



Armed Forces Act 2011

2011 CHAPTER 18

Punishments and other court orders

12 Amendments relating to new rank of lance corporal in RAF Regiment

- (1) In section 132 of AFA 2006 (punishments available to commanding officer)—
- (a) in row 1 of the Table, in paragraph (c) of the entry in the third column, after “air forces” insert “(but see subsection (1A))”;
 - (b) after subsection (1) insert—

“(1A) In this section and section 133 references to a corporal in any of Her Majesty’s air forces do not include a corporal in the Royal Air Force Regiment.”
- (2) In section 135 of AFA 2006 (reduction in rank: limits on powers), for subsection (3) substitute—
- “(3) Where the person being punished is a corporal in any of Her Majesty’s air forces, the reduction in rank authorised by subsection (2)(a) or (b) (as the case may be) is reduction to the highest rank the person has held in that force as an airman; but this is subject to subsection (3A).
 - (3A) In relation to the Royal Air Force Regiment, the reference in subsection (3) to a corporal is to be read as a reference to a lance corporal.”

13 Reduction in rank or rate

- (1) In section 138 of AFA 2006 (prohibited combinations of punishments), for subsections (2) and (3) substitute—
- “(2) If he awards detention, the only additional punishments he may award are—
 - (a) reduction in rank or disrating (subject to subsection (8));
 - (b) a service compensation order.”

- (2) Omit section 293 of AFA 2006 (automatic reduction of rank or rate of warrant officer or non-commissioned officer given custodial sentence or sentence of service detention).
- (3) The repeal of section 293 of AFA 2006 by subsection (2) does not affect any reduction in rank or disrating that occurred by virtue of that section before the commencement of that repeal.

14 Court Martial sentencing powers

- (1) For section 165 of AFA 2006 substitute—

“165 Sentencing powers of Court Martial where election for trial by that court instead of CO

Schedule 3A (sentencing powers of Court Martial where election for trial by that court instead of CO) has effect.”

- (2) After Schedule 3 to AFA 2006 insert the Schedule set out in Schedule 1.

15 Increase in maximum term of detention for certain offences

- (1) In section 305(5) of AFA 2006 (limit on term of imprisonment or detention for an offence under that section), omit the words “or service detention”.
- (2) In section 95 of the Reserve Forces Act 1996 (offences against orders and regulations under section 4)—
 - (a) in subsection (2)(a)(ii) omit the words “or service detention”;
 - (b) after subsection (2A) insert—

“(3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, subsection (2)(a)(ii) has effect as if the reference to 51 weeks were to 6 months.”

16 Enforcement of financial penalties

- (1) After section 269 of AFA 2006 insert—

“269A Fines: fixing of term of imprisonment for default

- (1) Where the Court Martial imposes a fine on a person aged 18 or over, the court must make an order fixing a term of imprisonment which the person is to undergo if—
 - (a) any sum which the person is liable to pay is not duly paid or recovered; and
 - (b) an enforcement order is made.
- (2) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be fixed under this section for fines of the amounts set out in that Table.

- (3) Where the person mentioned in subsection (1) is sentenced by the court to, or is serving or otherwise liable to serve, a term of—
- (a) imprisonment,
 - (b) detention in a young offender institution, or
 - (c) detention under section 108 of the Sentencing Act (detention of persons aged 18 to 21 for default or contempt),
- the court may order that any term of imprisonment fixed under subsection (1) shall not begin to run until after the end of that other term.
- (4) For the purposes of references in subsection (3) to a term of imprisonment or detention which a person has been sentenced to or is serving or liable to serve, consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term.
- (5) References in subsection (3) to a term which a person is serving or liable to serve are to a term imposed—
- (a) by a relevant service court; or
 - (b) by a civilian court in any part of the United Kingdom.
- (6) In this section—
- “enforcement order” means an order under regulations made under section 322 (orders for enforcement by prescribed courts of fines etc);
 - “relevant service court” means the Court Martial, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court.

269B Service compensation orders: power to set maximum term of imprisonment for default

- (1) This section applies where—
- (a) the Court Martial makes a service compensation order and the person by whom the compensation is payable is aged 18 or over; and
 - (b) the court thinks that the usual default term is insufficient.
- (2) In subsection (1) “the usual default term” means the period for which the person would be liable to be committed to prison for default if—
- (a) an enforcement order were made; and
 - (b) by virtue of that order, the amount payable under the service compensation order were treated as if it had been a fine imposed on a conviction by a magistrates’ court in England and Wales.
- (3) Where this section applies, the court may specify a longer period as the maximum term to which the person is liable to be committed to prison for default if an enforcement order is made.
- (4) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be specified under this section for service compensation orders of the amounts set out in that Table.
- (5) In this section “enforcement order” has the same meaning as in section 269A.

269C Orders under section 269A or 269B against service parents or service guardians: appeals

- (1) This section applies where—
 - (a) the Court Martial makes an order under section 268 in respect of a fine or service compensation order (fine or compensation to be paid by service parent or service guardian); and
 - (b) the court also makes an order under section 269A or 269B (“a default term order”) in respect of the parent or guardian (“P”).
 - (2) For the purposes of the Court Martial Appeals Act 1968—
 - (a) the default term order is to be treated as a sentence passed on P for the offence in respect of which the fine or service compensation order was imposed; and
 - (b) P is to be treated, for the purpose of enabling P to appeal against the default term order, as if P had been convicted of the offence by the Court Martial.
 - (3) For the purposes of any appeal against the default term order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
 - (4) On an appeal against the default term order, the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order; but this is subject to subsection (5).
 - (5) If the default term order was made under section 269A, the power under subsection (4) may only be exercised if the court also quashes the order under section 268.”
- (2) In section 322(3) of AFA 2006 (financial penalty enforcement orders), after paragraph (a) insert—
- “(aa) about the effect, where a sum is certified in such an order, of an order made by the Court Martial under—
 - (i) section 269A (fines: fixing of term of imprisonment for default); or
 - (ii) section 269B (service compensation order: maximum term of imprisonment for default);”.

17 Service sexual offences prevention orders

- (1) After section 232 of AFA 2006 insert—

“Service sexual offences prevention orders etc

232A Service sexual offences prevention orders

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
 - (a) it deals with a person within subsection (2) (“the defendant”) in respect of—

- (i) a qualifying section 42 offence of which the defendant has been convicted; or
 - (ii) a relevant finding in relation to a qualifying section 42 offence; and
 - (b) it is satisfied that it is necessary to make an order under this section for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (2) The following are persons within this subsection—
 - (a) a member of the regular forces;
 - (b) a member of the reserve forces (whether or not for the time being subject to service law);
 - (c) a civilian subject to service discipline;
 - (d) a person who the court is satisfied is intending to become, or likely to become, a civilian subject to service discipline.
- (3) An order under this section—
 - (a) prohibits the defendant from doing anything described in the order; and
 - (b) has effect for a fixed period, of at least five years, specified in the order or until further order.
- (4) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (5) Where—
 - (a) a court makes an order under this section, and
 - (b) the defendant is already subject to such an order (whether made by that court or another),the earlier order ceases to have effect.
- (6) In this section and sections 232B to 232E—
 - (a) “protecting the service community outside the United Kingdom from serious sexual harm” from a person means protecting the service community outside the United Kingdom, or particular members of that community, from serious physical or psychological harm, caused by the person committing one or more offences under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 to SOA 2003;
 - (b) “qualifying section 42 offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 or 5 to SOA 2003;
 - (c) “relevant finding”, in relation to an offence, means—
 - (i) a finding that a person is not guilty of the offence by reason of insanity; or
 - (ii) a finding that a person is unfit to stand trial and has done the act charged;
 - (d) “service community” means persons subject to service law and civilians subject to service discipline;
 - (e) “SOA 2003” means the Sexual Offences Act 2003.

Status: This is the original version (as it was originally enacted).

- (7) In construing subsection (6)(a) or (b), any condition subject to which an offence is listed in Schedule 3 to SOA 2003 that relates—
- (a) to the way in which a person is dealt with in respect of the offence or a relevant finding, or
 - (b) to the age of any person, is to be disregarded.

232B Service SOPOs: appeals

- (1) This section applies where the Court Martial makes an order under section 232A in respect of a relevant finding in relation to a qualifying section 42 offence.
- (2) For the purposes of the Court Martial Appeals Act 1968—
- (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and
 - (b) the defendant is to be treated for the purpose of enabling the defendant to appeal against the order as if the defendant had been convicted of the offence by the court.
- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

232C Service SOPOs etc: variation and revocation

- (1) The Court Martial may vary or revoke an order under section 232A on an application made by—
- (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (2) If subsection (3) applies, the Court Martial may vary or revoke an order under section 104 of SOA 2003 (sexual offences prevention order) on an application made by—
- (a) a Provost Marshal; or
 - (b) the person subject to the order.
- (3) This subsection applies if the person subject to the order under section 104 of SOA 2003 (“the SOA order”) is also subject to an associated order under section 232A and either—
- (a) the person is subject to service law or a civilian subject to service discipline; or
 - (b) the application is made together with an application for the variation or revocation of the associated order under section 232A.
- (4) An order may be varied under this section so as to extend the period for which it has effect, or so as to impose additional prohibitions, only if—
- (a) in the case of an order under section 232A, the court is satisfied that the variation is necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm

- from the person subject to the order (in which case section 232A(4) applies accordingly);
- (b) in the case of an order under section 104 of SOA 2003, the requirements of section 108(5) of that Act are met (protection of public in United Kingdom from serious sexual harm).
- (5) The Court Martial must not before the end of the relevant period revoke an order under section 232A, or an order under section 104 of SOA 2003, without the consent of—
- (a) the person subject to the order; and
- (b) a Provost Marshal.
- (6) In subsection (5) “the relevant period” means the period of five years beginning with the day on which the order was made.
- (7) For the purposes of this section an order under section 104 of SOA 2003 and an order under section 232A are “associated” if they were made by the Court Martial or the Service Civilian Court in dealing with the same offence or relevant finding.
- (8) This section is without prejudice to section 108 of SOA 2003 (application to civilian court for variation etc of a sexual offences prevention order).

232D Variation or revocation: appeals

- (1) A person may appeal to the Court Martial Appeal Court against—
- (a) the variation under section 232C of an order to which the person is subject; or
- (b) a decision by the Court Martial not to vary or revoke such an order on an application under that section.
- (2) On an appeal under subsection (1), the Court Martial Appeal Court may make—
- (a) such orders as may be necessary to give effect to its determination of the appeal; and
- (b) such incidental or consequential orders as appear to it to be just.

232E Extended prohibitions orders

- (1) On an application made by a Provost Marshal, the Court Martial must make an order under this section in respect of a person within subsection (2) if the relevant requirements are met.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
- (b) a member of the reserve forces (whether or not for the time being subject to service law);
- (c) a civilian subject to service discipline.
- (3) The relevant requirements are met if the Court Martial is satisfied—
- (a) that the person is subject to an order under section 104 or 105 of SOA 2003 (“the principal order”); and

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- (b) that there are members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal order.
- (4) For the purposes of subsection (3)(b) a person (“P”) is “protected” by the principal order if one or more of the prohibitions included in the order are for the purposes of the protection of P, or of persons of a description within which P falls.
- (5) An order under this section—
- (a) prohibits the person subject to the order from doing anything described in the order; and
 - (b) has effect—
 - (i) until the expiry of the principal order; or
 - (ii) if earlier, until the principal order is varied, renewed or discharged under section 108 of SOA 2003.
- (6) Only corresponding prohibitions may be included in an order under this section.
- (7) For the purposes of subsection (6) a “corresponding prohibition” is a prohibition in substantially the same terms as a prohibition in the principal order (“the principal prohibition”), subject to such modifications as are necessary to secure that the prohibition is for the purposes of the protection of members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal prohibition.
- (8) In subsection (7) “protected” is to be construed in accordance with subsection (4).

232F Extended prohibitions orders: appeals

- (1) A person may appeal to the Judge Advocate General against the making of an order under section 232E in respect of the person.
- (2) The Secretary of State may by rules make provision about appeals under this section, and the rules may in particular make provision—
- (a) specifying the grounds on which an appeal may be brought;
 - (b) with respect to the procedure which is to apply in connection with an appeal;
 - (c) with respect to the powers of the Judge Advocate General in relation to an appeal.

232G Offence: breach of order under section 232A or 232E

- (1) A person within subsection (2) (“P”) commits an offence if, without reasonable excuse, P does anything which P is prohibited from doing by an order under section 232A or 232E.
- (2) The following are persons within this subsection—
- (a) a person subject to service law;
 - (b) a civilian subject to service discipline.

- (3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
 - (4) Where a person is convicted of an offence under this section, the court that convicts him may vary or revoke the order to which the offence relates.”
- (2) In section 108 of the Sexual Offences Act 2003 (variation, renewal or discharge of sexual offences prevention order), after subsection (8) insert—
- “(9) Subsection (1) does not apply where section 232C(3)(a) of the Armed Forces Act 2006 (case where sexual offences prevention order in respect of person subject to service law, or civilian subject to service discipline, may be varied etc by Court Martial) applies.”