



Armed Forces Act 1991

1991 CHAPTER 62

An Act to continue the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957; to amend those Acts and other enactments relating to the armed forces; to make provision for compensation for miscarriages of justice before courts-martial; to make provision for orders for the assessment and emergency protection of children forming part of or staying with service families abroad; and for connected purposes. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Commencement Information

II Act partly in force at Royal Assent and partly in force at 01.01.1992 see [s.27](#)

PART I

CONTINUANCE OF SERVICES ACTS

1 Continuation of Services Acts.

- (1) The 1955 Acts and the 1957 Act shall, instead of expiring on 31st December 1991, continue in force until 31st August 1992, and shall then expire unless continued in force in accordance with the following provisions of this section.
- (2) Subject to subsection (3) below, Her Majesty may from time to time by Order in Council provide for the 1955 Acts and the 1957 Act to continue in force for a period not exceeding twelve months beyond the day on which they would otherwise expire.
- (3) No Order in Council shall be made under subsection (2) above so as to continue the 1955 Acts and the 1957 Act beyond the end of the year 1996.

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- (4) No recommendation shall be made to Her Majesty in Council to make an Order under subsection (2) above unless a draft thereof has been laid before Parliament and approved by a resolution of each House of Parliament.

PART II

AMENDMENTS RELATING TO THE ARMED FORCES AND OTHER PERSONS SUBJECT TO PROVISIONS OF THE SERVICES ACTS

Young offenders

2 Young offenders: custodial sentences.

- (1) Section 71A of each of the 1955 Acts (juveniles) and, subject to the modifications in subsection (6) below, section 43A of the 1957 Act (juveniles) shall each be amended in accordance with subsections (2) to (5) below.

- (2) In subsection (1B)—

- (a) after the words “imprisonment for life ” there shall be inserted “then, subject to subsection (1E) below ”; and
- (b) paragraph (a) shall be omitted.

- (3) After subsection (1C) there shall be inserted the following subsections—

“(1D) Subject to subsections (3) and (4) below, the only custodial sentences that a court may award where a person under 21 years of age is convicted or found guilty of an offence are—

- (a) a custodial order under section 71AA of this Act or under paragraph 10 of Schedule 5A to this Act; and
- (b) a sentence of custody for life under subsection (1A) or (1B) above.

- (1E) A court may not—

- (a) make a custodial order under section 71AA of this Act; or
- (b) pass a sentence of custody for life under subsection (1B) above;

unless it is satisfied—

- (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
- (ii) that he qualifies for a custodial sentence.

- (1F) An offender qualifies for a custodial sentence if—

- (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
- (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
- (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”

- (4) In subsection (4)—

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- (a) for the words “A person under 17 years of age ” there shall be substituted “In any case where—
 - (a) a person aged 14 or over but under 17 years of age is”;
 - (b) for the words “may be sentenced by the court, if it ” there shall be substituted “or
 - (b) a person under 14 years of age is found guilty of manslaughter,

and, in either case, the court ”; and
 - (c) after the word “suitable ” there shall be inserted “the court may sentence that person ”.
- (5) After subsection (6) there shall be inserted the following subsection—
- “(7) A sentence of detention under section 71(1)(e) of this Act shall be treated for the purposes of this section as a non-custodial sentence and references in this section to a custodial sentence shall be construed accordingly.”
- (6) The modifications of the amendments in subsections (2) to (5) above in their application to section 43A of the 1957 Act are—
- (a) for “section 71AA ”, in each place where it occurs in the amendment in subsection (3) above, there shall be substituted “section 43AA ”;
 - (b) for “Schedule 5A ” in the amendment in subsection (3) above there shall be substituted “Schedule 4A ”; and
 - (c) for “section 71(1)(e) ” in the amendment in subsection (5) above there shall be substituted “section 43(1)(e) ”.

3 Young service offenders: minimum period of custodial orders etc.

- (1) In section 71AA of each of the 1955 Acts and in section 43AA of the 1957 Act (young service offenders: custodial orders), in subsection (1) the words “subject to subsection (1A) below ” shall be omitted and after the words “period to be specified in the order ” there shall be inserted “being not less than 21 days and ”.
- (2) Subsection (1A) of each of those sections shall be omitted.
- (3) Subject to subsection (4) below, in subsection (1B) of each of those sections for the words from “there is ” to “in respect of him ” there shall be substituted “ it is satisfied as mentioned in sub-paragraphs (i) and (ii) of subsection (1E) of section 71A of this Act with respect to any person ”.
- (4) In the application of subsection (3) above to section 43AA of the 1957 Act, for “section 71A ” there shall be substituted “section 43A ”.

4 Reasons to be given where custodial sentence awarded to young offender.

- (1) After section 71AA of each of the 1955 Acts there shall be inserted the following section—

“71AB Reasons to be given where custodial sentence awarded to young offender.

- (1) This section applies where a court—

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- (a) makes a custodial order under section 71AA of this Act, or
 - (b) passes a sentence of custody for life under section 71A(1B) of this Act.
- (2) It shall be the duty of the court—
- (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 71A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and
 - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.”
- (2) After section 43AA of the 1957 Act there shall be inserted the following section—

“43AB Reasons to be given where custodial sentence awarded to young offender.

- (1) This section applies where a court—
- (a) makes a custodial order under section 43AA of this Act, or
 - (b) passes a sentence of custody for life under section 43A(1B) of this Act.
- (2) It shall be the duty of the court—
- (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 43A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and
 - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the committal order.”

5 **Young civilian offenders: custodial orders.**

- (1) In Schedule 5A to each of the 1955 Acts and Schedule 4A to the 1957 Act (powers of court on trial of civilian), paragraph 10 (custodial orders) shall be amended in accordance with the following provisions of this section.
- (2) Subject to subsection (9) below, in sub-paragraph (1)—
- (a) for the words “subsection (1A) below ” there shall be substituted “ sub-paragraphs (1A) and (1AA) below ”; and
 - (b) for the words from “in accordance ” to the end of paragraph (b) there shall be substituted—

“for a period, to be specified in the order, which—

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- (a) shall not be less than 21 days;
 - (b) shall not exceed the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21; and
 - (c) if the order is made by a Standing Civilian Court, shall not exceed six months”.
- (3) In sub-paragraph (1A) the words from the beginning to “appropriate and ” shall be omitted.
- (4) After sub-paragraph (1A) there shall be inserted the following sub-paragraphs—
 - “(1AA) The court may not make a custodial order unless it is satisfied—
 - (a) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
 - (b) that he qualifies for a custodial sentence.
 - (1AB) An offender qualifies for a custodial sentence if—
 - (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
 - (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
 - (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”
- (5) In sub-paragraph (1B) for the words from “there is ” to “in respect of him ” there shall be substituted “it is satisfied as mentioned in paragraphs (a) and (b) of sub-paragraph (1AA) above with respect to an offender ”.
- (6) Subject to subsection (10) below, for sub-paragraphs (3A) and (3B) there shall be substituted the following sub-paragraphs—
 - “(3A) Where the court makes a custodial order it shall be its duty—
 - (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of sub-paragraph (1AB) above, the paragraph or paragraphs in question, and why it is so satisfied; and
 - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
 - (3B) Where the court makes a custodial order and, in accordance with its duty under sub-paragraph (3A) above, makes the statement required by paragraph (a) of that sub-paragraph, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.”
- (7) For sub-paragraph (4) there shall be substituted the following sub-paragraphs—
 - “(4) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.
 - (4A) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any

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enactment applying to persons detained in any such institution shall apply to a person so detained under this paragraph.”

- (8) In sub-paragraph (6), in each of paragraphs (a), (b) and (c) after the words “where the offender is ” there shall be inserted “in or ”.
- (9) In the application of subsection (2) above to paragraph 10 of Schedule 4A to the 1957 Act, for paragraph (b) there shall be substituted—
- “(b) for the words from “in accordance ” to the end of paragraph (b) there shall be substituted “for a period to be specified in the order, being not less than 21 days and not exceeding the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21 ”.”
- (10) In the application of subsection (6) above to paragraph 10 of Schedule 4A to the 1957 Act, for the words from “order (made under ” onwards there shall be substituted “committal order ”.

6 Abolition of reception orders.

In Schedule 5A to each of the 1955 Acts and in Schedule 4A to the 1957 Act the following provisions (which refer to reception orders made in respect of civilians under 17 found guilty of certain offences) shall cease to have effect—

- (a) in paragraph 2 the definition of “reception order ”;
- (b) paragraphs 6 to 9; and
- (c) in paragraph 15(3), in the third column of the Table, paragraph 2.

Stoppages and compensation orders

7 Stoppages under the 1955 Acts: personal injuries and limits.

- (1) In section 71 of each of the 1955 Acts (scale of punishments and supplementary provisions)—
- (a) in subsection (1), in paragraph (k) after the word “expense ” there shall be inserted “personal injury ”; and
 - (b) after subsection (5) there shall be inserted the following subsections—
 - “(6) Unless the Secretary of State by order provides that this subsection shall no longer apply, the stoppages awarded by a court-martial in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.
 - (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 225 of the ^{M1}Army Act 1955 and section 223 of the ^{M2}Air Force Act 1955 (general provisions as to interpretation) in subsection (1) in the definition of “stoppages ” the words from “for any expense ” onwards shall be omitted.

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Marginal Citations

M1 1955 c. 18.

M2 1955 c. 19.

8 Stoppages under the 1957 Act: personal injuries and limits.

- (1) In section 43 of the 1957 Act (scale of punishments and supplementary provisions)—
- (a) in subsection (1), in paragraph (1) after the word “expense”, in both places where it occurs, there shall be inserted “personal injury”; and
 - (b) after subsection (6) there shall be inserted the following subsections—
 - “(7) Unless the Secretary of State by order provides that this subsection shall no longer apply, the stoppages awarded in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.
 - (8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 49 of the 1957 Act (summary trial), after subsection (5) there shall be inserted the following subsection—
- “(6) The reference in the proviso to subsection (5) above to stoppages does not include a reference to stoppages for personal injury.”

9 Compensation orders for personal injuries on trial of civilians.

- (1) In the following enactments relating to the powers of a court on the trial of a civilian—
- (a) Schedule 5A to each of the 1955 Acts, and
 - (b) Schedule 4A to the 1957 Act,
- paragraph 11 (compensation orders) shall be amended in accordance with the following provisions of this section.
- (2) In sub-paragraph (1) for the words “loss or damage, other than personal injury” there shall be substituted “personal injury, loss or damage”.
- (3) Subject to subsection (6) below, after sub-paragraph (1) there shall be inserted the following sub-paragraph—
- “(1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made by a court-martial for any personal injury shall not exceed such sum as is for the time being specified in sub-paragraph (2) below or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

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(4) In sub-paragraph (4) the words from “and no such order ” onwards shall be omitted and after that sub-paragraph there shall be inserted the following sub-paragraphs—

“(4A) A compensation order may only be made in respect of injury, loss or damage which was due to an accident arising out of the presence of a motor vehicle on a road if—

- (a) it is in respect of damage which is treated by sub-paragraph (3) above as resulting from an offence of unlawfully obtaining any property; or
- (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements specified by the Secretary of State for the purposes of this paragraph;

and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(4B) For the purposes of sub-paragraph (4A) above, a person is not uninsured in relation to the use of a vehicle if—

- (a) the vehicle is in the public service of the Crown; or
- (b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 or paragraph (2) or paragraph (3) of Article 90 of the Road Traffic (Northern Ireland) Order 1981.”

(5) After sub-paragraph (5) there shall be inserted the following sub-paragraph—

“(6) Where the court considers—

- (a) that it would be appropriate both to impose a fine and to make a compensation order, but
- (b) that the person concerned has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).”

(6) Subsection (3) above shall not apply in relation to paragraph 11 of Schedule 4A to the 1957 Act; but after sub-paragraph (1) of that paragraph there shall be inserted the following sub-paragraph—

“(1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made for any personal injury shall not exceed such sum as is for the time being specified in paragraph 11(2) of Schedule 5A to the Army Act 1955 or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

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Courts-martial

10 Compensation for miscarriages of justice.

- (1) Subject to subsection (2) below, when—
- (a) a person has been convicted by a court-martial, and
 - (b) subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice,
- the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.
- (3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.
- (4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.
- (5) In this section “reversed ” shall be construed as referring to a conviction having been quashed—
- (a) on an appeal out of time; or
 - (b) on a reference under section 34 of the ^{M3}Courts-Martial (Appeals) Act 1968.
- (6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.
- (7) Schedule 1 to this Act shall have effect.

Marginal Citations

M3 1968 c. 20.

11 Withdrawal of election to be tried by court-martial under the 1955 Acts: officers, warrant officers and civilians.

- (1) In section 79 of each of the 1955 Acts (further proceedings on charges against officers and warrant officers), in subsection (6) after the words “so elects ” there shall be inserted “and does not subsequently in accordance with Queen’s Regulations withdraw his election ”.
- (2) In section 209 of each of those Acts (application of Acts to civilians), in subsection (3) (modifications), in paragraph (d) after the words “so elects ” there shall be inserted “and does not subsequently in accordance with Rules of Procedure withdraw his election ”.

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12 Powers of naval courts-martial.

- (1) In section 90 of the 1957 Act (suspension of sentences), in subsection (1) for the words “any such case ” there shall be substituted “any case where a sentence is suspended under this subsection ” and after that subsection there shall be inserted the following subsection—

“(1A) Where any person has been sentenced under this Act by a court-martial to imprisonment or detention, the court-martial may itself exercise the power under subsection (1) above to order the suspension of the sentence.”

- (2) In Schedule 4A to the 1957 Act (powers of courts-martial on trial of civilian), in paragraph 4(7) (offences relating to community supervision orders to be treated as offences against provisions of Part II of that Act) for the words “Part II ” there shall be substituted “Part I ”.

13 Damage to public or service property etc.

- (1) In the ^{M4}Army Act 1955, in Schedule 3 (alternative offences of which accused may be convicted by court-martial), after the paragraphs in the first and second columns numbered 7B there shall be inserted—

“7C. Wilfully damaging public or service property or property belonging to another person subject to military law.

7C. By wilful neglect causing damage to public or service property or property belonging to another person subject to military law.”

- (2) The paragraphs set out in subsection (1) above shall also be inserted in the first and second columns of Schedule 3 to the ^{M5}Air Force Act 1955 after the paragraphs numbered 7B, but with the substitution for the words “military law ”, in each place where they occur, of the words “air-force law ”.

Marginal Citations

M4 1955 c. 18.

M5 1955 c. 19.

Deduction of maintenance payments etc. from pay

14 Deductions from pay in respect of liabilities for maintenance: the 1955 Acts.

- (1) Section 150 of each of the 1955 Acts (enforcement of maintenance and affiliation orders by deduction from pay) shall be amended in accordance with subsections (2) to (4) below.
- (2) In subsection (1), in paragraph (a) the words “or child ” shall be omitted and after that paragraph there shall be inserted the following paragraph—
- “(aa) the maintenance of any child of his or his wife or of any other child who has been treated by them both as a child of their family; or”.
- (3) After subsection (1) there shall be inserted the following subsection—

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“(1A) Without prejudice to any enactment or rule of law relating to adoption or legitimation, in subsection (1)(aa) above any reference to a child of the defendant or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.”

(4) In subsection (5)—

- (a) in the paragraph beginning “references to a wife ” the words “or child ”, in both places where they occur, shall be omitted; and
- (b) the paragraph beginning “references to a child ” shall be omitted.

(5) At the end of section 151 of each of the 1955 Acts (deductions from pay for maintenance of wife or child) there shall be added, and be deemed always to have been added, the following subsection—

“(6) Without prejudice to any enactment or rule of law relating to adoption or legitimation, references in this section to a child of any person shall be construed without regard to whether the father and mother of the child have or had been married to each other at any time.”

(6) The amendments made by the preceding provisions of this section do not affect the operation,—

- (a) in England and Wales, of section 1 of the ^{M6}Family Law Reform Act 1987; or
- (b) in Scotland, of section 1 of the ^{M7}Law Reform (Parent and Child) (Scotland) Act 1986.

Marginal Citations

- M6** 1987 c. 42.
M7 1986 c. 9.

15 Deductions from naval and marine pay in respect of liabilities for maintenance.

(1) In the ^{M8}Naval Forces (Enforcement of Maintenance Liabilities) Act 1947, section 1 (deductions from pay in respect of liabilities for maintenance etc.) shall be amended in accordance with subsections (2) to (4) below.

(2) In subsection (1)—

- (a) for paragraph (a) there shall be substituted the following paragraphs—
 - “(a) for the maintenance of the wife of that person;
 - (aa) for the maintenance of any child of that person or his wife or of any other child who has been treated by them both as a child of their family;”;
- (b) in paragraph (b) for the words from “and any such children ” onwards there shall be substituted “or any such child as is mentioned in paragraph (aa) above ”; and
- (c) after paragraph (b) there shall be added the following paragraph—
 - “(c) for the payment of any sum adjudged as costs, or awarded as expenses, incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order or decree.”

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(3) After subsection (2) there shall be inserted the following subsections—

“(2A) For the purposes of this section—

- (a) if, in proceedings in connection with the dissolution or annulment of a marriage, an order has been made for the payment of any periodical or other sum in respect of the maintenance of the person who, if the marriage had subsisted, would have been the wife of any such person as is mentioned in subsection (1) above, references in this section to that person’s wife include references to the person in whose favour the order was made;
- (b) any reference to an order or decree of any court in Her Majesty’s dominions includes a reference to an order registered in a court in the United Kingdom under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or registered under Part I of the Civil Jurisdiction and Judgments Act 1982 in a court in any territory to which that Act for the time being extends; and
- (c) without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of a person or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.

(2B) In relation to women members of Her Majesty’s naval forces, within the meaning of the Naval Discipline Act 1957, references in this section to a wife shall be construed as references to a husband.”

(4) Subsections (3) and (5) shall be omitted.

(5) In section 101 of the 1957 Act (service of proceedings for maintenance etc.), in subsection (5) (definition of “maintenance order”) for paragraphs (a) and (b) there shall be substituted the following paragraphs—

- “(a) the maintenance of the wife of the person against whom the order is made; or
- (b) the maintenance of any child of that person or his wife or of any other child who has been treated by them both as a child of their family; or”.

(6) After subsection (5) of section 101 of the 1957 Act there shall be inserted the following subsections—

“(5A) In subsection (5) above—

- (a) references to the wife of a person include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been his wife if the marriage had subsisted; and
- (b) without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of a person or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.

(5B) In relation to women members of Her Majesty’s naval forces, references in this section to a wife shall be construed as references to a husband.”

(7) The amendments made by the preceding provisions of this section do not affect the operation,—

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- (a) in England and Wales, of section 1 of the ^{M9}Family Law Reform Act 1987; or
- (b) in Scotland, of section 1 of the ^{M10}Law Reform (Parent and Child) (Scotland) Act 1986.

Marginal Citations

M8 1947 c. 24.

M9 1987 c. 42.

M10 1986 c. 9.

Naval and marine pay and pensions

16 New provisions as to assignments, charges and court orders in respect of naval and marine pay, pensions etc.

(1) In the 1957 Act, after section 128F there shall be inserted the following section—

“128G Avoidance of assignment of or charge on naval pay and pensions etc.

- (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, pensions, bounty, grants or other allowances in the nature thereof payable to any person in respect of his or any other person’s service in Her Majesty’s naval forces shall be void.
- (2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.
- (3) Nothing in this section—
 - (a) shall apply to the making or variation of attachment of earnings orders; or
 - (b) shall prejudice any enactment providing for the payment of any sum to a bankrupt’s trustee in bankruptcy for distribution among creditors.
- (4) In the application of this section to Northern Ireland at any time before the coming into operation of the Insolvency (Northern Ireland) Order 1989, for the reference in subsection (3) above to a bankrupt’s trustee in bankruptcy there shall be substituted a reference to an assignee in bankruptcy.”

(2) Subsection (1) above has effect in place of sections 4 and 5 of the ^{M11}Naval and Marine Pay and Pensions Act 1865.

(3) In section 2 of the ^{M12}Naval Pensions Act 1884 (application of 1865 Act etc. to Greenwich Hospital pensions) after the words “Act 1865”, in the second place where they occur, there shall be inserted “or section 128G of the Naval Discipline Act 1957”.

(4) In section 59(3) of the ^{M13}Reserve Forces Act 1980 (which applies sections 3 and 5 of the Naval and Marine Pay and Pensions Act 1865 in relation to pay, bounty and allowances payable as mentioned in that provision)—

- (a) for the words “Sections 3 and 5” there shall be substituted “Section 3”; and

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- (b) after “1865 ” there shall be inserted “and section 128G of the Naval Discipline Act 1957 ”.

Marginal Citations

- M11** 1865 c. 73.
M12 1884 c. 44.
M13 1980 c. 9.

PART III

PROTECTION OF CHILDREN OF SERVICE FAMILIES

VALID FROM 01/06/1996

17 Power to make service family child assessment orders.

- (1) Subject to subsection (2) below, the power to make an order under this section (in this Part of this Act referred to as an “assessment order ”) is exercisable only with respect to a child who—
- (a) forms part of the family of a person subject to service law serving in a country or territory outside the United Kingdom or of a civilian in a corresponding position; and
 - (b) resides outside the United Kingdom with that family or another such family.
- (2) The power to make an assessment order is also exercisable with respect to a child who, though not falling within paragraph (a) of subsection (1) above, is staying (for however short a time) with such a family as is referred to in that paragraph and is so exercisable as if he resided with that family; and any reference in the following provisions of this Part of this Act to a person with whom a child was at any time residing shall be construed accordingly.
- (3) On an application made with respect to a child by a person authorised in that behalf by regulations, the officer having jurisdiction may make an assessment order with respect to the child if, but only if, he is satisfied that—
- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
 - (b) an assessment of the state of the child’s health or development or of the way in which he has been treated is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
 - (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order.
- (4) A person making an application for an assessment order with respect to a child shall take such steps as are reasonably practicable to ensure that, before the application is considered, notice of the application is given to—
- (a) the child;
 - (b) his parents;

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- (c) any other person who has parental responsibility for him;
 - (d) any other person caring for the child or with whom the child is residing immediately before the making of the application;
 - (e) any person in whose favour a contact order is in force with respect to the child; and
 - (f) any person who is allowed to have contact with the child by virtue of an order under section 34 of the ^{M14}Children Act 1989.
- (5) An assessment order shall not be made with respect to any child if the officer to whom the application is made is satisfied—
- (a) that there are grounds for making a protection order with respect to the child; and
 - (b) that he ought to make such an order rather than an assessment order;
- and an officer to whom an application for an assessment order is made may treat the application as an application for a protection order.
- (6) Regulations may make provision with respect to the procedure to be followed on and in connection with the making of an assessment order.

Marginal Citations

M14 1989 c. 41.

VALID FROM 01/06/1996

18 Content, effect, variation and discharge of assessment orders.

- (1) An assessment order shall—
- (a) specify the date by which the assessment is to begin; and
 - (b) have effect for such period, not exceeding seven days beginning with that date, as may be specified in the order.
- (2) Where an assessment order is in force with respect to a child, it shall be the duty of any person who is in a position to produce the child—
- (a) to produce him to such person as may be named in the order; and
 - (b) to comply with such directions relating to the assessment of the child as the officer making the order considers appropriate to include in the order.
- (3) Subject to subsection (4) below, an assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.
- (4) If the child to whom an assessment order relates is of sufficient understanding to make an informed decision, he may refuse to submit to a medical or psychiatric examination or other assessment.
- (5) The child to whom an assessment order relates may only be kept away from home—
- (a) in accordance with directions included in the order; and
 - (b) if it is necessary for the purposes of the assessment; and
 - (c) for such period or periods as may be specified in the order.

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- (6) Where the child to whom an assessment order relates is to be kept away from home, the order shall contain such directions as the officer making it considers appropriate with regard to the contact that the child must be allowed to have with other persons while away from home.
- (7) In such circumstances and subject to such conditions as may be prescribed by regulations, an assessment order may be varied or discharged on an application made, in such manner as may be so prescribed, by—
- (a) the child to whom the order relates;
 - (b) a parent of his;
 - (c) any other person who has parental responsibility for him;
 - (d) any other person caring for the child or with whom the child was residing immediately before the making of the application;
 - (e) any person in whose favour a contact order is in force with respect to the child; or
 - (f) any person who is allowed to have contact with the child by virtue of an order under section 34 of the ^{M15}Children Act 1989.
- (8) A person subject to service law or a civilian in a corresponding position who intentionally obstructs any person exercising a power conferred on him by virtue of the making of an assessment order shall be liable on conviction to a fine or to any less punishment provided by the ^{M16}Army Act 1955, the ^{M17}Air Force Act 1955 or the 1957 Act, as the case may require.
- (9) Any offence under subsection (8) above shall be treated,—
- (a) if the offender is subject to military law or a civilian to whom Part II of the ^{M18}Army Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
 - (b) if the offender is subject to air-force law or a civilian to whom Part II of the ^{M19}Air Force Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
 - (c) if the offender is subject to the 1957 Act or a civilian to whom Parts I and II of that Act are applied by section 118 of that Act, as if it were an offence against a provision of Part I of that Act which is triable by court-martial under that Act.
- (10) Any power conferred by this section to give directions shall be exercisable subject to, and in accordance with, any provision made by regulations.

Marginal Citations

M15 1989 c. 41.

M16 1955 c. 18.

M17 1955 c. 19.

M18 1955 c. 18.

M19 1955 c. 19.

Status: Point in time view as at 25/07/1991. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/10/2001

19 Power to make orders for the emergency protection of children of service families.

[^{F1}(1) The power to make an order under this section (in this Part of this Act referred to as a “protection order”) is exercisable only with respect to a child who—

- (a) resides outside the British Islands with the family of a person subject to service law serving in a country or territory outside the British Islands or of a civilian in a corresponding position, or
- (b) is staying (for however short a time) outside the British Islands with such a family.

(2) In the following provisions of this Part, any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying.]

(3) On an application made by any person with respect to a child, the officer having jurisdiction may make a protection order with respect to the child if, but only if, he is satisfied that—

- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant; or
- (b) there is reasonable cause to believe that the child is likely to suffer significant harm if he does not remain in the place in which he is then being accommodated (whether or not that is the place where he is resident); or
- (c) in the case of an application made by a designated person—
 - (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
 - (ii) the applicant is making enquiries with respect to the child’s welfare; and
 - (iii) those enquiries are being frustrated by access to the child being unreasonably refused to the applicant or a person authorised by the applicant to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

(4) No protection order shall be made without affording—

- (a) the child to whom it is proposed that the order should relate,
- (b) his parents,
- (c) any other person who has parental responsibility for him, and
- (d) any other person with whom he was residing immediately before the making of the application for the order,

an opportunity to make representations to the officer to whom the application for the order is made, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person as is mentioned in paragraph (c) or paragraph (d) above.

(5) Any person—

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- (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (3)(c) above, and
- (b) purporting to be a designated person or a person authorised by a designated person to seek such access,

shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.

(6) Regulations may—

- (a) prescribe the descriptions of persons who for the purposes of this section are designated persons; and
- (b) make provision with respect to the procedure to be followed on and in connection with the making of protection orders.

(7) This section and sections 20 to 22 below have effect in place of section 14 of the ^{M20}Armed Forces Act 1981 (temporary removal to and detention in a place of safety abroad of children of service families in need of care or control).

Textual Amendments

F1 S. 19(1)(2) substituted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 58; S.I. 2001/3234, art. 2

Marginal Citations

M20 1981 c. 55.

19 Power to make orders for the emergency protection of children of service families. **E+W**

- (1) Subject to subsection (2) below, the power to make an order under this section (in this Part of this Act referred to as a “protection order”) is exercisable only with respect to a child who—
- (a) forms part of the family of a person subject to service law serving in a country or territory outside the United Kingdom or of a civilian in a corresponding position; and
 - (b) resides outside the United Kingdom with that family or another such family.
- (2) The power to make a protection order is also exercisable with respect to a child who, though not falling within paragraph (a) of subsection (1) above, is staying (for however short a time) with such a family as is referred to in that paragraph and is so exercisable as if he resided with that family; and any reference in the following provisions of this Part of this Act to a person with whom a child was at any time residing shall be construed accordingly.
- (3) On an application made by any person with respect to a child, the officer having jurisdiction may make a protection order with respect to the child if, but only if, he is satisfied that—
- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant; or

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- (b) there is reasonable cause to believe that the child is likely to suffer significant harm if he does not remain in the place in which he is then being accommodated (whether or not that is the place where he is resident); or
 - (c) in the case of an application made by a designated person—
 - (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
 - (ii) the applicant is making enquiries with respect to the child's welfare; and
 - (iii) those enquiries are being frustrated by access to the child being unreasonably refused to the applicant or a person authorised by the applicant to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.
- (4) No protection order shall be made without affording—
- (a) the child to whom it is proposed that the order should relate,
 - (b) his parents,
 - (c) any other person who has parental responsibility for him, and
 - (d) any other person with whom he was residing immediately before the making of the application for the order,
- an opportunity to make representations to the officer to whom the application for the order is made, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person as is mentioned in paragraph (c) or paragraph (d) above.
- (5) Any person—
- (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (3)(c) above, and
 - (b) purporting to be a designated person or a person authorised by a designated person to seek such access,
- shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.
- (6) Regulations may—
- (a) prescribe the descriptions of persons who for the purposes of this section are designated persons; and
 - (b) make provision with respect to the procedure to be followed on and in connection with the making of protection orders.
- (7) This section and sections 20 to 22 below have effect in place of section 14 of the ^{M45}Armed Forces Act 1981 (temporary removal to and detention in a place of safety abroad of children of service families in need of care or control).

Marginal Citations

M45 1981 c. 55.

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VALID FROM 01/06/1996

20 Content and effect of protection orders.

- (1) A protection order shall name the person on whose application it was made (in this Part of this Act referred to as “the responsible person”) and, wherever it is reasonably practicable to do so, the order shall also name the child to whom it relates; and where it does not name that child it shall describe him as clearly as possible.
- (2) Where a protection order is in force with respect to a child—
 - (a) it shall be the duty of any person who is in a position to do so to comply with any request to produce the child to the responsible person; and
 - (b) the order authorises—
 - (i) the removal of the child at any time to accommodation provided by or on behalf of the responsible person and his being kept there; or
 - (ii) the prevention of the child’s removal from any service hospital, or other place, in which he was being accommodated immediately before the making of the order.
- (3) Where a protection order is in force with respect to a child, the responsible person—
 - (a) shall only exercise a power given by virtue of subsection (2)(b) above in order to safeguard the welfare of the child;
 - (b) shall comply with the requirements of any regulations made for the purposes of this subsection; and
 - (c) subject to paragraphs (a) and (b) above, shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare (having regard in particular to the duration of the order).
- (4) The officer making a protection order may give such directions (if any) as he considers appropriate with respect to all or any of the following matters—
 - (a) whether the responsible person, in exercising any power under the order, should be accompanied by a person having a medical, nursing or other appropriate qualification;
 - (b) any contact which is, or is not, to be allowed between the child and any named person; and
 - (c) any medical or psychiatric examination or other assessment of the child which is, or is not, to be carried out;

but, where a direction is given under paragraph (c) above for the carrying out of an examination or other assessment, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or assessment.
- (5) Where a protection order is in force with respect to a child and—
 - (a) the responsible person has exercised the power given by subsection (2)(b)(i) above but it appears to him that it is safe for the child to be returned; or
 - (b) the responsible person has exercised the power given by subsection (2)(b)(ii) above but it appears to him that it is safe for the child to be allowed to be removed from the place in question,

he shall return the child or (as the case may be) allow him to be removed.
- (6) Where he is required by subsection (5) above to return the child, the responsible person shall—

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- (a) return him to the care of the person from whose care he was removed; or
 - (b) if that is not reasonably practicable, return him to the care of—
 - (i) a parent of his;
 - (ii) any person who is not a parent of his but who has parental responsibility for him; or
 - (iii) such other person as the responsible person (with the agreement of the officer having jurisdiction) considers appropriate.
- (7) Where the responsible person has been required by subsection (5) above to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.
- (8) Where a protection order has been made with respect to a child, the responsible person shall, subject to any direction given under subsection (4) above, allow the child reasonable contact with—
- (a) his parents;
 - (b) any other person who has parental responsibility for him;
 - (c) any other person with whom he was residing immediately before the making of the application for the order;
 - (d) any person in whose favour a contact order is in force with respect to him;
 - (e) any person who is allowed to have contact with the child by virtue of an order under section 34 of the ^{M21}Children Act 1989; and
 - (f) any person acting on behalf of any of those persons.
- (9) A person subject to service law or a civilian in a corresponding position who intentionally obstructs any person exercising the power under subsection (2)(b) above to remove, or prevent the removal of, a child shall be liable on conviction to a fine or to any less punishment provided by the ^{M22}Army Act 1955, the ^{M23}Air Force Act 1955 or the 1957 Act, as the case may require.
- (10) Any offence under subsection (9) above shall be treated,—
- (a) if the offender is subject to military law or a civilian to whom Part II of the Army Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
 - (b) if the offender is subject to air-force law or a civilian to whom Part II of the Air Force Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
 - (c) if the offender is subject to the 1957 Act or a civilian to whom Parts I and II of that Act are applied by section 118 of that Act, as if it were an offence against a provision of Part I of that Act which is triable by court-martial under that Act.
- (11) Any directions given under subsection (4) above shall be set out in the protection order, and—
- (a) the power to give such directions shall be exercisable subject to, and in accordance with, any provision made by regulations; and
 - (b) any direction given in the exercise of that power may be varied or revoked at any time subject to, and in accordance with, any provision so made.

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Marginal Citations

M21 1989 c. 41.

M22 1955 c. 18.

M23 1955 c. 19.

VALID FROM 01/06/1996

21 Duration of protection orders.

- (1) A protection order shall specify the period for which it is to have effect, being—
- (a) in a case where the order is made by an officer other than a superior officer, a period not exceeding the period of eight days beginning with the date of the order; and
 - (b) in a case where the order is made by a superior officer, a period not exceeding the period of twenty-eight days beginning with the date of the order.

- (2) Where a protection order has been made with respect to a child and it appears at any time to the officer having jurisdiction—
- (a) that the period for which the order is to have effect is less than the maximum period applicable under subsection (1) above in relation to a protection order made by that officer; and
 - (b) that there is reasonable cause to believe that the child concerned is likely to suffer significant harm if the effect of the order is not extended or further extended,

that officer may by an order (in this Part of this Act referred to as an “extension order”) continue the effect of the protection order until a time no later after the making of the protection order than the end of that maximum period.

- (3) No extension order shall be made without affording—
- (a) the child to whom the protection order relates,
 - (b) his parents,
 - (c) any other person who has parental responsibility for him, and
 - (d) any other person with whom he was residing immediately before the making of the application for the protection order,

an opportunity to make representations to the officer by whom the case is being considered, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person as is mentioned in paragraph (c) or paragraph (d) above.

- (4) Where a child is removed under a protection order to accommodation in the United Kingdom—
- (a) the order shall not authorise his being kept in that accommodation after the end of the period of twenty-four hours beginning with his arrival in that accommodation; but
 - (b) the powers conferred by the ^{M24}Children Act 1989, the ^{M25}Social Work (Scotland) Act 1968 and the ^{M26}Children and Young Persons Act (Northern Ireland) 1968 shall be exercisable with respect to the child as if everything

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which was relevant to the question of whether a protection order should be made were relevant, notwithstanding that the child has been removed under the order, to the question whether the conditions for the exercise of any of those powers are satisfied.

- (5) Without prejudice to the power to vary or revoke any direction previously given under subsection (4) of section 20 above, an officer making an extension order may exercise the power to give such directions and subsection (11) of that section shall have effect accordingly.

Marginal Citations

M24 1989 c. 41.

M25 1968 c. 49.

M26 1968 c. 34 (N.I.).

VALID FROM 01/06/1996

22 Review and discharge of protection orders.

- (1) Subsections (2) to (4) below apply in relation to a protection order in any case where—
- (a) the order as originally made has effect for a period exceeding eight days; or
 - (b) by an extension order the effect of the protection order is continued for a period exceeding seven days beginning with the date of the extension order.
- (2) If, during the period of six days beginning with the date of the protection order or during any other period of six days while the protection order continues to have effect,—
- (a) no extension order is made continuing the effect of the protection order, and
 - (b) no review of the protection order is carried out in accordance with subsection (4) below,
- then, subject to subsection (3) below, on the day immediately following the end of that six-day period a superior officer shall carry out a review of the protection order in accordance with subsection (4) below.
- (3) Subsection (2) above does not require a review of a protection order to be carried out on the day following any six-day period if—
- (a) the order ceases to have effect at the end of that period or on that following day; or
 - (b) on that following day an extension order is made continuing the effect of the protection order.
- (4) A superior officer carrying out a review of a protection order shall consider whether—
- (a) if the child were returned by the responsible person, or
 - (b) where section 20(2)(b)(ii) above applies, if the child were allowed to be removed from the place in which he was being accommodated immediately before the making of the order,

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any of the conditions in paragraphs (a) to (c) of subsection (3) of section 19 above would be satisfied; and if in his opinion none of those conditions would be satisfied he shall discharge the order.

- (5) Without prejudice to the possibility of the discharge of a protection order on a review under the preceding provisions of this section, if an application is made by—
- (a) the responsible person,
 - (b) the child to whom the order relates,
 - (c) a parent of his,
 - (d) any other person who has parental responsibility for him, or
 - (e) any other person with whom he was residing immediately before the making of the application for the order,

then, in such circumstances and subject to such conditions as may be prescribed by regulations, the officer having jurisdiction may discharge the order.

- (6) Regulations may make provision as to the procedure to be followed on a review of a protection order (including provision as to the making of representations by any persons).
- (7) Without prejudice to the power to vary or revoke any direction previously given under subsection (4) of section 20 above, if, on carrying out a review of a protection order or on an application under subsection (5) above, the officer dealing with the matter does not discharge the order, he may exercise the power to give directions under subsection (4) of section 20 above and subsection (11) of that section shall have effect accordingly.

VALID FROM 01/06/1996

23 Interpretation of Part III.

- (1) In this Part of this Act—

“accommodation ” means any service hospital or other suitable place the occupier of which is willing temporarily to receive the child to whom a protection order relates, whether situated in the United Kingdom, the country or territory where the child resides or elsewhere;

“assessment order ” has the meaning given by section 17 above;

“child ” means a person under the age of eighteen;

“civilian in a corresponding position ” has the same meaning as in section 13 of the ^{M27}Armed Forces Act 1981;

“contact order ” has the meaning given by section 8(1) of the ^{M28}Children Act 1989;

“extension order ” has the meaning given by section 21(2) above;

“officer having jurisdiction ” and “superior officer ” shall be construed in accordance with subsection (2) below;

“parental responsibility ” has the meaning given by section 3 of the Children Act 1989;

“parents ” shall be construed in accordance with subsection (3) below;

“protection order ” has the meaning given by section 19 above;

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“regulations ” means regulations made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;

“the responsible person ”, in relation to a protection order, has the meaning given by section 20(1) above;

“service hospital ” means a military, air-force or naval unit or establishment or a ship at or in which medical or surgical treatment is provided for persons subject to service law; and

“service law ” means military law, air-force law or the 1957 Act.

- (2) Regulations may make provision for determining—
- (a) who, in relation to an assessment order or a protection order, is at any time the officer having jurisdiction for the purposes of any of the provisions of this Part of this Act; and
 - (b) who, in relation to a protection order, is at any time a superior officer for the purposes of sections 21 and 22 above.
- (3) Any reference in this Part of this Act to the parents of a child shall be construed without regard to whether they are or have been married to each other at any time; and this subsection is without prejudice to—
- (a) the operation of section 1 of the ^{M29}Family Law Reform Act 1987 as part of the law of England and Wales or section 1 of the ^{M30}Law Reform (Parent and Child) (Scotland) Act 1986 as part of the law of Scotland; and
 - (b) any enactment or rule of law relating to adoption or legitimation.
- (4) Any power under this Part of this Act to make regulations may make different provision for different cases and for different purposes.

Marginal Citations

M27 1981 c. 55.

M28 1989 c. 41.

M29 1987 c. 42.

M30 1986 c. 9.

PART IV

SUPPLEMENTARY

Commencement Information

I2 Pt. IV: only ss. 25 and 27 are in force, see s. 27(2)

24 Application of Services Acts, including provisions of this Act, to Channel Islands and Isle of Man.

- (1) In section 216 of the ^{M31}Army Act 1955 and section 214 of the ^{M32}Air Force Act 1955 (application of those Acts to the Channel Islands and the Isle of Man) for subsection (1) there shall be substituted the following subsection—

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- “(1) This Act extends to the Channel Islands and the Isle of Man subject to the following provisions of this section and to such modifications as Her Majesty may by Order in Council specify; and, where any such modification refers to any law for the time being in force in any of the Channel Islands or the Isle of Man, the modification may be expressed to have effect for all purposes of this Act (and not only in the application of this Act to the Channel Islands or the Isle of Man, as the case may be).”
- (2) In section 125 of the 1957 Act (application of that Act to the Channel Islands and the Isle of Man) for subsection (1) there shall be substituted the following subsection—
- “(1) This Act extends to the Channel Islands and the Isle of Man subject to subsection (2) below and to such modifications as Her Majesty may by Order in Council specify; and, where any such modification refers to any law for the time being in force in any of the Channel Islands or the Isle of Man, the modification may be expressed to have effect for all purposes of this Act (and not only in the application of this Act to the Channel Islands or the Isle of Man, as the case may be).”
- (3) Section 216(4) of the Army Act 1955, section 214(4) of the Air Force Act 1955 and section 125(3) of the 1957 Act (which contain specific modifications in relation to the Channel Islands and the Isle of Man) shall cease to have effect.
- (4) Section 216 of the Army Act 1955 and section 214 of the Air Force Act 1955 shall each apply in relation to the provisions of section 10 and Part III of this Act as if those provisions were comprised in the Army Act 1955 or the Air Force Act 1955, as the case may require.
- (5) Section 125 of the 1957 Act shall apply in relation to the provisions of—
- (a) the ^{M33}Naval Forces (Enforcement of Maintenance Liabilities) Act 1947, and
 - (b) section 10 and Part III of this Act,
- as if those provisions were comprised in the 1957 Act.

Marginal Citations

M31 1955 c. 18.

M32 1955 c. 19.

M33 1947 c. 24.

25 The 1955 Acts and the 1957 Act.

In this Act—

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

“the 1957 Act ” means the ^{M34}Naval Discipline Act 1957.

Marginal Citations

M34 1957 c. 53.

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26 Minor and consequential amendments and repeals.

- (1) Schedule 2 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments specified in Schedule 3 to this Act, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule.

27 Short title and commencement.

- (1) This Act may be cited as the Armed Forces Act 1991.
- (2) Subject to subsection (4) below, Parts II and III of this Act, sections 24 and 26 above and Schedules 2 and 3 to this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different provisions and for different purposes.
- (3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (4) The repeal by this Act of section 1 of the ^{M35}Armed Forces Act 1986 shall come into force on 1st January 1992.

Marginal Citations

M35 [1986 c. 21](#).

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SCHEDULES

SCHEDULE 1

Section 10.

ASSESSORS OF COMPENSATION FOR MISCARRIAGES OF JUSTICE

- 1 A person may only be appointed to be an assessor for the purposes of section 10 of this Act if he is—
- (a) a person who has a 7 year general qualification, within the meaning of section 71 of the ^{M36}Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland;
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;
 - (d) a person who holds or has held judicial office in any part of the United Kingdom; or
 - (e) a member (whether the chairman or not) of the Criminal Injuries Compensation Board.

Marginal Citations

M36 1990 c. 41.

- 2 A person shall hold and vacate office as an assessor in accordance with the terms of his appointment.
- 3 A person shall vacate office as an assessor—
- (a) if he ceases to be qualified for appointment as an assessor, or
 - (b) on attaining the age of 72,
- unless the Secretary of State considers that it is in the interests of the efficient operation of section 10 of this Act that he should continue to hold office.
- 4 A person may at any time resign his office as an assessor by giving the Secretary of State notice in writing to that effect.
- 5 Subject to paragraph 6 below, the Secretary of State may at any time remove a person from office as an assessor if satisfied that—
- (a) he has been convicted of a criminal offence;
 - (b) he has become bankrupt, has made an arrangement with his creditors, has had his estate sequestrated or has granted a trust deed for his creditors or a composition contract;
 - (c) he is incapacitated by physical or mental illness; or
 - (d) he is otherwise unable or unfit to perform his duties.
- 6 The power conferred by paragraph 5 above shall only be exercisable,—
- (a) in the case of a person who qualifies for appointment under paragraph 1(a) or paragraph 1(c) above, with the consent of the Lord Chancellor;

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- (b) in the case of a person who qualifies for appointment under paragraph 1(b) above, with the consent of the Lord President of the Court of Session;
 - (c) in the case of a person who qualifies for appointment under paragraph 1(d) above by virtue of holding or having held judicial office in England and Wales or Northern Ireland, with the consent of the Lord Chancellor; and
 - (d) in the case of a person who qualifies for appointment under paragraph 1(d) above by virtue of holding or having held judicial office in Scotland, with the consent of the Lord President of the Court of Session.
- 7 An assessor shall be paid such remuneration and allowances as the Secretary of State may, with the approval of the Treasury, determine.

SCHEDULE 2

Section 26.

MINOR AND CONSEQUENTIAL AMENDMENTS

Removal of offender to United Kingdom before confirmation of sentence

- 1 In section 71AA(2) of each of the 1955 Acts (young service offenders: custodial orders) and in section 127(2) of each of those Acts (country in which sentence of imprisonment or detention to be served) the words “after the confirmation of the sentence is completed” shall be omitted.

Power to impose imprisonment for default in payment of fines

- 2 In section 71B of each of the 1955 Acts and in section 43B of the 1957 Act (power to impose imprisonment for default in payment of fines), in subsection (2) (which refers to the Table in section 31(3A) of the Powers of Criminal Courts Act 1973) for the words from “from time to time” to “the Magistrates’ Courts Act 1980” there shall be substituted “for the time being in force”.

Evidence of child of tender years

- 3 (1) In section 93 of each of the 1955 Acts (administration of oaths)—
- (a) in the proviso to subsection (2) (which relates to the evidence of a child of tender years and the corroboration thereof) the words from “so however” to the end of the proviso shall be omitted; and
 - (b) after subsection (2) there shall be inserted the following subsection—
“(2A) Unsworn evidence admitted by virtue of the proviso to subsection (2) above may corroborate evidence (sworn or unsworn) given by any other person.”
- (2) In section 60 of the 1957 Act (administration of oaths)—
- (a) the proviso to subsection (3) (which relates to the corroboration of evidence given by a child of tender years) shall be omitted; and

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(b) after that subsection there shall be inserted the following subsection—

“(3A) Unsworn evidence admitted by virtue of subsection (3) above may corroborate evidence (sworn or unsworn) given by any other person.”

Rules of evidence

- 4 (1) In section 99 of each of the 1955 Acts (rules of evidence), in subsection (1) after the words “subject to section 99A below ” there shall be inserted “to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.) ”.
- (2) In the ^{M37}Armed Forces Act 1976, in Schedule 3 (Standing Civilian Courts), in paragraph 11 (rules of evidence) after the words “paragraph 12 below ” there shall be inserted “and to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.) ”.

Marginal Citations

M37 1976 c. 52.

Finality of trials

- 5 (1) Each of the 1955 Acts shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 133 (jurisdiction of civil courts), in subsection (1) for the words “an offence substantially the same as that offence ” there shall be substituted “the same, or substantially the same offence ”.
- (3) In section 134 (persons not to be tried under those Acts for offences already disposed of), in subsection (1) for the words “that offence ” there shall be substituted “the same, or substantially the same offence ”.

Enactments requiring fiat of Attorney General etc. in connection with proceedings

- 6 (1) In section 204A of each of the 1955 Acts (fiat of Attorney General etc. not required in connection with proceedings under the Act, other than subsections (1) and (3) of section 132) for the words “subsections (1) and (3) ” there shall be substituted “subsection (3A) ”.
- (2) In section 129A of the 1957 Act (fiat of Attorney General etc. not required in connection with proceedings under the Act, other than section 52(3)(b)) for the words “section 52(3)(b) ” there shall be substituted “section 52(3) ”.

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Recognizance by parent or guardian on conviction of civilian under 17

- 7 In Schedule 4A to the 1957 Act (powers of court on trial of civilian) in paragraph 14(1) (order requiring parent or guardian to enter into a recognizance in respect of person under 17 found guilty of an offence) for the amount specified as the maximum amount of the recognizance there shall be substituted “£1,000”.

Power of Courts-Martial Appeal Court to order retrial

- 8 In section 19 of the ^{M38}Courts-Martial (Appeals) Act 1968 (power to authorise retrial in certain cases), in subsection (1) the words from “the appeal against conviction” to “and” shall be omitted.

Marginal Citations

M38 1968 c. 20.

Compensation orders

- 9 (1) In section 38 of the ^{M39}Powers of Criminal Courts Act 1973 (effect of compensation order on subsequent award of damages in civil proceedings)—
- (a) in subsection (1) after the words “compensation order” there shall be inserted “or a service compensation order or award”;
 - (b) in subsection (2) after the word “order” there shall be inserted “or award”; and
 - (c) at the end of the section there shall be added the following subsection—

“(3) In this section a “service compensation order or award” means—

 - (a) an order requiring the payment of compensation under paragraph 11 of Schedule 5A to the Army Act 1955, of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; or
 - (b) an award of stoppages payable by way of compensation under any of those Acts.”
- (2) In section 67 of the ^{M40}Criminal Justice (Scotland) Act 1980 (effect of compensation order on subsequent award of damages in civil proceedings)—
- (a) in subsection (1) after the words “compensation order” there shall be inserted “or a service compensation order or award”;
 - (b) in subsections (2) and (3) after the word “order”, in every place where it occurs, there shall be inserted “or award”; and
 - (c) at the end of the section there shall be added the following subsection—

“(4) In this section a “service compensation order or award” means—

 - (a) an order requiring the payment of compensation under paragraph 11 of Schedule 5A to the Army Act 1955, of

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- Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; or
- (b) an award of stoppages payable by way of compensation under any of those Acts.”
- (3) In Article 5 of the ^{M41}Criminal Justice (Northern Ireland) Order 1980 (effect of compensation order on subsequent award of damages in civil proceedings)—
- (a) in paragraph (1) after the words “compensation order” there shall be inserted “or a service compensation order or award”;
- (b) in paragraphs (2) and (3) after the word “order”, in every place where it occurs, there shall be inserted “or award”; and
- (c) at the end of the Article there shall be added the following paragraph—
- “(4) In this Article a “service compensation order or award” means—
- (a) an order requiring the payment of compensation under paragraph 11 of Schedule 5A to the Army Act 1955, of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; or
- (b) an award of stoppages payable by way of compensation under any of those Acts.”
- (4) In Schedule 7 to the ^{M42}Criminal Justice Act 1988 (compensation payable by Criminal Injuries Compensation Board), in paragraph 13 (reduction of compensation by reference to damages etc.) at the end of sub-paragraph (b) there shall be inserted—
- “ or
- (c) any order under paragraph 11 (compensation orders) of Schedule 5A to the Army Act 1955, of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; or
- (d) any award of stoppages under any of the Acts referred to in sub-paragraph (c) above”.

Marginal Citations

M39 1973 c. 62.

M40 1980 c. 62.

M41 S.I. 1980/704 (N.I.6).

M42 1988 c. 33.

Powers of Standing Civilian Courts

- 10 In section 8 of the ^{M43}Armed Forces Act 1976 (powers of Standing Civilian Courts in relation to civilians), in subsection (1) for the words “and to section 71A” there shall be substituted “and to the restrictions imposed by section 71A”.

Marginal Citations

M43 1976 c. 52.

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Removal or amendment of spent or obsolete expressions

- 11 (1) In section 131 of each of the 1955 Acts (trial and punishment of service offences notwithstanding offender ceasing to be subject to military or air-force law), in subsection (1) the word “reconsideration” shall be omitted.
- (2) In section 145 of each of the 1955 Acts (forfeiture of pay for absence from duty), in subsection (1), in paragraph (b)—
- (a) the words “corrective training, preventive detention” shall be omitted; and
 - (b) for the words from “an order or sentence” to the end of the paragraph there shall be substituted—
 - “(i) an order or sentence of a civil court;
 - (ii) a revocation of a licence under section 62 of the Criminal Justice Act 1967; or
 - (iii) an order of recall under section 23 of the Prison Act (Northern Ireland) 1953.”
- (3) In the 1957 Act, in section 129 (jurisdiction of civil courts), in subsection (2) the words “corrective training, preventive detention” shall be omitted.
- (4) In the ^{M44}Reserve Forces Act 1980, in Schedule 6 (general provisions as to evidence in proceedings under Parts IV and V of that Act) paragraph 1(7A) shall be omitted.

Marginal Citations

M44 1980 c. 9.

VALID FROM 01/01/1992

SCHEDULE 3

Section 26.

ENACTMENTS REPEALED

Commencement Information

- I3** Sch. 3 wholly in force; the repeal of s. 1 of the [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#) came into force at 01.01.1992, see [s. 27\(4\)](#); further provisions in force at 1.1.1992 by [S.I. 1991/2719, art. 2, Sch.](#); the remaining provisions in force at 1.6.1996 by [S.I. 1996/1173, art. 2](#) (with savings in [art. 3](#))

Chapter	Short title	Extent of repeal
28 & 29 Vict. c. 73.	The Naval and Marine Pay and Pensions Act 1865.	Sections 4 and 5.
10 & 11 Geo. 6 c. 24.	The Naval Forces (Enforcement of Maintenance Liabilities) Act 1947.	In section 1 subsections (3) and (5).Section 2.

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3 & 4 Eliz. 2 c. 18.	The Army Act 1955.	<p>Section 71A(1B) (a).In section 71AA, in subsection (1) the words “subject to subsection (1A) below”, subsection (1A) and in subsection (2) the words from “after” to “completed”.In section 93, in the proviso to subsection (2) the words from “so however” onwards.In section 122(1) the words “this Part of”.In section 127(2) the words from “after” to “completed”.In section 131(1) the word “reconsideration”.In section 145(1)(b) the words “corrective training, preventive detention”.In section 150, in subsection (1)(a) the words “or child” and in subsection (5) the words “or child”, in both places where they occur, and the paragraph beginning “references to a child”.Section 216(4).In section 225(1), in the definition of “stoppages” the words from “for any expense” onwards.In Schedule 5A, in paragraph 2 the definition of “reception order”, paragraphs 6 to 9, in paragraph 10(1A) the words from the beginning to “appropriate and”, in paragraph 11(4) the words from “and no such order” onwards and, in paragraph 15(3), in the third column of the Table paragraph 2.</p>
3 & 4 Eliz. 2 c. 19.	The Air Force Act 1955.	<p>Section 71A(1B) (a).In section 71AA, in subsection (1) the words “subject to subsection (1A) below”, subsection (1A) and in subsection (2) the words from “after” to “completed”.In</p>

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		<p>section 93, in the proviso to subsection (2) the words from “so however ” onwards. In section 122(1) the words “this Part of ”. In section 127(2) the words from “after ” to “completed ”. In section 131(1) the word “reconsideration ”. In section 145(1)(b) the words “corrective training, preventive detention ”. In section 150, in subsection (1)(a) the words “or child ” and in subsection (5) the words “or child ”, in both places where they occur, and the paragraph beginning “references to a child ”. Section 214(4). In section 223(1), in the definition of “stoppages ” the words from “for any expense ” onwards. In Schedule 5A, in paragraph 2 the definition of “reception order ”, paragraphs 6 to 9, in paragraph 10(1A) the words from the beginning to “appropriate and ”, in paragraph 11(4) the words from “and no such order ” onwards and, in paragraph 15(3), in the third column of the Table paragraph 2.</p>
5 & 6 Eliz. 2 c. 53.	The Naval Discipline Act 1957.	Section 43A(1B) (a). In section 43AA, in subsection (1) the words “subject to subsection (1A) below ” and subsection (1A). In section 60 the proviso to subsection (3). Section 125(3). In section 129(2) the words “corrective training, preventive detention ”. In Schedule 4A, in paragraph 2 the definition of “reception order ”, paragraphs 6 to 9, in paragraph 10(1A) the words from the beginning

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		to “appropriate and”, in paragraph 11(4) the words from “and no such order” onwards and, in paragraph 15(3), in the third column of the Table paragraph 2.
1968 c. 20.	The Courts-Martial (Appeals) Act 1968.	In section 8(1A)(a), “6” and the words “reception orders”. In section 19(1) the words from “the appeal against conviction” to “and”.
1974 c. 53.	The Rehabilitation of Offenders Act 1974.	Section 5(5)(h).
S.I. 1978/1908 (N.I. 27).	The Rehabilitation of Offenders (Northern Ireland) Order 1978.	Article 6(5)(d).
1980 c. 9.	The Reserve Forces Act 1980.	In Schedule 6 paragraph 1(7A).
1981 c. 55.	The Armed Forces Act 1981.	Section 14.
1982 c. 14.	The Reserve Forces Act 1982.	In section 2 subsections (4) and (5).
1986 c. 21.	The Armed Forces Act 1986.	Section 1. Section 13. In Schedule 1, in paragraph 12 sub-paragraphs (3) and (5).
1989 c. 41.	The Children Act 1989.	In Schedule 12 paragraphs 8, 10 and 18. In Schedule 14 paragraph 15(1)(b) and, in paragraph 16, in sub-paragraph (1) the words “or (b)”, sub-paragraph (2) (b) and the word “or” immediately preceding it and sub-paragraph (3).

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