

2007 No. 711

DEFENCE

The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007

<i>Made</i>	- - - -	<i>28th February 2007</i>
<i>Laid before Parliament</i>		<i>8th March 2007</i>
<i>Coming into force</i>	- -	<i>31st March 2007</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 113B(1)(a) of the Army Act 1955(a), sections 113B(1)(a) of the Air Force Act 1955(b) and sections 71AB(1)(a) of the Naval Discipline Act 1957(c):

Citation, commencement and interpretation

1. This Order may be cited as the Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007, shall come into force on 31st March 2007 and in this Order—

“the 1955 Acts” means the Army Act 1955 and the Air Force Act 1955;

“the 1957 Act” means the Naval Discipline Act 1957.

Application

2. Sections 113B(1)(a) and 113C of the 1955 Acts (d) and sections 71AB(1)(a) and 71AC of the 1957 Act (e) shall apply to any case of a description specified in the Schedule to these regulations.

3. This Order shall apply only to cases as specified in the Schedule where sentence is passed by a court-martial on or after 31st March 2007.

Date 28th February 2007

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

(a) 1955 c.18

(b) 1955 c.19

(c) 1957 c.53

(d) Sections 113B and 113C of the Army Act 1955 and the Air Force Act 1955 were inserted by the Armed Forces Act 2001 (c.19), section 21.

(e) Sections 71AB and 71AC of the Naval Discipline Act 1957 were inserted by the Armed Forces Act 2001 (c.19), section 21.

Description of cases to which Sections 113B(1)(a) and 113C of the 1955 Acts and sections 71AB(1)(a) and 71AC of the 1957 Act are to apply

1. Any case in which sentence is passed by a court-martial on a person in respect of an offence against section 70 of the 1955 Acts or section 42 of the 1957 Act where the corresponding civil offence is—

- (a) an offence under section 16 of the Offences Against the Person Act 1861(a) (threats to kill);
- (b) an offence under section 1 of the Children and Young Persons Act 1933(b) (cruelty to persons under 16);
- (c) an offence under section 4(2) or (3) (production or supply of a controlled drug), section 5(3) (possession of a controlled drug with intent to supply) or section 6(2) (cultivation of cannabis plant) of the Misuse of Drugs Act 1971(c);
- (d) an offence under section 50(2) or (3) (improper importation of goods), section 68(2) (exportation of prohibited or restricted goods) or section 170(1) or (2) (fraudulent evasion of duty) of the Customs and Excise Management Act 1979(d), insofar as those offences are in connection with a prohibition or restriction on importation or exportation of either:
 - (i) a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971, such prohibition or restriction having effect by virtue of section 3 of that Act; or
 - (ii) an article prohibited by virtue of section 42 of the Customs Consolidation Act 1876(e) but only insofar as it relates to or depicts a person under the age of 16.
- (e) an offence under sections 29 to 32 (racially or religiously aggravated assaults; racially or religiously aggravated criminal damage; racially or religiously aggravated public offences; racially or religiously aggravated harassment etc) of the Crime and Disorder Act 1998(f).
- (f) an offence under one of the following sections in the Sexual Offences Act 2003(g)—
 - (i) section 3 (sexual assault);
 - (ii) section 4 (causing a person to engage in sexual activity without consent);
 - (iii) section 7 (sexual assault of a child under 13);
 - (iv) section 8 (causing or inciting a child under 13 to engage in sexual activity);
 - (v) section 9 (sexual activity with a child);
 - (vi) section 10 (causing or inciting a child to engage in sexual activity);
 - (vii) section 11 (engaging in sexual activity in the presence of a child);
 - (viii) section 12 (causing a child to watch a sexual act);
 - (ix) section 14 (arranging or facilitating commission of a child sex offence);
 - (x) section 15 (meeting a child following sexual grooming etc);
 - (xi) section 25 (sexual activity with a child family member);
 - (xii) section 47 (paying for sexual services of a child);
 - (xiii) section 48 (causing or inciting child prostitution or pornography);
 - (xiv) section 49 (controlling a child prostitute or a child involved in pornography);

(a) 1861 c.100.
 (b) 1933 c.12.
 (c) 1971 c.38.
 (d) 1979 c.2.
 (e) 1876 c.36.
 (f) 1998 c.37.
 (g) 2003 c.42.

- (xv) section 50 (arranging or facilitating child prostitution or pornography);
- (xvi) section 52 (causing or inciting prostitution for gain);
- (xvii) section 57 (trafficking into the UK for sexual exploitation)
- (xviii) section 58 (trafficking within the UK for sexual exploitation);
- (xix) section 59 (trafficking out of the UK for sexual exploitation);
- (xx) section 61 (administering a substance with intent).

2. Any case in which sentence is passed on a person for attempting to commit or inciting the commission of an offence set out in paragraph 1 above.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 113C of the Army Act 1955 and the Air Force Act 1955 and section 71AC of the Naval Discipline Act 1957 empower the Attorney General to refer offences that in the civilian system would be indictable only to the Courts-Martial Appeal Court, with the leave of that court, where he considers that the sentence imposed by a court-martial was unduly lenient. The Secretary of State may by Order, made under section 113B(1)(a) of the Army Act 1955/Air Force Act 1955 or section 71AB(1)(a) of the Naval Discipline Act 1957 extend the scope of the Attorney General's powers by specifying certain offences, where the corresponding civil offences are triable either summarily or on indictment, where he considers that the sentence imposed by a court-martial was unduly lenient.

Article 3 of this Order provides that section 113B(1)(a) and 113C of the 1955 Acts and section 71AB(1)(a) and 71AC of the 1957 Act are to apply to the cases specified in the Schedule to this Order. Paragraph 1 of the Schedule specifies cases in which a sentence has been passed by the court martial for one of the offences listed. Paragraph 2 of the Schedule specifies cases in which a sentence has been passed for attempting to commit or inciting the commission of any of the offences listed in paragraph 1.

The provisions in this Order are broadly equivalent to those applied in the civil court which are set out in Part IV (Review of Sentencing) of the Criminal Justice Act 1988 and The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006.

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