

## SCHEDULES

### SCHEDULE 25

Section 145

#### AMENDMENTS TO ARMED FORCES LEGISLATION

##### PART 1

##### COURTS-MARTIAL (APPEALS) ACT 1968

- 1 The Courts-Martial (Appeals) Act 1968 (c. 20) has effect subject to the following amendments.

*Power to dismiss certain appeals following references by the CCRC*

- 2 After section 25B insert—

*“Appeals following references by the CCRC*

##### **25C Power to dismiss certain appeals following references by the CCRC**

- (1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 12A(1)(a), (7) or (8) of the Criminal Appeal Act 1995.
- (2) Notwithstanding anything in section 12, 21 or 25 of this Act, the Appeal Court may dismiss the appeal if—
- (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction or finding that is the subject of the appeal, and
  - (b) the condition in subsection (3) is met.
- (3) The condition in this subsection is that if—
- (a) the reference had not been made, but
  - (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,
- the Court would not think it appropriate to grant the application by exercising the power conferred by section 9(3).”

*Interim hospital orders*

- 3 Section 16(5) (effect of interim hospital order made by Appeal Court) is omitted.
- 4 Section 25B(3) (as substituted by the Armed Forces Act 2006) (effect of interim hospital order made by Appeal Court) is omitted.

5 Before section 36 (but after the cross-heading preceding it) insert—

**“35A Effect of interim hospital orders**

- (1) This section applies where the Appeal Court—
  - (a) make an interim hospital order by virtue of any provision of this Part, or
  - (b) renew an interim hospital order so made.
- (2) The Court Martial shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.”

6 In section 36 (powers of Court under Part 2 which are exercisable by single judge), in subsection (1) after paragraph (h) insert—

- “(ha) to renew an interim hospital order made by them by virtue of any provision of this Part;”.

*Evidence*

7 (1) Section 28 (evidence) is amended as follows.

(2) In subsection (1), at the beginning insert “For the purposes of an appeal or an application for leave to appeal,”.

(3) In that subsection, for paragraph (b) substitute—

- “(b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and”.

(4) After subsection (1) insert—

“(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—

- (a) the Appeal Court;
- (b) the appellant;
- (c) the respondent.”

(5) In subsection (4), at the beginning insert “For the purposes of an appeal or an application for leave to appeal,”.

(6) After subsection (4) insert—

- “(5) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.”

*Appeals against procedural directions*

8 In section 36C (appeals against procedural directions), subsections (1) and (2) are omitted.

*Detention of accused pending appeal to Supreme Court*

- 9 (1) Section 43 (as amended by the Armed Forces Act 2006) (detention of accused on appeal by Crown) is amended as follows.
- (2) In subsection (1) for “may make an order under this section” substitute “shall make one of the orders specified in subsection (1A)”.
- (3) In subsection (1A)—
- (a) for “An order under this section is” substitute “The orders specified in this subsection are”,
  - (b) the word “or” at the end of paragraph (a) is omitted, and
  - (c) after paragraph (b) insert—  
“(c) an order that the accused be released without bail.”
- (4) After subsection (1B) insert—
- “(1C) The Appeal Court may make an order within subsection (1A)(c) only if they think that it is in the interests of justice that the accused should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.”
- (5) In subsection (2) for “under this section” substitute “within subsection (1A)(a) or (b)”.
- (6) For subsection (5) substitute—
- “(5) The accused shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the Appeal Court have made an order within subsection (1A)(c), or
  - (b) the Appeal Court have made an order within subsection (1A)(a) or (b) but the order has ceased to have effect by virtue of subsection (2) or the accused has been released or discharged by virtue of subsection (3).”

**PART 2**

ARMED FORCES ACT 2006

- 10 The Armed Forces Act 2006 (c. 52) has effect subject to the following amendments.

*Consecutive custodial sentences*

- 11 In section 188(4) (consecutive custodial sentences), after “Part 12 of the 2003 Act” insert “or under Part 2 of the Criminal Justice Act 1991”.

*Dangerous offenders*

- 12 In section 209 (offenders under 18 convicted of certain serious offences), in subsection (7) for “sections 221, 222 and 227” substitute “section 226(2) of the 2003 Act (as applied by section 221(2) of this Act) and section 227 of this Act”.
- 13 (1) Section 219 (dangerous offenders aged 18 or over) is amended as follows.
- (2) In subsection (1) for the words from “a person” to the end substitute “—

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- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a serious offence, and
  - (c) the court is of the required opinion (defined by section 223).”
- (3) For subsections (2) and (3) substitute—
- “(2) Section 225(2) to (4) of the 2003 Act apply in relation to the offender.
- (3) In section 225(2) and (3A) of the 2003 Act (as applied by subsection (2)), references to “the offence” are to be read as references to the offence under section 42 of this Act.”
- (4) For the italic cross-heading before section 219 substitute “*Required or discretionary sentences for particular offences*”.
- 14 (1) Section 220 (certain violent or sexual offences: offenders aged 18 or over) is amended as follows.
- (2) In subsection (1) for the words from “a person” to the end substitute “—
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is a specified offence,
  - (c) the court is of the required opinion (defined by section 223), and
  - (d) where the corresponding offence under the law of England and Wales is a serious offence, the case is not one in which the court is required by section 225(2) of the 2003 Act (as applied by section 219(2) of this Act) to impose a sentence of imprisonment for life.”
- (3) For subsection (2) substitute—
- “(2) Section 227(2) to (5) of the 2003 Act apply in relation to the offender.”
- (4) In subsection (3)—
- (a) for “section 227” substitute “section 227(2) to (5)”,
  - (b) before paragraph (a) insert—
    - “(za) the reference in section 227(2A) to “the offence” is to be read as a reference to the offence under section 42 of this Act;”, and
  - (c) in paragraph (a) for “subsection (2)(b)” substitute “subsection (2C)(b)”.
- (5) After subsection (3) insert—
- “(3A) The power conferred by section 227(6) of the 2003 Act includes power to amend section 227(2B) as applied by this section.”
- 15 (1) Section 221 (dangerous offenders aged under 18) is amended as follows.
- (2) In subsection (1) for the words from “a person” to the end substitute “—
- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct),

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- (b) the corresponding offence under the law of England and Wales is a serious offence, and
    - (c) the court is of the required opinion (defined by section 223).”
  - (3) For subsection (2) substitute—
    - “(2) Section 226(2) to (4) of the 2003 Act apply in relation to the offender.”
  - (4) In subsection (3)—
    - (a) for the words from the beginning to “is” substitute “In section 226(2) of the 2003 Act (as applied subsection (2))”, and
    - (b) in paragraphs (a) and (b) the words “in section 226(2)” are omitted.
  - (5) Subsection (4) is omitted.
- 16 (1) Section 222 (offenders aged under 18: certain violent or sexual offences) is amended as follows.
  - (2) In subsection (1), in paragraph (d) for the words from “section 221” to the end substitute “section 226(2) of the 2003 Act (as applied by section 221(2) of this Act) to impose a sentence of detention for life.”
  - (3) For subsection (2) substitute—
    - “(2) Section 228(2) to (5) of the 2003 Act apply in relation to the offender.”
  - (4) In subsection (3)—
    - (a) for “section 228” substitute “section 228(2) to (5)”, and
    - (b) in paragraph (a) for “subsection (2)(b)” substitute “subsection (2B)(b)”.
  - (5) After subsection (3) insert—
    - “(3A) The power conferred by section 228(7) of the 2003 Act includes power to amend section 228(2A) as applied by this section.”
- 17 (1) Section 223 (the required opinion for the purposes of sections 219 to 222) is amended as follows.
  - (2) In subsection (1) for “219(2), 220(2), 221(2)” substitute “219(1), 220(1), 221(1)”.
  - (3) In subsection (2) for “section 229(2) to (4)” substitute “section 229(2) and (2A)”.
  - (4) In subsection (3) the words “to (4)” are omitted.
- 18 (1) Section 228 (appeals where previous convictions set aside) is amended as follows.
  - (2) For subsection (1) substitute—
    - “(1) Subsection (3) applies where—
      - (a) a sentence has been imposed on any person under section 225(3) or 227(2) of the 2003 Act (as applied by section 219(2) or 220(2) of this Act),
      - (b) the condition in section 225(3A) or (as the case may be) 227(2A) of the 2003 Act was met but the condition in section 225(3B) or (as the case may be) 227(2B) of that Act was not, and
      - (c) any previous conviction of his without which the condition in section 225(3A) or (as the case may be) 227(2A) would not have been met has been subsequently set aside on appeal.”

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- 19 In section 237 (purposes of sentencing), in subsection (3)(b)—  
     (a) for “to 222” substitute “, 221”, and  
     (b) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”.
- 20 In section 256 (pre-sentence reports), in subsection (1)(c) for the words from “section” to the end substitute “section 219(1), 220(1), 221(1) or 222(1) (sentences for dangerous offenders).”
- 21 In section 260 (discretionary custodial sentences: general restrictions), in subsection (1)(b) for the words from “as a result” to the end substitute “under section 225(2) or 226(2) of the 2003 Act (as applied by section 219(2) or 221(2) of this Act) or as a result of any of sections 225 to 227 of this Act.”
- 22 In section 261 (length of discretionary custodial sentences: general provision)—  
     (a) in subsection (1) for “falling to be imposed as a result of section 219(2) or 221(2)” substitute “imposed under section 225 or 226 of the 2003 Act (as applied by section 219(2) or 221(2) of this Act)”, and  
     (b) in subsection (3) for “required minimum sentences” substitute “sentences that may or must be imposed”.
- 23 In section 273 (review of unduly lenient sentences by Court Martial Appeal Court), in subsection (6)(b) for “section 219, 220, 221, 222, 225, 226 or 227” substitute “section 225(2) or 226(2) of the 2003 Act (as applied by section 219(2) or 221(2) of this Act) or by section 225, 226 or 227 of this Act”.

*Restrictions on imposing community punishment*

- 24 In section 253(2)(h) (duties in complying with section 252) for “section 151(2) of the 2003 Act as applied by section 270 of this Act” substitute “section 270B(4)”.
- 25 In section 254(1) (savings for powers to mitigate sentence etc.) for “and 270” substitute “, 270 and 270B”.
- 26 (1) Section 270 (community punishments: general restrictions etc.) is amended as follows.
- (2) After subsection (6) insert—  
     “(6A) The fact that by virtue of any provision of this section—  
         (a) a community punishment may be awarded in respect of an offence,  
         or  
         (b) particular restrictions on liberty may be imposed by a community punishment,  
     does not require a court to award such a punishment or to impose those restrictions.”
- (3) Subsection (7) is omitted.
- (4) In subsection (8)—  
     (a) the word “Accordingly” is omitted; and  
     (b) for “151(2) of the 2003 Act as applied by this section” substitute “270B(4)”.
- 27 After section 270 insert—

**“270A Community punishment available only for offences punishable with imprisonment or for offenders previously fined**

The power to award a community punishment is only exercisable in respect of an offence if—

- (a) a person who is guilty of such an offence is liable to imprisonment; or
- (b) in any other case, section 270B(4) confers power to award such a punishment.

**270B Community punishment for offender previously fined**

- (1) This section provides for the award of a community punishment by a court in respect of an offence (“the current offence”) committed by a person to whom subsection (2) or (3) applies.
- (2) This subsection applies to the offender if—
  - (a) a person guilty of the current offence is liable to imprisonment,
  - (b) the offender was aged 16 or over when he was convicted;
  - (c) on three or more previous occasions the offender has, on conviction by a court for an offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine; and
  - (d) despite the effect of section 238(1)(b), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community punishment.
- (3) This subsection applies to the offender if—
  - (a) a person guilty of the current offence is not liable to imprisonment;
  - (b) the offender was aged 16 or over when he was convicted; and
  - (c) on three or more previous occasions the offender has, on conviction by a court for an offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine.
- (4) The court may award a community punishment in respect of the current offence if it considers that, having regard to all the circumstances including the matters referred to in subsection (5), it would be in the interests of justice to award such a punishment.
- (5) Those matters are—
  - (a) the nature of the offences to which the previous convictions mentioned in subsection (2)(c) or (3)(c) (as the case may be) relate and their relevance to the current offence; and
  - (b) the time that has elapsed since the offender’s conviction of each of those offences
- (6) In subsections (2)(c) and (3)(c) “conviction by a court” means—
  - (a) a conviction by a civilian court in any part of the United Kingdom for a service offence or for an offence punishable by the law of that part of the United Kingdom; or
  - (b) a conviction in service disciplinary proceedings.

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- (7) For the purposes of subsections (2)(c) and (3)(c) a compensation order or a service compensation order awarded in service disciplinary proceedings does not form part of an offender's sentence.
- (8) It is immaterial for the purposes of subsections (2)(c) and (3)(c) whether on previous occasions a court has passed on the offender a sentence not consisting only of a fine.
- (9) This section does not limit the extent to which a court may, in accordance with section 238(1)(b) and (2), treat any previous convictions of the offender as increasing the seriousness of an offence.
- (10) In this section—
  - (a) “service disciplinary proceedings” means proceedings (whether or not before a court) in respect of a service offence; and
  - (b) any reference to a conviction or sentence, in the context of such proceedings, includes anything that under section 376(1) to (3) is to be treated as a conviction or sentence.”

*Review of sentence on reference by Attorney General*

28 In section 273 (reviews of unduly lenient sentencing by Court Martial Appeal Court) for subsection (7) substitute—

“(7) Where a reference under subsection (1) relates to a case in which the Court Martial made an order specified in subsection (7A), the Court Martial Appeal Court may not, in deciding what sentence is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time.

- (7A) The orders specified in this subsection are—
- (a) an order under section 269(2) of the 2003 Act (determination of minimum term in relation to mandatory life sentence);
  - (b) an order under section 82A(2) of the Sentencing Act (determination of minimum term in relation to discretionary life sentences and certain other sentences).”

*Compensation for miscarriages of justice*

- 29 (1) Section 276 (compensation for miscarriages of justice) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “subsections (2) to (3A)”.
- (3) At the end of subsection (3) insert “before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.
- (3A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.”
- (4) For subsection (6) substitute—



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“(6) Section 276A applies in relation to the assessment of the amount of the compensation.”

(5) After subsection (7) insert—

“(7A) But in a case where—

- (a) a person’s conviction for an offence is quashed on an appeal out of time, and
- (b) the person is to be subject to a retrial,

the conviction is not to be treated for the purposes of subsection (1) as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.”

30 After section 276 insert—

**“276A Miscarriages of justice: amount of compensation**

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 276 for a miscarriage of justice.
- (2) In assessing so much of any compensation payable under section 276 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
  - (a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction, and
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 276 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
  - (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
  - (b) any other convictions of the person and any punishment resulting from them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 276 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 276 for a particular miscarriage of justice must not exceed the overall compensation limit.  
That limit is—
  - (a) £1 million in a case to which section 276B applies, and
  - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 276 for a person’s loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

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That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.

- (7) The Secretary of State may by order amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.

### **276B Cases where person has been detained for at least 10 years**

- (1) For the purposes of section 276A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
- (a) the conviction is reversed, or
  - (b) the pardon is given,
- as mentioned in section 276(1).
- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) by virtue of a sentence passed in respect of the relevant offence,
  - (b) under mental health legislation by reason of P’s conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P’s having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
- (a) in qualifying detention, and
  - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
- (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
  - (b) under mental health legislation by reason of P’s conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P’s having been ordered to be kept in service custody, or remanded for mental health purposes, in connection with an offence for which P was subsequently convicted other than—
    - (i) the relevant offence, or
    - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.

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(5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P’s conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.

(6) In this section—

“kept in service custody” means—

- (a) kept in service custody under section 105(2) of the Armed Forces Act 2006, or
- (b) kept in military, air-force or naval custody under section 75A(2) of the Army Act 1955 or of the Air Force Act 1955 or section 47G(2) of the Naval Discipline Act 1957 (as the case may be);

“mental health legislation” means—

- (a) Part 3 of the Mental Health Act 1983, or
- (b) the provisions of any earlier enactment corresponding to Part 3 of that Act;

“the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));

“remanded for mental health purposes” means remanded or admitted to hospital under section 35, 36 or 38 of the Mental Health Act 1983 or under any corresponding provision of any earlier enactment;

“reversed” has the same meaning as in section 276 of this Act.

(7) If, as a result of the miscarriage of justice—

- (a) two or more convictions are reversed, or
- (b) a pardon is given in respect of two or more offences,

“the relevant offence” means any of the offences concerned.”

31 In section 373 (orders, regulations etc.) in subsection (3)(a), after “113,” insert “276A(7),”.

*Imposition of unpaid work requirement for breach of service community order or overseas service community order*

32 In paragraph 14(b) of Schedule 5 (modifications of Schedule 8 to the Criminal Justice Act 2003 as it applies to overseas community orders), for “(3)” substitute “(3A)”.

*Suspended prison sentences: further conviction or breach of requirement*

33 In paragraph 9(1)(b) of Schedule 7 (which provides for paragraph 9 of Schedule 12 to the Criminal Justice Act 2003, as it applies to an order under paragraph 8 of that Schedule made by a service court, to have effect with substituted sub-paragraphs (2) and (3))—

- (a) in the substituted text of sub-paragraph (2), after “Part 12” insert “of this Act or under Part 2 of the Criminal Justice Act 1991”; and
- (b) in the substituted text of sub-paragraph (3), after “287” insert “of the Armed Forces Act 2006”.

### PART 3

#### TRANSITIONAL PROVISIONS

*Transitional provisions: compensation for miscarriage of justice*

- 34 (1) Paragraph 29(3) has effect in relation to any application for compensation made in relation to—
- (a) a conviction which is reversed, and
  - (b) a pardon which is given,
- on or after the commencement date.
- (2) Paragraphs 29(4) and 30 have effect in relation to—
- (a) any application for compensation made on or after the commencement date, and
  - (b) any application for compensation made before that date in relation to which the question whether there is a right to compensation has not been determined before that date by the Secretary of State under section 276(4) of the 2006 Act.
- (3) Paragraph 29(5) has effect in relation to any conviction quashed on an appeal out of time in respect of which an application for compensation has not been made before the commencement date.
- (4) Paragraph 29(5) so has effect whether a conviction was quashed before, on or after the commencement date.
- (5) In the case of—
- (a) a conviction which is reversed, or
  - (b) a pardon which is given,
- before the commencement date but in relation to which an application for compensation has not been made before that date, any such application must be made before the end of the period of 2 years beginning with that date.
- (6) But the Secretary of State may direct that an application for compensation in relation to a case falling within sub-paragraph (5) which is made after the end of that period is to be treated as if it had been made before the end of that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.
- (7) In this paragraph—
- “the 2006 Act” means the Armed Forces Act [2006 \(c. 52\)](#);
  - “application for compensation” means an application for compensation made under section 276(3) of the 2006 Act;
  - “the commencement date” means the date on which paragraphs 29 and 30 come into force;
  - “reversed” has the same meaning as in section 276(1) of the 2006 Act (as amended by paragraph 29(5)).