

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 14

#### COURT MARTIAL SENTENCING POWERS

##### Commencement Information

**II** Sch. 1 in force at 2.4.2012 by S.I. 2012/669, art. 4(b) (with arts. 10-12)

### “SCHEDULE 3A

Section 165

#### COURT MARTIAL SENTENCING POWERS WHERE ELECTION FOR TRIAL BY THAT COURT INSTEAD OF CO

##### PART 1

##### RELEVANT OFFENCES

- 1 For the purposes of this Schedule an offence is “relevant” if it falls within any of cases A to D (see paragraphs 2 to 5); and references in this Schedule to a particular case of offence are to be read accordingly.
- 2 An offence of which a person is convicted falls within case A if the charge in respect of the offence is one in respect of which the person elected Court Martial trial under section 129 (whether or not the charge was amended after election).
- 3 An offence of which a person (“the accused”) is convicted falls within case B if—
  - (a) the charge in respect of the offence was substituted under section 125(2)(b) for a charge in respect of which the accused elected Court Martial trial under section 129; and
  - (b) the substitution was not one for which the accused's written consent was required by section 130A(2).
- 4 Where—
  - (a) a person (“the accused”) elects Court Martial trial under section 129 in respect of a charge,
  - (b) at the time of the election, another charge brought against the accused (“the relevant charge”) is regarded for the purposes of Part 5 as allocated for summary hearing,
  - (c) the relevant charge is referred to the Director of Service Prosecutions under section 123(2)(e) without the accused having been given the opportunity to elect Court Martial trial of the charge, and
  - (d) the Court Martial convicts the accused of an offence alleged in the relevant charge,that offence falls within case C.

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- 5 Where—
- (a) a person (“the accused”) is charged with an offence which, if the accused were convicted of it, would fall within case C,
  - (b) another charge (“the new charge”) is substituted under section 125(2)(b) for the charge,
  - (c) the substitution is not one for which the accused's written consent is required by section 130A(2), and
  - (d) the Court Martial convicts the accused of an offence alleged in the new charge, that offence falls within case D.

## PART 2

### SENTENCING POWERS ETC

#### *Sentencing powers: single relevant offence*

- 6 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case A offence or a case B offence; and
  - (b) paragraph 8 (multiple relevant offences) does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge in respect of which the offender elected Court Martial trial; and
  - (b) had recorded a finding that the charge had been proved.
- 7 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case C offence or a case D offence; and
  - (b) paragraph 8 does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge referred as mentioned in paragraph 4(c); and
  - (b) had recorded a finding that the charge had been proved.

#### *Multiple relevant offences*

- 8 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of two or more relevant offences; and
  - (b) condition 1 or 2 is met in relation to any two or more of the offences.
- (2) Condition 1, in relation to any two or more offences, is that—
- (a) each of the offences is a case A offence or a case B offence; and
  - (b) the relevant charges would have been heard summarily together if the offender had not elected Court Martial trial.

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- (3) In sub-paragraph (2) “relevant charge” means—
- (a) in relation to a case A offence, the charge in respect of that offence; and
  - (b) in relation to a case B offence, the charge in respect of which the offender elected Court Martial trial and for which the charge in respect of the case B offence was substituted.
- (4) Condition 2, in relation to any two or more offences, is that—
- (a) each of the offences is a case C offence or a case D offence; and
  - (b) the referred charges would have been heard summarily together if they had not been referred as mentioned in paragraph 4(c).
- (5) In sub-paragraph (4) “referred charge” means—
- (a) in relation to a case C offence, the charge in respect of that offence; and
  - (b) in relation to a case D offence, the charge referred as mentioned in paragraph 4(c) for which the charge in respect of the case D offence was substituted.

*Sentencing powers: multiple relevant offences*

- 9 (1) This paragraph applies where paragraph 8 applies by virtue of a condition in that paragraph being met in relation to any two or more relevant offences.
- (2) The offences in relation to which the condition is met (“the joined offences”) are to be treated for the purposes of section 255 (individual sentence for each offence) as a single offence; and references in this paragraph to “the sentence” are to the sentence passed by the Court Martial in respect of the joined offences.
- (3) Where condition 1 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard the relevant charges (as defined by paragraph 8(3)) summarily together; and
  - (b) had recorded findings that the charges had been proved.
- (4) Where condition 2 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard the referred charges (as defined by paragraph 8(5)) summarily together; and
  - (b) had recorded findings that the charges had been proved.

*Further provision about sentencing*

- 10 Where paragraph 9 applies, the following provisions apply in relation to the sentence as if it were a sentence being passed by an officer at a summary hearing—
- section 242 (service detention: general restriction);
  - section 243 (length of term of service detention);
  - section 248 (forfeiture of seniority, reduction in rank or disrating).
- 11 Where the Court Martial is dealing with an offender for an offence with which a relevant offence is associated, the offences are to be treated for the purposes of Part 9 (sentencing: principles and procedures) as not being associated.

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*Activation of suspended sentence of detention*

- 12 (1) This paragraph applies where—
- (a) the Court Martial, on convicting a person (“the offender”) of a relevant offence, makes an order under section 191(3) in relation to a suspended sentence of service detention passed on the offender; and
  - (b) the suspended sentence was passed by an officer or the Summary Appeal Court.
- (2) The term of the suspended sentence as it takes effect by virtue of the order must not exceed 28 days unless the offender's commanding officer would have had extended powers for the purposes of section 194 if—
- (a) where the offence is a case A offence or a case B offence, the offender had not elected Court Martial trial; or
  - (b) where the offence is a case C offence or a case D offence, the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (3) If—
- (a) the Court Martial awards a term of service detention (“the new sentence”) in respect of the offence (or, where paragraph 9 applies, in respect of the offence and one or more other relevant offences), and
  - (b) the order under section 191(3) provides for the suspended sentence to take effect from the end of the new sentence,
- the aggregate of the terms of the two sentences must not exceed 28 days or, where the extended powers condition is met, 90 days.
- (4) The extended powers condition is—
- (a) where the offence is a case A offence or a case B offence, that the offender's commanding officer would have had extended powers for the purposes of section 194 if the offender had not elected Court Martial trial;
  - (b) where the offence is a case C offence or a case D offence, that the offender's commanding officer would have had extended powers for the purposes of section 194 if the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (5) In determining for the purposes of sub-paragraph (2) or (4) whether the offender's commanding officer would have had extended powers for the purposes of section 194 if, as the case may be—
- (a) the offender had not elected Court Martial trial, or
  - (b) the charge referred as mentioned in paragraph 4(c) had not been so referred,
- no account is to be taken of any of the matters mentioned in sub-paragraph (6).
- (6) Those matters are—
- (a) any change in the commanding officer's rank after the election or referral;
  - (b) in the case of sub-paragraph (2)(a) or (4)(a), any possibility that, if the offender had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of section 194; and
  - (c) in the case of sub-paragraph (2)(b) or (4)(b), any possibility that, if the charge referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for those purposes after the time when the charge was in fact referred.

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*Court orders other than sentences*

- 13 (1) The Court Martial may not make an order under section 229 (service restraining order) by virtue of—
- (a) convicting a person of a relevant offence; or
  - (b) acquitting a person of an offence which would be a relevant offence if the person were convicted of it.
- (2) The Court Martial may not make an order under section 232A (service sexual offences prevention order) by virtue of dealing with a person in respect of—
- (a) a relevant offence of which the person has been convicted; or
  - (b) a relevant finding in relation to an offence which, if the person were convicted of it, would be a relevant offence.
- (3) In sub-paragraph (2) “relevant finding” has the same meaning as in section 232A.

*Review of unduly lenient sentences*

- 14 In section 273 (review of unduly lenient sentence by Court Martial Appeal Court), the reference in subsection (1)(a) to an offence under section 42 does not include a relevant offence.

*Appeals: application of Court Martial Appeals Act 1968 to multiple relevant offences*

- 15 (1) This paragraph applies where, by virtue of paragraph 9(2), the Court Martial passed a single sentence in respect of two or more relevant offences (“the joined offences”); and references in this paragraph to “the 1968 Act” are to the Court Martial Appeals Act 1968.
- (2) Where—
- (a) section 13 of the 1968 Act (power to re-sentence when some but not all convictions successfully appealed) applies in relation to the sentence, but
  - (b) the appellant remains convicted of two or more of the joined offences,
- those offences are to be treated for the purposes of section 13(2) of the 1968 Act as a single offence.
- (3) Sub-paragraph (4) applies where section 14 of the 1968 Act (substitution of conviction on different charge after plea of not guilty) applies in relation to a conviction of any of the joined offences.
- (4) The reference in section 14(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of all the applicable offences.
- (5) For the purposes of sub-paragraph (4) an offence is an “applicable offence” if it is—
- (a) a joined offence of which the appellant remains convicted;
  - (b) an offence a finding of guilty of which has been substituted under section 14 of the 1968 Act for a finding of guilty of a joined offence; or
  - (c) an offence a plea of guilty of which has been substituted under section 14A of that Act for a plea of guilty of a joined offence.
- (6) Sub-paragraph (7) applies where—

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- (a) section 14A of the 1968 Act (substitution of conviction on different charge after guilty plea) applies in relation to a conviction of any of the joined offences; and
  - (b) section 14 of that Act does not so apply.
- (7) The reference in section 14A(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14A(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of—
- (a) all the joined offences of which the appellant remains convicted; and
  - (b) the offence a plea of guilty of which has been substituted under section 14A for a plea of guilty of a joined offence.
- (8) Where sub-paragraph (4) or (7) applies and the case also falls within section 13(1) of the 1968 Act, section 13 of that Act shall not apply.
- (9) In section 16A of the 1968 Act (appeals against sentence), the reference in subsection (2)(b) to the offence is to be read as a reference to the joined offences.

### PART 3

#### INTERPRETATION

##### *“Commanding officer”*

- 16 (1) References in this Schedule to a person's commanding officer are to the person's commanding officer at the time the person elected Court Martial trial.
- (2) In determining for the purposes of paragraph 6(2), 7(2) or 9(3) or (4) the punishments that a person's commanding officer could have awarded in respect of a charge or charges, no account is to be taken of—
- (a) any change in the commanding officer's rank after the person elected Court Martial trial or (as the case may be) after the charge or charges referred as mentioned in paragraph 4(c) were so referred;
  - (b) in the case of paragraph 6(2) or 9(3), any possibility that, if the person had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6; or
  - (c) in the case of paragraph 7(2) or 9(4), any possibility that, if the charge or charges referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6 after the time when the referral in fact took place.

##### *Substituted charges*

- 17 References in this Schedule to a charge substituted under section 125(2)(b) for another charge (“the original charge”) include—
- (a) a charge substituted for a charge that was itself substituted for the original charge,
  - (b) a charge substituted for a charge within paragraph (a),
- and so on.”

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## SCHEDULE 2

Section 26

### JUDGE ADVOCATES SITTING IN CIVILIAN COURTS

#### PART 1

##### AMENDMENTS CONFERRING JURISDICTION ON JUDGE ADVOCATES

###### *Senior Courts Act 1981 (c. 54)*

- 1 (1) Section 8 of the Senior Courts Act 1981 (persons who may exercise the jurisdiction of the Crown Court) is amended as follows.
- (2) In subsection (1)(b), for “, Recorder or District Judge (Magistrates' Courts)” substitute “, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts)”.
- (3) In subsection (1)(c), for “or Recorder” substitute “, Recorder or qualifying judge advocate”.
- (4) After subsection (1) insert—
- “(1A) The jurisdiction of the Crown Court exercisable by a qualifying judge advocate by virtue of subsection (1) is the jurisdiction of the Court in relation to any criminal cause or matter other than an appeal from a youth court.”
- (5) In subsection (3), for “, Circuit judge, Recorder or District Judge (Magistrates' Courts)” substitute “, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts)”.
- (6) After subsection (3) insert—
- “(4) Subsection (1A) does not affect the jurisdiction of the Crown Court exercisable by a person who holds an office mentioned in subsection (1)(a) or (b) where that person is also a qualifying judge advocate.”

#### Commencement Information

**I2** Sch. 2 para. 1 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 2 In section 73(2) and (3) of that Act (general provisions relating to Crown Court proceedings), for “or Recorder” (wherever it occurs) substitute “, Recorder or qualifying judge advocate”.

#### Commencement Information

**I3** Sch. 2 para. 2 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 3 In section 74 of that Act (Crown Court proceedings on appeals)—
- (a) in subsection (1), after “Recorder” insert “ or a qualifying judge advocate”; and
- (b) in subsection (3), for “or Recorder,” substitute “, Recorder or qualifying judge advocate,”.

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**Commencement Information**

**I4** Sch. 2 para. 3 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 4 In section 75(1) of that Act (allocation of cases and distribution of cases in Crown Court), for “, Circuit judge, Recorder or District Judge (Magistrates' Courts)” substitute “, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates' Courts)”.

**Commencement Information**

**I5** Sch. 2 para. 4 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 5 In section 151(1) of that Act (interpretation), at the appropriate place insert—
- ““qualifying judge advocate” means—
- (a) the Judge Advocate General; or
- (b) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General);”.

**Commencement Information**

**I6** Sch. 2 para. 5 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

*Courts Act 2003 (c. 39)*

- 6 In section 66 of the Courts Act 2003 (judges having powers of District Judges (Magistrates' Courts))—
- (a) after subsection (2) insert—
- “(2A) A qualifying judge advocate has the powers of a justice of the peace who is a District Judge (Magistrates' Courts) in relation to criminal causes and matters.”; and
- (b) after subsection (4) insert—
- “(5) In this section “qualifying judge advocate” means—
- (a) the Judge Advocate General; or
- (b) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General).
- (6) Subsection (2A) is without prejudice to the powers conferred by this section on a person within subsection (2) where that person is also a qualifying judge advocate.”

**Commencement Information**

**I7** Sch. 2 para. 6 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

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## PART 2

### RELATED AMENDMENTS

#### *Criminal Justice Act 1967 (c. 80)*

- 7 In section 9(5) of the Criminal Justice Act 1967 (application for court attendance of person who has provided a written statement), after paragraph (d) insert—
- “(e) subject to subsection (5A), a qualifying judge advocate (within the meaning of the Senior Courts Act 1981).
- (5A) Subsection (5)(e) applies only where the application in question is to the Crown Court.”; but this paragraph is subject to paragraph 8.

#### Commencement Information

**18** Sch. 2 para. 7 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 8 (1) This paragraph applies if the amendment made to section 9(5) of the Criminal Justice Act 1967 by paragraph 1 of Schedule 4 to the Courts Act 2003 has not come into force before the commencement of paragraph 1 of this Schedule.
- (2) Until the coming into force of that amendment—
- (a) paragraph 7 above does not apply; and
- (b) section 9(5) of the Criminal Justice Act 1967 is amended as follows.
- (3) The words from “by a puisne judge” to the end become paragraph (a).
- (4) After paragraph (a) insert “; or
- (b) subject to subsection (5A), by a qualifying judge advocate (within the meaning of the Senior Courts Act 1981) sitting alone.
- (5A) Subsection (5)(b) applies only where the application in question is to the Crown Court.”

#### Commencement Information

**19** Sch. 2 para. 8 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

#### *Juries Act 1974 (c. 23)*

- 9 In section 9B(3) of the Juries Act 1974 (judges who may determine whether juror to be discharged on account of disability)—
- (a) omit the “or” at the end of paragraph (c); and
- (b) after paragraph (d) insert “; or
- (e) subject to subsection (4), a qualifying judge advocate (within the meaning of the Senior Courts Act 1981).
- (4) Subsection (3)(e) applies only where the case relates to a summons to attend for jury service in the Crown Court.”; but this is subject to paragraph 10.

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**Commencement Information**

**I10** Sch. 2 para. 9 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

- 10 (1) This paragraph applies if the amendment made to section 9B(3) of the Juries Act 1974 by paragraph 3 of Schedule 4 to the Courts Act 2003 has not come into force before the commencement of paragraph 1 of this Schedule.
- (2) Until the coming into force of that amendment—
- (a) paragraph 9 above does not apply; and
  - (b) section 9B(3) of the Juries Act 1974 is amended as follows.
- (3) The words from “any judge” to the end become paragraph (a).
- (4) After paragraph (a) insert “, or
- (b) subject to subsection (4), any qualifying judge advocate (within the meaning of the Senior Courts Act 1981).
- (4) Subsection (3)(b) applies only where the case relates to a summons to attend for jury service in the Crown Court.”

**Commencement Information**

**I11** Sch. 2 para. 10 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

*Police and Criminal Evidence Act 1984 (c. 60)*

- 11 (1) Schedule 1 to the Police and Criminal Evidence Act 1984 (access to excluded or special procedure material) is amended as follows.
- (2) In paragraph 17 (as amended by section 114(1) and (9) of the Serious Organised Crime and Police Act 2005), after “a Recorder” insert “, a qualifying judge advocate (within the meaning of the Senior Courts Act 1981) ”.

**Commencement Information**

**I12** Sch. 2 para. 11 in force at 2.4.2012 by S.I. 2012/669, art. 4(c)

SCHEDULE 3

Section 29

MINOR AMENDMENTS OF SERVICE LEGISLATION

*Definition of “service policeman” in Armed Forces Act 1991*

- 1 In section 22A of the Armed Forces Act 1991 (removal and accommodation of children by service police in emergency), in subsection (8) for the definition of “service policeman” substitute—
- ““service policeman” has the meaning given by section 375(1) of the Armed Forces Act 2006.”

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**Commencement Information**

**I13** Sch. 3 para. 1 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Powers of arrest of an officer acting on behalf of provost officer*

- 2 In section 67(2) of AFA 2006 (persons who may arrest an officer), for paragraph (c) substitute—
- “(c) by a person who is lawfully exercising authority on behalf of a provost officer, and who—
- (i) is an officer; or
  - (ii) is acting on the order of an officer.”

**Commencement Information**

**I14** Sch. 3 para. 2 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Entry for purposes of arrest by service policeman*

- 3 In section 90(6) of AFA 2006 (powers of arrest to which section applies), for “or 111,” substitute “ , 111 or 303, ”.

**Commencement Information**

**I15** Sch. 3 para. 3 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Definition of “service living accommodation”*

- 4 (1) Section 96 of AFA 2006 (definition of “service living accommodation” etc for purposes of Part 3) is amended as follows.
- (2) In subsection (1), in each of paragraphs (a), (b) and (c) for “subject to service law” substitute “ within subsection (1A) ”.
- (3) After subsection (1) insert—
- “(1A) The following are persons within this subsection—
- (a) a person subject to service law;
  - (b) a civilian subject to service discipline.”

**Commencement Information**

**I16** Sch. 3 para. 4 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Consultation of DSP before decision by service police on referral of case*

- 5 (1) In section 116 of AFA 2006 (referral of case following investigation by service or civilian police), for subsection (4) substitute—
- “(4) Subsection (4A) applies if—

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- (a) the allegation or circumstances would indicate to a reasonable person that a Schedule 2 offence has or might have been committed, or
  - (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,
- and a service policeman proposes not to refer the case to the Director under subsection (2).
- (4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).”
- (2) In section 117(3)(b) (referral of multiple offences), for “116(3) or (4)” substitute “116(3) to (4A)”.

**Commencement Information**

**I17** Sch. 3 para. 5 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Powers of DSP in respect of charge allocated for Court Martial trial*

- 6 (1) Section 125 of AFA 2006 (powers of Director of Service Prosecutions in respect of charge allocated for Court Martial trial) is amended as follows.
- (2) In subsection (3)—
- (a) insert “ or ” after paragraph (a); and
  - (b) omit paragraph (c) and the “or” preceding it.
- (3) Omit subsection (4).

**Commencement Information**

**I18** Sch. 3 para. 6 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Right to elect Court Martial trial*

- 7 In section 129 of AFA 2006 (right to elect Court Martial trial), for subsection (4) substitute—
- “(4) Subsection (5) applies if an opportunity to elect Court Martial trial of a charge (“the original charge”) has been given under subsection (1) and subsequently—
- (a) the charge is amended;
  - (b) another charge is substituted for it; or
  - (c) an additional charge is brought.
- (5) Subsection (1) applies in relation to the amended, substituted or additional charge; and if the amendment, substitution or addition takes place after the start of the summary hearing, that subsection has effect in relation to the charge as if the reference to hearing a charge summarily were to proceeding with the hearing.

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- (6) In subsection (4)—
- (a) “amended” means amended under section 123(2)(a) or, in the case of a charge referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, amended under section 125(2)(a) and referred to the commanding officer under section 125(2)(e);
  - (b) “substituted” means substituted under section 123(2)(b) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, substituted under section 125(2)(b) and referred to the commanding officer under section 125(2)(e);
  - (c) “brought”, in relation to an additional charge, means brought under section 123(2)(c) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, brought under section 125(2)(c) and referred to the commanding officer under section 125(2)(e).
- (7) Subsection (8) applies where—
- (a) an opportunity to elect Court Martial trial of a charge has been given under this section;
  - (b) the accused has not elected Court Martial trial; and
  - (c) at a time after the giving of the opportunity to elect, the commanding officer obtains extended powers for the purposes of any provision of section 133, 134, 135 or 194.
- (8) The provisions of this section requiring the giving of an opportunity to elect Court Martial trial of the charge shall apply again.”

**Commencement Information**

**I19** Sch. 3 para. 7 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 8 In section 130(3) of AFA 2006 (consequences of election for Court Martial trial), for “if the charge is amended after referral.” substitute “—
- (a) where the charge is amended after referral;
  - (b) to any charge substituted for or added to the charge after referral; or
  - (c) where extended powers for the purposes of any provision of section 133, 134, 135 or 194 are obtained after referral.”

**Commencement Information**

**I20** Sch. 3 para. 8 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 9 After section 130 of AFA 2006 insert—

**“130A Restrictions on DSP's powers to substitute or add charges after election**

- (1) This section applies where—
- (a) a charge is for the time being regarded for the purposes of Part 5 as allocated for Court Martial trial; and

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (b) the charge is in respect of an offence which would be a relevant offence for the purposes of Schedule 3A (sentencing powers of Court Martial where election for trial by that court) if the accused were convicted of it.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused substitute under section 125(2)(b)—
- (a) a charge in respect of an offence which is not one that may be dealt with at a summary hearing (see section 53); or
  - (b) a charge in respect of an offence within section 54(2) (offences that may be dealt with summarily only with permission or by senior officer), except where the relevant charge was in respect of such an offence.
- (3) In subsection (2)(b) “relevant charge” means—
- (a) in relation to a case A offence or a case B offence (within the meaning of Schedule 3A), the charge in respect of which the accused elected Court Martial trial; and
  - (b) in relation to a case C offence or a case D offence (within the meaning of Schedule 3A), the charge referred as mentioned in paragraph 4(c) of that Schedule.
- (4) The Director may not without the written consent of the accused bring under section 125(2)(c) a charge in addition to the charge.
- (5) In construing Part 1 of Schedule 3A (relevant offences) for the purposes of this section, paragraphs 3(b) and 5(c) of that Schedule are to be disregarded.”

**Commencement Information**

**I21** Sch. 3 para. 9 in force at 2.4.2012 by S.I. 2012/669, art. 4(d) (with art. 9)

*Summary hearing*

- 10 In each of sections 133(3), 134(2) and 135(5) of AFA 2006 (obtaining extended powers of punishment), for “before the summary hearing of the charge or charges” substitute “ within the relevant time (defined by section 135A) ”.

**Commencement Information**

**I22** Sch. 3 para. 10 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 11 After section 135 of AFA 2006 insert—

**“135A Extended powers: time for obtaining**

- (1) In each of sections 133(3), 134(2) and 135(5), “within the relevant time” means before the start of the summary hearing; but this is subject to subsections (2) and (3).
- (2) Subsection (3) applies where after the start of a summary hearing—
  - (a) a charge is amended under section 123(2)(a);

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (b) a charge is substituted for another charge under section 123(2)(b); or
  - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of sections 133(3), 134(2) and 135(5) as made within the relevant time.”

**Commencement Information**

**I23** Sch. 3 para. 11 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 12 In section 136 of AFA 2006 (maximum amount of fine), for subsections (1) to (3) substitute—
- “(1) The maximum amount of a fine that a commanding officer may award is 28 days' pay.”

**Commencement Information**

**I24** Sch. 3 para. 12 in force at 2.4.2012 by S.I. 2012/669, art. 4(d) (with art. 7)

- 13 In section 153(2) of AFA 2006 (powers to make rules relating to summary hearings etc), in each of paragraphs (d) and (e) after “applications for” insert “, and grants of,”.

**Commencement Information**

**I25** Sch. 3 para. 13 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Activation of suspended sentence of service detention*

- 14 In each of sections 190(1)(a), 191(2)(b) and 193(2)(b) of AFA 2006 (circumstances where suspended sentence may be activated), for “an offence in the British Islands” substitute “ an offence under the law of any part of the British Islands ”.

**Commencement Information**

**I26** Sch. 3 para. 14 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 15 (1) Section 194 of AFA 2006 (limits on commanding officer's powers to activate suspended sentence) is amended as follows.
- (2) In subsection (4) for “before the relevant time” substitute “ within the relevant time (defined by section 194A) ”.
  - (3) Omit subsection (6).

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

**Commencement Information**

**I27** Sch. 3 para. 15 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

16 After section 194 of AFA 2006 insert—

**“194A Extended powers of activation: time for obtaining**

- (1) In section 194(4) “within the relevant time” means—
- (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
  - (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.
- (2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the hearing—
- (a) a charge is amended under section 123(2)(a);
  - (b) a charge is substituted for another charge under section 123(2)(b); or
  - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of section 194(4) as made within the relevant time.”

**Commencement Information**

**I28** Sch. 3 para. 16 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Suspended sentences of imprisonment*

17 In section 200(5) of AFA 2006 (suspended sentences of imprisonment), in paragraph (b) of the words treated as substituted, for “ in the British Islands ” substitute “under the law of any part of the British Islands”.

**Commencement Information**

**I29** Sch. 3 para. 17 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Detention and training orders*

18 In section 213 of AFA 2006 (application to service detention and training orders of provisions relating to civilian orders)—

- (a) in the second paragraph of subsection (1), after “105,” insert “ 106(4) to (6), ”;

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

(b) in subsection (2), after “(13)” insert “, 106(6)”.

**Commencement Information**

**I30** Sch. 3 para. 18 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

19 In section 214(2)(b) of AFA 2006 (offences during currency of detention and training order), for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.

**Commencement Information**

**I31** Sch. 3 para. 19 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Restrictions on community punishments*

20 (1) In section 270 of AFA 2006 (general restrictions on community punishments), for subsections (7) and (8) substitute—

“(7) Subsections (1) and (2)(b) are subject to section 270A.”

(2) After that section insert—

**“270A Exception to restrictions on community punishments**

(1) If the conditions in subsection (2) are met, the power to award a community punishment in respect of an offence (“the current offence”) may be exercised even though the court would not otherwise regard—

- (a) the current offence, or
- (b) the combination of the current offence and one or more offences associated with it,

as serious enough to warrant a community punishment (despite the effect of section 238(1)(b)).

(2) The conditions referred to in subsection (1) are—

- (a) that the offender was aged 16 or over when convicted of the current offence;
- (b) that on three or more previous occasions the offender has been awarded a relevant financial penalty; and
- (c) that the court, having regard to all the circumstances, considers that it would be in the interests of justice to award a community punishment.

(3) In subsection (2)(b) a “relevant financial penalty” means a sentence consisting only of a fine—

- (a) passed on the offender in respect of a service offence, or member State service offence, committed by the offender when aged 16 or over;
- (b) passed on the offender on conviction by a civilian court in the British Islands of an offence so committed; or

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (c) passed on the offender on conviction by a civilian court in another member State of a relevant offence so committed.
- (4) For the purposes of subsection (2)(b) it is immaterial whether the offender has on other previous occasions been awarded a sentence other than a relevant financial penalty.
- (5) The circumstances which must be had regard to under subsection (2)(c) include—
- (a) the nature of the offences for which the relevant financial penalties were awarded;
  - (b) the relevance of those offences to the current offence; and
  - (c) the time that has elapsed since those penalties were awarded.
- (6) For the purposes of subsection (3), none of the following forms part of an offender's sentence—
- (a) a service compensation order;
  - (b) a compensation order under—
    - (i) section 130 of the Sentencing Act;
    - (ii) section 249 of the Criminal Procedure (Scotland) Act 1995;
    - or
    - (iii) Article 14 of the Criminal Justice (Northern Ireland) Order 1994;
  - (c) a surcharge under section 161A of the 2003 Act.
- (7) This section does not limit the extent to which a court may, in accordance with section 238, treat previous convictions of the offender as increasing the seriousness of an offence.
- (8) In this section—
- (a) “member State service offence” means an offence which—
    - (i) was the subject of proceedings under the law governing all or any of the naval, military or air forces of a member State other than the United Kingdom; and
    - (ii) would constitute a service offence or an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom, by a person subject to service law, at the time of the conviction of the current offence;
  - (b) “relevant offence” means an offence which would constitute an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom at the time of the conviction of the current offence.”
- (3) In consequence of the amendments made by this paragraph, paragraphs 26(3) and (4) and 27 of Schedule 25 to the Criminal Justice and Immigration Act 2008 (which amend AFA 2006 but have not been commenced) are omitted.

**Commencement Information**

**I32** Sch. 3 para. 20 in force at 2.4.2012 by S.I. 2012/669, art. 4(d) (with art. 13)

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

*Definition of “period when unlawfully at large”*

- 21 In section 301(5) of AFA 2006 (duration of sentences: persons unlawfully at large), for the definition of “period when the person is unlawfully at large” substitute—
- “period when the person is unlawfully at large” means (subject to any rules made by virtue of section 300(2)(g))—
- (a) the period beginning with the day when the person becomes unlawfully at large and ending with the day when the person is taken back into custody (service or otherwise) or returns to the place where the sentence was being served; or
  - (b) in relation to a person who is absent when sentenced, the period beginning with the day when the sentence is passed and ending with the day when the person is taken into custody (service or otherwise);”.

**Commencement Information**

**I33** Sch. 3 para. 21 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Persons treated as members of service police force*

- 22 Omit section 375(5) of AFA 2006 (Provost Marshal and other officers to be taken to be members of appropriate service police force).

**Commencement Information**

**I34** Sch. 3 para. 22 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

*Power to make transitional provision under AFA 2006*

- 23 In section 380 of AFA 2006 (power to make transitional provision in connection with the coming into force of that Act), after subsection (8) insert—
- “(8A) The power under subsection (1) to make transitional provision in connection with the coming into force of any provision made by or under this Act includes power, where this Act or any provision made under it is amended, to amend any earlier order under this section.”

**Commencement Information**

**I35** Sch. 3 para. 23 in force at 8.3.2012 by S.I. 2012/669, art. 3(e)

*Activation of suspended sentence of imprisonment*

- 24 (1) Schedule 7 to AFA 2006 (suspended prison sentence: further conviction etc) is amended as follows.
- (2) Paragraph 6 becomes sub-paragraph (1) of that paragraph.
  - (3) In paragraph (a) of that sub-paragraph, for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

(4) After that sub-paragraph insert—

“(2) Anything that under section 376(1) and (2) of this Act is to be treated as a conviction for the purposes of this Act is also to be treated as a conviction for the purposes of paragraph 8(1)(b) of that Schedule as modified by this paragraph.”

**Commencement Information**

**I36** Sch. 3 para. 24 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

SCHEDULE 4

Section 30

CONSEQUENTIAL AMENDMENTS

*Road Traffic Act 1988 (c. 52)*

1 In section 184(3) of the Road Traffic Act 1988 (definitions relating to persons subject to service discipline), for paragraph (a) of the definition of “member of the provost staff” substitute—

“(a) a service policeman (within the meaning given by section 375(1) of the Armed Forces Act 2006); or”.

**Commencement Information**

**I37** Sch. 4 para. 1 in force at 2.4.2012 by S.I. 2012/669, art. 4(e)

*Extradition Act 2003 (c. 41)*

2 In section 216(13) of the Extradition Act 2003 (definition of “service policeman”), for the words from “means” to the end substitute “ has the meaning given by section 375(1) of the Armed Forces Act 2006 ”.

**Commencement Information**

**I38** Sch. 4 para. 2 in force at 2.4.2012 by S.I. 2012/669, art. 4(e)

*Armed Forces Act 2006 (c. 52)*

VALID FROM 01/11/2013

3 (1) Section 50(2) of AFA 2006 (definition of “service offence”) is amended as follows.

(2) After paragraph (a) insert—

“(aa) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);”.

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (3) After paragraph (c) insert—  
“(ca) an offence under section 232G (breach of service sexual offences prevention order or extended prohibitions order);”.
- (4) For paragraph (e) substitute—  
“(e) an offence under section 305 (random drug testing);”.

VALID FROM 01/11/2013

- 4 (1) Section 53(1) of AFA 2006 (offences that may be dealt with at a summary hearing) is amended as follows.
- (2) After paragraph (g) insert—  
“(ga) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);”.
- (3) For paragraph (i) substitute—  
“(i) an offence under section 305 (random drug testing);”.

VALID FROM 14/12/2012

- 5 In section 58 of AFA 2006 (time limit for charging civilian formerly subject to service discipline)—
- (a) in subsection (5)(a), after sub-paragraph (i) insert—  
“(ia) leaving a country in which he fell within paragraph 5 of that Schedule;”;
- (b) in subsection (7), after paragraph (a) insert—  
“(aa) in relation to a person who falls within subsection (5)(a) by reason of leaving a country in which he fell within paragraph 5 of that Schedule, in that country or any other country in which he falls within that paragraph;”;
- (c) after subsection (7) insert—  
“(8) In subsections (5)(a)(ia) and (7)(aa) “country” is to be read in accordance with paragraph 14 of Schedule 15.”

VALID FROM 14/12/2012

- 6 In section 87(1) of AFA 2006 (power of CO to authorise entry and search by service policeman), for paragraphs (a) and (b) substitute—
- “(a) that a relevant offence within the meaning of section 84 has been committed;
- (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;
- (c) that the material would be likely to be admissible in evidence at a trial for the offence;

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);
- (e) that at least one of the conditions specified in section 83(4) applies; and
- (f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).”

VALID FROM 14/12/2012

- 7 In section 88(1) of AFA 2006 (power of CO to authorise entry and search by person other than service policeman), for paragraphs (a) and (b) substitute—
- “(a) that a relevant offence within the meaning of section 84 has been committed;
  - (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;
  - (c) that the material would be likely to be admissible in evidence at a trial for the offence;
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);
  - (e) that at least one of the conditions specified in section 83(4) applies (the reference in section 83(4)(e) to a service policeman being read as a reference to a person authorised under this subsection); and
  - (f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).”

VALID FROM 01/11/2013

- 8 (1) Section 97 of AFA 2006 (power to use reasonable force) becomes subsection (1) of that section.
- (2) After that subsection insert—
- “(2) Subsection (1) does not apply in relation to powers conferred by Chapter 3A of this Part.”

- 9 In section 164(3) of AFA 2006 (provisions to which section 164 is subject)—
- (a) omit the entry relating to section 165 of the Act;
  - (b) omit the “and” after the entry relating to Chapters 4 to 6 of Part 8; and
  - (c) after the entry relating to Part 9 insert “; and

Schedule 3A (offender elected Court Martial trial).”

*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

#### Commencement Information

**I39** Sch. 4 para. 9 in force at 2.4.2012 by S.I. 2012/669, art. 4(e)

VALID FROM 01/11/2013

10 In Part 13 of AFA 2006, for the heading to Chapter 1 substitute— “ RANDOM DRUG TESTING ”.

VALID FROM 01/11/2013

11 In section 305 of AFA 2006 (testing for drugs)—  
(a) for the heading substitute “ Random drug testing ”;  
(b) in subsection (2)(b) omit the words from “or an investigation” to the end.

VALID FROM 01/11/2013

12 (1) Section 308 of AFA 2006 (provisions supplementary to sections 305 and 306) is amended as follows.  
(2) In the heading, for “Sections 305 and 306” substitute “ Section 305 ”.  
(3) In subsection (1)—  
(a) for “sections 305(1) and 306(2)” substitute “ section 305(1) ”;  
(b) omit paragraph (b);  
(c) in paragraph (c), omit “or 306(2)”;  
(d) in paragraph (d), omit “or 306(2)”.  
(4) Omit subsection (2).  
(5) In subsection (3), omit “or section 306(2)”.  
(6) In subsection (4), before paragraph (a) insert—  
“(za) Chapter 3A of Part 3.”.

VALID FROM 01/11/2013

13 In section 325(1) of AFA 2006 (evidential burden as respects excuses)—  
(a) after “41,” insert “ 93A, 93E, 93G, ”;  
(b) for “266 and 306” substitute “ 232G and 266 ”.

14 (1) Section 373 of AFA 2006 (orders, regulations and rules) is amended as follows.  
(2) In subsection (2)—  
(a) after “sections” insert “ 20A, ”;  
(b) after “36,” insert “ 93F, ”.  
(3) In subsection (3)(d)—

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

- (a) after “section” insert “ 20A, ”;
- (b) after “336(5)(a)” insert “ , 336A ”.

(4) In subsection (3)(g), after “section” insert “ 232F or ”.

**Commencement Information**

**I40** Sch. 4 para. 14 in force at 8.3.2012 by S.I. 2012/669, art. 3(f)

15 Omit section 380(9) of AFA 2006.

**Commencement Information**

**I41** Sch. 4 para. 15 in force at 8.3.2012 by S.I. 2012/669, art. 3(f)

SCHEDULE 5

Section 30

REPEALS AND REVOCATIONS

**Commencement Information**

**I42** Sch. 5 in force for specified purposes at 2.4.2012 by S.I. 2012/669, art. 4(f)

**I43** Sch. 5 in force for specified purposes at 8.3.2012 by S.I. 2012/669, art. 3(g)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Military Lands Act 1900 (c. 56)	In section 2— (a) in subsection (2), paragraph (b) of the proviso; (b) subsection (3).
Naval Medical Compassionate Fund Act 1915 (c. 28)	The whole Act.
Defence (Transfer of Functions) (No 1) Order 1964 (S.I. 1964/488)	In Part I of the First Schedule, the entry relating to the Naval Medical Compassionate Fund Act 1915.
Court Martial Appeals Act 1968 (c. 20)	Section 56.
Juries Act 1974 (c. 23)	In section 9B(3), the “or” at the end of paragraph (c).
Reserve Forces Act 1996 (c. 14)	In section 95(2)(a)(ii) the words “or service detention”.
Courts Act 2003 (c. 39)	Section 65(1). In Schedule 8, paragraphs 259(3) and 261.
Civil Partnership Act 2004 (c. 33)	In Schedule 26, paragraph 8.
Armed Forces Act 2006 (c. 52)	In section 125— (a) in subsection (3), paragraph (c) and the “or” preceding it; (b) subsection (4).

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*Status: Point in time view as at 02/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2011. (See end of Document for details)*

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In section 164(3), the entry relating to section 165 and the “and” at the end of the entry relating to Chapters 4 to 6 of Part 8.

Section 194(6).

Section 293.

In section 305—

- (a) in subsection (2)(b), the words from “or an investigation” to the end;
- (b) in subsection (5), the words “or service detention”.

Sections 306 and 307.

In section 308—

- (a) in subsection (1), paragraph (b), and in paragraphs (c) and (d) the words “or 306(2)”;  
(b) subsection (2);  
(c) in subsection (3), the words “or section 306(2)”.

Section 336(3).

Section 375(5).

Section 380(9).

In Schedule 8, paragraph 50.

Criminal Justice and Immigration Act 2008 (c. 4) In Schedule 25, paragraphs 26(3) and (4) and 27.

Naval Medical Compassionate Fund Order 2008 (S.I. 2008/3129) The whole Order.

Coroners and Justice Act 2009 (c. 25) In Schedule 17, paragraph 9.

In Part 5 of Schedule 23, the entry relating to section 270B of the Armed Forces Act 2006.

The Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041) Part 20.

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**Status:**

Point in time view as at 02/04/2012.

**Changes to legislation:**

There are currently no known outstanding effects for the Armed Forces Act 2011.