during the period of discharge, this section enables the court to re-sentence him for the original offence. It corresponds to section 13 of the Sentencing Act.
388. Where the original conviction was by the SCC and the second conviction is by the Court Martial, under subsection (2) the sentence passed by the Court Martial for the original offence must be one that the SCC could pass. Where the second conviction is by the SCC, under subsection (3) the sentence passed by the SCC must be one that it could have passed if it had just convicted the offender of the original offence (even if it was in fact the Court Martial that convicted him of that offence).
389. Subsection (5) ensures that the offender can appeal against a sentence passed under this section by the Court Martial where the original conviction was by the SCC, or vice versa.

Section 187: Effect of discharge

390. This section corresponds to section 14 of the Sentencing Act. Under subsection (1), an offender who is conditionally or absolutely discharged is deemed not to have been convicted of an offence, except for the purposes of the proceedings in which the order was made and any re-sentencing of the offender under section 186. Under subsection (2) this rule ceases to apply if the offender is later re-sentenced under section 186 (provided that he was aged 18 or over when he was convicted of the original offence).
391. Under subsection (3), where a conditional or absolute discharge is imposed the conviction is also to be disregarded for the purposes of legislation imposing a disqualification or disability.
392. Subsection (5) ensures that the section does not affect the offender's rights of appeal, his right not to be tried again for the same offence, or an order to restore property.

Chapter 2 – Consecutive Sentences

Section 188: Consecutive custodial sentences

393. This section enables a service court, when passing a custodial sentence for a fixed period, to make it consecutive to another sentence. The other sentence may be one that the court passes on the same occasion, or one previously passed on him by any service court or a civilian court (including a court outside England and Wales).

Section 189: Consecutive sentences of service detention

394. This section enables a court or CO, when passing a sentence of service detention, to make it consecutive to another sentence of service detention passed on a previous occasion (or, in the case of the Court Martial or the CMAc, the same occasion), provided that this does not take the total period above two years (see section 244).

Chapter 3 – Suspended Sentence of Service Detention

Section 190: Suspension of sentence of service detention

395. This section enables a court or CO, when passing a sentence of service detention, to suspend the sentence. In that case the sentence does not come into effect unless “activated” following the offender's conviction of another offence committed during a period of three to twelve months (“the operational period”) specified when the sentence

is passed. This is distinct from the rule that a sentence of detention passed by a CO (even if not suspended) does not take effect until the offender has had a chance to appeal: see sections 290 and 291.

Section 191: Activation by Court Martial of suspended sentence of service detention

396. Subsection (1) enables the Court Martial to activate a suspended sentence of service detention, including one passed at a summary hearing, if it convicts the offender of another offence committed during the operational period.
397. Subsection (2) further enables the Court Martial to activate a suspended sentence of service detention passed by, or on appeal from, that court if the offender commits another service offence or a civilian offence during the operational period and is convicted of that offence. In this case the Court Martial may issue a summons requiring him to appear before it, or a warrant for his arrest.
398. Where the Court Martial activates a suspended sentence, under subsection (3) it can order that the offender must serve the entire period of the original sentence or some shorter term. Under subsection (4) it can also make the sentence consecutive to another sentence of service detention passed on the same or a previous occasion, provided that this does not take the total period of the sentences above two years (see section 244).
399. Where the Court Martial activates a suspended sentence on the basis of a conviction by a CO or the SAC, and the punishment awarded by the CO or the SAC was a service supervision and punishment order or a minor punishment, under subsection (5) any outstanding part of that punishment is cancelled.

Section 192: Activation by Court Martial: appeals

400. Where the Court Martial makes an order under section 191 activating a suspended sentence of service detention, this section enables the offender to appeal against the order. The CMAC can substitute an order activating the sentence for a shorter period, or can quash the Court Martial's order altogether.

Section 193: Activation by CO of suspended sentence of service detention

401. This section enables a CO to activate a suspended sentence of service detention passed at a summary hearing or by the SAC (but not by the Court Martial), where he finds the offender to have committed a further service offence during the operational period or the offender has been convicted of a civilian offence committed during that period.
402. Where a CO activates a suspended sentence, under subsection (3) he can order that the offender must serve the entire period of the original sentence or some shorter term. Under subsection (4) he can also make the sentence consecutive to another sentence of service detention passed on the same or a previous occasion. But these powers are subject to the restrictions in sections 194 and 244, and subsection (5) provides that any provision in an order included by virtue of subsection (4) has effect subject to section 292.

Section 194: Activation by CO: maximum term

403. This section prevents a CO from activating a suspended sentence of service detention for more than 28 days, or making it consecutive to another sentence so that the total term exceeds 28 days, unless he has been granted extended powers by higher authority or is of senior rank. He cannot in any event make the activated sentence consecutive to another sentence passed by him so that the total term exceeds 90 days.

Section 195: Suspended sentences: powers of SAC

404. This section applies where a CO has activated a suspended sentence of service detention under section 193. Its effect is that the offender can appeal against the order activating

the sentence, and the order can be reviewed under section 152, as if the order were a punishment awarded for the original offence.

405. Where the CO activated the suspended sentence upon finding the offender guilty of another offence, under subsection (2) an appeal against that finding or the punishment awarded for that offence counts as an appeal against the activation order, and an appeal against the order counts as an appeal against the punishment. Under subsection (4) the SAC can quash the activation order or substitute an order activating the sentence for some other period, whether shorter or longer than that for which the CO activated the sentence; but the orders made and punishments awarded by the SAC, in combination, must be no more severe than those made or awarded by the CO.
406. If a CO finds an offence proved and has power to activate a suspended sentence but does not do so, and the offender appeals, subsection (5) enables the SAC to activate the suspended sentence—but only if the activation order, in combination with the punishments awarded by the SAC, is no more severe than the punishments awarded by the CO.
407. If a CO activates a suspended sentence on the basis that the offender has been convicted of a civilian offence, and the offender appeals, subsection (8) enables the SAC to quash the order or to substitute another order under section 193 which is no more severe. Subsection (9) provides that when substituting such an order, the SAC must take account of any period of the suspended sentence already served by the offender.

Chapter 4 – Imprisonment for Term of Under 12 Months

408. This chapter deals with the powers of service courts to pass sentences of imprisonment for less than 12 months. It applies, with modifications, provisions of the 2003 Act which enable civilian courts in England and Wales to pass sentences of “custody plus” and to suspend a sentence of imprisonment.

Application of provisions in the 2003 Act

Section 196: Term of sentence etc

409. Under section 181 of the 2003 Act, a sentence of imprisonment for less than 12 months passed by a civilian court in England and Wales must include an order requiring the offender to comply, after his release from custody, with one or more of the requirements listed in section 182 (a “custody plus” order), unless the sentence is one of intermittent custody or is suspended in accordance with section 189 (as to which, see section 200 below). This section extends these provisions (except those relating to intermittent custody) to service courts, subject to modifications made by the rest of this Chapter.

Imprisonment with or without “custody plus” order

Section 197: Imprisonment with or without a custody plus order

410. This section modifies section 181 of the 2003 Act so as to enable a service court to pass an immediate (i.e. non-suspended) sentence of imprisonment for less than 12 months which does not include a custody plus order. An offender on whom such a sentence is passed will serve a period of custody determined by the court in accordance with section 181 of the 2003 Act, and following his release will be on licence and subject to licence conditions for the remainder of the sentence (the “licence period”), but will not be subject to any of the requirements in section 182 of the 2003 Act.
411. Subsection (3) prohibits a court from including in a custody plus order a requirement to be complied with outside the UK. So, if the court passes an immediate sentence of imprisonment for less than 12 months and expects the offender to reside outside the UK during the licence period (e.g. because he is not being sentenced to dismissal from

HM service, and is likely to be posted overseas following his release from custody), the court cannot include a custody plus order in the sentence.

Section 198: Transfer to Scotland or Northern Ireland of custody plus order

412. Paragraphs 2 and 9 of Schedule 11 to the 2003 Act enable a civilian court in England and Wales to make a custody plus order in respect of an offender who resides or will reside in Scotland or Northern Ireland. Subsections (1) and (2) of this section enable service courts to do the same.
413. Schedule 10 to the 2003 Act enables a civilian court in England and Wales to amend or revoke a custody plus order. Part 4 of Schedule 11 modifies Schedule 10 in relation to a custody plus order which requires compliance in Scotland or Northern Ireland (either because it was originally made so as to require such compliance or because it has been amended to that effect under Schedule 10). In certain circumstances the court that can exercise functions in relation to such an order is a court in England and Wales (rather than one in Scotland or Northern Ireland), which might be a magistrates' court. Where the order was originally made by a service court, however, subsection (3) ensures that the civilian court in England and Wales responsible for exercising these functions is the Crown Court.

Section 199: Revocation and amendment of custody plus orders

414. This section modifies Schedule 10 to the 2003 Act (which enables a civilian court in England and Wales to amend or revoke a custody plus order) so that, in the case of a custody plus order made by a service court, the civilian court in England and Wales with power to amend or revoke the order is the Crown Court.

Suspended sentences of imprisonment

Section 200: Suspended sentence orders with or without community requirements

415. Section 189 of the 2003 Act allows a civilian court in England and Wales, when passing a sentence of imprisonment for less than 12 months, to make an order (a "suspended sentence order") that the sentence is not to take effect immediately, but can be brought into effect if the offender commits a further offence within a specified period (the "operational period") or fails to comply with one or more requirements ("community requirements") which the order must impose. The requirements available for this purpose include all those available for inclusion in a custody plus order, plus some additional options. This section modifies section 189 so that a service court can not only make a suspended sentence order including community requirements, but (unlike a civilian court) can also make one without such requirements.
416. Subsection (5) further modifies section 189 of the 2003 Act so that a suspended sentence order made by a service court can take effect not only if the offender fails to comply with the community requirements (if any) or commits a civilian offence during the operational period of the order, but also if he commits another service offence during that period.
417. Subsection (6) prohibits a court from including a community requirement to be complied with outside the UK. So, if the court passes a suspended sentence of imprisonment and expects the offender to reside outside the UK, the order must be one without community requirements.

Section 201: Order without community requirements: provisions not applying

418. This section ensures that the provisions of the 2003 Act relating to community requirements do not apply to a suspended sentence order without such requirements.

Section 202: Order with community requirements: disapplication of certain provisions

419. This section prevents certain provisions of the 2003 Act, which would not make sense in relation to a suspended sentence order made by a service court, from applying to such an order.

Section 203: Review of order with community requirements

420. Section 191 of the 2003 Act enables a suspended sentence order to provide for the order to be periodically reviewed by a court. Subsection (1) of this section modifies section 191 so that, where a service court makes a suspended sentence order which includes community requirements and provides for periodic review, the court required to review the order is the Crown Court.
421. Section 210 of the 2003 Act enables, and in some cases requires, a suspended sentence order imposing a drug rehabilitation requirement to provide for that requirement to be periodically reviewed by a court. Subsection (2) modifies section 210 so that, where a service court makes a suspended sentence order which includes a drug rehabilitation requirement and provides for its periodic review, the court required to review it is the Crown Court.
422. Section 211 of the 2003 Act provides for the powers of a court reviewing a drug rehabilitation requirement imposed under a suspended sentence order. In certain circumstances the court can re-sentence the offender for the original offence. Subsection (3) modifies section 211 of the 2003 Act so that the Crown Court can exercise its ordinary sentencing powers rather than those of the service court that made the order. Subsection (4) enables an offender re-sentenced by the Crown Court to appeal to the civilian Court of Appeal.

Section 204: Transfer to Scotland or Northern Ireland of order with community requirements

423. Paragraphs 1 and 6 of Schedule 13 to the 2003 Act enable a civilian court in England and Wales to make a suspended sentence order in respect of an offender who resides or will reside in Scotland or Northern Ireland. Subsections (1) and (2) of this section extend this power to service courts.
424. Schedule 12 to the 2003 Act enables a civilian court in England and Wales to make further orders in relation to a suspended sentence order where the offender has failed to comply with its requirements or has been convicted of a further offence, or to amend the order. Part 3 of Schedule 13 to the 2003 Act modifies Schedule 12 to the 2003 Act in relation to a suspended sentence order which requires compliance in Scotland or Northern Ireland. In certain circumstances the court that can exercise functions in relation to such an order is a court in England and Wales, which might be a magistrates' court. Where the order was originally made by a service court, however, subsection (3) ensures that the civilian court in England and Wales responsible for exercising these functions is the Crown Court.

Section 205: Amendment of order with community requirements

425. This section modifies Part 3 of Schedule 12 to the 2003 Act (which enables a civilian court in England and Wales to amend a suspended sentence order) so that, if the order was made by a service court and includes community requirements, the court with power to amend it is the Crown Court. When there is power to re-sentence the offender for the original offence, the Crown Court has its ordinary sentencing powers (subject to the limits on the powers of the SCC, if it was the SCC that made the order). Subsection (4) enables an offender re-sentenced by the Crown Court to appeal to the civilian Court of Appeal.

Section 206: Suspended sentence: further conviction or breach of community requirement

426. This section gives effect to Schedule 7, which modifies Part 2 of Schedule 12 to the 2003 Act, which provides for the activation of a suspended sentence following a breach of the community requirements or a conviction of a further offence.

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.

Chapter 6 – Mandatory etc Custodial Sentences for Certain Offences

441. The sections in Chapter 6 of Part 8 require the Court Martial to impose certain custodial sentences where a person is convicted of a criminal conduct offence and a civilian court convicting him of the corresponding offence would be required to impose such a sentence.

Mandatory sentences

Section 217: Mandatory life imprisonment

442. This section requires the court to pass a sentence of life imprisonment where such a sentence would be mandatory in the case of the corresponding civilian offence. One such offence is murder. If the offender was under 18 at the time of the offence, however, section 218 applies instead.

Section 218: Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

443. Where life imprisonment is mandatory in the case of the corresponding civilian offence but the offender was under 18 at the time of the offence, under this section the court must sentence him to be detained during Her Majesty's pleasure.

Required sentences

444. Under each of sections 219 to 222 the Court Martial must pass a particular sentence where a civilian court convicting the offender of the corresponding offence would be required by Chapter 5 of Part 12 of the 2003 Act to pass such a sentence. These provisions apply where the conviction is for one of certain violent or sexual offences and in the court's view there is a significant risk of the offender's causing serious harm by committing more such offences.

Section 219: Dangerous offenders aged 18 or over

445. Where the corresponding offence is one of those listed in Schedule 15 to the 2003 Act and carries at least 10 years' imprisonment, and the offender is aged 18 or over when convicted, this section requires the court to pass a sentence either of life imprisonment or of imprisonment for public protection (which is another form of indeterminate sentence, defined by section 225(4) of the 2003 Act). Life imprisonment is mandatory if the conditions in section 225(2) of the 2003 Act (which determine when a civilian court would be required to pass such a sentence) are met.

Section 220: Certain violent or sexual offences: offenders aged 18 or over

446. Where the corresponding offence is listed in Schedule 15 to the 2003 Act but carries less than 10 years' imprisonment, and the offender is 18 or over, this section requires the court to pass an extended sentence of imprisonment. This sentence is defined by section 227 of the 2003 Act. It consists of an appropriate custodial term of at least 12 months, plus an extension period (of up to 5 years in the case of a violent offence, or 8 years in the case of a sexual offence) during which the offender is on licence.

Section 221: Dangerous offenders aged under 18

447. Where section 219 would apply but for the offender being under 18, this section requires the court to pass a sentence of detention for life under section 209 if the conditions

in section 226(2) of the 2003 Act (which determine when a civilian court would be required to pass such a sentence under section 91 of the Sentencing Act) are met. If they are not met, the court must pass a sentence of detention for public protection (another form of indeterminate sentence, defined by section 226(4) of the 2003 Act), unless the court considers that an extended sentence of detention under section 228 of the 2003 Act (as required by section 222) would be adequate for the protection of the public.

Section 222: Offenders aged under 18: certain violent or sexual offences

448. Where section 220 would apply but for the offender being under 18, or section 221 applies but the court does not think that a sentence of detention for public protection is necessary, this section requires the court to pass an extended sentence of detention. This sentence is defined by section 228 of the 2003 Act. It consists of an appropriate custodial term of at least 12 months, plus an extension period (of up to 5 years in the case of a violent offence, or 8 years in the case of a sexual offence) during which the offender is on licence.

Section 223: “The required opinion” for purposes of sections 219 to 222

449. This section requires the Court Martial, in determining what sentence is required by sections 219 to 222, to apply criteria similar to those that a civilian court would be required to apply for the purposes of sections 225 to 228 of the 2003 Act. But, as well as assessing the risk of the offender’s committing further specified offences in the UK, the Court Martial must also consider the risk of his doing things elsewhere that would be specified offences if done in England or Wales. If he is an adult and has previous convictions for specified offences, the court must assume that there is a significant risk unless it considers that this would be an unreasonable conclusion.

Section 224: Place of detention under certain sentences

450. This section applies section 235 of the 2003 Act, which provides for the place in which a person sentenced under section 226 or 228 of that Act may be detained, to a sentence under either of those sections passed by the Court Martial as a result of section 221 or 222.

Section 225: Third drug trafficking offence

451. Section 110 of the Sentencing Act requires an adult convicted of a third class A drug trafficking offence to be sentenced to at least seven years’ imprisonment unless there are particular circumstances which would make this unjust. Subject to that exception, this section requires the Court Martial to impose such a sentence where it convicts an adult of a criminal conduct offence and section 110 of the Sentencing Act would apply if he were convicted by a civilian court of the corresponding offence.

Section 226: Third domestic burglary

452. Section 111 of the Sentencing Act requires an adult convicted of a third domestic burglary to be sentenced to at least three years’ imprisonment unless there are particular circumstances which would make this unjust. Subject to that exception, this section requires the Court Martial to impose such a sentence where it convicts an adult of a criminal conduct offence and section 111 of the Sentencing Act would apply if he were convicted by a civilian court of the corresponding offence.

Section 227: Firearms offences

453. Section 51A of the Firearms Act 1968 requires an adult convicted of certain offences under that Act to be sentenced to at least five years’ imprisonment if he was an adult when he committed the offence, or three if he was aged 16 or 17, unless there are exceptional circumstances which justify not passing such a sentence. Subject to that exception, this section requires the Court Martial to impose such a sentence where it

convicts an adult of a criminal conduct offence and section 51A of the Firearms Act 1968 would apply if he were convicted by a civilian court of the corresponding offence.

454. If the offender is aged under 18 when convicted, the minimum sentence required by section 51A of the Firearms Act 1968 (in the absence of exceptional circumstances) is one of three years' detention under section 91 of the Sentencing Act. Where a person under 18 is convicted by the Court Martial and section 51A of the Firearms Act 1968 would apply if he were convicted by a civilian court of the corresponding offence, the minimum sentence required by this section (in the absence of exceptional circumstances) is one of three years' detention under section 209.

Section 228: Appeals where previous convictions set aside

455. This section allows an offender extra time to appeal against his sentence if, for the purpose of the sections in this Chapter, the court took account of a previous conviction of his which has since been set aside on appeal.

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.