

# ARMED FORCES ACT 2001

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## EXPLANATORY NOTES

### THE ACT - COMMENTARY ON SECTIONS

#### Part 3 – Trial and Punishment of Offences

##### *Section 22: Required custodial sentences*

77. This section introduces *Schedule 3*, which amends the SDAs to clarify how the rules about mandatory sentences are to apply to courts-martial. It also provides that Schedule 3 will only apply to offences committed after the commencement of those amendments.
78. Sections 109 to 111 of the Powers of Criminal Courts (Sentencing) Act 2000 provide for mandatory sentences in circumstances where an accused is repeatedly convicted of certain offences. Section 109 provides that anyone over 18 convicted of a second serious offence is to receive a sentence of life imprisonment unless the court is of the opinion that there are exceptional circumstances which justify not imposing such a sentence. If the court imposes an alternative sentence, it must state in open court its reasons for doing so. The offences which this provision covers are listed in the section and include attempted murder, manslaughter, rape, robbery and carrying a firearm with criminal intent.
79. *Sections 110 and 111* are similar in their application. They provide for minimum custodial sentences to be imposed where the accused is convicted of a third offence of class A drug trafficking or domestic burglary. In both cases, the court may vary the sentence if it is of the opinion that there are particular circumstances which justify doing so. Reasons for not imposing the minimum sentence must be given.
80. *Paragraphs 1 and 2* of Schedule 3 replace the provisions about mandatory sentences in the Army and Air Force Acts with more detailed provisions equivalent to those mentioned above. Paragraph 3 inserts in each of those Acts provisions based on section 152 of the Powers of Criminal Courts (Sentencing) Act 2000, which allows a shorter sentence to be imposed where the accused has pleaded guilty to a class A drug trafficking offence or a domestic burglary.
81. *Paragraph 4* makes clear that civilians who are subject to the SDAs and tried under the provisions of the Army or Air Force Acts may not be given an absolute or conditional discharge where they are tried for one of the offences attracting a mandatory sentence, unless the court is of the opinion that there are circumstances (as described above) which justify not imposing a mandatory sentence.
82. *Paragraphs 5 to 7* replace the provisions about mandatory sentences in the Naval Discipline Act with more detailed provisions equivalent to those mentioned above.