

SCHEDULES

SCHEDULE 5

Sections 181, 184

BREACH, REVOCATION AND AMENDMENT OF COMMUNITY PUNISHMENTS

PART 1

SERVICE COMMUNITY ORDERS

General

- 1 (1) In Schedule 8 to the 2003 Act (breach, revocation or amendment of community order), “community order” includes a service community order under this Act.
- (2) In its application to such an order, that Schedule has effect as if paragraphs 2(b), 4, 5(4), 6(2), 7, 9, 12, 13, 15, 16(5), 17(5) and (6), 18(4), 20(2), 21 and 27(1)(b)(ii) and (d), (2) and (3)(a) were omitted.

Breach of requirement of order

- 2 Paragraphs 5(1)(b) and 6(1) of that Schedule (warning and laying of information) have effect in relation to a service community order under this Act as if the references to a justice of the peace were to the Crown Court.
- 3 Paragraph 8 of that Schedule (issue of summons or warrant for breach) applies to such an order as it applies to an order mentioned in sub-paragraph (1) of that paragraph.

Revocation of order

- 4 Paragraph 14 of that Schedule (Crown Court’s powers of revocation) has effect as if the reference in sub-paragraph (1)(a) to a community order as there mentioned included a service community order under this Act.

Amendment of order

- 5 In Part 4 of that Schedule (amendment of order) as it applies to a service community order under this Act, “the appropriate court” means the Crown Court.
- 6 In paragraph 19 of that Schedule (amendment in relation to review of drug rehabilitation requirement) as it applies to such an order, “the court responsible for the order” means the Crown Court.

Powers of civilian courts in relation to order following subsequent conviction

- 7 Paragraph 22 of that Schedule (committal to Crown Court on subsequent conviction by magistrates’ court in England or Wales) has effect as if the reference in sub-

paragraph (1) to a community order made by the Crown Court included a service community order under this Act.

Re-sentencing powers

- 8 (1) This paragraph applies for the purposes of construing the powers conferred on the Crown Court by paragraphs 10(1)(b), 14(2)(b)(ii), 17(3)(b) and 23(2)(b)(ii) of Schedule 8 to the 2003 Act to deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order.
- (2) Each of those powers shall be construed in relation to a service community order under this Act as a power to deal with the offender, for the offence in respect of which the order was made—
- (a) if that offence is an offence punishable with imprisonment, in any way in which the Crown Court could deal with him if he had just been convicted before that court of an offence punishable with imprisonment;
 - (b) if it is not an offence punishable with imprisonment, in any way in which the Crown Court could deal with him if he had just been convicted before that court of an offence not punishable with imprisonment.
- (3) A term of imprisonment or fine imposed by virtue of this paragraph—
- (a) must not exceed the maximum permitted for the offence in respect of which the order was made; and
 - (b) where the order was made by the Service Civilian Court, must not exceed—
 - (i) in the case of a term of imprisonment, 12 months;
 - (ii) in the case of a fine, the prescribed sum.
- (4) In relation to a service community order under this Act, the references in paragraphs 10(4) and 17(4)(b) of that Schedule to a custodial sentence are to be read as references to a sentence of imprisonment.
- 9 Where a sentence is passed by virtue of paragraph 8 above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

PART 2

OVERSEAS COMMUNITY ORDERS

General

- 10 (1) In Schedule 8 to the 2003 Act (breach, revocation or amendment of community order), “community order” includes an overseas community order.
- (2) In its application to such an order, that Schedule has effect as if there were omitted—
- (a) in paragraph 1, the definitions of “the local justice area concerned” and “the responsible officer”; and
 - (b) paragraphs 2, 3(b), 4, 5(4), 6(2), 7, 9, 10(6), 12, 13, 15, 16, 17(5) and (6), 18(4), 19, 20(2), 21(4), 22 and 23(1)(a)(ii).
- 11 (1) For the purposes of that Schedule as it applies in relation to an overseas community order, “court” includes—

- (a) the Court Martial;
- (b) the Service Civilian Court.

- (2) For the purposes of that Schedule as it applies in relation to such an order, and for the purposes of this Part of this Schedule, an overseas community order made on appeal is to be treated as having been made by the Court Martial.

Breach of requirement of order

- 12 Paragraphs 5(1)(b) and 6(1) of that Schedule (warning and laying of information) have effect in relation to an overseas community order as if the references to causing an information to be laid before a justice of the peace in respect of the failure were references to applying to the court that made the order for the exercise of its powers in relation to the failure.
- 13 Paragraph 8 of that Schedule (issue of summons or warrant for breach) has effect in relation to such an order as if for it and the cross-heading before it there were substituted—

“Issue of summons or warrant

- 8 (1) If at any time while an overseas community order under the Armed Forces Act 2006 is in force it appears to the appropriate court, on an application by the responsible officer, that the offender has failed to comply with any of the requirements of the order, that court may—
- (a) issue a summons requiring the offender to appear at the time and place specified in it, or
 - (b) issue a warrant for his arrest.
- (2) In sub-paragraph (1) “the appropriate court” means the court that made the order.
- (3) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court issuing the summons or warrant.
- (4) Where a summons issued under sub-paragraph (1)(a) requires the offender to appear before the court and he does not appear in answer to the summons, the court may issue a warrant for his arrest.”
- 14 Paragraph 10 of that Schedule (powers of Crown Court on breach of community order) has effect in relation to an overseas community order as if—
- (a) the cross-heading before it were “Powers of court that made the order”;
 - (b) any reference to the Crown Court in sub-paragraphs (1) to (3) and (5) were to the court that made the overseas community order; and
 - (c) for sub-paragraph (4) there were substituted—
- “(4) In dealing with an offender under sub-paragraph (1)(b) the court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the order, impose a custodial sentence within the meaning of the Armed Forces Act 2006 (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 260(2) of that Act.”

Revocation of order

- 15 Paragraph 14 of that Schedule (Crown Court's powers of revocation) has effect in relation to an overseas community order as if—
- (a) the reference in sub-paragraph (1)(a) to a community order as there mentioned were to an overseas community order; and
 - (b) in the other provisions of paragraph 14, and in the cross-heading before it, any reference to the Crown Court were to the court that made the overseas community order.

Amendment of order

- 16 In Part 4 of that Schedule (amendment of order) as it applies to an overseas community order, "the appropriate court" means the court that made the order.
- 17 Paragraph 17 of that Schedule has effect in relation to an overseas community order as if for sub-paragraph (4)(b) there were substituted—
- "(b) may impose a custodial sentence within the meaning of the Armed Forces Act 2006 (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 260(2) of that Act."

Powers in relation to order following subsequent conviction

- 18 Paragraph 21 of that Schedule (powers of magistrates' court on subsequent conviction) has effect in relation to an overseas community order as if—
- (a) the cross-heading before it were "Powers of Service Civilian Court on subsequent conviction"; and
 - (b) any reference in that paragraph to a magistrates' court were to the Service Civilian Court.
- 19 Paragraph 23 of that Schedule (powers of Crown Court on subsequent conviction) has effect in relation to an overseas community order as if—
- (a) the cross-heading before it were "Powers of Court Martial on subsequent conviction"; and
 - (b) any reference in that paragraph to the Crown Court (except the references in sub-paragraph (1)(a)(ii), which is treated as omitted) were to the Court Martial.

Supplementary provisions relating to orders

- 20 In paragraph 26 of that Schedule as it applies to an overseas community order, the reference to section 177(3) of the 2003 Act shall be treated as omitted.
- 21 Paragraph 27 of that Schedule has effect in relation to an overseas community order as if it read—
- "27 On the making under this Schedule of an order revoking or amending an overseas community order, the court administration officer (within the meaning of the Armed Forces Act 2006) must—
 - (a) provide copies of the revoking or amending order—
 - (i) to the offender;
 - (ii) to the responsible officer;

- (iii) to the offender's commanding officer; and
 - (iv) if the offender is aged under 14, to his parent or guardian;
- (b) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule; and
- (c) in the case of an amending order which imposes or amends an education requirement, provide to Service Children's Education a copy of so much of the amending order as relates to that requirement."

Court Martial rules

- 22 If Court Martial rules provide that powers of the Court Martial under Schedule 8 to the 2003 Act as applied by this Part of this Schedule are to be exercised by a judge advocate, the rules may also disapply section 160 of this Act in relation to sentences passed under that Schedule.

Appeals

- 23 A person who—
- (a) is sentenced by the Court Martial under paragraph 23(2)(b)(ii) of Schedule 8 to the 2003 Act as applied by this Part of this Schedule, and
 - (b) was not convicted by the Court Martial of the offence in respect of which the sentence is passed,
- is to be treated, for the purpose of enabling him to appeal under the Court Martial Appeals Act 1968 (c. 20) against the sentence, as if he had been so convicted.