Armed Forces Act 2006

2006 CHAPTER 52

F1

An Act to make provision with respect to the armed forces; and for connected purposes. [8th November 2006]

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:—

Textual Amendments

F1 Act expires on 8.11.2007, see s. 382(1)(2) (subject to power to continue in s. 382(3)-(6))

FIRST GROUP OF PARTS

DISCIPLINE

VALID FROM 28/03/2009

PART 1

OFFENCES

Assisting an enemy, misconduct on operations etc

1 Assisting an enemy

(1) A person subject to service law commits an offence if, without lawful excuse, he intentionally—

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(a) communicates with an enemy;
(b) gives an enemy information that would or might be useful to the enemy;
(c) fails to make known to the proper authorities any information received by him from an enemy;
(d) provides an enemy with any supplies; or
(e) harbours or protects an enemy other than a prisoner of war.

(2) A person subject to service law who has been captured by an enemy commits an offence if, without lawful excuse, he intentionally serves with or assists the enemy—
(a) in the prosecution of hostilities or of measures likely to influence morale; or
(b) in any other manner not authorised by international law.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

2 Misconduct on operations

(1) A person subject to service law commits an offence if, without reasonable excuse, he—
(a) surrenders any place or thing to an enemy; or
(b) abandons any place or thing which it is his duty to defend against an enemy or to prevent from falling into the hands of an enemy.

(2) Subsections (3) to (5) apply to a person subject to service law who is—
(a) in the presence or vicinity of an enemy;
(b) engaged in an action or operation against an enemy; or
(c) under orders to be prepared for any action or operation by or against an enemy.

(3) A person to whom this subsection applies commits an offence if he fails to use his utmost exertions to carry out the lawful commands of his superior officers.

(4) A person to whom this subsection applies commits an offence if he is on guard duty and posted or ordered to patrol, or is on watch, and—
(a) without reasonable excuse, he sleeps; or
(b) (without having been regularly relieved) he leaves any place where it is his duty to be.

(5) A person to whom this subsection applies commits an offence if, without reasonable excuse, he intentionally communicates with a person who is—
(a) a member of any of Her Majesty's forces or of any force co-operating with them, or
(b) a relevant civilian,
and the communication is likely to cause that person to become despondent or alarmed.

(6) In subsection (5) "relevant civilian" means a person who—
(a) is a civilian subject to service discipline; and
(b) is accompanying a person subject to service law who is—
(i) in the presence or vicinity of an enemy; or

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(ii) engaged in an action or operation against an enemy.

(7) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

3 Obstructing operations

(1) A person subject to service law commits an offence if—

(a) he does an act that is likely to put at risk the success of an action or operation of any of Her Majesty's forces; and

(b) he intends to prevent, or is reckless as to whether he prevents, the success of the action or operation.

(2) A person subject to service law commits an offence if—

(a) without lawful excuse, he does an act that delays or discourages an action or operation of any of Her Majesty's forces; and

(b) he intends to delay or discourage the action or operation.

(3) In this section "act" includes an omission and references to the doing of an act are to be read accordingly.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—

(a) if the offence relates to an action or operation against an enemy, may be for life;

(b) otherwise, must not exceed ten years.

4 Looting

(1) A person within subsection (4) commits an offence if, without lawful excuse—

(a) he takes any property from a person who has been killed, injured, captured or detained in the course of an action or operation of any of Her Majesty's forces or of any force co-operating with them; or

(b) he searches such a person with the intention of taking property from him.

(2) A person within subsection (4) commits an offence if, without lawful excuse—

(a) he takes any property which has been left exposed or unprotected in consequence of—

(i) an action or operation of any of Her Majesty's forces or of any force co-operating with them; or

(ii) an event, or state of affairs, in relation to which such an action or operation is undertaken; or

(b) he searches any place or thing with the intention of taking property of a description mentioned in paragraph (a).

(3) A person within subsection (4) commits an offence if he takes otherwise than for the public service any vehicle, equipment or stores abandoned by an enemy.

(4) A person is within this subsection if he is—

(a) a person subject to service law; or

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(b) a civilian subject to service discipline.

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—

(a) in the case of an offence under subsection (1) or (2), may be for life;

(b) in the case of an offence under subsection (3), must not exceed seven years.

5 Failure to escape etc

(1) Subsections (2) and (3) apply to a person subject to service law who has been captured by an enemy.

(2) A person to whom this subsection applies commits an offence if—

(a) he is aware of steps that he could take to rejoin Her Majesty's forces;

(b) he could reasonably be expected to take those steps; and

(c) without lawful excuse, he fails to take them.

(3) A person to whom this subsection applies commits an offence if, without lawful excuse, he intentionally prevents or discourages another person subject to service law who has been captured by an enemy from taking any reasonable steps to rejoin Her Majesty's forces.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed ten years.

Mutiny

6 Mutiny

(1) A person subject to service law commits an offence if he takes part in a mutiny.

(2) For the purposes of this section a person subject to service law takes part in a mutiny if—

(a) in concert with at least one other person subject to service law, he—

(i) acts with the intention of overthrowing or resisting authority; or

(ii) disobeys authority in such circumstances as to subvert discipline;

(b) he agrees with at least one other person subject to service law to overthrow or resist authority; or

(c) he agrees with at least one other person subject to service law to disobey authority, and the agreed disobedience would be such as to subvert discipline.

(3) For the purposes of subsection (2)—

(a) "authority" means lawful authority in any part of Her Majesty's forces or of any force co-operating with them;

(b) the reference to acting includes omitting to act.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

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7 Failure to suppress mutiny

(1) A person subject to service law commits an offence if—

(a) he knows that a mutiny is occurring or is intended; and

(b) he fails to take such steps as he could reasonably be expected to take to prevent or suppress it.

(2) For the purposes of this section a mutiny occurs when a person subject to service law, in concert with at least one other person subject to service law—

(a) acts with the intention of overthrowing or resisting authority; or

(b) disobeys authority in such circumstances as to subvert discipline.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

Desertion and absence without leave

8 Desertion

(1) A person subject to service law commits an offence if he deserts.

(2) For the purposes of this Act a person deserts if he is absent without leave and—

(a) he intends to remain permanently absent without leave; or

(b) he intends to avoid a period of active service.

(3) In this section "active service" means service in—

(a) an action or operation against an enemy;

(b) an operation outside the British Islands for the protection of life or property; or

(c) the military occupation of a foreign country or territory.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—

(a) if the offender intended to avoid a period of active service, may be for life;

(b) otherwise, must not exceed two years.

9 Absence without leave

(1) A person subject to service law commits an offence if subsection (2) or (3) applies to him.

(2) This subsection applies to a person if he is intentionally or negligently absent without leave.

(3) This subsection applies to a person if—

(a) he does an act, being reckless as to whether it will cause him to be absent without leave; and

(b) it causes him to be absent without leave.

(4) In subsection (3) "act" includes an omission and the reference to the doing of an act is to be read accordingly.

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(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

10 Failure to cause apprehension of deserters or absentees

(1) A person subject to service law commits an offence if—

(a) he knows that another person—

(i) has committed, is committing or is attempting to commit an offence under section 8 (desertion); or

(ii) is committing or attempting to commit an offence under section 9 (absence without leave); and

(b) he fails to take such steps as he could reasonably be expected to take to cause that person to be apprehended.

(2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

Insubordination etc

11 Misconduct towards a superior officer

(1) A person subject to service law commits an offence if—

(a) he uses violence against a superior officer ("B"); and

(b) he knows or has reasonable cause to believe that B is a superior officer.

(2) A person subject to service law commits an offence if—

(a) his behaviour towards a superior officer ("B") is threatening or disrespectful; and

(b) he knows or has reasonable cause to believe that B is a superior officer.

(3) For the purposes of this section—

(a) the behaviour of a person ("A") towards another person ("B") includes any communication made by A to B (whether or not in B's presence);

(b) "threatening" behaviour is not limited to behaviour that threatens violence.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—

(a) in the case of an offence under subsection (1), or an offence under subsection (2) of behaviour that is threatening, ten years;

(b) in any other case, two years.

12 Disobedience to lawful commands

(1) A person subject to service law commits an offence if—

(a) he disobeys a lawful command; and

(b) he intends to disobey, or is reckless as to whether he disobeys, the command.

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(2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed ten years.

13 Contravention of standing orders

(1) A person subject to service law, or a civilian subject to service discipline, commits an offence if—

(a) he contravenes a lawful order to which this section applies; and

(b) he knows or could reasonably be expected to know of the order.

(2) This section applies to standing orders, and other routine orders of a continuing nature, of any of Her Majesty's forces, made for any—

(a) part of Her Majesty's forces;

(b) area or place; or

(c) ship, train or aircraft;

but paragraph (a) of this subsection does not apply in relation to a civilian subject to service discipline.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

14 Using force against a sentry etc

(1) A person subject to service law commits an offence if—

(a) he uses force against a member of any of Her Majesty's forces, or of any force co-operating with them, who is—

(i) on guard duty and posted or ordered to patrol;

(ii) on watch; or

(iii) under orders to regulate traffic by land, water or air; or

(b) by the threat of force he compels such a person to let him or any other person pass.

(2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

Neglect of duty and misconduct

15 Failure to attend for or perform duty etc

(1) A person subject to service law commits an offence if, without reasonable excuse, he—

(a) fails to attend for any duty;

(b) leaves any duty before he is permitted to do so; or

(c) fails to perform any duty.

(2) A person subject to service law commits an offence if he performs any duty negligently.

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(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

16 Malingering

(1) A person subject to service law commits an offence if, to avoid service—

(a) he pretends to have an injury;

(b) by any act he causes himself an injury;

(c) by any act or omission he aggravates or prolongs any injury of his; or

(d) he causes another person to injure him.

(2) A person subject to service law commits an offence if, at the request of another person subject to service law ("B") and with the intention of enabling B to avoid service—

(a) by any act he causes B an injury; or

(b) by any act or omission he aggravates or prolongs any injury of B.

(3) In this section—

"injury" includes any disease and any impairment of a person's physical or mental condition, and the reference to injuring is to be read accordingly;

"service" includes any particular duty or kind of duty.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

17 Disclosure of information useful to an enemy

(1) A person subject to service law commits an offence if—

(a) without lawful authority, he discloses information that would or might be useful to an enemy; and

(b) he knows or has reasonable cause to believe that the information would or might be useful to an enemy.

(2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

18 Making false records etc

(1) A person subject to service law commits an offence if—

(a) he makes an official record, knowing that it is false in a material respect; and

(b) he knows or has reasonable cause to believe that the record is official.

(2) A person who adopts as his own a record made by another person is for the purposes of subsection (1) to be treated, as well as that other person, as making the record.

(3) A person subject to service law commits an offence if—

(a) with intent to deceive, he tampers with or suppresses an official document; and

(b) he knows or has reasonable cause to believe that the document is official.

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(4) A person subject to service law commits an offence if—

(a) with intent to deceive, he fails to make a record which he is under a duty to make; and

(b) he knows or has reasonable cause to believe that the record would, if made, be official.

(5) For the purposes of this section—

(a) "record" means a document or an entry in a document;

(b) "document" means anything in which information is recorded;

(c) a record or document is official if it is or is likely to be made use of, in connection with the performance of his functions as such, by a person who holds office under the Crown or is in the service of the Crown.

(6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

19 Conduct prejudicial to good order and discipline

(1) A person subject to service law commits an offence if he does an act that is prejudicial to good order and service discipline.

(2) In this section "act" includes an omission and the reference to the doing of an act is to be read accordingly.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

20 Unfitness or misconduct through alcohol or drugs

(1) A person subject to service law commits an offence if, due to the influence of alcohol or any drug—

(a) he is unfit to be entrusted with his duty or any duty which he might reasonably expect to be called upon to perform; or

(b) his behaviour is disorderly or likely to bring discredit to Her Majesty's forces.

(2) Subsection (1) does not apply to the influence of a drug on a person ("A") if—

(a) the drug was taken or administered on medical advice and A complied with any directions given as part of that advice;

(b) the drug was taken or administered for a medicinal purpose, and A had no reason to believe that the drug might impair his ability to carry out the duties mentioned in subsection (1)(a) or (as the case may be) result in his behaving in a way mentioned in subsection (1)(b);

(c) the drug was taken on the orders of a superior officer of A; or

(d) the drug was administered to A on the orders of a superior officer of the person administering it.

(3) In this section—

(a) "drug" includes any intoxicant other than alcohol;

(b) a person's "behaviour" includes anything said by him.

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(4) In proceedings for an offence under this section, any paragraph of subsection (2) is to be treated as not having applied in relation to the defendant unless sufficient evidence is adduced to raise an issue as to whether it did.

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

21 Fighting or threatening behaviour etc

(1) A person subject to service law commits an offence if, without reasonable excuse, he fights another person.

(2) A person subject to service law commits an offence if—

(a) without reasonable excuse, his behaviour is—

(i) threatening, abusive, insulting or provocative; and

(ii) likely to cause a disturbance; and

(b) he intends to be, or is aware that his behaviour may be, threatening, abusive, insulting or provocative.

(3) For the purposes of this section a person's "behaviour" includes anything said by him.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

22 Ill-treatment of subordinates

(1) A person subject to service law who is an officer, warrant officer or non-commissioned officer commits an offence if—

(a) he ill-treats a subordinate ("B");

(b) he intends to ill-treat B or is reckless as to whether he is ill-treating B; and

(c) he knows or has reasonable cause to believe that B is a subordinate.

(2) For the purposes of this section a person ("B") is a subordinate of another person ("A") if—

(a) B is subject to service law; and

(b) A is a superior officer of B.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

23 Disgraceful conduct of a cruel or indecent kind

(1) A person subject to service law commits an offence if—

(a) he does an act which is cruel or indecent; and

(b) his doing so is disgraceful.

(2) In this section "act" includes an omission and the reference to the doing of an act is to be read accordingly.

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(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

Property offences

24 Damage to or loss of public or service property

(1) A person subject to service law commits an offence if—

(a) he does an act that causes damage to or the loss of any public or service property or any property belonging to another person subject to service law; and

(b) either—

(i) he intends to cause damage to or the loss of the property, and there is no lawful excuse for his act; or

(ii) he is reckless as to whether he causes damage to or the loss of the property.

(2) A person subject to service law commits an offence if—

(a) negligently, he does an act that causes damage to or the loss of any public or service property; or

(b) he does an act that is likely to cause damage to or the loss of any public or service property and—

(i) he is reckless as to whether he causes damage to or the loss of the property; or

(ii) he is negligent.

(3) For the purposes of this section—

(a) "act" includes an omission and references to the doing of an act are to be read accordingly;

(b) references to causing include allowing;

(c) "loss" includes temporary loss;

(d) "property" means property of a tangible nature, and references to public or service property are to be read accordingly.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—

(a) in the case of an offence under subsection (1), ten years;

(b) in the case of an offence under subsection (2), two years.

25 Misapplying or wasting public or service property

(1) A person subject to service law commits an offence if he misapplies or wastes any public or service property.

(2) A person guilty of an offence under this section is liable to any punishment mentioned in rows 2 to 12 of the Table in section 164.

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26 Sections 24 and 25: "public property" and "service property"

(1) This section applies for the purposes of sections 24 and 25.

(2) "Public property" means property belonging to or held for the purposes of—
- (a) a department of the Government of the United Kingdom;
- (b) any part of the Scottish Administration;
- (c) a Northern Ireland department; or
- (d) the National Assembly for Wales.

(3) "Service property" means property—
- (a) belonging to or used for the purposes of any of Her Majesty's forces;
- (b) belonging to a Navy, Army and Air Force Institute; or
- (c) belonging to an association established, or having effect as if established, under section 110 of the Reserve Forces Act 1996 (c. 14) (reserve associations).

Offences against service justice

27 Obstructing or failing to assist a service policeman

(1) A person within subsection (2) commits an offence if—
- (a) he intentionally obstructs, or intentionally fails to assist when called upon to do so, a person who is—
  - (i) a service policeman acting in the course of his duty; or
  - (ii) a person subject to service law lawfully exercising authority on behalf of a provost officer; and
- (b) he knows or has reasonable cause to believe that that person is a service policeman or a person exercising authority on behalf of a provost officer.

(2) A person is within this subsection if he is—
- (a) a person subject to service law; or
- (b) a civilian subject to service discipline.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

28 Resistance to arrest etc

(1) A person subject to service law ("A") commits an offence if another person ("B"), in the exercise of a power conferred by or under this Act, orders A into arrest and—
- (a) A disobeys the order;
- (b) A uses violence against B; or
- (c) A's behaviour towards B is threatening.

(2) A person subject to service law, or a civilian subject to service discipline, commits an offence if—
- (a) he uses violence against a person who has a duty to apprehend him, or his behaviour towards such a person is threatening; and

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(b) he knows or has reasonable cause to believe that the person has a duty to apprehend him.

(3) For the purposes of this section—

(a) a person's "behaviour" includes anything said by him;

(b) "threatening" behaviour is not limited to behaviour that threatens violence;

(c) a "duty" to apprehend a person means such a duty arising under service law.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

29 Offences in relation to service custody

(1) A person subject to service law, or a civilian subject to service discipline, commits an offence if he escapes from lawful custody.

(2) A person subject to service law, or a civilian subject to service discipline, commits an offence if—

(a) he uses violence against a person in whose lawful custody he is, or his behaviour towards such a person is threatening; and

(b) he knows or has reasonable cause to believe that the custody is lawful.

(3) For the purposes of this section—

(a) references to custody are to service custody;

(b) a person's behaviour includes anything said by him;

(c) "threatening" behaviour is not limited to behaviour that threatens violence.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

30 Allowing escape, or unlawful release, of prisoners etc

(1) A person subject to service law commits an offence if—

(a) he knows that a person is committed to his charge, or that it is his duty to guard a person;

(b) he does an act that results in that person's escape; and

(c) he intends to allow, or is reckless as to whether the act will allow, that person to escape, or he is negligent.

(2) A person subject to service law commits an offence if—

(a) he knows that a person is committed to his charge;

(b) he releases that person without authority to do so; and

(c) he knows or has reasonable cause to believe that he has no such authority.

(3) In this section "act" includes an omission and the reference to the doing of an act is to be construed accordingly.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed—

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(a) in the case of an offence under subsection (1) where the offender intended to allow the person to escape, or an offence under subsection (2) where the offender knew he had no authority to release the person, ten years;

(b) in any other case, two years.

Ships and aircraft

31 Hazarding of ship

(1) A person subject to service law commits an offence if he does an act that causes the hazarding of any of Her Majesty's ships and—

(a) he intends to cause damage to or the stranding or loss of the ship, and there is no lawful excuse for his act; or

(b) he is reckless as to whether he causes damage to or the stranding or loss of the ship.

(2) A person subject to service law commits an offence if, negligently, he does an act that causes the hazarding of any of Her Majesty's ships.

(3) For the purposes of this section—

(a) "act" includes an omission and references to the doing of an act are to be read accordingly;

(b) references to causing include allowing;

(c) "Her Majesty's ships" means all ships belonging to or used for the purposes of any of Her Majesty's forces.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—

(a) in the case of an offence under subsection (1), may be for life;

(b) in the case of an offence under subsection (2), must not exceed two years.

32 Giving false air signals etc

(1) A person subject to service law commits an offence if, without lawful excuse, he intentionally—

(a) gives a false air signal; or

(b) alters or interferes with an air signal or any equipment for giving an air signal.

(2) In this section "air signal" means a message, signal or indication given (by any means) for the guidance of aircraft or a particular aircraft.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

33 Dangerous flying etc

(1) A person subject to service law commits an offence if—

(a) he does an act—

(i) when flying or using an aircraft, or

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(ii) in relation to an aircraft or aircraft material,

that causes or is likely to cause loss of life or injury to any person; and

(b) either—

(i) he intends to cause loss of life or injury to any person, and there is no lawful excuse for his act; or

(ii) he is reckless as to whether he causes loss of life or injury to any person.

(2) A person subject to service law commits an offence if, negligently, he does an act—

(a) when flying or using an aircraft, or

(b) in relation to an aircraft or aircraft material,

that causes or is likely to cause loss of life or injury to any person.

(3) In this section—

"act" includes an omission and the reference to the doing of an act is to be read accordingly;

"aircraft material" includes—

(a) parts of and accessories for aircraft (whether or not for the time being in aircraft);

(b) armaments in or for use in aircraft;

(c) any other equipment or instrument in or for use in aircraft;

(d) any equipment for use in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;

(e) any fuel for the propulsion of aircraft; and

(f) any lubricant for aircraft or for anything within any of paragraphs (a) to (d).

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence—

(a) in the case of an offence under subsection (1), may be for life;

(b) in the case of an offence under subsection (2), must not exceed two years.

34 Low flying

(1) A person subject to service law commits an offence if—

(a) he flies an aircraft at a height less than the minimum height, other than—

(i) when taking off or landing; or

(ii) in any other circumstances prescribed by regulations made by the Defence Council; and

(b) he intends to fly, or is reckless as to whether he flies, the aircraft at a height less than the minimum height, or he is negligent.

(2) If a person flies an aircraft in contravention of subsection (1) on the orders of another person who is in command of the aircraft, that other person is for the purposes of this section to be treated as flying the aircraft.

(3) In this section "minimum height" means the height prescribed by regulations made by the Defence Council.

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(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

35 Annoyance by flying

(1) A person subject to service law commits an offence if—

(a) he flies an aircraft so as to annoy or be likely to annoy any person;

(b) he can reasonably avoid flying the aircraft as mentioned in paragraph (a); and

(c) he intends to fly, or is reckless as to whether he flies, the aircraft so as to annoy any person, or he is negligent.

(2) If a person flies an aircraft in contravention of subsection (1) on the orders of another person who is in command of the aircraft, that other person is for the purposes of this section to be treated as flying the aircraft.

(3) A person guilty of an offence under this section is liable to any punishment mentioned in rows 3 to 12 of the Table in section 164.

36 Inaccurate certification

(1) A person subject to service law commits an offence if he makes or signs a relevant certificate without having ensured its accuracy.

(2) In this section "relevant certificate" means a certificate (including an electronic certificate) relating to—

(a) any matter affecting the seagoing or fighting efficiency of any of Her Majesty's ships;

(b) any of Her Majesty's aircraft;

(c) any aircraft material; or

(d) any equipment of a description prescribed by regulations made by the Defence Council.

(3) In subsection (2)—

"Her Majesty's ships" has the meaning given by section 31;

"Her Majesty's aircraft" means all aircraft belonging to or used for the purposes of any of Her Majesty's forces;

"aircraft material" has the meaning given by section 33.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

37 Prize offences by officer in command of ship or aircraft

(1) A person subject to service law who, while in command of any of Her Majesty's ships or aircraft, takes any ship or aircraft as prize commits an offence if he unlawfully fails to ensure that all the ship papers or aircraft papers found on board are sent to a prize court of competent jurisdiction.

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(2) A person subject to service law who, while in command of any of Her Majesty's ships or aircraft, takes any ship, aircraft or goods as prize commits an offence if he unlawfully fails to ensure that—

(a) the ship is brought to a convenient port for adjudication;

(b) the aircraft is brought to a convenient airfield for adjudication; or

(c) the goods are brought to a convenient port or airfield for adjudication.

(3) In this section—

"Her Majesty's ships" and "Her Majesty's aircraft" have the meanings given (respectively) by sections 31 and 36;

"prize court" means a prize court within the meaning of the Naval Prize Act 1864 (c. 25);

"ship papers" and "aircraft papers" have the meanings given by section 2 of that Act.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

38 Other prize offences

(1) A person subject to service law commits an offence if—

(a) he ill-treats a person who is on board a ship or aircraft when it is taken as prize; or

(b) he unlawfully takes anything in the possession of such a person.

(2) A person subject to service law commits an offence if he unloads, unpacks or otherwise interferes with any goods that are on board a ship or aircraft which has been taken as prize, unless—

(a) the goods have been adjudged by a prize court (within the meaning of the Naval Prize Act 1864 (c. 25)) to be lawful prize; or

(b) the goods are removed for safe keeping or for necessary use by any of Her Majesty's forces or any force co-operating with them.

(3) A person subject to service law commits an offence if, without lawful excuse, he unloads, unpacks or otherwise interferes with any goods that are on board a ship or aircraft that has been detained in exercise of a belligerent right or under an enactment.

(4) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

Attempts, [F2 encouragement and assistance] , and aiding and abetting

Textual Amendments

F2 Words in s. 39 cross-heading substituted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 5 para. 10** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

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39 Attempts

(1) A person subject to service law commits an offence if he attempts to commit an offence to which this subsection applies.

(2) Subsection (1) applies to any service offence except—

(a) an offence committed by virtue of section 41 (aiding and abetting);

(b) an offence under this section or section 42.

(3) A civilian subject to service discipline commits an offence if he attempts to commit an offence to which this subsection applies.

(4) Subsection (3) applies to—

(a) an offence under section 4, 13, 27, 28(2), 29, 107 or 306 of this Act or under section 18 or 20 of the Armed Forces Act 1991 (c. 62); and

(b) an offence under section 40 of **[**F3encouraging or assisting the commission of**]** an offence mentioned in paragraph (a).

(5) For the purposes of this section a person attempts to commit an offence if, with intent to commit the offence, he does an act which is more than merely preparatory to the commission of the offence.

(6) For those purposes, a person may attempt to commit an offence even though the facts are such that the commission of the offence is impossible.

(7) Where—

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence, but

(b) if the facts of the case had been as he believed them to be his intention would be so regarded,

then for the purposes of this section he shall be regarded as having had an intent to commit that offence.

(8) Where in proceedings for an offence under this section there is evidence sufficient in law to support a finding that the defendant did an act falling within subsection (5), the question whether his act fell within that subsection is a question of fact.

(9) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of the offence attempted.

Textual Amendments

F3 Words in s. 39(4)(b) substituted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 5 para. 8** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

[F4 40 Encouraging and assisting

(1) A person subject to service law commits an offence if he encourages or assists the commission of a service offence (other than an offence under section 42).

(2) A civilian subject to service discipline commits an offence if he encourages or assists the commission of an offence mentioned in section 39(4).

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(3) Reference in this section to encouraging or assisting the commission of an offence is to the doing of an act that would have constituted an offence under Part 2 of the Serious Crime Act 2007 if the offence encouraged or assisted had been an offence under the law of England and Wales.

(4) In determining whether an act would have constituted an offence under that Part, section 49(4) of that Act has effect as if for "offences under this Part and listed offences" it read "offences under sections 39 and 40 of the Armed Forces Act 2006".

(5) Any requirement in that Part to specify matters in an indictment applies for the purposes of this section as it applies for the purposes of that Part, but with references to the indictment being read as references to the charge sheet.

(6) A person guilty of an offence under this section is liable to the same punishment as he would be liable to if guilty of—

(a) the service offence encouraged or assisted; or

(b) if convicted of the offence under this section by reference to more than one such service offence, any one of those service offences.**]**

Textual Amendments

F4 S. 40 substituted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 5 para. 9** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

41 Aiding, abetting, counselling or procuring

(1) Where a person subject to service law aids, abets, counsels or procures the commission by another person of an offence to which this subsection applies, he commits that offence.

(2) Subsection (1) applies to any service offence except an offence under section 42.

(3) A person who by virtue of subsection (1) commits an offence is liable to be charged, tried (including dealt with at a summary hearing) and punished as a principal offender.

(4) Where a civilian subject to service discipline aids, abets, counsels or procures the commission by another person of an offence mentioned in section 39(4), he commits that offence and is liable to be charged, tried and punished as a principal offender.

Criminal conduct

42 Criminal conduct

(1) A person subject to service law, or a civilian subject to service discipline, commits an offence under this section if he does any act that—

(a) is punishable by the law of England and Wales; or

(b) if done in England or Wales, would be so punishable.

(2) A person may be charged with an offence under this section even if he could on the same facts be charged with a different service offence.

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(3) A person guilty of an offence under this section is liable to—

(a) if the corresponding offence under the law of England and Wales is under that law an offence punishable with imprisonment, any punishment mentioned in the Table in section 164;

(b) otherwise, any punishment mentioned in rows 5 to 12 of that Table.

(4) Any sentence of imprisonment or fine imposed in respect of an offence under this section must not exceed—

(a) if the corresponding offence under the law of England and Wales is a summary offence, the maximum term of imprisonment or fine that could be imposed by a magistrates' court on summary conviction;

(b) if that corresponding offence is an indictable offence, the maximum sentence of imprisonment or fine that could be imposed by the Crown Court on conviction on indictment.

(5) In subsection (4) "a summary offence" and "an indictable offence" mean, respectively, a summary offence under the law of England and Wales and an indictable offence under that law.

(6) In this section and sections 45 to 49 "act" includes an omission and references to the doing of an act are to be read accordingly.

(7) In subsections (1) and (8) and sections 45 to 49 "punishable" means punishable with a criminal penalty.

(8) In this Act "the corresponding offence under the law of England and Wales", in relation to an offence under this section, means—

(a) the act constituting the offence under this section; or

(b) if that act is not punishable by the law of England and Wales, the equivalent act done in England or Wales.

43 Attempting criminal conduct

(1) Subsection (2) applies for the purpose of determining whether an attempt is an offence under section 42.

(2) For that purpose section 1(4) of the Criminal Attempts Act 1981 (c. 47) (offences that it is an offence to attempt) has effect as if for the words from "offence which" to "other than" there were substituted " offence under section 42 of the Armed Forces Act 2006 consisting of an act punishable by the law of England and Wales as an indictable offence or an act that, if done in England or Wales, would be so punishable by that law; but "indictable offence" here does not include ".

(3) Section 42(6) applies for the purposes of section 1(4) of the Criminal Attempts Act 1981 as modified by this section.

44 Trial of section 42 offence of attempt

(1) Where, in proceedings for a section 42 offence of attempt, there is evidence sufficient in law to support a finding that the defendant did an act falling within subsection (1) of section 1 of the Criminal Attempts Act 1981, the question whether his act fell within that subsection is a question of fact.

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(2) In this section "a section 42 offence of attempt" means an offence under section 42 consisting of an act that is, or that would be if done in England or Wales, an offence under section 1(1) of the Criminal Attempts Act 1981 (c. 47).

(3) References in subsections (1) and (2) to section 1(1) of the Criminal Attempts Act 1981 are to that provision as it has effect by virtue of section 43 above.

45 Conspiring to commit criminal conduct

(1) For the purpose of determining whether an agreement that a course of conduct be pursued is an offence under section 42—

(a) sections 1(1) and 2 of the Criminal Law Act 1977 (c. 45) (conspiracy) have effect as if any reference to an offence included a reference to an act that, if done in England or Wales, would be punishable by the law of England and Wales; and

(b) section 1(2) of that Act has effect as if it read—

"(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of it, a person is nevertheless not guilty by virtue of subsection (1) above of conspiracy to commit—

(a) that offence, or

(b) an act that would amount to that offence if done in England or Wales,

unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence, or the act, is to take place."

(2) Section 42(6) applies for the purposes of section 1(2) of the Criminal Law Act 1977 as substituted by this section.

[F5 46 Encouraging or assisting criminal conduct

(1) Subsection (2) applies if a person subject to service law, or a civilian subject to service discipline, encourages or assists the doing of an act (or one or more of a number of acts) that, if done in England or Wales, would be punishable by the law of England and Wales.

(2) Regardless of where that act (or those acts) might be done and of his state of mind with respect to that question, his encouragement or assistance shall be treated for the purposes of section 42(1) as an act that is punishable by the law of England and Wales (so far as it is not such an act in any event).

(3) Reference in this section to encouraging or assisting is to an act that would constitute an offence under Part 2 of the Serious Crime Act 2007 disregarding any provision in that Part about the place where the act (or acts) being encouraged or assisted might be done or the accused's state of mind with respect to that question.]

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Textual Amendments

F5 S. 46 substituted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 5 para. 11** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

47 Aiding, abetting, counselling or procuring criminal conduct

(1) Subsection (2) applies if—

(a) any person ("A") does an act that is punishable by the law of England and Wales or would be so punishable if done in England or Wales; and

(b) a person subject to service law, or a civilian subject to service discipline, aids, abets, counsels or procures A's doing of that act.

(2) Regardless of where the act aided, abetted, counselled or procured was done, the aiding, abetting, counselling or procuring shall be treated for the purposes of section 42(1) as an act that is punishable by the law of England and Wales.

(3) For the purpose of determining whether an attempt is an act that falls within subsection (1)(a) above, section 1(4) of the Criminal Attempts Act 1981 (c. 47) has effect with the modification made by section 43.

48 Provision supplementary to sections 43 to 47

(1) This section applies where—

(a) an attempt, agreement or **[**F6encouragement or assistance**]**, or a person's aiding, abetting, counselling or procuring, is an offence under section 42 by reason of section 43, 45, 46 or 47; and

(b) the act to which it relates ("the contemplated act") is not an act that is (or that if done would have been) punishable by the law of England and Wales.

(2) For the following purposes it shall be assumed that the contemplated act amounted to the offence under the law of England and Wales that it would have amounted to if it had been the equivalent act in England or Wales.

(3) Those purposes are—

(a) the purpose of determining what punishment may be imposed for the offence under section 42;

(b) the purpose of determining for the purposes of any of the following provisions of this Act whether the act constituting the offence under section 42, or the equivalent act done in England or Wales, is or would be—

(i) an offence under the law of England and Wales;

(ii) any particular such offence;

(iii) such an offence of any particular description.

Textual Amendments

F6 Words in s. 48(1)(a) substituted (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 5 para. 12** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

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Modifications etc. (not altering text)

C1 S. 48 applied (with modifications) by 2003 c. 44, Sch. 15A para. 52(2) (as inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 13(2), 153(7), **Sch. 5**; S.I. 2008/1586, art. 2(1), Sch. 1 para. 4 (with Sch. 2 para. 2))

49 Air Navigation Order offences

(1) If a person subject to service law, or a civilian subject to service discipline, does in or in relation to a military aircraft any act that if done in or in relation to a civil aircraft would amount to a prescribed Air Navigation Order offence, the act shall be treated for the purposes of section 42(1) as punishable by the law of England and Wales.

(2) Where an act is an offence under section 42 by reason of subsection (1) above—

(a) section 42(8)(b) does not apply; and

(b) it shall be assumed for the following purposes that the act amounted to the offence under the law of England and Wales that it would have amounted to if it had been done in or in relation to a civil aircraft.

(3) Those purposes are—

(a) the purpose of determining what punishment may be imposed for the offence under section 42;

(b) the purpose of determining for the purposes of any of the following provisions of this Act whether the act constituting the offence under section 42 is—

(i) an offence under the law of England and Wales;

(ii) any particular such offence;

(iii) such an offence of any particular description.

(4) In this section—

"military aircraft" has the meaning given by section 92 of the Civil Aviation Act 1982 (c. 16);

"civil aircraft" means an aircraft that is registered in the United Kingdom and is not a military aircraft;

"Air Navigation Order offence" means an offence under an Order in Council made under section 60 of the Civil Aviation Act 1982 (whenever made, and whether or not also made under any other enactment);

"prescribed" means prescribed by an order made by the Secretary of State for the purposes of this section.

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VALID FROM 28/03/2009

PART 2

JURISDICTION AND TIME LIMITS

CHAPTER 1

JURISDICTION

Court Martial

50 Jurisdiction of the Court Martial

(1) The Court Martial has jurisdiction to try any service offence.

(2) In this Act "service offence" means—

(a) any offence under Part 1;

(b) an offence under section 107 (breach of requirement imposed on release from custody);

(c) an offence under section 229 (breach of service restraining order);

(d) an offence under section 266 (failure to comply with financial statement order);

(e) any offence under Chapter 1 of Part 13 (testing for alcohol and drugs);

(f) any offence under regulations under section 328 (false answer during enlistment in a regular force) or section 343 (service inquiries) that the regulations provide is a service offence;

(g) an offence under section 18 or 20 of the Armed Forces Act 1991 (c. 62) (orders for the protection of children);

(h) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996 (c. 14) (reserve forces offences); or

(i) an offence under paragraph 5(1) of Schedule 1 to that Act (false answer during enlistment in a reserve force) committed by a person within paragraph 5(3) of that Schedule.

Service Civilian Court

51 Jurisdiction of the Service Civilian Court

(1) The Service Civilian Court has jurisdiction to try any service offence committed outside the British Islands by a civilian, except an offence within subsection (3) or an offence in relation to which subsection (6) applies.

(2) For the purposes of subsection (1) an offence is committed by a civilian if it is committed by a person who, at the time when it is committed, is a civilian subject to service discipline.

(3) The offences within this subsection are—

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(a) an indictable-only offence under section 42;

(b) an offence under section 266 committed in respect of a financial statement order made by a court other than the Service Civilian Court;

(c) any service offence under regulations under section 328 or 343;

(d) an offence within section 50(2)(h) or (i) (Reserve Forces Act offences).

(4) For the purposes of subsection (3)(a) an offence under section 42 is "indictable-only" if the corresponding offence under the law of England and Wales is under that law an offence which, if committed by an adult, is triable only on indictment; but this is subject to subsection (5).

(5) Where the defendant is aged under 18 at the time a decision under section 279 is made, an offence under section 42 is "indictable-only" for the purposes of subsection (3)(a) above if (and only if)—

(a) the corresponding offence under the law of England and Wales is murder, manslaughter or an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (causing or allowing death of child etc); or

(b) section 227 (firearms offences) would apply if the accused were convicted by the Court Martial of the offence under section 42.

(6) This subsection applies in relation to an offence if the defendant is for the time being—

(a) a member of the regular or reserve forces; or

(b) liable to recall.

(7) For the purposes of subsection (6) a person is "liable to recall" if—

(a) under section 65(1) of the Reserve Forces Act 1996 (c. 14) he is liable to be recalled for service; or

(b) he is liable to be recalled as mentioned in section 35(1) of the Reserve Forces Act 1980 (c. 9).

Commanding officers

52 Charges capable of being heard summarily

(1) A charge against a person ("the accused") in respect of an offence is capable of being heard summarily if (and only if) conditions A to C are met.

(2) Condition A is that the offence is one that may be dealt with at a summary hearing (see section 53).

(3) Condition B is that the accused is—

(a) an officer of or below the rank of commander, lieutenant-colonel or wing commander; or

(b) a person of or below the rank or rate of warrant officer.

(4) Condition C is (subject to subsections (5) and (6)) that the accused is—

(a) subject to service law,

(b) a member of a volunteer reserve force, or

(c) a member of an ex-regular reserve force who is subject to an additional duties commitment,

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from the time the offence is committed to the end of the summary hearing of the charge.

(5) If the offence is one under section 96(1) of the Reserve Forces Act 1996 (c. 14) committed by virtue of section 96(2) of that Act, condition C is that the accused is—

(a) liable to recall, or

(b) a member of the regular forces,

from the time the offence is committed to the end of the summary hearing of the charge.

(6) If the offence is any other Reserve Forces Act offence, condition C is that the accused is a member of a reserve force from the time the offence is committed to the end of the summary hearing of the charge.

(7) For the purposes of this section—

(a) a person is "liable to recall" if—

(i) under section 65(1) of the Reserve Forces Act 1996 he is liable to be recalled for service; or

(ii) he is liable to be recalled as mentioned in section 35(1) of the Reserve Forces Act 1980 (c. 9);

(b) "Reserve Forces Act offence" means an offence within section 53(1)(k).

(8) Where at any time it falls to a person to determine for the purposes of any provision of this Act whether a charge is or would be capable of being heard summarily, the references in subsections (4) to (6) to the end of the summary hearing of the charge are to be read as references to that time.

53 Offences that may be dealt with at a summary hearing

(1) The following service offences may be dealt with at a summary hearing—

(a) an offence under section 4(3);

(b) an offence under any of sections 9 to 15;

(c) an offence under section 16(1)(a), or an offence under section 16(1)(c) committed by omission;

(d) an offence under any of sections 17 to 29;

(e) an offence under section 30(1) of negligently doing an act that results in a person's escape, or an offence under section 30(2);

(f) an offence under any of sections 34 to 36;

(g) an offence under section 42 (criminal conduct) within subsection (3);

(h) an offence under section 107;

(i) an offence under Chapter 1 of Part 13;

(j) any service offence under regulations under section 328 or 343;

(k) an offence under section 96 or 97 of the Reserve Forces Act 1996 of absence without leave.

(2) Any reference in a paragraph of subsection (1), except paragraph (g), to an offence includes an offence under section 39 of attempting to commit that offence.

(3) An offence under section 42 is within this subsection if the corresponding offence under the law of England and Wales is—

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(a) an offence listed in either Part of Schedule 1 (criminal conduct offences that may be dealt with at a summary hearing); or

(b) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) of attempting to commit an (indictable) offence so listed.

(4) The Secretary of State may by order amend Schedule 1.

54 Charges which may be heard summarily only with permission or by senior officer

(1) An officer may not hear summarily a charge in respect of an offence within subsection (2) unless—

(a) he has obtained the permission of higher authority; or

(b) he is of or above the rank of rear admiral, major-general or air vice-marshal.

(2) An offence is within this subsection if it is an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—

(a) an offence listed in Part 2 of Schedule 1; or

(b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an (indictable) offence so listed.

CHAPTER 2

TIME LIMITS FOR COMMENCING PROCEEDINGS

Time limits for offences other than Reserve Forces Act offences

55 Time limit for charging former member of a regular or reserve force

(1) This section applies where a person ceases to be a member of a regular or reserve force.

(2) The person may not, after the end of six months beginning with the date he ceased to be a member of that force, be charged with a service offence committed while he was a member.

(3) Subsection (2) applies even if the person rejoins the force within those six months.

56 Time limit for charging certain members or former members of ex-regular reserve forces

(1) This section applies where—

(a) a person, while a member of an ex-regular reserve force, has been subject to an additional duties commitment; and

(b) the person ceases to be subject to the commitment.

(2) The person may not, after the end of six months beginning with the date he ceased to be subject to the commitment, be charged with a service offence committed while he was so subject.

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57 Time limit for charging person formerly subject to service law

(1) This section applies where a person ceases to be subject to service law.

(2) The person may not, after the end of six months beginning with the date he ceased to be subject to service law, be charged with a service offence committed while he was so subject.

(3) Subsection (2) applies even if the person (again) becomes subject to service law within those six months.

(4) Subsection (2) does not apply in relation to an offence committed by a person when he was—

(a) a member of a volunteer reserve force; or

(b) a member of an ex-regular reserve force who was subject to an additional duties commitment.

58 Time limit for charging civilian formerly subject to service discipline

(1) Subsection (2) applies in any case where a person ceases to be a civilian subject to service discipline, except a case where at the time he does so he becomes subject to service law.

(2) Where this subsection applies—

(a) the person may not, after the end of six months beginning with the date he ceased to be a civilian subject to service discipline, be charged with a service offence committed while he was such a civilian; and

(b) this applies even if he (again) becomes such a civilian within those six months.

(3) Where a person ceases to be a civilian subject to service discipline and at the time he does so becomes subject to service law, section 57 has effect as if—

(a) the reference in subsection (2) to a service offence committed while the person was subject to service law included a service offence committed during the relevant period; and

(b) the reference in subsection (3) to becoming subject to service law included becoming a civilian subject to service discipline.

(4) In subsection (3)(a) above "the relevant period" means the period while the person was a civilian subject to service discipline that ended with his becoming subject to service law.

(5) Subsection (6) applies to a person—

(a) who ceases to be a civilian subject to service discipline by reason only of—

(i) leaving an area designated for the purposes of Schedule 15;

(ii) entering the British Islands; or

(iii) leaving an area which a designation under paragraph 7 of Schedule 15 specifies as an area that he must be in for the designation to apply to him; and

(b) who is residing or staying in a qualifying place at the time he does so.

(6) As regards that time, and for so long after that time as he continues—

(a) to reside or stay in a qualifying place, and

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(b) to be a person who is not a civilian subject to service discipline but who would be such a civilian if he were in a qualifying place,

he is to be treated for the purposes of this section (apart from subsection (5)) as being such a civilian.

(7) In subsections (5) and (6) "in a qualifying place" means—

(a) in relation to a person who falls within subsection (5)(a) by reason of leaving an area designated for the purposes of Schedule 15, in any such area;

(b) in relation to a person who falls within subsection (5)(a) by reason of entering the British Islands, outside the British Islands;

(c) in relation to a person who falls within subsection (5)(a) by reason of leaving an area mentioned in subsection (5)(a)(iii), in that area.

59 Time limit for charging offence under section 107

(1) A person may not be charged with an offence under section 107 (breach of requirement imposed on release from custody) after the end of whichever of the following periods ends last—

(a) six months beginning with the date of commission of the offence;

(b) two months beginning with the date the person is apprehended.

(2) Where subsection (1) prohibits the charging of a person with an offence, the power under section 123(2)(c) or 125(2)(c) may not be exercised so as to charge that person with that offence.

60 Time limit for charging offence under section 266

A person may not be charged with an offence under section 266 (failure to comply with financial statement order) after the end of whichever of the following periods ends first—

(a) two years beginning with the date of commission of the offence;

(b) six months beginning with the date the offence becomes known to a member of the Service Prosecuting Authority.

61 Sections 55 to 60: exceptions and interpretation

(1) References in sections 55 to 60 and this section to charging (except the second such reference in section 59(2)) are to charging under section 120 or 122.

(2) Where any of sections 55 to 58 prohibits the charging of a person with an offence, the person may be charged with the offence if the Attorney General consents.

(3) Each of sections 55 to 60 is without prejudice to the rest of those sections.

(4) Nothing in those sections applies in relation to a Reserve Forces Act offence (as defined by section 62).

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Time limit for Reserve Forces Act offences

62 Time limit for charging Reserve Forces Act offences

(1) A person may not be charged with a Reserve Forces Act offence after the end of whichever of the following periods ends last—

(a) six months beginning with the date of commission of the offence;

(b) two months beginning with the date the offence becomes known to the person's commanding officer;

(c) two months beginning with the date the person is apprehended;

(d) if the offence was committed when the person was a relevant reservist, six months beginning with the date he ceases to be a relevant reservist.

(2) If—

(a) the offence was committed when the person was a relevant reservist, and

(b) he ceases to be a relevant reservist after committing it,

the period in subsection (1)(d) is not extended by his (again) becoming a relevant reservist within the six months beginning with the date he so ceased.

(3) In this section—

(a) the reference in subsection (1) to charging is to charging under section 120 or 122;

(b) "Reserve Forces Act offence" means an offence within section 50(2)(h) or (i);

(c) "relevant reservist" means—

(i) a member of a volunteer reserve force; or

(ii) a member of an ex-regular reserve force who is in full-time service or subject to an additional duties commitment;

(d) "in full-time service" means in such service under a commitment entered into under section 24 of the Reserve Forces Act 1996 (c. 14).

(4) Where subsection (1) prohibits the charging (as defined by subsection (3)(a)) of a person with an offence, the power under section 123(2)(c) or 125(2)(c) may not be exercised so as to charge that person with that offence.

CHAPTER 3

DOUBLE JEOPARDY

63 Service proceedings barring subsequent service proceedings

(1) This section applies where a person—

(a) has been convicted or acquitted of a service offence; or

(b) has had a service offence taken into consideration when being sentenced;

and in this section "offence A" means the offence mentioned in paragraph (a) or (b).

(2) The Court Martial may not try that person for an offence ("offence B") if—

(a) offence B is the same offence in law as offence A, or subsection (3) applies; and

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(b) the alleged facts on which the charge in respect of offence B is based are the same, or substantially the same, as those on which the charge in respect of offence A was based.

(3) This subsection applies if—

(a) the person was convicted of offence A, or offence A was taken into consideration, and offence B is an offence all of whose elements are elements of offence A;

(b) the person was acquitted of offence A and offence B is an offence whose elements include all the elements of offence A; or

(c) the person was convicted or acquitted of offence A by the Court Martial or the Service Civilian Court and offence B is an offence of which under section 161 (alternative offences) he could have been convicted on acquittal of offence A.

(4) Where offence A is an offence taken into consideration which was not charged, the reference in subsection (2)(b) to the facts on which the charge in respect of offence A was based is to be read as a reference to the facts on which a charge in respect of offence A would have been based.

(5) Where by reason of this section a person cannot be tried by the Court Martial for an offence—

(a) the Service Civilian Court may not try him for that offence; and

(b) a charge against him in respect of that offence may not be heard summarily by an officer.

64 Service proceedings barring subsequent civilian proceedings

(1) This section applies where a person—

(a) has been convicted or acquitted of an offence under section 42 (criminal conduct); or

(b) has had such an offence taken into consideration when being sentenced.

(2) A civilian court in a relevant territory may not try that person for any offence for which, under the law of that territory, it would be debarred from trying him if he had been convicted or (as the case may be) acquitted by a court in England and Wales of the relevant offence.

(3) "The relevant offence" means the offence under the law of England and Wales which the act (or alleged act) constituting the offence under section 42 amounted to.

(4) Where that act (or alleged act) would amount to an offence under the law of England and Wales if it had been done in England or Wales, for the purposes of subsection (3) it shall be assumed to amount to that offence.

(5) In this section "relevant territory" means—

(a) England and Wales;

(b) Scotland;

(c) Northern Ireland; or

(d) the Isle of Man.

(6) In this section "act" includes an omission and references to the doing of an act are to be read accordingly.

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65 Sections 63 and 64: supplementary

(1) If a direction under section 127(1) or (2) has been made in relation to an offence, the person to whom the direction relates shall be treated—

(a) for the purposes of section 63, and

(b) in the case of a direction under section 127(2), for the purposes of section 64,

as if he had been acquitted of the offence.

(2) The reference in subsection (1)(a) above to section 63 does not include subsection (3)(c) of that section.

(3) For the purposes of sections 63 and 64 a person shall be taken not to have had an offence taken into consideration when being sentenced if the sentence has been quashed.

66 Civilian proceedings barring subsequent service proceedings

(1) The Court Martial may not try a person for an offence under section 42 (criminal conduct) if the act constituting the offence amounts to an offence under the law of England and Wales for which a civilian court in England and Wales would on the ground of *autrefois acquit* or *autrefois convict* be debarred from trying him.

(2) The Court Martial may not try a person for a non-criminal service offence (that is, a service offence not under section 42) if—

(a) any act constituting an element of the offence amounts to an offence under the law of England and Wales ("offence X"); and

(b) a civilian court in England and Wales would on the ground of *autrefois acquit* be debarred from trying the person for offence X.

(3) Where an act constituting—

(a) an offence under section 42, or

(b) an element of a non-criminal service offence,

would amount to an offence under the law of England and Wales if it had been done in England or Wales, it shall be assumed for the purposes of subsection (1) or (2) to amount to that offence.

(4) Where a civilian court (anywhere) has taken an offence into consideration in sentencing a person and the sentence has not been quashed, the person shall be treated for the purposes of subsection (1) as having been convicted by that court of that offence.

(5) Where by reason of this section a person cannot be tried by the Court Martial for an offence—

(a) the Service Civilian Court may not try him for that offence; and

(b) a charge against him in respect of that offence may not be heard summarily by an officer.

(6) This section does not apply in any case where the question whether a person can be tried for an offence (or dealt with summarily for it) is determined by section 63.

(7) In this section "act" includes an omission and references to the doing of an act are to be read accordingly.

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PART 3

POWERS OF ARREST, SEARCH AND ENTRY

VALID FROM 28/03/2009

CHAPTER 1

ARREST ETC

Powers of arrest

67 Power of arrest for service offence

(1) A person who is reasonably suspected of being engaged in committing, or of having committed, a service offence may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to service law.

(2) An officer may be arrested under subsection (1)—

(a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;

(b) by a service policeman; or

(c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.

(3) A person of or below the rank or rate of warrant officer may be arrested under subsection (1)—

(a) by an officer;

(b) by a warrant officer or non-commissioned officer of superior rank or rate;

(c) by a service policeman;

(d) by a person who is lawfully exercising authority on behalf of a provost officer; or

(e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.

(4) A civilian subject to service discipline may be arrested under subsection (1)—

(a) by an officer;

(b) by a service policeman; or

(c) by a person who is lawfully exercising authority on behalf of a provost officer.

(5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.

(6) The power of arrest conferred on any person by this section may be exercised—

(a) personally;

(b) by giving orders for the arrest of the person who is to be arrested; or

(c) where that person is subject to service law, by ordering him into arrest.

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68 Section 67: supplementary

(1) In section 67(2)(a) the reference to being engaged in a mutiny is a reference to committing an offence under section 6.

(2) For the purposes of section 67(3), a person who—

(a) is suspected of having committed a service offence while a member of Her Majesty's forces, and

(b) is not a member of Her Majesty's forces or a civilian subject to service discipline,

is to be treated in relation to the offence as being of the rank or rate which he held when he was last a member of Her Majesty's forces.

(3) For the purposes of section 67(4), a person who—

(a) is suspected of having committed a service offence while a civilian subject to service discipline, and

(b) is not a member of Her Majesty's forces or a civilian subject to service discipline,

is to be treated in relation to the offence as if he were a civilian subject to service discipline.

(4) Where a person may be charged (within the meaning of section 61(1)) with an offence only with the consent of the Attorney General (see section 61(2)), section 67(1) has effect in relation to the offence as if for the words from "in accordance with" to the end there were substituted " by a service policeman " (and as if section 67(2) to (5) were omitted).

69 Power of arrest in anticipation of commission of service offence

(1) A service policeman may arrest a person whom he reasonably suspects of being about to commit a service offence.

(2) Subsection (6) of section 67 applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.

(3) Where a person is arrested under this section—

(a) the arrest must be reported as soon as practicable to his commanding officer; and

(b) he may be kept in service custody until such time as a service policeman is satisfied that the risk of his committing the service offence concerned has passed.

Search on arrest

70 Search by service policeman upon arrest

(1) A service policeman may search an arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) A service policeman may search an arrested person for anything that is subject to search if he has reasonable grounds for believing that the arrested person may have any such thing concealed on him.

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(3) For the purposes of this section a thing is "subject to search" if—

(a) the arrested person might use it to assist him to escape from service custody; or

(b) in the case of an arrest under section 67 or 69, it might be evidence relating to a service offence.

(4) References in this section to an arrested person are to a person arrested under section 67, 69, 110, 111 or 303.

71 Search by other persons upon arrest

(1) A person (other than a service policeman) who is exercising a power of arrest may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subsection (4) (power to search arrested person for things subject to search) applies where—

(a) a person ("the arrested person") is to be or has been arrested by a person other than a service policeman; and

(b) the commanding officer of the arrested person has reasonable grounds for believing that it is likely that that person would—

(i) escape from service custody, or

(ii) conceal, damage, alter or destroy evidence,

if a search for things subject to search could not be carried out before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (3).

(3) That assistance is—

(a) the assistance of a service policeman; or

(b) in a case where corresponding powers conferred by section 32(2)(a) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.

(4) Where this subsection applies, the commanding officer of the arrested person may order or authorise the person exercising the power of arrest to search the arrested person, on or after exercising the power, for anything that is subject to search.

(5) A commanding officer may give an order under subsection (4) only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.

(6) A person authorised under subsection (4) may exercise the power of search conferred by that subsection only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.

(7) Section 70(3) (meaning of things "subject to search") applies for the purposes of this section.

(8) References in this section to arrest are to arrest under section 67, 110 or 111, and related expressions in this section are to be read accordingly.

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(9) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

72 Sections 70 and 71: supplementary

(1) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may search the arrested person only to the extent that is reasonably required for the purpose of discovering anything that is subject to search (within the meaning of those sections).

(2) Nothing in section 70 or 71 authorises anyone to require an arrested person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.

(3) The reference in subsection (2) to headgear does not include headgear worn for religious reasons.

(4) Any power of search conferred by section 70 or 71 authorises the search of the arrested person's mouth.

73 Seizure and retention after search upon arrest

(1) A person exercising the power conferred by section 70(1) or 71(1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(2) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—

(a) that the person searched might use it to assist him to escape from service custody; or

(b) in the case of an arrest under section 67 or 69, that it is evidence of a service offence or has been obtained in consequence of the commission of a service offence.

(3) In subsection (2) "item subject to legal privilege" has the meaning given by section 10 of PACE.

74 Power to make provision conferring power to search premises at which person arrested

The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under section 67, which is equivalent to that made by any of the provisions of section 32 of PACE which relate to the power to enter and search premises, subject to such modifications as the Secretary of State considers appropriate.

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VALID FROM 28/03/2009

CHAPTER 2

STOP AND SEARCH

75 Power of service policeman to stop and search persons, vehicles etc

(1) A service policeman may, in the circumstances mentioned in subsection (2) and in a place permitted by section 78, search any of the following for stolen or prohibited articles, controlled drugs or Her Majesty's stores—

(a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;

(b) a service vehicle which is in the charge of any person;

(c) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law or a civilian subject to service discipline;

(d) anything which is in or on a service vehicle or a vehicle within paragraph (c).

(2) The circumstances are that the service policeman has reasonable grounds for suspecting—

(a) that the search will reveal stolen or prohibited articles;

(b) that the search will reveal Her Majesty's stores that have been unlawfully obtained;

(c) in the case of the search of a person, that the person is in possession of a controlled drug in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971 (c. 38); or

(d) in the case of the search of a vehicle, that the search will reveal a controlled drug that is in a person's possession in such circumstances.

(3) A service policeman may detain for the purposes of a search under subsection (1)—

(a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;

(b) any person in charge of a service vehicle;

(c) any service vehicle; and

(d) any vehicle within subsection (1)(c).

(4) A service policeman may seize any article that he discovers in the course of a search under subsection (1) and that he has reasonable grounds for suspecting to be—

(a) a stolen or prohibited article;

(b) evidence of an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971; or

(c) any of Her Majesty's stores that have been unlawfully obtained.

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76 Stop and search by persons other than service policemen

(1) An officer may order or authorise a person subject to service law (other than a service policeman)—

(a) to search, in a place permitted by section 78—

(i) a person within subsection (2),

(ii) a vehicle in the charge of such a person, or

(iii) anything which is in or on such a vehicle,

for stolen or prohibited articles, controlled drugs or Her Majesty's stores;

(b) to detain such a person or vehicle for the purposes of such a search; and

(c) to seize any article that he discovers in the course of such a search and that he has reasonable grounds for suspecting to be an article within section 75(4)(a) to (c);

but this is subject to subsections (3) to (7).

(2) A person is within this subsection if he is—

(a) a person subject to service law whose commanding officer is the officer mentioned in subsection (1);

(b) a civilian subject to service discipline whose commanding officer is that officer;

(c) a person whom—

(i) that officer (in the case of an order under subsection (1)), or

(ii) the authorised person (in the case of an authorisation under that subsection),

has reasonable grounds for believing to be a person within paragraph (a) or (b).

(3) An order under subsection (1) may be given only in relation to a particular person or vehicle.

(4) An officer may give an order under subsection (1) only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the officer).

(5) A person authorised under subsection (1) may exercise the power of search conferred by virtue of that subsection only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the authorised person).

(6) An officer may give an order or authorisation under subsection (1) only if he has reasonable grounds for believing that it is likely that—

(a) an offence under section 42 would be committed, or

(b) a person who has committed such an offence would avoid apprehension,

if the powers conferred by this section could not be exercised before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (7).

(7) That assistance is—

(a) the assistance of a service policeman; or

(b) in a case where corresponding powers conferred by section 1 of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.

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77 Sections 75 and 76: definitions

(1) Subsections (2) to (6) apply for the purposes of sections 75 and 76.

(2) "Controlled drug" has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38).

(3) "Her Majesty's stores" has the same meaning as in the Public Stores Act 1875 (c. 25).

(4) "Prohibited article" means—

(a) an offensive weapon, other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty's forces;

(b) an article made or adapted for use in the course of or in connection with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence mentioned in subsection (8); or

(c) an article intended by the person having it with him for such use by him or by some other person.

(5) "Service vehicle" means a vehicle which—

(a) belongs to any of Her Majesty's forces; or

(b) is in use for the purposes of any of those forces.

(6) "Stolen", in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 (c. 60) in the provisions of that Act relating to goods which have been stolen.

(7) In subsection (4)(a) "offensive weapon" means any article—

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person having it with him for such use by him or by some other person.

(8) The offences referred to in subsection (4)(b) are—

(a) an offence under section 1 of the Theft Act 1968 (theft);

(b) an offence under section 9 of that Act (burglary);

(c) an offence under section 12 of that Act (taking vehicle etc without consent);

(d) an offence under section 1 of the Criminal Damage Act 1971 (c. 48) (destroying or damaging property);

(e) an offence under section 1 of the Fraud Act 2006 (fraud).

(9) The reference in subsection (4)(b) to an offence under section 42 includes an act or omission which would constitute such an offence if done or made by a person subject to service law.

78 Places in which powers under sections 75 and 76 may be exercised

The powers conferred by sections 75 and 76 may be exercised only in—

(a) any place to which (at the time of exercise of the power) the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

(b) any other place to which people have ready access (at the time of exercise of the power) but which is not a dwelling or service living accommodation; and

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(c) any premises which (at the time of exercise of the power) are permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces but are not service living accommodation.

79 Sections 75 and 76: limitation on searching persons or vehicles in certain gardens etc

(1) Subsection (2) applies if a person ("A") is in a garden or yard, or on other land, occupied with and used for the purposes of—

(a) a dwelling; or

(b) any service living accommodation within section 96(1)(a).

(2) A person ("B") may not by virtue of section 78(a) or (b) search A in the exercise of the power conferred by section 75 or 76 unless B has reasonable grounds for believing—

(a) that A does not reside in the dwelling or service living accommodation; and

(b) that A is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.

(3) Subsection (4) applies if a vehicle is in a garden or yard, or on other land, occupied with and used for the purposes of—

(a) a dwelling; or

(b) any service living accommodation within section 96(1)(a).

(4) A person may not by virtue of section 78(a) or (b) search the vehicle or anything in or on it in the exercise of the power conferred by section 75 or 76 unless he has reasonable grounds for believing—

(a) that the person in charge of the vehicle does not reside in the dwelling or service living accommodation; and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.

(5) In this section "dwelling" does not include any dwelling which is permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces.

80 Searches under sections 75 and 76: supplementary

(1) The time for which a person or vehicle may be detained for the purposes of a search under section 75 or 76 is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(2) Nothing in section 75 or 76 authorises anyone to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.

(3) The reference in subsection (2) to headgear does not include headgear worn for religious purposes.

(4) Nothing in this Chapter limits the powers exercisable on any premises if, or to the extent that, the premises are being used for keeping persons in service custody.

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81 Power to make further provision about searches under sections 75 and 76

The Secretary of State may by order make provision, in relation to the search of persons or vehicles under section 75 or 76, which is equivalent to that made by any provision of—

(a) section 2(1) to (7) and (9)(b) of PACE (provisions relating to search under section 1 of that Act and other powers), and

(b) section 3 of PACE (duty to make records concerning searches),

subject to such modifications as the Secretary of State considers appropriate.

82 Application of Chapter to ships and aircraft

This Chapter applies to ships and aircraft as it applies to vehicles.

VALID FROM 28/03/2009

CHAPTER 3

POWERS OF ENTRY, SEARCH AND SEIZURE

Entry for purposes of obtaining evidence etc

83 Power of judge advocate to authorise entry and search

(1) A judge advocate may issue a warrant authorising a service policeman to enter and search premises if—

(a) an application for the warrant, specifying the premises, is made by a service policeman; and

(b) the judge advocate is satisfied that the premises are relevant residential premises and that there are reasonable grounds for believing—

(i) that a relevant offence has been committed;

(ii) that there is on the premises material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

(iii) that the material would be likely to be admissible in evidence at a trial for the offence;

(iv) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(v) that any of the conditions mentioned in subsection (2) applies.

(2) Those conditions are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;

(c) that entry to the premises will not be granted unless a warrant is produced;

(d) in the case of service living accommodation within section 96(1)(b) or (c)—

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(i) that it is not practicable to communicate with the person or (as the case may be) any of the persons for whom the accommodation is provided; or

(ii) that there is no such person with whom it is practicable to communicate who will agree to grant access to the accommodation without the production of a warrant;

(e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.

(3) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).

84 Section 83: definitions

(1) Subsections (2) to (4) apply for the purposes of section 83.

(2) "Relevant offence" means any of the following—

(a) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an indictable offence;

(b) a service offence specified for the purposes of this subsection in an order made by the Secretary of State;

(c) a service offence whose commission has led to, or is intended or is likely to lead to, any of the consequences mentioned in subsection (5).

(3) "Relevant residential premises" means—

(a) service living accommodation; or

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law;

(ii) a civilian subject to service discipline; or

(iii) a person who is suspected of having committed an offence in relation to which the warrant is sought.

(4) "Items subject to legal privilege", "excluded material" and "special procedure material" have the meanings given (respectively) by sections 10, 11 and 14 of PACE, but as if in section 11(2)(b) of PACE "enactment" included any provision of—

(a) an Act of the Scottish Parliament or Northern Ireland legislation; or

(b) an instrument made under such an Act or under Northern Ireland legislation.

(5) The consequences referred to in subsection (2)(c) are—

(a) serious harm to the security of the State or to public order;

(b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;

(c) the death of any person;

(d) serious injury to any person;

(e) substantial financial gain to any person;

(f) serious financial loss to any person;

(g) the undermining of discipline or morale among members of any of Her Majesty's forces.

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(6) In subsection (5)(d) "injury" includes any disease and any impairment of a person's physical or mental condition.

(7) For the purposes of subsection (5)(f), loss is serious if (having regard to all the circumstances) it is serious for the person who suffers it.

85 Section 83: power to make supplementary provision

The Secretary of State may by order—

(a) make provision authorising the use, in connection with applications under section 83 to judge advocates, of live television or telephone links or similar arrangements;

(b) make provision, in relation to warrants issued under that section or entry and search under such a warrant, which is equivalent to that made by any provision of sections 15 and 16 of PACE (which relate to the issue to constables of warrants to enter and search premises), subject to such modifications as the Secretary of State considers appropriate.

86 Power to make provision as to access to excluded material etc

(1) The Secretary of State may by order make provision enabling a service policeman to obtain access to excluded material or special procedure material on relevant residential premises, for the purpose of an investigation of a relevant offence, by making an application in accordance with the order to a judge advocate.

(2) An order under this section may in particular—

(a) provide for any provision of Schedule 1 to PACE (which relates to applications by constables to judges for access to excluded material or special procedure material) to apply (with modifications) for the purposes of the order;

(b) authorise the use, in connection with any application made by virtue of the order, of live television or telephone links or similar arrangements.

(3) In this section "relevant residential premises" means—

(a) service living accommodation; or

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law;

(ii) a civilian subject to service discipline; or

(iii) a person who is suspected of having committed the relevant offence concerned.

(4) In this section "excluded material", "special procedure material" and "relevant offence" have the meanings given by section 84.

87 Power of CO to authorise entry and search by service policeman

(1) An officer may authorise a service policeman to enter and search premises within subsection (3) if the officer has reasonable grounds for believing—

(a) that the conditions mentioned in section 83(1)(b)(i) to (v) are satisfied in relation to the premises; and

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(b) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).

(2) That time is the earliest time by which it would be practicable—

(a) for a service policeman to obtain and execute a warrant under section 83 authorising the entry and search of the premises; or

(b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.

(3) The premises referred to in subsection (1) are—

(a) service living accommodation of a person whose commanding officer is the officer mentioned in that subsection;

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law whose commanding officer is that officer; or

(ii) a civilian subject to service discipline whose commanding officer is that officer;

(c) premises which that officer has reasonable grounds for believing to be within paragraph (b).

(4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

88 Power of CO to authorise entry and search by other persons

(1) An officer may authorise a person subject to service law (other than a service policeman) to enter and search service living accommodation within subsection (3) if the officer has reasonable grounds for believing—

(a) that the conditions mentioned in section 83(1)(b)(i) to (v) are satisfied in relation to the premises (the reference in section 83(2)(e) to a service policeman being read as a reference to a person authorised under this subsection); and

(b) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).

(2) That time is the earliest time by which it would be practicable—

(a) to obtain the assistance of a service policeman; or

(b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.

(3) Service living accommodation is within this subsection if it is—

(a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1); and

(b) within section 96(1)(b) or (c).

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(4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

89 Review by judge advocate of certain searches under section 87 or 88

(1) Where any property has been seized and retained during a search under section 87 or 88, the officer who authorised the search must as soon as practicable request a judge advocate to undertake a review of the search and of the seizure and retention of anything seized and retained during it.

(2) The Secretary of State may by order make provision—

(a) with respect to the practice and procedure which is to apply in connection with reviews under this section;

(b) conferring functions on judge advocates in relation to such reviews.

Entry for purposes of arrest etc

90 Entry for purpose of arrest etc by a service policeman

(1) A service policeman may for the purpose of arresting a person enter and search premises within subsection (2), but only if he has reasonable grounds for believing that the person is on the premises.

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

(a) service living accommodation;

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law;

(ii) a civilian subject to service discipline; or

(iii) the person to be arrested;

(c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).

(3) In relation to premises containing two or more separate dwellings, the powers conferred by subsection (1) are powers to enter and search—

(a) any parts of the premises which the occupiers of any dwelling contained in the premises use in common with the occupiers of any other such dwelling; and

(b) any such dwelling that the service policeman has reasonable grounds for believing the person to be arrested to be in.

(4) A service policeman may, for the purpose of saving life or limb or preventing serious damage to property, enter and search any—

(a) service living accommodation;

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law; or

(ii) a civilian subject to service discipline; or

(c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).

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(5) Any power of search conferred by this section is a power to search only to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(6) References in this section to arrest are to arrest under section 67, 69, 110 or 111, and related expressions in this section are to be read accordingly.

91 Entry for purpose of arrest etc by other persons

(1) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(1) on a service policeman; but this is subject to subsection (3).

(2) The premises are—

(a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1);

(b) premises occupied as a residence (alone or with other persons) by—

(i) a person subject to service law whose commanding officer is that officer; or

(ii) a civilian subject to service discipline whose commanding officer is that officer;

(c) premises which that officer has reasonable grounds for believing to be within paragraph (b).

(3) An officer may give an authorisation under subsection (1) only if—

(a) the arrest is to be made under section 67;

(b) the offence in respect of which the arrest is to be made is a relevant offence (as defined by section 84); and

(c) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (4)—

(i) the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence, or present a danger to himself or others; or

(ii) discipline or morale among members of any of Her Majesty's forces might be undermined.

(4) That assistance is—

(a) the assistance of a service policeman, or

(b) in a case where corresponding powers conferred by section 17(1)(b) or (c) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force capable of exercising those corresponding powers.

(5) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(4) on a service policeman; but this is subject to subsection (6).

(6) An officer may give an authorisation under subsection (5) in relation to premises within section 90(4)(b) or (c) only if it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.

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(7) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

Additional powers of entry, search and seizure

92 Power to make provision conferring powers of entry and search after arrest

The Secretary of State may by order make provision, in relation to premises occupied or controlled by a person who—

(a) has been arrested under section 67, and

(b) is being held in service custody without being charged with a service offence,

which is equivalent to that made by any provision of section 18 of PACE (entry and search after arrest), subject to such modifications as the Secretary of State considers appropriate.

93 Power to make provision conferring power of seizure etc

The Secretary of State may by order make provision, in relation to—

(a) a service policeman who, in connection with the investigation of a service offence, is lawfully on premises which are searchable by virtue of this Part, or

(b) any power of seizure or retention conferred by or under this Part,

which is equivalent to that made by any provision of sections 19 to 21 of PACE (which relate to seizure) or section 22(1) to (4) of that Act (power to retain property seized), subject to such modifications as the Secretary of State considers appropriate.

VALID FROM 28/03/2009

CHAPTER 4

SUPPLEMENTARY

94 Property in possession of service police or CO

(1) The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman or a person's commanding officer in connection with the investigation of a service offence.

(2) The regulations may in particular—

(a) enable the Court Martial, the Service Civilian Court or a judge advocate to make an order for the delivery of the property to the person appearing to the court or judge advocate to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judge advocate considers appropriate;

(b) enable the commanding officer of a person charged with a service offence—

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(i) to determine that any property seized under this Part in connection with the investigation of a service offence should be delivered to the person appearing to the commanding officer to be the owner of the property; or

(ii) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate;

(c) enable the commanding officer of a person—

(i) in whose possession the property was before it was seized under this Part, or

(ii) who claims to be the owner of the property,

to determine that it should be delivered to that person;

(d) make provision as to appeals against orders made by virtue of paragraph (a) and determinations made by virtue of paragraph (b) or (c); and

(e) provide that, at the end of a specified period from the making of an order by virtue of paragraph (a), the right of any person to take proceedings for the recovery of the property is to cease.

(3) A determination made by virtue of subsection (2)(b) or (c) does not affect the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered.

95 Saving provision

(1) Nothing in this Part affects—

(a) any power of a service policeman or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation;

(b) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation;

(c) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to search, or order the search of, a person or to stop and search, or order the stop and search of, a service vehicle; or

(d) any power of a service policeman or commanding officer to search, or order the search of, a service vehicle which is not in the charge of any person.

(2) In subsection (1) "service vehicle" means a vehicle, ship or aircraft which—

(a) belongs to any of Her Majesty's forces; or

(b) is in use for the purposes of any of those forces.

96 "Service living accommodation", "premises" and other definitions

(1) In this Part "service living accommodation" means (subject to subsection (2))—

(a) any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his family, as living accommodation or as a garage;

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(b) any other room, structure or area (whether on land or on a ship) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more persons subject to service law; or

(c) any locker which—

(i) is provided by any of Her Majesty's forces for personal use by a person subject to service law in connection with his sleeping accommodation, but

(ii) is not in a room, structure or area falling within paragraph (b).

(2) Premises are not service living accommodation for the purposes of this Part if, or to the extent that, they are being used for keeping persons in service custody.

(3) In this Part "premises" includes any place and, in particular, includes—

(a) any vehicle, ship or aircraft; and

(b) any tent or movable structure.

(4) In this Part "enactment" includes any provision of—

(a) an Act of the Scottish Parliament or Northern Ireland legislation, or

(b) an instrument made under such an Act or under Northern Ireland legislation,

and also includes any rule of law in Scotland.

97 Power to use reasonable force

Where a power is conferred on any person by or under this Part, he may use reasonable force, if necessary, in the exercise of the power.

VALID FROM 28/03/2009

PART 4

CUSTODY

CHAPTER 1

CUSTODY WITHOUT CHARGE

98 Limitations on custody without charge

(1) Except in accordance with sections 99 to 102, a person arrested under section 67 may not be kept in service custody without being charged with a service offence.

(2) If at any time the commanding officer of a person who is kept in service custody without being charged with a service offence—

(a) becomes aware that the grounds for keeping that person in service custody have ceased to apply, and

(b) is not aware of any other grounds on which continuing to keep that person in service custody could be justified under this Act,

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the commanding officer must, subject to subsection (3), order his immediate release from service custody.

(3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested may not be released under subsection (2).

(4) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

99 Authorisation by commanding officer of custody without charge

(1) Where a person is arrested under section 67—

(a) the arrest, and

(b) any grounds on which he is being kept in service custody without being charged with a service offence,

must be reported as soon as practicable to his commanding officer.

(2) Until such a report is made, the person may be kept in service custody without being charged with a service offence, but only if the person who made the arrest has reasonable grounds for believing that keeping him in service custody without being charged is necessary—

(a) to secure or preserve evidence relating to a service offence for which he is under arrest; or

(b) to obtain such evidence by questioning him.

(3) After receiving a report under subsection (1), the commanding officer must as soon as practicable determine—

(a) whether the requirements of subsection (4) are satisfied; and

(b) if so, whether to exercise his powers under that subsection;

and the person to whom the report relates may be kept in service custody for such period as is necessary to enable the commanding officer to make that determination.

(4) If, in relation to the person to whom the report relates, the commanding officer has reasonable grounds for believing—

(a) that keeping him in service custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him, and

(b) that the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in service custody.

(5) Subject to subsection (6), an authorisation under subsection (4) ends not more than 12 hours after it is given.

(6) Except in accordance with section 101 or 102, a person may not be kept in service custody later than 48 hours after the arrest without being charged with a service offence.

(7) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence—

(a) subsections (1) to (5) apply in relation to the arrest for that other offence;

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(b) the reference in subsections (2)(a) and (4)(a) to a service offence for which he is under arrest includes the service offence for which he was originally arrested;

(c) the reference in subsection (6) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested; and

(d) the last authorisation under subsection (4) (if any) given in relation to him ceases to have effect (and accordingly section 100 ceases to apply in relation to that authorisation).

100 Review of custody by commanding officer

(1) The commanding officer of a person kept in service custody in accordance with section 99 must, subject to subsections (3) and (4), review the keeping of that person in service custody not later than the end of the period for which it is authorised.

(2) Subsections (4) and (5) of section 99 apply on each review under this section as they apply where a report is received under section 99(1).

(3) A review may be postponed if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 99(4), it is not practicable to carry out the review at that time.

(4) A review may also be postponed if at the expiry of the last authorisation under section 99(4)—

(a) the person in service custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being questioned; or

(b) the commanding officer is not readily available.

(5) Subsection (4) does not limit the power to postpone under subsection (3).

(6) If a review is postponed under subsection (3) or (4)—

(a) it must be carried out as soon as practicable after the expiry of the last authorisation under section 99(4); and

(b) the keeping in service custody of the person to whom the review relates is by virtue of this paragraph authorised until that time.

101 Extension by judge advocate of custody without charge

(1) If, on an application by the commanding officer of a person arrested under section 67, a judge advocate is satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, the judge advocate may by order authorise the keeping of that person in service custody.

(2) A judge advocate may not hear an application under this section unless the person to whom it relates—

(a) has been informed in writing of the grounds for the application; and

(b) has been brought before him for the hearing.

(3) The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—

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(a) the judge advocate must adjourn the hearing to enable him to obtain representation; and

(b) he may be kept in service custody during the adjournment.

(4) The period for which a judge advocate, on an application under this section, may authorise the keeping of a person in service custody is such period, ending not more than 96 hours after the arrest, as he considers appropriate having regard to the evidence before him.

(5) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, the reference in subsection (4) to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.

(6) For the purposes of this section and section 102, the continued keeping of a person in service custody is justified only if—

(a) keeping him in custody without being charged with a service offence is necessary to secure or preserve evidence relating to a service offence for which he is under arrest or to obtain such evidence by questioning him; and

(b) the investigation is being conducted diligently and expeditiously.

102 Further provision about applications under section 101

(1) Subject to subsection (2), an application under section 101 may be made—

(a) at any time before the end of 48 hours after the arrest; or

(b) if it is not practicable for the application to be heard before the end of that period, as soon as practicable thereafter but not more than 96 hours after the arrest.

(2) Where subsection (1)(b) applies, an authorisation on a review under section 100 may be for a period ending more than 48 hours after the arrest, but may not be—

(a) for a period of more than six hours; or

(b) for a period ending more than 96 hours after the arrest.

(3) If—

(a) an application under section 101 is made more than 48 hours after the arrest, and

(b) it appears to the judge advocate that it would have been reasonable for the commanding officer to make the application before the end of that period,

the judge advocate must refuse the application.

(4) Where on an application under section 101 relating to any person the judge advocate is not satisfied that there are reasonable grounds for believing that the continued keeping of that person in service custody is justified, he must—

(a) refuse the application; or

(b) adjourn the hearing of it until a time not later than 48 hours after the arrest.

(5) The person to whom the application relates may be kept in service custody during the adjournment.

(6) Where a judge advocate refuses an application under section 101 at any time less than 48 hours after the arrest, he may direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.

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(7) Where a judge advocate refuses an application under section 101 at any later time, he must direct that the person to whom it relates must, without delay, be charged with a service offence or released from service custody.

(8) Where a person, while kept in service custody without being charged with a service offence, is arrested under section 67 for another service offence, any reference in this section to the arrest is to be read as a reference to the arrest for the service offence for which he was originally arrested.

103 Custody without charge: other cases

Sections 98 to 102 apply—

(a) where a person is transferred to or taken into service custody under section 313(4), 315(4), 316(3) or 317(4), and

(b) in any other case where a person arrested by a member of a UK police force or overseas police force is transferred to service custody,

as they apply where a person is arrested under section 67, subject to such modifications as the Secretary of State may by order prescribe.

104 Custody without charge: supplementary

(1) The Secretary of State may by regulations make provision—

(a) for the delegation by the commanding officer of a person in service custody of any of the commanding officer's functions under sections 98 to 102;

(b) with respect to circumstances in which a person kept in service custody without being charged with a service offence is to be informed of, or given an opportunity to make representations about, any matter;

(c) for the keeping of written records relating to compliance with any requirement of sections 69(3)(a) and 98 to 102 or of regulations under paragraph (b).

(2) Any reference in sections 99 to 102 to a period of time is to be treated as approximate only.

CHAPTER 2

CUSTODY ETC AFTER CHARGE

Custody after charge

105 Custody after charge

(1) Where a person (referred to in this section and sections 106 to 109 as "the accused") is kept in service custody after being charged with a service offence, he must be brought before a judge advocate as soon as practicable.

(2) At a hearing under subsection (1), the judge advocate may by order authorise the keeping of the accused in service custody, but only if one or more of conditions A to C in section 106 are met.

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(3) The period for which a judge advocate may, by an order under subsection (2), authorise the keeping of the accused in service custody is such period, ending not later than eight days after the day on which the order is made, as he considers appropriate having regard to the evidence before him.

(4) For the purpose of deciding whether condition A in section 106 is met, the judge advocate must have regard to such of the following considerations as appear to him to be relevant—

(a) the nature and seriousness of the offence with which the accused is charged (and the probable method of dealing with him for it),

(b) the character, antecedents, associations and social ties of the accused,

(c) the accused's behaviour on previous occasions while charged with a service offence and released from service custody or while on bail in criminal proceedings, and

(d) the strength of the evidence that the accused committed the offence,

as well as to any other considerations which appear to be relevant.

(5) If—

(a) the accused is charged with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—

(i) murder,

(ii) manslaughter,

(iii) an offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape), or

(iv) an attempt to commit an offence within sub-paragraph (i) or (iii),

(b) representations are made as to any of the matters mentioned in condition A in section 106, and

(c) the judge advocate decides not to authorise the keeping of the accused in service custody,

the judge advocate must state the reasons for his decision and must cause those reasons to be included in the record of the proceedings.

(6) An order under subsection (2) does not authorise the keeping of the accused in service custody—

(a) if the accused is subsequently released from service custody, at any time after his release; or

(b) at any time after he is sentenced in respect of the offence with which he is charged.

(7) Subsection (1) does not apply where the accused is charged with a service offence at a time when he is kept in service custody by reason of a sentence passed in respect of a service offence or of an order under subsection (2), unless that reason ceases to apply.

106 Conditions A to D

(1) Condition A is that the judge advocate is satisfied that there are substantial grounds for believing that the accused, if released from service custody, would—

(a) fail to attend any hearing in the proceedings against him;

(b) commit an offence while released; or

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(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(2) Condition B is that the judge advocate is satisfied that the accused should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests.

(3) Condition C is that the judge advocate is satisfied that, because of lack of time since the accused was charged, it has not been practicable to obtain sufficient information for the purpose of deciding whether condition A or B is met.

(4) Condition D is that the accused's case has been adjourned for inquiries or a report and it appears to the judge advocate that it would be impracticable to complete the inquiries or make the report without keeping the accused in service custody.

107 Release from custody after charge

(1) Subsections (2) and (3) apply where, at a hearing under section 105(1), the judge advocate does not authorise keeping the accused in service custody.

(2) Subject to subsection (3), the accused must be released from service custody without delay.

(3) The accused may be required to comply, before release or later, with such requirements as appear to the judge advocate to be necessary—

(a) to secure his attendance at any hearing in the proceedings against him;

(b) to secure that he does not commit an offence while released from custody;

(c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or

(d) for his own protection or, if he is aged under 17, for his own welfare or in his own interests.

(4) On an application made—

(a) by or on behalf of the accused, or

(b) by the commanding officer of the accused,

any requirement imposed under subsection (3) (including such a requirement as previously varied under this subsection) may be varied or discharged by a judge advocate.

(5) A person on whom a requirement has been imposed by virtue of subsection (3)(a) commits an offence if, without reasonable excuse, he fails to attend any hearing to which the requirement relates.

(6) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

108 Review of custody after charge

(1) Where the keeping of the accused in service custody is authorised by an order under section 105(2), it must be reviewed by a judge advocate not later than the end of the period for which it is authorised.

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(2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he must—

(a) release the accused from service custody; or

(b) request a review.

(3) Where a request is made under subsection (2)(b), a review must be carried out as soon as practicable.

(4) Sections 105(2) to (6), 106 and 107 apply in relation to a review as they apply in relation to a hearing under section 105(1); but the application of section 105(3) is subject to subsection (7).

(5) At the first review the accused may support an application for release from service custody with any argument as to fact or law (whether or not he has advanced that argument previously).

(6) At subsequent reviews the judge advocate need not hear arguments as to fact or law which have been heard previously.

(7) On a review at a hearing at which the accused is legally represented, the judge advocate may, if the accused consents, authorise the keeping of the accused in service custody for a period of not more than 28 days.

(8) In this section "review" means a review under subsection (1).

109 Custody during proceedings of Court Martial or Service Civilian Court

(1) In relation to a review under section 108(1) which takes place between—

(a) the arraignment of the accused before the Court Martial or the Service Civilian Court, and

(b) the conclusion of proceedings before the court,

section 105(2) to (6) (as applied by section 108(4)) apply with the following modifications.

(2) The reference in section 105(2) to conditions A to C is to be read as a reference to conditions A to D.

(3) Where the accused is awaiting sentence—

(a) references in section 105(4)(a) and (5) to an offence with which the accused is charged are to be read as references to the offence for which he is awaiting sentence; and

(b) section 105(4)(d) does not apply.

Arrest after charge

110 Arrest after charge or during proceedings by order of commanding officer

(1) The commanding officer of a person who—

(a) has been charged with, or is awaiting sentence for, a service offence, and

(b) is not in service custody,

may, if satisfied that taking that person into service custody is justified, give orders for his arrest.

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(2) For the purposes of this section, taking a person into service custody is justified if there are reasonable grounds for suspecting that, if not taken into service custody, he would—

(a) fail to attend any hearing in the proceedings against him;

(b) commit an offence; or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3) Taking a person into service custody is also justified for the purposes of this section if—

(a) he has failed to attend any hearing in the proceedings against him;

(b) there are reasonable grounds for suspecting that he should be taken into service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests; or

(c) there are reasonable grounds for suspecting that—

(i) if not taken into service custody, he would fail to comply with a requirement imposed under section 107(3); or

(ii) he has failed to comply with such a requirement.

(4) A person arrested under subsection (1) who is kept in service custody—

(a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and

(b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).

(5) Where a power of arrest is conferred on any person by virtue of this section, he may use reasonable force, if necessary, in the exercise of the power.

111 Arrest during proceedings at direction of court

(1) Where—

(a) a person has been arraigned before the Court Martial or the Service Civilian Court, and

(b) proceedings before the court have not concluded,

a judge advocate, if satisfied that taking him into service custody is justified, may direct the arrest of that person.

(2) Any person with power to arrest that person for a service offence has the same power, exercisable in the same way, to arrest him pursuant to a direction under subsection (1).

(3) Subsections (2) and (3) of section 110 apply for the purposes of this section.

(4) A person arrested under this section who is kept in service custody—

(a) must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and

(b) on that review is to be dealt with as on a review under section 108(1) (see sections 108(4) to (8) and 109).

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CHAPTER 3

CUSTODY PROCEEDINGS RULES

112 Custody proceedings rules

(1) The Secretary of State may make rules with respect to proceedings—

(a) on an application under section 101;

(b) under section 105(1);

(c) on an application under section 107(4);

(d) on a review under section 108(1), 110(4), 111(4) or 171(2).

(2) Rules under this section may in particular make provision—

(a) with respect to arrangements preliminary to the proceedings;

(b) with respect to the representation of the person to whom the proceedings relate;

(c) with respect to evidence, including the admissibility of evidence;

(d) for procuring the attendance of witnesses;

(e) with respect to the immunities and privileges of witnesses;

(f) with respect to oaths and affirmations;

(g) with respect to circumstances in which a review under section 108(1), 110(4), 111(4) or 171(2) may be carried out without a hearing;

(h) with respect to the use for the purposes of the proceedings of live television or telephone links or similar arrangements, including the use of such links or other arrangements as a means of satisfying any requirement imposed by this Act for a person to be brought before a judge advocate;

(i) for the appointment of persons to discharge administrative functions under the rules.

VALID FROM 28/03/2009

PART 5

INVESTIGATION, CHARGING AND MODE OF TRIAL

CHAPTER 1

INVESTIGATION

Duties of commanding officers

113 CO to ensure service police aware of possibility serious offence committed

(1) If an officer becomes aware of an allegation or circumstances within subsection (2), he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.

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(2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a Schedule 2 offence has or may have been committed by a relevant person.

(3) In subsection (2) "relevant person" means a person whose commanding officer is the officer mentioned in subsection (1).

(4) In this Chapter "Schedule 2 offence" means a service offence listed in Schedule 2.

(5) The Secretary of State may by order amend Schedule 2.

114 CO to ensure service police aware of certain circumstances

(1) If an officer of a prescribed description becomes aware of circumstances of a prescribed description, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter.

(2) In this section "prescribed" means prescribed by regulations under section 128.

115 Duty of CO with respect to investigation of service offences

(1) This section applies where—

(a) an officer becomes aware of an allegation or circumstances within subsection (2); and

(b) the officer is not required by section 113(1) or 114(1) to ensure that a service police force is aware of the matter.

(2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a service offence has or may have been committed by a relevant person.

(3) In subsection (2) "relevant person" means a person whose commanding officer is the officer mentioned in subsection (1).

(4) The officer must either—

(a) ensure that the matter is investigated in such way and to such extent as is appropriate; or

(b) ensure, as soon as is reasonably practicable, that a service police force is aware of the matter.

(5) Subsection (4) does not apply if the matter has already been investigated in such way and to such extent as is appropriate.

Duty of service policeman following investigation

116 Referral of case following investigation by service or civilian police

(1) This section applies where—

(a) a service police force has investigated an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed; or

(b) a UK police force or overseas police force has investigated such an allegation or such circumstances and has referred the matter to a service police force.

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(2) If—

(a) a service policeman considers that there is sufficient evidence to charge a person with a Schedule 2 offence, or

(b) a service policeman considers that there is sufficient evidence to charge a person with any other service offence, and is aware of circumstances of a description prescribed by regulations under section 128 for the purposes of this paragraph,

he must refer the case to the Director of Service Prosecutions ("the Director").

(3) If—

(a) a service policeman considers that there is sufficient evidence to charge a person with a service offence, and

(b) subsection (2) does not apply,

he must refer the case to the person's commanding officer.

(4) If—

(a) the allegation or circumstances gave rise to the duty under section 113(1) or 114(1), and

(b) a service policeman proposes not to refer the case to the Director under subsection (2),

he must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).

(5) For the purposes of subsections (2) and (3) there is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted.

117 Section 116: position where investigation is of multiple offences or offenders

(1) This section applies where the investigation mentioned in section 116(1) relates to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons.

(2) Each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.

(3) If a case is referred under section 116(2) to the Director of Service Prosecutions—

(a) any other case of a description prescribed by regulations under section 128 for the purposes of this paragraph is to be treated as referred under section 116(2) to the Director of Service Prosecutions; and

(b) nothing in section 116(3) or (4) applies in relation to any case treated as so referred.

118 Duty of service policeman to notify CO of referral to DSP

(1) This section applies where a service policeman considers that there is sufficient evidence to charge a person ("A") with a service offence and refers the case under section 116(2) to the Director of Service Prosecutions.

(2) The service policeman must as soon as reasonably practicable after referring the case—

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(a) notify A's commanding officer of the referral; and

(b) provide prescribed documents to A's commanding officer.

(3) A notification under subsection (2)(a) must specify—

(a) the service offence the service policeman considers there is sufficient evidence to charge A with; and

(b) where that offence is not a Schedule 2 offence, the circumstances he is aware of that are of a description prescribed as mentioned in section 116(2)(b).

(4) In this section—

(a) any reference to there being sufficient evidence to charge a person with a service offence is to be read in accordance with section 116(5);

(b) "prescribed documents" means documents prescribed for the purposes of subsection (2)(b) by regulations under section 128.

(5) Section 117(3)(a) (certain cases to be treated as referred under section 116(2)) does not apply for the purposes of this section.

CHAPTER 2

CHARGING AND MODE OF TRIAL

Powers of charging etc

119 Circumstances in which CO has power to charge etc

(1) This section sets out the circumstances in which a commanding officer has initial powers (defined by section 120) in respect of a case.

(2) If a commanding officer of a person becomes aware of an allegation which indicates, or circumstances which indicate, that the person has or may have committed a service offence, he has initial powers in respect of the case.

(3) Subsection (2) does not apply if the allegation or circumstances—

(a) give or have given rise to the duty under section 113(1) or 114(1);

(b) are being or have been investigated by a service police force; or

(c) are being or have been investigated by a UK police force or overseas police force, and it appears to the commanding officer that that force may refer the matter to the service police.

(4) A commanding officer has initial powers in respect of a case which a service policeman has referred to him under section 116(3) (referral of case following investigation by service or civilian police).

(5) A commanding officer has initial powers in respect of a case which the Director of Service Prosecutions has referred to him under section 121(4) (referral of case by DSP).

(6) If an allegation or circumstances mentioned in subsection (2) relate to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons, each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.

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120 Power of CO to charge etc

(1) Subsections (2) and (3) apply where under section 119 a commanding officer has initial powers in respect of a case.

(2) The officer may bring, in respect of the case, one or more charges that are capable of being heard summarily (see section 52).

(3) The officer may refer the case to the Director of Service Prosecutions.

(4) A charge brought under subsection (2) is to be regarded for the purposes of this Part as allocated for summary hearing.

(5) Where an officer refers a case under subsection (3), any other case—

(a) which is of a description prescribed by regulations under section 128 for the purposes of this subsection, and

(b) as respects which the officer has initial powers,

is to be treated as referred under subsection (3) to the Director of Service Prosecutions.

121 Power of DSP to direct bringing of charge etc

(1) The powers in subsections (2) to (5) are exercisable by the Director of Service Prosecutions ("the Director") in respect of a case which has been referred to him under—

(a) section 116(2) (referral of case following investigation by service or civilian police); or

(b) section 120(3) (referral of case by CO).

(2) The Director may direct the commanding officer of the person concerned to bring, in respect of the case, such charge or charges against him as may be specified in the direction.

(3) If—

(a) the Director makes a direction under subsection (2), and

(b) the Service Civilian Court has jurisdiction to try the charge specified in the direction,

the Director may allocate the charge for trial by that court.

(4) The Director may refer the case to the commanding officer of the person concerned, but only if he has decided that it would not be appropriate to make a direction under subsection (2) in respect of it.

(5) The Director may make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of any offence as regards which he could make a direction under subsection (2).

122 Charges brought at direction of DSP

(1) Where a direction under section 121(2) is given to an officer, he must bring the charge or charges specified in the direction.

(2) A charge brought as a result of such a direction—

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(a) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial if the Director of Service Prosecutions allocated it (under section 121(3)) for trial by that court;

(b) otherwise, is to be regarded for the purposes of this Part as allocated for Court Martial trial.

Powers of commanding officer or DSP after charge etc

123 Powers of CO after charge

(1) This section applies where a charge against a person ("the accused") is for the time being regarded for the purposes of this Part as allocated for summary hearing.

(2) The accused's commanding officer may—

(a) amend the charge;

(b) substitute for the charge another charge against the accused;

(c) bring an additional charge against the accused;

(d) discontinue proceedings on the charge;

(e) refer the charge to the Director of Service Prosecutions.

(3) The powers under subsection (2) may be exercised before or after the start of any summary hearing of the charge.

(4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be capable of being heard summarily (see section 52).

(5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.

(6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for summary hearing.

(7) Where a charge is referred under subsection (2)(e) to the Director of Service Prosecutions, the charge and any other charge brought in respect of the same case are to be regarded for the purposes of this Part as allocated for Court Martial trial.

124 CO to hear charge allocated for summary hearing

(1) This section applies in respect of a charge which is regarded for the purposes of this Part as allocated for summary hearing.

(2) The accused's commanding officer must hear the charge summarily unless—

(a) he exercises his powers under section 123(2)(b), (d) or (e) in respect of the charge (substitution of charge, discontinuance of proceedings, or referral to DSP); or

(b) the accused elects Court Martial trial of the charge (see section 129).

(3) Subsection (2) is subject to sections 52 (charges capable of being heard summarily) and 54 (charges which may be heard summarily only with permission or by senior officer).

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

(1) This section applies where a charge against a person ("the accused") is for the time being regarded for the purposes of this Part as allocated for Court Martial trial.

(2) The Director of Service Prosecutions may—

(a) amend the charge;

(b) substitute for the charge another charge against the accused;

(c) bring an additional charge against the accused;

(d) discontinue proceedings on the charge;

(e) refer the charge to the accused's commanding officer, but only if the charge is capable of being heard summarily (see section 52);

(f) allocate the charge for trial by the Service Civilian Court, but only if the charge is one that that court has jurisdiction to try;

(g) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.

(3) Court Martial rules may restrict the exercise of powers under subsection (2)—

(a) after arraignment by the Court Martial;

(b) after referral of the charge to the Court Martial under section 279(4) or 280(3) (referral by SCC); or

(c) where the charge is in respect of an offence which would be a relevant offence for the purposes of section 165 (election for trial by Court Martial) if the accused were convicted or acquitted of it.

(4) Subsection (3)(c) does not apply in relation to powers under subsection (2)(e) (which are restricted by section 130).

(5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.

(6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Court Martial trial.

(7) Any charge referred under subsection (2)(e) to a commanding officer is to be regarded for the purposes of this Part as allocated for summary hearing.

(8) Any charge allocated under subsection (2)(f) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.

126 Powers of DSP in respect of charge allocated for SCC trial

(1) This section applies where a charge against a person ("the accused") is for the time being regarded for the purposes of this Part as allocated for Service Civilian Court trial.

(2) The Director of Service Prosecutions may—

(a) amend the charge;

(b) substitute for the charge another charge against the accused;

(c) bring an additional charge against the accused;

(d) discontinue proceedings on the charge;

(e) allocate the charge for trial by the Court Martial;

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(f) make a direction under section 127(1) or (2) (directions barring further proceedings) in respect of the offence charged or any offence that could be charged under paragraph (c) above.

(3) SCC rules may restrict the exercise, after a decision by the Service Civilian Court under section 279 as to whether it should try the charge, of powers under subsection (2).

(4) Any amended, substituted or additional charge under subsection (2)(a) to (c) must be one that the Service Civilian Court has jurisdiction to try.

(5) Any additional charge brought under subsection (2)(c) must be in respect of the case as respects which the charge mentioned in subsection (1) was brought.

(6) Any amended, substituted or additional charge under subsection (2)(a) to (c) is to be regarded for the purposes of this Part as allocated for Service Civilian Court trial.

(7) Any charge allocated under subsection (2)(e) is to be regarded for the purposes of this Part as allocated for Court Martial trial.

CHAPTER 3

SUPPLEMENTARY

127 Directions by DSP barring further proceedings

(1) A direction under this subsection is a direction that for the purposes of section 63 the person specified in the direction is to be treated as acquitted of the service offence so specified.

(2) A direction under this subsection is a direction that for the purposes of sections 63 and 64 the person specified in the direction is to be treated as acquitted of the service offence so specified.

128 Regulations for purposes of Part 5

(1) The Secretary of State may by regulations make such provision as he considers necessary or expedient for the purposes of any provision of this Part.

(2) Regulations under this section may in particular make provision—

(a) for the delegation by a commanding officer of any of his functions;

(b) as to the bringing, amendment and substitution of charges;

(c) as to the referral of cases and charges, including provision requiring a commanding officer in prescribed circumstances to refer a case or charge to the Director of Service Prosecutions;

(d) as to the examination of witnesses for the purpose of obtaining information of assistance to the Director of Service Prosecutions in connection with his functions under Chapter 2;

(e) requiring prescribed persons to be notified of prescribed matters.

(3) In subsection (2) "prescribed" means prescribed by regulations under this section.

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VALID FROM 28/03/2009

PART 6

SUMMARY HEARING AND APPEALS AND REVIEW

CHAPTER 1

SUMMARY HEARING

Right to elect Court Martial trial

129 Right to elect Court Martial trial

(1) Before hearing a charge summarily the commanding officer must, in the way specified by rules under section 153, give the accused the opportunity of electing Court Martial trial of the charge.

(2) If the accused elects Court Martial trial of the charge—

(a) the commanding officer must refer the charge to the Director of Service Prosecutions; and

(b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.

(3) Where two or more charges against the accused are to be heard summarily together, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.

(4) Where, after the start of a summary hearing—

(a) a charge is amended under section 123(2)(a),

(b) a charge is substituted for another charge under section 123(2)(b), or

(c) an additional charge is brought under section 123(2)(c),

this section applies in relation to the amended, substituted or additional charge as if the reference in subsection (1) to hearing a charge summarily were a reference to proceeding with the hearing.

130 Further consequences of election for Court Martial trial

(1) This section applies where the accused has elected Court Martial trial of a charge.

(2) The Director of Service Prosecutions ("the Director") may not without the written consent of the accused refer to a commanding officer, under section 125(2)(e)—

(a) that charge (whether or not amended by the Director), or

(b) any charge substituted under section 125(2)(b) or additionally brought under section 125(2)(c).

(3) Where a charge mentioned in subsection (2) is referred under section 125(2)(e), the accused may not elect Court Martial trial of the charge (and accordingly

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section 129(1) does not apply in respect of the charge); but this does not apply if the charge is amended after referral.

Summary hearing

131 Summary hearing

(1) This section applies where a commanding officer hears a charge summarily.

(2) The commanding officer may dismiss the charge at any stage of the hearing; but this is subject to subsection (4) and to any provision of rules under section 153.

(3) If the commanding officer determines that the charge has not been proved, he must dismiss the charge.

(4) If the commanding officer determines that the charge has been proved, he must—
(a) record a finding that the charge has been proved; and
(b) award one or more of the punishments authorised by section 132.

(5) Where the commanding officer records findings that two or more charges against a person have been proved, the award he must make under subsection (4) is a single award (consisting of one or more of those punishments) in respect of the charges taken together.

(6) Nothing in this section authorises a commanding officer to include in an award two or more punishments within the same row of the Table in section 132, except where those punishments are—
(a) different minor punishments which regulations made under row 7 of the Table permit to be awarded together; or
(b) service compensation orders.

Punishments available to commanding officer

132 Punishments available to commanding officer

(1) The second column of the following Table lists the punishments that may be awarded by a commanding officer who has heard a charge summarily, subject in the case of each punishment to any limitation shown in the third column opposite it.

TABLE

Row Number	***Punishment***	***Limitation***
1	detention for a term not exceeding the maximum allowed by section 133	only if the person being punished is of or below the rank of— (a) leading rate; (b) lance corporal or lance bombardier; (c) corporal in any of Her Majesty's air forces

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2	forfeiture of a specified term of seniority or of all seniority	only if the person being punished is an officer, and only in accordance with section 134
3	reduction in rank, or disrating	only if the person being punished is a warrant officer or non-commissioned officer, only in accordance with section 135, and not to an extent prohibited by regulations under section 135(4)
4	a fine not exceeding the maximum amount allowed by section 136	
5	a severe reprimand or a reprimand	only if the person being punished is an officer, warrant officer or non-commissioned officer
6	a service supervision and punishment order (defined by section 173)	only if the person being punished is an able rate, marine, soldier or airman
7	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
8	a service compensation order (defined by section 175) of an amount not exceeding the maximum allowed by section 137	

(2) Subsection (1) is subject to (in particular)—

(a) section 138 (prohibited combinations of punishments) and any regulations made under that section;

(b) Chapter 1 of Part 9 (general provisions about sentencing).

(3) Where regulations under row 7 of the Table authorise a minor punishment, they may—

(a) confer on the offender's commanding officer a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;

(b) confer on the offender's commanding officer the function of deciding the details of the punishment;

(c) provide for the delegation by the commanding officer of any of his functions under the regulations.

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133 Detention: limits on powers

(1) The maximum term of detention that a commanding officer may award under row 1 of the Table in section 132 to an able rate, marine, soldier or airman is—

(a) 90 days if the commanding officer has extended powers for the purposes of this subsection;

(b) otherwise, 28 days.

(2) A commanding officer may not award detention under row 1 of the Table in section 132 to a person of any of the following ranks—

(a) leading rate,

(b) lance corporal or lance bombardier,

(c) corporal in any of Her Majesty's air forces,

unless the commanding officer has extended powers for the purposes of this subsection; and the maximum term of detention that a commanding officer may (if he has those powers) award such a person is 90 days.

(3) A commanding officer has extended powers for the purposes of subsection (1) or (2) if he has, before the summary hearing of the charge or charges—

(a) applied to higher authority for extended powers for the purposes of that subsection; and

(b) been notified by higher authority that his application has been granted.

(4) A commanding officer also has extended powers for the purposes of subsection (1) or (2) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

134 Forfeiture of seniority: requirement for approval

(1) A commanding officer may not award forfeiture of seniority under row 2 of the Table in section 132 unless he has extended powers for the purposes of this section.

(2) A commanding officer has extended powers for the purposes of this section if he has, before the summary hearing of the charge or charges—

(a) applied to higher authority for extended powers for the purposes of this section; and

(b) been notified by higher authority that his application has been granted.

(3) A commanding officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

135 Reduction in rank: limits on powers

(1) A commanding officer may not award reduction in rank, or disrating, under row 3 of the Table in section 132 unless—

(a) he has extended powers for the purposes of this subsection; or

(b) the person being punished is a lance corporal or lance bombardier.

(2) The reduction in rank or disrating that a commanding officer may award is reduction or disrating—

(a) by one acting rank or rate; or

(b) if the person being punished has no acting rank or rate, by one substantive rank or rate.

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(3) Where the person being punished is a corporal in any of Her Majesty's air forces, the reduction in rank authorised by subsection (2)(a) (if he is an acting corporal) or (2)(b) (if he is not) is reduction to the highest rank he has held in that force as an airman.

(4) The Defence Council may by regulations provide that persons of a trade or branch specified in the regulations may not be reduced or disrated under section 132 below a rank or rate so specified.

(5) A commanding officer has extended powers for the purposes of subsection (1) if he has, before the summary hearing of the charge or charges—

(a) applied to higher authority for extended powers for the purposes of that subsection; and

(b) been notified by higher authority that his application has been granted.

(6) A commanding officer also has extended powers for the purposes of subsection (1) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

136 Fine: maximum amount

(1) The maximum amount of a fine that a commanding officer may award is—

(a) 28 days' pay unless paragraph (b) applies;

(b) if the person being punished is an officer or warrant officer and the commanding officer does not have extended powers for the purposes of this paragraph, 14 days' pay.

(2) A commanding officer has extended powers for the purposes of paragraph (b) of subsection (1) if he has, before the summary hearing of the charge or charges—

(a) applied to higher authority for extended powers for the purposes of that paragraph; and

(b) been notified by higher authority that his application has been granted.

(3) A commanding officer also has extended powers for the purposes of that paragraph if he is of or above the rank of rear admiral, major-general or air vice-marshal.

(4) For the purposes of this section a day's pay is—

(a) subject to paragraph (b), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded;

(b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate.

(5) If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of subsection (4) he is to be taken to have been on duty then.

(6) In subsection (4) "special member" and "ordinary member" have the same meanings as in the Reserve Forces Act 1996 (c. 14).

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137 Service compensation orders: maximum amount

(1) Where an award by a commanding officer consists of or includes one service compensation order, the compensation to be paid under the order must not exceed £1,000.

(2) Where an award by a commanding officer consists of or includes two or more service compensation orders, the total compensation to be paid under the orders must not exceed £1,000.

(3) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in subsections (1) and (2) such other sum as appears to him justified by the change.

(4) In subsection (3) "the relevant date" means—

(a) the date of the coming into force of this section; or

(b) where the sum for the time being specified in subsections (1) and (2) was substituted for a sum previously so specified, the date of the substitution.

138 Prohibited combinations of punishments

(1) Subsections (2) to (6) apply where a commanding officer awards punishment in respect of an offender.

(2) If he awards detention, other than a suspended sentence of service detention, the only additional punishment he may award is a service compensation order.

(3) If he awards a suspended sentence of service detention, the only additional punishments he may award are—

(a) reduction in rank or disrating (subject to subsection (8));

(b) a service compensation order.

(4) If he awards forfeiture of seniority, the only additional punishments he may award are—

(a) a severe reprimand or a reprimand;

(b) a service compensation order.

(5) If he awards reduction in rank or disrating, the only additional punishments he may award are—

(a) a suspended sentence of service detention (subject to subsection (8));

(b) a service compensation order.

(6) If he awards a fine, he may not also award a service supervision and punishment order.

(7) Regulations under row 7 of the Table in section 132 may make provision, as respects any punishment authorised by those regulations, prohibiting that punishment from being awarded with any other punishment (whether or not so authorised) specified by the regulations.

(8) Nothing in this section authorises a commanding officer to award a particular punishment where the award of that punishment is prohibited otherwise than by this section.

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(9) References in this section to a service compensation order include references to two or more such orders.

139 Savings for maximum penalties for offences

(1) Where a commanding officer awards punishment in respect of a single offence, nothing in sections 131 to 138 authorises him—

(a) to award a punishment of a kind which the Court Martial could not award for that offence;

(b) if the offence is under section 42 (criminal conduct), to award a fine exceeding the maximum allowed by section 42(4).

(2) Where a commanding officer awards punishment in respect of two or more offences—

(a) nothing in sections 131 to 138 authorises him to award a punishment of a particular kind unless it is one which the Court Martial could award for at least one of the offences; and

(b) if all the offences are under section 42 and the maximum fine allowed by section 136 exceeds the permitted maximum, nothing in sections 131 to 138 authorises him to award a fine exceeding the permitted maximum.

(3) The permitted maximum is the total of the fines that under section 42(4) the commanding officer could award in respect of the offences if he had power to make separate awards in respect of them.

CHAPTER 2

THE SUMMARY APPEAL COURT

140 The Summary Appeal Court

(1) There shall be a court, to be known as the Summary Appeal Court.

(2) The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom.

141 Right of appeal

(1) A person in respect of whom—

(a) a charge has been heard summarily, and

(b) a finding that the charge has been proved has been recorded,

may appeal to the Summary Appeal Court against the finding or against the punishment awarded.

(2) Subject to subsection (3), any appeal under this section must be brought—

(a) within the period of 14 days beginning with the date on which the punishment was awarded ("the initial period"); or

(b) within such longer period as the court may allow by leave given before the end of the initial period.

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(3) The court may at any later time give leave for an appeal to be brought within such period as it may allow.

(4) The respondent to an appeal under this section is the Director of Service Prosecutions.

142 Constitution of the SAC for appeals

(1) For the purpose of hearing an appeal under section 141, the Summary Appeal Court is to consist of—

(a) a judge advocate;

(b) an officer qualified for membership under section 143 and not ineligible by virtue of section 144; and

(c) a third person who is an officer or warrant officer so qualified and not so ineligible.

(2) Subsection (1) is subject to any provision made by SAC rules.

(3) The judge advocate for an appeal under section 141 is to be specified by or on behalf of the Judge Advocate General.

(4) The other members of the court for an appeal under section 141 are to be specified by or on behalf of the court administration officer.

143 Officers and warrant officers qualified for membership of the SAC

(1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Summary Appeal Court if he is subject to service law.

(2) An officer is not qualified for membership of the court unless—

(a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or

(b) immediately before receiving his commission, he was a warrant officer in any of those forces.

(3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.

(4) An officer or warrant officer is not qualified for membership of the court if—

(a) he is a member of the Military Court Service;

(b) he is a member of or on the staff of the Service Prosecuting Authority;

(c) he is a service policeman;

(d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;

(e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(f) he is an advocate or solicitor in Scotland;

(g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

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(5) In this section "relevant territory" means—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) a Commonwealth country; or

(d) a British overseas territory.

144 Officers and warrant officers ineligible for membership in particular circumstances

(1) An officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if—

(a) he was the commanding officer of the appellant at any time in the period beginning with the date of commission of the offence which is the subject of the finding against the appellant and ending with the start of the appeal hearing;

(b) before the summary hearing, he took part in investigating the subject matter of any finding against the appellant;

(c) he is a higher authority who dealt with an application made before the summary hearing for permission under section 54 or for extended powers for the purposes of any provision of section 133, 134, 135, 136 or 194;

(d) he serves under the command of a person within paragraph (c);

(e) he serves under the command of the officer who conducted the summary hearing; or

(f) before the summary hearing, he conducted (whether alone or with other persons) an inquiry into the subject matter of any finding against the appellant.

(2) A warrant officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if he falls within subsection (1)(b), (d), (e) or (f).

(3) Where there is more than one finding against the appellant, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.

(4) SAC rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Summary Appeal Court.

145 Open court

Subject to any provision made by SAC rules, the Summary Appeal Court must sit in open court.

146 Hearing of appeals

(1) An appeal under section 141 against a finding is to be by way of—

(a) a rehearing of the charge; and

(b) except where section 147(2) applies, a rehearing as respects punishment.

(2) An appeal under section 141 against punishment is to be by way of a rehearing as respects punishment.

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(3) In the case of the hearing of an appeal under section 141, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.

(4) Any rulings or directions given under subsection (3) are binding on the court.

147 Powers of the SAC

(1) At a rehearing of a charge by virtue of section 146(1)(a), the Summary Appeal Court may—

(a) confirm or quash the finding concerned; or

(b) substitute for the finding concerned a finding that another charge has been proved.

(2) Where the court quashes the finding, or (if there is more than one finding) every finding, made in respect of the appellant, it must quash the punishment which relates to that finding or, as the case may be, to those findings.

(3) At a rehearing as respects punishment by virtue of section 146(1)(b) or (2), the Summary Appeal Court may—

(a) confirm the punishment awarded; or

(b) quash that punishment and award in substitution for it any punishment which—

(i) it would have been within the powers of the officer who conducted the summary hearing to award; and

(ii) in the opinion of the court, is no more severe than the punishment originally awarded.

(4) SAC rules may make provision in connection with the exercise of the power under subsection (1)(b) (including provision restricting the exercise of the power).

(5) In determining—

(a) whether to substitute a term of detention, or

(b) the length of any such substituted term,

the court must take account of any period of the original term of detention that the appellant served.

148 Effect of substituted punishment

(1) Unless it otherwise directs, any punishment substituted by the Summary Appeal Court has effect as if awarded on the day on which the original punishment was awarded, but this is subject to subsection (2).

(2) Where the court substitutes a term of detention (other than a suspended sentence of service detention), the substituted term takes effect—

(a) if the court makes a direction under section 189(3), in accordance with the direction;

(b) otherwise, from the beginning of the day on which the punishment is substituted.

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149 Making of, and appeals from, decisions of the SAC

(1) Subject to section 146(3), any decision of the Summary Appeal Court when constituted as mentioned in section 142(1) must be determined by a majority of the votes of the members of the court.

(2) The appellant or respondent may question any decision of the Summary Appeal Court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Summary Appeal Court to have a case stated for the opinion of the High Court in England and Wales.

150 Privileges of witnesses and others

A witness before the Summary Appeal Court or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

151 SAC rules

(1) The Secretary of State may by rules (referred to in this Act as "SAC rules") make provision with respect to the Summary Appeal Court.

(2) SAC rules may in particular make provision with respect to—
- (a) sittings of the court, including the place of sitting and changes to the place of sitting;
- (b) the hearing of appeals and other proceedings of the court;
- (c) the practice and procedure of the court;
- (d) evidence, including the admissibility of evidence;
- (e) the representation of the appellant.

(3) Without prejudice to the generality of subsections (1) and (2), SAC rules may make provision—
- (a) as to oaths and affirmations for members of the court, witnesses and other persons;
- (b) as to objections to, and the replacement of, members of the court;
- (c) as to the constitution of the court;
- (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
- (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
  - (i) the payment of expenses to persons summoned to attend the court;
  - (ii) the issue by the court of warrants for the arrest of persons;
- (f) enabling an uncontested appeal to be determined without a hearing;
- (g) as to the bringing or abandonment of appeals;
- (h) for the discharge of a court (including provision as to rehearings following discharge);
- (i) as to notifications and references under section 152;
- (j) for the making and retention of records of the proceedings of the court;
- (k) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;

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(l) conferring functions in relation to the court on the court administration officer;

(m) for the delegation by the court administration officer of any of his functions in relation to the court.

(4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.

(5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—

(a) conferring powers of arrest;

(b) requiring any arrested person to be brought before the court;

(c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).

(6) SAC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.

(7) In this section "appeal" means an appeal under section 141.

CHAPTER 3

REVIEW OF SUMMARY FINDINGS AND PUNISHMENTS

152 Review of summary findings and punishments

(1) Where—

(a) a charge has been heard summarily, and

(b) a finding that the charge has been proved has been recorded,

the finding or the punishment awarded may be reviewed at any time.

(2) A review under this section may be carried out by—

(a) the Defence Council; or

(b) any officer appointed by the Defence Council to carry out the review or any class of review which includes the review.

(3) Subsection (4) applies where—

(a) a review has been carried out under this section in respect of a finding or punishment; and

(b) the person to whom the review relates has not brought an appeal under section 141 within the period provided by subsection (2) of that section.

(4) The person who carried out the review may, with the leave of the Summary Appeal Court, refer the finding or punishment to the court to be considered by it as on an appeal.

(5) Subsections (6) and (7) apply where—

(a) a review has been carried out under this section in respect of a finding or punishment; and

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(b) the person to whom the review relates has brought an appeal under section 141.

(6) If—

(a) the Summary Appeal Court has not completed the hearing of the appeal, and

(b) the person who carried out the review considers that any matter arising at or from the summary hearing should be brought to the notice of the court,

he may notify the court of that matter.

(7) If—

(a) the Summary Appeal Court has completed the hearing of the appeal, and

(b) the person who carried out the review considers that any matter arising at or from the summary hearing of which the court was not aware should have been brought to the notice of the court,

he may, with the leave of the court, refer the finding or punishment, including any finding or punishment substituted or awarded by the court, to the court to be considered by it as on an appeal.

(8) A reference to the Summary Appeal Court under subsection (4) or (7) shall be treated for the purposes of this Act as an appeal under section 141 brought by the person to whom the finding or punishment relates against the finding or punishment.

CHAPTER 4

SUMMARY HEARINGS ETC RULES

153 Summary hearings etc rules

(1) The Secretary of State may by rules make provision with respect to—

(a) the summary hearing of charges by commanding officers;

(b) hearings as regards the making of orders under section 193 (activation of suspended sentence of service detention).

(2) Rules under this section may in particular make provision—

(a) as to the practice and procedure to be followed at hearings;

(b) as to evidence at hearings;

(c) for the delegation by a commanding officer of any of his functions;

(d) as to applications for extended powers;

(e) as to applications for permission to hear summarily charges of a kind mentioned in section 54;

(f) requiring prescribed persons to be notified of prescribed matters.

(3) In subsection (2) "prescribed" means prescribed by rules under this section.

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VALID FROM 28/03/2009

PART 7

TRIAL BY COURT MARTIAL

CHAPTER 1

THE COURT MARTIAL

154 The Court Martial

(1) There shall be a court, to be known as the Court Martial.

(2) The Court Martial may sit in any place, whether within or outside the United Kingdom.

155 Constitution of the Court Martial

(1) In the case of any proceedings, the Court Martial is to consist of—

(a) a judge advocate; and

(b) at least three but not more than five other persons ("lay members").

(2) But Court Martial rules may provide that, in the case of proceedings of a prescribed description, there are to be—

(a) at least five but not more than seven lay members; or

(b) no lay members.

(3) In the case of proceedings where the Court Martial consists of a judge advocate and lay members—

(a) a prescribed number of the lay members must be officers or warrant officers qualified for membership under section 156 and not ineligible by virtue of section 157; and

(b) the rest must be officers so qualified and not so ineligible.

(4) Subsection (3) is subject to any provision made by Court Martial rules.

(5) The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General.

(6) The lay members for any proceedings are to be specified by or on behalf of the court administration officer.

(7) The number of lay members specified under subsection (6) is to be the minimum required unless a judge advocate, in accordance with Court Martial rules, directs otherwise.

(8) In subsection (7) "the minimum required" means—

(a) the minimum required by subsection (1)(b); or

(b) where rules made by virtue of subsection (2)(a) apply instead of subsection (1)(b), the minimum required by those rules.

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(9) In this section "prescribed" means prescribed by Court Martial rules.

156 Officers and warrant officers qualified for membership of the Court Martial

(1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Court Martial if he is subject to service law.

(2) An officer is not qualified for membership of the court unless—

(a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or

(b) immediately before receiving his commission, he was a warrant officer in any of those forces.

(3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.

(4) An officer or warrant officer is not qualified for membership of the court if—

(a) he is a member of the Military Court Service;

(b) he is a member of or on the staff of the Service Prosecuting Authority;

(c) he is a service policeman;

(d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;

(e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(f) he is an advocate or solicitor in Scotland;

(g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(5) In this section "relevant territory" means—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) a Commonwealth country; or

(d) a British overseas territory.

157 Officers and warrant officers ineligible for membership in particular circumstances

(1) An officer is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if—

(a) he was the commanding officer of the defendant at any time in the period beginning with the date of commission of the offence to which the arraignment relates and ending with the arraignment;

(b) he has taken part in investigating the subject matter of any charge against the defendant; or

(c) he has conducted (whether alone or with other persons) an inquiry into the subject matter of any charge against the defendant.

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(2) A warrant officer is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if he falls within subsection (1)(b) or (c).

(3) Where a defendant is arraigned in respect of more than one offence, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.

(4) Court Martial rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Court Martial for a description of proceedings so prescribed.

CHAPTER 2

COURT MARTIAL PROCEEDINGS

158 Open court

Subject to any provision made by Court Martial rules, the Court Martial must sit in open court.

159 Rulings and directions

(1) In the case of proceedings where the Court Martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.

(2) Any rulings or directions given under subsection (1) are binding on the court.

160 Decisions of Court Martial: finding and sentence

(1) Subject to the following provisions of this section, the finding of the Court Martial on a charge, and any sentence passed by it, must be determined by a majority of the votes of the members of the court.

(2) The judge advocate is not entitled to vote on the finding.

(3) In the case of an equality of votes on the finding, the court must acquit the defendant.

(4) In the case of an equality of votes on the sentence, the judge advocate has a casting vote.

161 Power of Court Martial to convict of offence other than that charged

(1) Where the Court Martial acquits a person of an offence specifically charged in the charge sheet, but the allegations in the charge sheet amount to or include (expressly or by implication) an allegation of another service offence, the court may convict him of that other offence.

(2) For the purposes of subsection (1)—

(a) an allegation of an offence to which section 39(1) applies (offence X) shall be taken as including an allegation of an offence under that section of attempting to commit offence X; and

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(b) an allegation of a completed section 42 offence shall be taken as including an allegation of a section 42 offence of attempt.

(3) Subsection (1) applies in relation to a charge sheet containing more than one charge as if each charge were contained in a separate charge sheet.

(4) In this section—

"a completed section 42 offence" means an offence that, by virtue of section 1(4) of the Criminal Attempts Act 1981 (c. 47) as modified by section 43 of this Act, is an offence to which section 1 of that Act applies;

"a section 42 offence of attempt" has the meaning given by section 44(2).

162 Privileges of witnesses and others

A witness before the Court Martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

163 Court Martial rules

(1) The Secretary of State may by rules (referred to in this Act as "Court Martial rules") make provision with respect to the Court Martial.

(2) Court Martial rules may in particular make provision with respect to—

(a) sittings of the court, including the place of sitting and changes to the place of sitting;
(b) trials and other proceedings of the court;
(c) the practice and procedure of the court;
(d) evidence, including the admissibility of evidence;
(e) the representation of the defendant;
(f) appeals from the Service Civilian Court.

(3) Without prejudice to the generality of subsections (1) and (2), Court Martial rules may make provision—

(a) as to oaths and affirmations for members of the court, witnesses and other persons;
(b) as to objections to, and the replacement of, members of the court;
(c) as to the constitution of the court;
(d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
(e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
(i) the payment of expenses to persons summoned to attend the court;
(ii) the issue by the court of warrants for the arrest of persons;
(f) as to the amendment of charges;
(g) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
(h) for the variation by the court of a sentence passed by it or the variation or rescission by it of an order made by it;
(i) for appeals—

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(i) against any orders (including directions) of the court prohibiting or restricting the publication of any matter or excluding the public from any proceedings (whether made in preliminary proceedings or otherwise);

(ii) against any other orders or rulings made in proceedings preliminary to a trial;

(j) for the discharge of a court (including provision as to retrials and rehearings following discharge);

(k) for the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 (c. 11) (orders for the inspection of bankers' books for the purposes of legal proceedings) to be exercisable by a judge advocate as well as by the court or a judge within the meaning of that Act;

(l) for the making and retention of records of the proceedings of the court;

(m) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;

(n) conferring functions in relation to the court on the court administration officer;

(o) for the delegation by the court administration officer of any of his functions in relation to the court.

(4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.

(5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—

(a) conferring powers of arrest;

(b) requiring any arrested person to be brought before the court;

(c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).

(6) Court Martial rules must secure that, after arraignment, charges may not be amended—

(a) in circumstances substantially different from those in which indictments are amendable by the Crown Court; or

(b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which indictments are so amendable.

(7) Rules made by virtue of subsection (3)(h) may make provision about the commencement of sentences or orders varied by the court (including provision conferring on the court a power to direct that a sentence shall take effect otherwise than as mentioned in section 289(1)).

(8) Court Martial rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.

(9) Rules made by virtue of paragraph (i) of subsection (3) may confer jurisdiction on the Court Martial Appeal Court, and rules under section 49 of the Court Martial Appeals Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of that paragraph.

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CHAPTER 3

PUNISHMENTS AVAILABLE TO COURT MARTIAL

164 Punishments available to Court Martial

(1) The second column of the following Table lists the punishments that may be awarded by sentence of the Court Martial, subject in the case of each punishment to any limitation shown in the third column opposite it.

TABLE

Row Number	*Punishment*	*Limitation*
1	imprisonment	
2	dismissal with disgrace from Her Majesty's service	
3	dismissal from Her Majesty's service	
4	detention for a term not exceeding two years	not if the person being sentenced is an officer
5	forfeiture of a specified term of seniority or of all seniority	only if the person being sentenced is an officer
6	reduction in rank, or disrating	only if the person being sentenced is a warrant officer or non-commissioned officer, and not to an extent prohibited by regulations under subsection (4)
7	a fine	
8	a service community order (defined by section 178)	only if the person being sentenced is on the same occasion sentenced to dismissal or dismissal with disgrace and subsection (5) permits
9	a severe reprimand or a reprimand	only if the person being sentenced is an officer, warrant officer or non-commissioned officer
10	a service supervision and punishment order (defined by section 173)	only if the person being sentenced is an able rate, marine, soldier or airman
11	such minor punishments as may from time to	

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	time be authorised by regulations made by the Defence Council
12	a service compensation order (defined by section 175)

(2) Where this Act provides that a person guilty of a particular offence is liable to any punishment mentioned in the Table or in specified rows of the Table, it means he is liable to any one or more of the punishments so mentioned (subject in the case of each one to any limitation shown in the third column opposite it).

(3) The previous provisions of this section are subject to (in particular)—

section 165 (offender elected Court Martial trial);

Chapters 4 to 6 of Part 8 (imprisonment for under 12 months, young offenders' custodial sentences, and mandatory etc sentences for serious offences); and

Part 9 (general provisions about sentencing).

(4) The Defence Council may by regulations restrict the extent to which persons of a description specified in the regulations may be reduced in rank or disrated under this section.

(5) The court may not make a service community order unless—

(a) the offender is aged 18 or over when convicted; and

(b) it appears to the court that he will reside in the United Kingdom when the order is in force.

(6) Where regulations under row 11 of the Table authorise a minor punishment, they may—

(a) confer on the Court Martial a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;

(b) confer on the offender's commanding officer the function of deciding the details of the punishment;

(c) provide for the delegation by the commanding officer of any of his functions under the regulations.

(7) This section is modified in relation to certain offenders by Schedule 3 (civilians etc).

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

(1) For the purposes of this section, an offence of which a person is convicted or acquitted is "relevant" if—

(a) the charge in respect of the offence is one as regards which the person elected Court Martial trial under section 129 (whether or not the charge was amended after election);

(b) the charge in respect of the offence was—

(i) brought under section 125 in addition to a charge as regards which the person so elected; or

(ii) substituted for a charge as regards which the person so elected, or for a charge within sub-paragraph (i), or for a charge so substituted; or

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(c) the person elected Court Martial trial as regards a charge in respect of another offence and conditions prescribed by Court Martial rules are met.

(2) Where—

(a) the Court Martial convicts a person of an offence which is relevant by virtue of subsection (1)(a), and

(b) subsection (4) (multiple relevant offences) does not apply,

the sentence passed in respect of the offence must be such that the commanding officer could have awarded the punishments awarded by that sentence if he had heard the charge summarily and had recorded a finding that the charge had been proved.

(3) In subsection (2) "the commanding officer" means the commanding officer who would have heard the charge if no election under section 129 had been made.

(4) This subsection applies where the court convicts a person of two or more relevant offences the charges in respect of which—

(a) would have been heard summarily together if no election under section 129 had been made; or

(b) are under Court Martial rules to be treated as if they would have been so heard.

(5) Court Martial rules may make provision about the sentencing powers available to the Court Martial—

(a) where subsection (4) applies;

(b) where the court convicts a person of an offence which is relevant by virtue of subsection (1)(b) or (c).

(6) Court Martial rules may make provision—

(a) about the sentencing principles that the Court Martial is to apply in relation to—

(i) the sentencing of an offender for one or more relevant offences; or

(ii) the sentencing of an offender for an offence with which a relevant offence is associated;

(b) restricting the orders that the court may make by virtue of a conviction or acquittal of a relevant offence, including provision—

(i) preventing the court from making an order of a particular kind;

(ii) restricting the provision that may be made by an order of a particular kind;

(c) in relation to any case where a person is convicted of a relevant offence,—

(i) as respects appeals;

(ii) excluding or restricting powers relating to review of sentence.

(7) Rules made by virtue of this section may modify or exclude—

(a) any provision of or made under this Act (including section 255);

(b) any provision of the Court Martial Appeals Act 1968.

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CHAPTER 4

FINDINGS OF UNFITNESS TO STAND TRIAL AND INSANITY

166 Fitness to stand trial

(1) This section applies where on a trial by the Court Martial the question arises (at the instance of the defence or otherwise) whether the defendant is fit to stand trial.

(2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 (c. 84) it would constitute a bar to his being tried on indictment in England and Wales.

(3) Subject to subsections (5) and (6), the question of fitness to stand trial must be determined as soon as it arises.

(4) The question of fitness to stand trial is to be determined by the judge advocate.

(5) If having regard to the nature of the supposed disability the judge advocate is of the opinion that it is expedient to do so and in the interests of the defendant, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.

(6) If before the question of fitness to stand trial falls to be determined the court finds the defendant not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.

(7) A judge advocate may not make a determination under subsection (4) except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.

167 Finding that defendant did the act or made the omission charged

(1) This section applies where in accordance with section 166(4) it is determined by the judge advocate that the defendant is unfit to stand trial.

(2) The trial shall not proceed or further proceed but the court must, as respects the charge or each of the charges on which the defendant was to be or was being tried, determine whether it is satisfied that he did the act charged against him as the offence.

(3) If as respects that charge or any of those charges the court is so satisfied, it must make a finding that the defendant did the act charged against him.

(4) If as respects that charge or any of those charges the court is not so satisfied, it must find the defendant not guilty as if on the charge in question the trial had proceeded to a conclusion.

(5) A determination under subsection (2) must be made—

(a) on the evidence (if any) already given in the trial; and

(b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed under this section by the judge advocate to put the case for the defence.

(6) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but as respects any charge to which subsection (2) above applies—

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(a) the question whether the court is satisfied as mentioned in that subsection is to be determined by the members of the court other than the judge advocate ("the lay members"); and

(b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.

(7) In this section "act" includes an omission and references to the doing of an act are to be read accordingly.

168 Findings of insanity

(1) This section applies where on the trial of a person by the Court Martial the court is satisfied, as respects the charge or any of the charges on which he is being tried, that—

(a) the defendant did the act charged against him as the offence; but

(b) at the time of that act he was insane.

(2) The court must find that the defendant was not guilty of that offence by reason of insanity.

(3) No finding under this section may be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.

(4) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but—

(a) the question whether the court is satisfied as mentioned in subsection (1) above is to be determined by the members of the court other than the judge advocate ("the lay members"); and

(b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.

(5) In this section "act" includes an omission and references to the doing of an act are to be read accordingly.

169 Powers where person unfit to stand trial or not guilty by reason of insanity

(1) This section applies where on a trial by the Court Martial—

(a) the defendant is found to be unfit to stand trial and to have done the act charged against him; or

(b) the defendant is found not guilty by reason of insanity.

(2) Subject to subsections (4) and (5), the court must make in respect of the defendant—

(a) a hospital order, with or without a restriction order;

(b) a service supervision order (defined by section 170); or

(c) an order discharging him absolutely.

(3) In this section—

"hospital order" means an order under section 37 of the Mental Health Act 1983 (c. 20) ("the 1983 Act") as modified by Schedule 4 to this Act;

"restriction order" means an order under section 41 of that Act as so modified.

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(4) The power to make a hospital order by virtue of this section is not exercisable unless the conditions in subsections (1)(b) and (2) of section 37 of the 1983 Act, as modified by Schedule 4 to this Act, are satisfied.

(5) Where—

(a) the finding mentioned in subsection (1) relates to an offence the sentence for which is fixed by law, and

(b) the court has power to make a hospital order,

the court must make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).

(6) The functions of the court under this section, and any functions under the 1983 Act that are exercisable by the court by reason of this section or Schedule 4, are to be exercised by—

(a) the judge advocate for the trial mentioned in subsection (1); or

(b) in a case where that judge advocate has made an interim hospital order under section 38 of the 1983 Act as modified by Schedule 4, by that or any other judge advocate.

(7) In subsection (1) "act" includes an omission and the reference to the doing of an act is to be read accordingly.

(8) Schedule 4 (modifications of the 1983 Act) has effect.

170 Service supervision orders

(1) In section 169 and this section a "service supervision order" means an order which requires the person in respect of whom it is made ("the supervised person") to be under the supervision of a person specified in the order ("the supervising officer") for a period specified in the order.

(2) The period specified in the order must not exceed the maximum period for the time being specified in paragraph 1(1) of Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84) (maximum period of civilian supervision order).

(3) The court may not make a service supervision order under section 169(2)(b) unless it is satisfied—

(a) that, having regard to all the circumstances of the case, the making of a service supervision order is the most suitable way of dealing with the defendant;

(b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and

(c) that arrangements have been made for any treatment which (under subsection (4)) is intended to be specified in the order.

(4) An order under section 169(2)(b) may, in accordance with regulations under subsection (5), require the supervised person to submit, during the whole of the period specified in the order or such part of it as may be so specified, to treatment by or under the direction of a registered medical practitioner.

(5) The Secretary of State may by regulations make further provision in relation to service supervision orders, including in particular provision—

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(a) as to the procedure to be followed by a court making a service supervision order;

(b) as to the descriptions of supervising officer who may be specified in such an order;

(c) for treatment to be provided, in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated, at a place other than a place specified in the order;

(d) authorising a court to include in a service supervision order requirements corresponding to any requirements that Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84) for the time being allows to be included in supervision orders under that Act;

(e) imposing on the supervised person obligations corresponding to any for the time being imposed by that Schedule;

(f) for the amendment and revocation of a service supervision order.

171 Remission for trial

(1) Where—

(a) a person is detained in pursuance of a hospital order which the Court Martial had power to make by virtue of section 169(1)(a),

(b) the court also made a restriction order, and

(c) the restriction order has not ceased to have effect,

the Secretary of State, if satisfied after consultation with **[**F7the responsible clinician**]** that the person can properly be tried, may remit the person for trial by the Court Martial.

(2) A person remitted under this section must be transferred to service custody, but when he is so transferred—

(a) he must as soon as practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and

(b) on that review he is to be dealt with as on a review under section 108(1) (see section 108(4) to (8)).

(3) On the transfer of a person to service custody under this section the hospital order and restriction order cease to have effect.

(4) In this section—

"hospital order" and "restriction order" have the same meanings as in section 169;

[F8"the responsible clinician" means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.**]**

(5) In subsection (1)(a) the reference to a hospital order as there mentioned includes a reference to—

(a) a hospital order made by virtue of section 16(1)(b) or 22(3A) of the Court Martial Appeals Act 1968 (c. 20);

(b) a hospital order made by virtue of section 25B(1) of that Act in a case in which a finding within section 169(1)(a) of this Act was made by the Court Martial.

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Textual Amendments

F7 Words in s. 171(1) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 15(5)(a)**, 56(1); S.I. 2008/1900, art. 2(b) (with art. 3, Sch.)

F8 Words in s. 171(4) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 15(5)(b)**, 56(1); S.I. 2008/1900, art. 2(b) (with art. 3, Sch.)

172 Provision supplementary to sections 166 and 168

(1) In sections 166 and 168 and this section "duly approved" means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

(2) For the purposes of the provisions of sections 166 and 168 which permit a court to act on the written evidence of—

(a) a registered medical practitioner, or

(b) a registered medical practitioner who is duly approved,

a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may (subject to subsection (4)) be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved.

(3) The court may require the signatory of any such report to be called to give oral evidence.

(4) Where in pursuance of a direction of the court any such report is tendered in evidence otherwise than by or on behalf of the defendant, then—

(a) if the defendant is represented by counsel or a solicitor, a copy of the report must be given to his counsel or solicitor;

(b) if the defendant is not so represented the substance of the report must be disclosed to him or, if he is aged under 18, to his parent or guardian if present in court;

(c) the defendant may require the signatory of the report to be called to give oral evidence; and

(d) evidence to rebut the evidence contained in the report may be called by the defendant or on his behalf.

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VALID FROM 28/03/2009

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

CHAPTER 1

DEFINITION ETC OF CERTAIN SENTENCES

Service supervision and punishment orders

173 Service supervision and punishment orders

(1) A service supervision and punishment order is an order that—

(a) imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe; and

(b) provides that one-sixth of his gross pay for that period is forfeit.

(2) The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made.

(3) The requirements that regulations under this section may prescribe include, in particular—

(a) requirements to perform activities of a prescribed description;

(b) requirements not to use entitlement to leave;

and the descriptions of activities that may be prescribed include extra work and drill.

(4) A requirement included in regulations under this section may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may—

(a) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when;

(b) provide for the delegation by the commanding officer of any of his functions under the regulations.

(5) Regulations under this section may prescribe different requirements for different parts of the period of the order.

(6) In this section "prescribed" means prescribed by regulations under this section.

174 Review of service supervision and punishment orders

(1) The commanding officer of a person subject to a service supervision and punishment order must, at times prescribed by regulations made by the Defence Council, consider whether the order should continue in force.

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(2) If on a review under subsection (1) the commanding officer decides that the order should not continue in force, he must order that it shall immediately cease to have effect.

(3) Regulations made by the Defence Council may—

(a) prescribe criteria to be applied by a commanding officer in deciding whether an order should continue in force;

(b) make provision about procedure in relation to orders under subsection (2).

(4) Where a commanding officer makes an order under subsection (2), there remains forfeit one-sixth of the offender's gross pay for the period—

(a) beginning with the day the service supervision and punishment order is made; and

(b) ending with the day before the date of the commanding officer's order.

Service compensation orders

175 Service compensation orders

(1) A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from—

(a) the offence of which he has been convicted; or

(b) where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration.

(2) A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor.

(3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of this section as having resulted from the offence, however and by whomever the damage was caused.

(4) No service compensation order may be made in respect of—

(a) bereavement;

(b) funeral expenses; or

(c) loss of any other kind suffered by the dependants of a person in consequence of his death.

(5) No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless—

(a) it is in respect of damage treated by subsection (3) 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 to which the Secretary of State is a party.

(6) Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount

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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.

(7) For the purposes of subsection (5) 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 (c. 52) or Article 90(2) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

(8) The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so.

(9) References in this section to "the court" are references to the court or officer sentencing the offender.

176 Service compensation orders: appeals etc

(1) A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.

(2) Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made.

(3) Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—

(a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;

(b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

177 Review of service compensation orders

(1) The appropriate court may, on the application of the person against whom a service compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) and (3).

(2) The appropriate court may exercise a power conferred by subsection (1) only at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.

(3) The appropriate court may exercise a power conferred by subsection (1) only if it appears to the court—

(a) that the injury, loss or damage in respect of which the service compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order;

(b) in the case of a service compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or

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(c) that the person against whom the service compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

(4) In this section "the appropriate court" means—

(a) if the service compensation order was awarded by an officer and subsection (5) applies, the commanding officer of the person against whom the service compensation order was made;

(b) in any other case, the Court Martial.

(5) This subsection applies if the person against whom the service compensation order was made is for the time being—

(a) subject to service law;

(b) a member of a volunteer reserve force; or

(c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

Service community orders (civilians and dismissed servicemen only)

178 Service community orders

(1) A service community order is an order—

(a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and

(b) specifying the local justice area in England and Wales, or (as the case may be) the locality in Scotland or the petty sessions district in Northern Ireland, where the offender resides or will reside.

(2) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is subject to—

(a) any restriction that section 177(1) imposes in relation to a particular requirement;

(b) the provisions of the 2003 Act mentioned in the paragraphs of section 177(2) of that Act; and

(c) section 218 of that Act.

(3) In the following provisions of the 2003 Act "community order" includes a service community order under this Act—

section 177(3) to (6) (provision about the making of community orders);

section 178 (power to provide for court review of community orders);

Chapter 4 of Part 12 (further provision about orders).

(4) In those provisions in their application in relation to a service community order under this Act, "court" includes a relevant service court.

(5) The following provisions of the 2003 Act do not apply in relation to a service community order under this Act—

section 207(3)(a)(ii) (condition for mental health treatment requirement);

section 219(3) (requirement to give copy of order to magistrates' court).

(6) For the purposes of this section each of the following is a relevant service court—

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(a) the Court Martial;
(b) the Service Civilian Court;
(c) the Court Martial Appeal Court;
(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

179 Periodic review etc of service community orders

(1) In section 210 of the 2003 Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to a service community order under this Act—
(a) "the court responsible for the order" means the Crown Court; and
(b) subsections (2) to (4) shall be treated as omitted.

(2) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if for subsections (3) to (5) there were substituted—

"(3A) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may revoke the service community order and deal with him, for the offence in respect of which the order was made—
(a) if that offence is an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment;
(b) if it is not an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence not punishable with imprisonment.

(3B) In dealing with the offender under subsection (3A) the court—
(a) must take into account the extent to which the offender has complied with the requirements of the order, and
(b) where subsection (3A)(a) applies, may impose a sentence of imprisonment notwithstanding anything in section 152(2).

(3C) A term of imprisonment or fine imposed under subsection (3A)—
(a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
(b) where the order was made by the Service Civilian Court, must not exceed—
(i) in the case of a term of imprisonment, 12 months;
(ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43)."

(3) Where a sentence is passed under section 211(3A) of the 2003 Act as substituted by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

180 Transfer of service community order to Scotland or Northern Ireland

(1) In Schedule 9 to the 2003 Act (transfer of community orders to Scotland or Northern Ireland)—

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(a) "community order" includes a service community order under this Act; and

(b) in the provisions mentioned in subsection (2), "court" includes a relevant service court.

(2) Those provisions are paragraphs 1(1) and (5), 2(1), 3(1), 4(1), 6, 9 (except 9(b)) and 10(c) and (d).

(3) In its application to a service community order under this Act, that Schedule has effect as if—

(a) the reference in paragraph 9(c) to the powers of the court making or amending the order were to the powers of the Crown Court;

(b) the reference in paragraph 11 to a community order made in England and Wales included a service community order made (anywhere) under this Act;

(c) the reference in paragraph 11 to the court which made the order or the court which last amended the order in England and Wales were to the Crown Court; and

(d) the reference in paragraph 15 to the court which made the order were to the Crown Court.

(4) In this section "relevant service court" has the meaning given by section 178(6).

181 Breach, revocation or amendment of service community order

Part 1 of Schedule 5 (application of Schedule 8 to the 2003 Act to service community orders) has effect.

Overseas community orders (civilians only)

182 Overseas community orders

(1) An overseas community order is an order—

(a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and

(b) not specifying anywhere as an area where the offender resides or will reside.

(2) The order may include a particular requirement mentioned in section 177(1) of the 2003 Act only if the court is satisfied—

(a) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and

(b) that arrangements will be made for the supervision of his compliance with the requirement.

(3) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is also subject to—

(a) the provisions mentioned in the paragraphs of section 177(2) of that Act; and

(b) Schedule 6 to this Act (special provisions for young offenders).

(4) Subject to section 183 below, in the following provisions of the 2003 Act "community order" includes an overseas order—

section 177(5) and (6) (provision about the making of community orders);

Chapter 4 of Part 12 (further provision about orders).

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(5) In those provisions in their application in relation to an overseas community order, "court" includes a relevant service court.

(6) For the purposes of this section each of the following is a relevant service court—

(a) the Court Martial;

(b) the Service Civilian Court;

(c) the Court Martial Appeal Court;

(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

183 Overseas community orders: modifications of 2003 Act

(1) The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to overseas community orders—

section 197(1) and (2) (meaning of "the responsible officer");

section 207(3)(a)(ii) (condition for mental health treatment requirement);

sections 210 and 211 (periodic review of drug rehabilitation requirement);

section 215 (electronic monitoring requirement);

section 216 (requirement to specify local justice area);

section 218 (availability of arrangements in local justice area etc).

[F9(2) Sections 201(7)(b) and 202(7) of the 2003 Act are to be read in relation to an oversees community order as referring to a place that has been approved by a local probation board or by a provider of probation services.**]**

(3) The court by which an overseas community order is made must (as well as complying with so much as is applicable of section 219 of the 2003 Act) provide a copy of the order without delay—

(a) to the offender's commanding officer;

(b) if the offender is aged under 14, to his parent or guardian; and

(c) if the order imposes an education requirement under Schedule 6 to this Act, to Service Children's Education.

(4) For the purposes of Part 12 of the 2003 Act "the responsible officer", in relation to an offender to whom an overseas community order relates, means the officer of a local probation board **[**F10or the officer of a provider of probation services (as the case may be)**]** who, as respects the offender, is for the time being responsible for discharging the functions conferred by that Part on the responsible officer.

(5) The power conferred on the Secretary of State by section 197(3)(a) of the 2003 Act includes power to amend subsection (4) above.

Textual Amendments

F9 S. 183(2) substituted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), **Sch. 1 para. 23(2)(a)**

F10 Words in s. 183(4) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), **Sch. 1 para. 23(2)(b)**

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184 Breach, revocation or amendment of overseas community order

Part 2 of Schedule 5 (application of Schedule 8 to the 2003 Act to overseas community orders) has effect.

Conditional or absolute discharge (civilians only)

185 Conditional or absolute discharge

(1) A conditional discharge is an order discharging the offender subject to the condition that he commits no service offence during a period specified in the order.

(2) The period specified in the order ("the period of conditional discharge") must—
(a) begin with the date of the order; and
(b) not exceed the maximum period for the time being specified in section 12(1)(b) of the Sentencing Act (maximum period of civilian conditional discharge).

(3) An absolute discharge is an order discharging the offender absolutely.

(4) Where by virtue of Schedule 3 a court sentences an offender by conditionally or absolutely discharging him, the sentence must not include any other punishment except a service compensation order.

186 Commission of further offence by person conditionally discharged

(1) This section applies where a person who has been conditionally discharged by virtue of Schedule 3 is convicted by the Court Martial or the Service Civilian Court ("the convicting court") of an offence committed during the period of conditional discharge.

(2) If the convicting court is the Court Martial, it may deal with him for the offence for which he was conditionally discharged in any way in which the court that conditionally discharged him could deal with him if it had just convicted him of that offence.

(3) If the convicting court is the Service Civilian Court, it may deal with him for the offence for which he was conditionally discharged in any way in which it could deal with him if it had just convicted him of that offence.

(4) If a person conditionally discharged is subsequently dealt with under this section for the offence in respect of which the order conditionally discharging him was made, that order ceases to have effect.

(5) A person who—
(a) is sentenced by a court under subsection (2) or (3) for an offence for which he was conditionally discharged, and
(b) was not convicted of that offence by that court,
is to be treated, for the purpose of enabling him to appeal against the sentence under section 285 below or the Court Martial Appeals Act 1968 (c. 20), as if he had been so convicted.

(6) Where subsection (3) applies and the offence for which the person was conditionally discharged is not one that the Service Civilian Court would have jurisdiction to try,

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it shall be assumed for the purposes of that subsection that it could have convicted him of the offence.

187 Effect of discharge

(1) A conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 186.

(2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently dealt with under section 186 for that offence, subsection (1) ceases to apply to the conviction.

(3) Without prejudice to subsections (1) and (2), a conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made is in any event to be disregarded for the purposes of any enactment or instrument which—

(a) imposes any disqualification or disability on convicted persons; or

(b) authorises or requires the imposition of any such disqualification or disability.

(4) In subsection (3)—

"enactment" includes an enactment contained in an Act of the Scottish Parliament, in Northern Ireland legislation or in a local Act;

"instrument" means an instrument having effect by virtue of an Act or Northern Ireland legislation (and "Act" here includes an Act of the Scottish Parliament).

(5) Subsections (1) to (4) do not affect—

(a) any appeal, whether against conviction or otherwise;

(b) any right of the offender to rely on his conviction in bar of any subsequent proceedings for the same offence; or

(c) the restoration of any property in consequence of the conviction.

CHAPTER 2

CONSECUTIVE SENTENCES

188 Consecutive custodial sentences

(1) This section applies where a court passes a qualifying custodial sentence on a person in respect of a service offence.

(2) In this section "qualifying custodial sentence" means—

(a) a determinate sentence of imprisonment;

(b) a determinate sentence of detention under section 209; or

(c) a sentence of detention under section 228 of the 2003 Act passed as a result of section 222 of this Act.

(3) The court may direct—

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(a) that the sentence shall take effect from the end of any other qualifying custodial sentence that the court passes on the person on the same occasion;

(b) that the sentence shall take effect from the end of any sentence to which this paragraph applies that was passed on the person on a previous occasion; or

(c) that the sentence shall take effect from the date when the person is (or but for the direction would be) released from custody under any sentence to which this paragraph applies that was passed on him on a previous occasion.

(4) Subsection (3)(b) applies to any of the following sentences, other than one from which the person has already been released early under Chapter 6 of Part 12 of the 2003 Act—

(a) a determinate sentence of imprisonment passed in respect of a service offence or by a civilian court in England and Wales;

(b) a determinate sentence of detention under section 209 of this Act or section 91 of the Sentencing Act;

(c) a sentence of detention under section 228 of the 2003 Act (whether or not passed as a result of section 222 of this Act).

(5) Subsection (3)(c) applies to any of the following sentences (wherever passed)—

(a) a determinate sentence of imprisonment not falling within paragraph (a) of subsection (4);

(b) a sentence not falling within paragraph (b) or (c) of subsection (4) but corresponding to a sentence so falling.

(6) In subsection (1) "court" does not include a civilian court.

189 Consecutive sentences of service detention

(1) A court which passes a sentence of service detention on a person may direct that the sentence shall take effect from the end of any other sentence of service detention—

(a) that has been passed on him on a previous occasion; or

(b) that the court passes on him on the same occasion.

(2) In subsection (1) "court" does not include the Summary Appeal Court.

(3) Where an officer or the Summary Appeal Court awards a person a term of service detention, the officer or court may direct that the award shall take effect from the end of any other sentence of service detention that has been passed on him on a previous occasion.

(4) This section is subject to section 244 (limit on combined term of sentences of service detention).

CHAPTER 3

SUSPENDED SENTENCE OF SERVICE DETENTION

190 Suspension of sentence of service detention

(1) A court which, or officer who, passes a sentence of service detention may order that the sentence shall not have effect unless—

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(a) during a period specified in the order ("the operational period") the offender commits another service offence or an offence in the British Islands; and

(b) a court or officer orders under section 191 or 193 that the sentence shall take effect.

(2) The operational period must be a period of at least three months and not more than twelve months beginning with the date of the order made under this section.

(3) In this Act "suspended sentence of service detention" means a sentence to which an order under this section relates.

191 Activation by Court Martial of suspended sentence of service detention

(1) The Court Martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of service detention passed on him.

(2) The Court Martial may also make an order under subsection (3) if—

(a) the Court Martial has passed a suspended sentence of service detention on a person;

(b) the person has been convicted of another service offence, or an offence in the British Islands, committed during the operational period of the suspended sentence; and

(c) the person appears or is brought before the Court Martial following the issue of a summons or warrant under subsection (6).

(3) An order under this subsection is an order—

(a) that the suspended sentence shall take effect with the original term unaltered; or

(b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.

(4) An order under subsection (3) may provide either—

(a) that the suspended sentence shall take effect immediately; or

(b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.

(5) Where—

(a) by virtue of subsection (2) the Court Martial orders that a suspended sentence shall take effect, and

(b) the conviction mentioned in subsection (2)(b) is a conviction by an officer or the Summary Appeal Court,

any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.

(6) If it appears to the Court Martial—

(a) that subsection (2)(a) and (b) apply, and

(b) that the offender has not been dealt with in respect of the suspended sentence,

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the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.

(7) In subsection (2)(a) the reference to the Court Martial includes—

(a) the Court Martial Appeal Court; and

(b) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

(8) This section is subject to section 244 (limit on combined term of sentences of service detention).

192 Activation by Court Martial: appeals

(1) This section applies where an order under section 191 is made.

(2) For the purposes of the Court Martial Appeals Act 1968 (c. 20)—

(a) the order is to be treated as a sentence passed on the offender by the Court Martial for the offence for which the suspended sentence was passed; and

(b) if the offender was not convicted of that offence by the Court Martial, he is to be treated for the purpose of enabling him to appeal against the order as if he had been so convicted.

(3) For the purposes of any appeal against the order references in section 16A of that Act to passing a sentence include making an order.

(4) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

193 Activation by CO of suspended sentence of service detention

(1) This section applies in relation to a suspended sentence of service detention passed on an offender by an officer or the Summary Appeal Court.

(2) If—

(a) an officer records a finding that a charge against the offender in respect of an offence committed during the operational period of the suspended sentence is proved, or

(b) the offender is convicted of an offence in the British Islands which was committed during that operational period, and subsequently appears before his commanding officer,

the officer may (subject to section 194) make an order under subsection (3).

(3) An order under this subsection is an order—

(a) that the suspended sentence shall take effect with the original term unaltered; or

(b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.

(4) An order under subsection (3) may provide either—

(a) that the suspended sentence shall take effect immediately; or

(b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the offender on a previous

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occasion or which the officer passes on the offender on the same occasion as he makes the order.

(5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to section 292 (postponement of commencement of suspended sentence on activation by CO).

194 Activation by CO: maximum term

(1) The term of a suspended sentence as it takes effect by virtue of an order under section 193 must not exceed 28 days unless the officer has extended powers for the purposes of this section.

(2) If—

(a) section 193(2)(a) applies and the officer awards a term of service detention in respect of the offence mentioned there ("the new sentence"), and

(b) the officer makes an order under section 193 and the order provides for the suspended sentence to take effect from the end of the new sentence,

the aggregate of the terms of the two sentences must not exceed 28 days or, if the officer has extended powers for the purposes of this section, 90 days.

(3) Nothing in subsection (2) affects section 133 (which determines the maximum length etc of the new sentence).

(4) An officer has extended powers for the purposes of this section if he has, before the relevant time—

(a) applied to higher authority for extended powers for the purposes of this section; and

(b) been notified by higher authority that his application has been granted.

(5) An officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

(6) In subsection (4) "the relevant time" means—

(a) where section 193(2)(a) applies, the beginning of the summary hearing of the charge mentioned there;

(b) where section 193(2)(b) applies, the beginning of the hearing as to whether an order under section 193 should be made.

(7) Section 193 is subject to section 244 (limit on combined term of sentences of service detention).

195 Suspended sentences: powers of SAC

(1) For the purposes of Chapters 2 and 3 of Part 6 (appeals and reviews), an order under section 193 is to be treated as a punishment awarded for the offence for which the suspended sentence was awarded.

(2) Where an order under section 193 was made by virtue of a finding within section 193(2)(a)—

(a) any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of it is for the purposes of Chapter 2 of Part 6 to be treated as also being an appeal or application for leave to appeal against the order;

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(b) any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment.

(3) Subsections (4) to (7) apply on an appeal to the Summary Appeal Court in a case in which section 193(2)(a) applied (power of CO to activate suspended sentence following finding of guilt).

(4) If the officer made an order under section 193, the Summary Appeal Court may (as an alternative to confirming the order)—

(a) quash the order; or

(b) make, in substitution for the order, any order under that section that the officer could have made.

(5) If the officer did not make an order under that section, the Summary Appeal Court may make any order under that section that the officer could have made.

(6) Section 147(3) has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if paragraph (b)(ii) were omitted.

(7) But the court may not exercise its powers under section 147(3) or subsection (4) or (5) above in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer.

(8) On an appeal against an order under section 193 made by virtue of section 193(2)(b), the Summary Appeal Court may (as an alternative to confirming the order)—

(a) quash the order; or

(b) make, in substitution for the order, any order under section 193 that—

(i) the officer could have made; and

(ii) is no more severe than the order appealed against.

(9) In determining in any case—

(a) whether to substitute an order under section 193, or

(b) the terms of any such substituted order,

the Summary Appeal Court must take account of any period of the suspended sentence that the appellant served.

CHAPTER 4

IMPRISONMENT FOR TERM OF UNDER 12 MONTHS

Application of provisions in the 2003 Act

196 Term of sentence etc

(1) In the following provisions of the 2003 Act, "court" includes a relevant service court—

sections 181 and 182 (imprisonment for under 12 months: term of sentence and "custody plus" orders);

sections 189 and 190 (suspended sentences of imprisonment);

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Chapter 4 of Part 12 (further provision about orders) in its application in relation to a custody plus order or suspended sentence order.

(2) For the purposes of this Chapter, each of the following is a relevant service court—

(a) the Court Martial;

(b) the Service Civilian Court;

(c) the Court Martial Appeal Court;

(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

Imprisonment with or without "custody plus" order

197 Imprisonment with or without a custody plus order

(1) Subsection (2) applies where a relevant service court—

(a) imposes a sentence of imprisonment on an offender; and

(b) would (apart from this section) be required by section 181(3)(b) of the 2003 Act to make a custody plus order.

(2) Section 181(3)(b) of the 2003 Act shall be read as conferring on the court a power rather than a duty to make a custody plus order (but this does not affect the duty of the court under section 181(3)(a) of that Act).

(3) A relevant service court may not specify in a custody plus order a requirement to be complied with outside the United Kingdom.

(4) Section 219(3) of the 2003 Act (requirement to give copy of order to magistrates' court) does not apply in relation to a custody plus order made by a relevant service court.

198 Transfer to Scotland or Northern Ireland of custody plus order

(1) In paragraphs 2(1) and (2) and 9(1) and (2) of Schedule 11 to the 2003 Act (court making custody plus order may require compliance in Scotland or Northern Ireland), "court" includes a relevant service court.

(2) In paragraphs 4, 6 and 12 of that Schedule (ancillary provisions) "court" (where the context allows) includes a relevant service court.

(3) Where Part 4 of that Schedule applies to a custody plus order made by a relevant service court, references in that Part to "the original court" are to be read as references to the Crown Court.

(4) Paragraph 22(7)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a custody plus order made by a relevant service court.

199 Revocation and amendment of custody plus orders

(1) In Schedule 10 to the 2003 Act (revocation and amendment) as it applies to a custody plus order made by a relevant service court—

(a) "the appropriate court" means the Crown Court; and

(b) the following shall be treated as omitted—

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(i) the definition of "the appropriate court" in paragraph 1(1);

(ii) paragraph 2.

(2) Paragraph 9(1)(b)(ii) and (2) of that Schedule (requirement to give copy of revoking or amending order etc to magistrates' court) do not apply in relation to a custody plus order made by a relevant service court.

Suspended sentences of imprisonment

200 Suspended sentence orders with or without community requirements

(1) Subsection (2) applies where (apart from this section) a relevant service court would have power under section 189 of the 2003 Act to make a suspended sentence order.

(2) Section 189(1) of that Act shall be read as conferring on the court a power either—

(a) to make a suspended sentence order with community requirements; or

(b) to make a suspended sentence order without community requirements.

(3) In this Chapter "a suspended sentence order with community requirements" means a suspended sentence order that—

(a) includes all the provision required by section 189(1) of the 2003 Act (as modified by subsection (5) below); and

(b) complies with section 189(3) and (4) of that Act.

(4) In this Chapter "a suspended sentence order without community requirements" means a suspended sentence order made as if in section 189 of the 2003 Act (as modified by subsection (5) below) the following were omitted—

(a) paragraph (a) of subsection (1);

(b) in paragraph (b) of that subsection, sub-paragraph (i) (and the word "either" before that sub-paragraph);

(c) subsection (4) and the reference in subsection (3) to the supervision period.

(5) In section 189(1) of the 2003 Act (suspended sentence orders) as it applies to a relevant service court, paragraph (b)(ii) (commission of UK offence in operational period of order) has effect as if for the words from "commits" to the end of sub-paragraph (ii) there were substituted "commits—

(a) another service offence (within the meaning of the Armed Forces Act 2006), or

(b) an offence in the British Islands,".

(6) A relevant service court may not specify in a suspended sentence order with community requirements a requirement to be complied with outside the United Kingdom.

201 Order without community requirements: provisions not applying

Nothing in the following provisions of the 2003 Act applies in relation to a suspended sentence order without community requirements—

sections 190 to 192 (imposition of community requirements and periodic reviews);

Chapter 4 of Part 12 (further provisions about orders);

Part 3 of Schedule 12 (amendment of order);

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Schedule 13 (transfer of order to Scotland or Northern Ireland).

202 Order with community requirements: disapplication of certain provisions

The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to a suspended sentence order with community requirements made by a relevant service court—

section 207(3)(a)(ii) (condition for mental health treatment requirement);

section 219(3) (requirement to give copy of order to magistrates' court).

203 Review of order with community requirements

(1) In section 191 of the 2003 Act (provision for periodic reviews of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—

(a) "the court responsible for the order" means the Crown Court; and

(b) subsections (3) to (5) shall be treated as omitted.

(2) In section 210 of that Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to such an order—

(a) "the court responsible for the order" means the Crown Court; and

(b) subsections (2) to (4) shall be treated as omitted.

(3) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if—

(a) in subsection (3)(b) for the words from "he could have been dealt with" to the end there were substituted " it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment ";

(b) in subsection (4)(b) the words in brackets were omitted; and

(c) after subsection (4) there were inserted—

"(4A) A term of imprisonment or fine imposed under subsection (3)(b)—

(a) must not exceed the maximum permitted for the offence in respect of which the order was made, and

(b) where the order was made by the Service Civilian Court, must not exceed—

(i) in the case of a term of imprisonment, 12 months;

(ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43)."

(4) Where a sentence is passed under section 211(3)(b) of the 2003 Act as modified by subsection (3) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

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204 Transfer to Scotland or Northern Ireland of order with community requirements

(1) In paragraphs 1(1) and 6(1) of Schedule 13 to the 2003 Act (court making suspended sentence order with community requirements may require compliance in Scotland or Northern Ireland), "court" includes a relevant service court.

(2) In paragraphs 1(5) and (6), 3, 6(5) and 8 of that Schedule (ancillary provisions), "court" (where the context allows) includes a relevant service court.

(3) Where Part 3 of that Schedule applies to a suspended sentence order made by a relevant service court—

(a) references in that Part to "the original court" are to be read as references to the Crown Court; and

(b) the following shall be treated as omitted—

(i) the definition of "original court" in paragraph 11;

(ii) paragraph 12(3).

(4) Paragraph 20(6)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a suspended sentence order made by a relevant service court.

205 Amendment of order with community requirements

(1) In Part 3 of Schedule 12 to the 2003 Act (amendment of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—

(a) "the appropriate court" means the Crown Court;

(b) the reference in paragraph 17 to the court responsible for the order is to be read as a reference to the Crown Court; and

(c) paragraphs 13(3), 14(5), 15(6), 16(4), 18(2) and 22(1)(b)(ii) and (d) and (2) shall be treated as omitted.

(2) Paragraph 15 of that Schedule has effect in its application to such an order as if—

(a) in sub-paragraph (4)(b) for the words "of the offence" there were substituted " of an offence punishable with imprisonment "; and

(b) after sub-paragraph (5) there were inserted—

"(5A) A term of imprisonment or fine imposed under sub-paragraph (4)(b)—

(a) must not exceed the maximum permitted for the offence in respect of which the order was made, and

(b) where the order was made by the Service Civilian Court, must not exceed—

(i) in the case of a term of imprisonment, 12 months;

(ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43)."

(3) Paragraphs 2(b) and 3 of that Schedule shall be treated as omitted for the purposes of Part 3 of that Schedule as it applies to such an order.

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(4) Where a sentence is passed under paragraph 15(4)(b) of Schedule 12 to the 2003 Act as modified by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

206 Suspended sentence: further conviction or breach of community requirement

Schedule 7 (modification of Schedule 12 to the 2003 Act in relation to suspended sentences passed by relevant service courts) has effect.

Supplementary

207 Definitions for purposes of Chapter

In this Chapter—

"custody plus order" means an order under section 181(3)(b) of the 2003 Act;

"relevant service court" has the meaning given by section 196(2) of this Act;

"suspended sentence order" means an order under section 189(1) of the 2003 Act;

"suspended sentence order with community requirements" has the meaning given by section 200(3) of this Act;

"suspended sentence order without community requirements" has the meaning given by section 200(4) of this Act.

CHAPTER 5

YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS

Prohibition on imposing imprisonment on persons under 18

208 Prohibition on imposing imprisonment on persons under 18

A person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

Detention for certain serious offences

209 Offenders under 18 convicted of certain serious offences: power to detain for specified period

(1) Subsection (5) (power to pass sentence of detention) applies where—

(a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

(b) the case is within any of subsections (2) to (4).

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(2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—

(a) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and

(b) not an offence the sentence for which is fixed by law.

(3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—

(a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);

(b) section 13 of that Act (child sex offences committed by children or young persons);

(c) section 25 of that Act (sexual activity with a child family member); or

(d) section 26 of that Act (inciting a child family member to engage in sexual activity).

(4) The case is within this subsection if it falls within section 227(1) (certain firearms offences).

(5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.

(6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence.

(7) Subsections (5) and (6) are subject to (in particular)—

sections 221, 222 and 227 (required custodial sentences for certain offences); and

sections 260 and 261 (general restrictions on custodial sentences).

210 Detention under section 209: place of detention etc

(1) A person sentenced to be detained under section 209 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

(2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

Detention and training orders

211 Offenders under 18: detention and training orders

(1) Where—

(a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and

(b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),

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the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

(2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.

(3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—

(a) it is of the opinion mentioned in subsection (2);

(b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and

(c) the offence was committed on or after such date as may be appointed under section 100(2)(b)(ii) of the Sentencing Act (appointed day for purposes of orders under that Act).

(4) Subsection (1) is also subject to sections 209, 218, 221, 222 and 227 (other custodial sentences that may or must be imposed in particular cases).

212 Term of detention and training order: general

(1) The term of an order made under section 211 in respect of an offence—

(a) shall be 4, 6, 8, 10, 12, 18 or 24 months; and

(b) may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.

(2) Where—

(a) the offence is an offence under section 42 (criminal conduct),

(b) the corresponding offence under the law of England and Wales is under that law a summary offence, and

(c) the maximum term of imprisonment with which that offence is punishable in the case of a person aged 18 or over is 51 weeks,

the term of the order may not exceed 6 months.

213 Application of provisions relating to civilian detention and training orders

(1) In the following provisions of the Sentencing Act references to a detention and training order include an order under section 211 of this Act—

section 101(3) to (10) and (13) (power to impose consecutive terms, duty of court to take account of remands, etc);

sections 102 to 105, 106A and 107 (period of detention and training, period of supervision, breach of supervision requirements, etc).

(2) In sections 101(3) to (10) and (13) and 106A of the Sentencing Act "court" includes a relevant service court (within the meaning given by section 196(2)).

(3) In section 101(8) and (9) of the Sentencing Act in their application to an order under section 211 of this Act, any reference to an offender's being "remanded in custody" is a reference to his being kept in service custody; and section 101(11) and (12) of that Act do not apply in relation to such an order.

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214 Offences during currency of detention and training order

(1) This section applies to a person in respect of whom an order under section 211 has been made if—

(a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) ("the new offence"); and

(b) whether before or after that date, he is convicted of the new offence.

(2) An offence is within this subsection if it is—

(a) a service offence which is punishable with imprisonment; or

(b) an offence in the British Islands which is so punishable.

(3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such **[**F11youth detention accommodation**]** as the Secretary of State may determine for the whole or any part of the period which—

(a) begins with the date of the court's order; and

(b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1).

(4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).

(5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).

(6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—

(a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and

(b) in either case, shall be disregarded in determining the appropriate length of that sentence.

(7) If it appears to the Court Martial—

(a) that this section applies to a person,

(b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and

(c) that no order under subsection (3) or under section 105 of the Sentencing Act has been made in respect of the new offence,

the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.

(8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

Textual Amendments

F11 Words in s. 214(3) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 3 para. 17(2)**; S.I. 2007/3001, art. 2(1)(r)

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215 Section 214: definitions etc

(1) Section 101(13) of the Sentencing Act (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.

(2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.

(3) In section 214 **[**F12"youth detention accommodation"**]** has the meaning given by section 107 of the Sentencing Act.

Textual Amendments

F12 Words in s. 215(3) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), s. 41(1), **Sch. 3 para. 17(3)**; S.I. 2007/3001, art. 2(1)(r)

216 Appeals against orders under section 214

(1) This section applies where an order under section 214 ("the relevant order") is made.

(2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—

(a) the relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and

(b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.

(3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

(4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.

CHAPTER 6

MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

Mandatory sentences

217 Mandatory life imprisonment

(1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—

(a) murder; or

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(b) any other offence the sentence for which is fixed by law as imprisonment for life.

(2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty's pleasure

(1) This section applies if—

(a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);

(b) the corresponding offence under the law of England and Wales is under that law—

(i) murder; or

(ii) any other offence the sentence for which is fixed by law as imprisonment for life; and

(c) the offender appears to the court to have been aged under 18 at the time the offence was committed.

(2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.

(3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

(4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

Required sentences

219 Dangerous offenders aged 18 or over

(1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.

(2) If the court is of the required opinion (defined by section 223), then—

(a) if the case falls within section 225(2) of the 2003 Act the court must impose the sentence required by section 225(2) of that Act;

(b) otherwise, it must impose the sentence required by section 225(3) of that Act.

(3) In determining for the purposes of this section whether the case falls within section 225(2) of the 2003 Act, references in section 225(2) to "the offence" are to be read as references to the offence under section 42 of this Act.

(4) In this section "serious offence" has the meaning given by section 224 of the 2003 Act.

(5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

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220 Certain violent or sexual offences: offenders aged 18 or over

(1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a specified offence other than a serious offence.

(2) If the court is of the required opinion (defined by section 223), it must impose the sentence required by section 227(2) to (5) of the 2003 Act.

(3) In section 227 of the 2003 Act as applied by this section—

(a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;

(b) the reference in subsection (3)(a) to section 153(2) of that Act is to be read as a reference to section 261(2) of this Act;

(c) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and

(d) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.

(4) In this section the following expressions—

"serious offence",

"specified offence",

"specified violent offence", and

"specified sexual offence",

have the meanings given by section 224 of the 2003 Act.

221 Dangerous offenders aged under 18

(1) This section applies where a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.

(2) If the court is of the required opinion (defined by section 223), then—

(a) if the case falls within section 226(2) of the 2003 Act the court must impose the sentence required by section 226(2) of that Act (read with subsection (3)(b) below);

(b) if the case falls within section 226(3) of that Act the court must impose the sentence required by section 226(3) of that Act.

(3) In determining for the purposes of this section whether the case falls within section 226(2) of the 2003 Act and what the sentence required by that provision is—

(a) references in section 226(2) to "the offence" are to be read as references to the offence under section 42 of this Act; and

(b) references in section 226(2) to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.

(4) In determining for the purposes of this section whether the case falls within section 226(3) of the 2003 Act, the reference in section 226(3) to further specified

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offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales.

(5) In this section "serious offence" has the meaning given by section 224 of the 2003 Act.

(6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

222 Offenders aged under 18: certain violent or sexual offences

(1) This section applies where—

(a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct);

(b) the corresponding offence under the law of England and Wales is a specified offence;

(c) the court is of the required opinion (defined by section 223); and

(d) where the corresponding offence under the law of England and Wales is a serious offence, the case is not one in which the court is required by section 221 to impose a sentence complying with subsection (2) of that section.

(2) Where this section applies, the court must impose the sentence required by section 228(2) to (5) of the 2003 Act.

(3) In section 228 of the 2003 Act as applied by this section—

(a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;

(b) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence;

(c) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence; and

(d) references to the maximum term of imprisonment permitted for the offence are to the maximum term of imprisonment that (apart from section 219) is permitted for the offence under section 42 in the case of a person aged 18 or over.

(4) In this section the following expressions—

"serious offence",

"specified offence",

"specified violent offence", and

"specified sexual offence",

have the meanings given by section 224 of the 2003 Act.

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223 "The required opinion" for purposes of sections 219 to 222

(1) "The required opinion" for the purposes of sections 219(2), 220(2), 221(2) and 222(1) is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—

(a) further specified offences; or

(b) further acts or omissions that would be specified offences if committed in England or Wales.

(2) For the purposes of the court's decision whether it is of that opinion, section 229(2) to (4) of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.

(3) In section 229(2) to (4) of the 2003 Act as applied by this section—

(a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and

(b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.

(4) In this section—

"serious harm" has the meaning given by section 224 of the 2003 Act;

"specified offence" has the meaning given by that section.

224 Place of detention under certain sentences

Where as a result of section 221 or 222 a court passes a sentence of—

(a) detention for public protection under section 226(3) of the 2003 Act, or

(b) detention under section 228 of that Act,

section 235 of that Act (place of detention etc) applies accordingly.

225 Third drug trafficking offence

(1) This section applies where —

(a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

(b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.

(2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—

(a) relate to any of the offences or to the offender; and

(b) would make it unjust to do so in all the circumstances.

226 Third domestic burglary

(1) This section applies where—

(a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

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(b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.

(2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—

(a) relate to any of the offences or to the offender; and

(b) would make it unjust to do so in all the circumstances.

227 Firearms offences

(1) This section applies if—

(a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

(b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.

(2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

228 Appeals where previous convictions set aside

(1) Subsection (3) applies where—

(a) a sentence has been imposed on a person by virtue of section 219 or 220; and

(b) any previous conviction of his without which the court would not have been required to make the assumption mentioned in section 229(3) of the 2003 Act (as applied by section 223) has been subsequently set aside on appeal.

(2) Subsection (3) also applies where—

(a) a sentence has been imposed on any person by virtue of section 225 or 226; and

(b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.

(3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.

(4) Subsection (3) has effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

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CHAPTER 7

COURT ORDERS OTHER THAN SENTENCES

Service restraining orders

229 Service restraining orders

(1) The Court Martial or the Service Civilian Court may make an order under this section where—

(a) it convicts or acquits a person ("the defendant") of an offence; and

(b) the defendant is subject to service law or is a civilian subject to service discipline.

(2) An order under this section—

(a) prohibits the defendant from doing anything described in the order; and

(b) has effect for a fixed period specified in the order or until further order.

(3) An order under this section may be made, and a prohibition may be included in the order, only for the purpose of protecting a person mentioned in the order from conduct which amounts to harassment.

(4) A person subject to service law or a civilian subject to service discipline commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an order under this section.

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.

(6) In proceedings for an order under this section, the Director of Service Prosecutions and the defence may lead (as further evidence) any evidence which would be admissible in proceedings in the High Court in England and Wales for an injunction under section 3 of the Protection from Harassment Act 1997 (c. 40).

230 Service restraining orders: supplementary

(1) Section 7 (interpretation) of the Protection from Harassment Act 1997 (c. 40) ("the 1997 Act") applies for the purposes of section 229 of this Act as it applies for the purposes of sections 5 and 5A of that Act.

(2) Section 12 of the 1997 Act (national security etc) applies for the purposes of section 229 of this Act as if—

(a) the reference in subsection (1)(c) to serious crime were a reference to serious service offences or serious crime (committed anywhere);

(b) the reference in subsection (1) to the 1997 Act were a reference to section 229 of this Act.

(3) Where the Court Martial Appeal Court allows an appeal against conviction it may remit the case to the Court Martial for that court to consider whether to proceed under section 229.

(4) Section 229 applies in relation to a case remitted under subsection (3) as if subsection (1)(a) were omitted.

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231 Service restraining orders: appeals

(1) This section applies where a court makes an order under section 229—

(a) after it has acquitted the defendant of an offence; or

(b) in respect of a case remitted to it under section 230(3).

(2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—

(a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and

(b) the defendant is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court.

(3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

232 Service restraining orders: variation and revocation

(1) The Court Martial may vary or revoke an order under section 229 on an application made by—

(a) the Director of Service Prosecutions;

(b) the defendant; or

(c) any other person mentioned in the order.

(2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).

(3) Where a person is convicted of an offence under section 229, the court that convicts him may vary or revoke the order to which the offence relates.

Order for parent or guardian to enter into recognizance

233 Order for service parent or service guardian to enter into recognizance

(1) Where—

(a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court,

(b) he is a civilian subject to service discipline, and

(c) he has a service parent or service guardian,

the court may, and in the circumstances mentioned in subsection (3) must, exercise the powers conferred by this section.

(2) The powers conferred by this section are as follows—

(a) with the consent of the offender's service parent or service guardian, to order that parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him; and

(b) if the service parent or service guardian refuses consent and the court considers the refusal unreasonable, to order that parent or guardian to pay a fine not exceeding level 3 on the standard scale.

(3) The circumstances referred to in subsection (1) as those in which the court must exercise the powers conferred by this section are—

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(a) that the offender is under 16 when convicted; and

(b) that the court is satisfied, having regard to the circumstances of the case, that the exercise of those powers would be desirable in the interests of preventing the commission by him of further offences.

(4) Where the powers conferred by this section are not exercised in a case where subsection (1) applies and the offender is under 16 when convicted, the court must state in open court that it is not satisfied as mentioned in subsection (3)(b) and why it is not so satisfied.

(5) A parent or guardian is a "service parent" or "service guardian" for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.

(6) For the purposes of this section, taking "care" of a person includes giving him protection and guidance and "control" includes discipline.

234 Recognizances and fines under section 233: further provision

(1) An order under section 233 must not require the parent or guardian to enter into a recognizance for an amount exceeding level 3 on the standard scale.

(2) Such an order must not require the parent or guardian to enter into a recognizance—

(a) for a period exceeding three years; or

(b) where the offender will reach the age of 18 in a period shorter than three years, for a period exceeding that shorter period.

(3) In fixing the amount of a recognizance under that section, the court must take into account (among other things) the means of the parent or guardian so far as they appear or are known to the court, and this applies whether taking those means into account has the effect of increasing or reducing the amount of the recognizance.

(4) A recognizance under section 233 may, where the court has passed an overseas community order on the offender, include a provision that the service parent or service guardian ensure that the offender complies with the requirements of that order.

(5) A court imposing a fine under section 233(2)(b) may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.

235 Recognizances: appeals, variation and revocation

(1) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—

(a) an order under section 233 is to be treated as a sentence passed on the parent or guardian for the offence; and

(b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.

(2) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

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(3) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

(4) The Court Martial may vary or revoke an order under section 233 if on the application of the parent or guardian it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

236 Forfeiture of recognizance

(1) Where—

(a) a recognizance under section 233 has been entered into, and

(b) the offender commits a service offence during the period of the recognizance,

the Court Martial or the Service Civilian Court may on convicting the offender of that offence (and subject to subsection (2)) declare the recognizance to be forfeited.

(2) The court may not make such a declaration where the parent or guardian is neither a person subject to service law nor a civilian subject to service discipline.

(3) If a court declares under this section that a recognizance is to be forfeited it must—

(a) adjudge the parent or guardian to pay the sum in which he is bound;

(b) adjudge him to pay part of that sum; or

(c) remit that sum.

(4) A court declaring under this section that a recognizance is to be forfeited may make an order under section 251 (power to allow payment by instalments); and in relation to a forfeiture under this section, section 251(2) to (7) have effect as if references to the fine or service compensation order were to the forfeiture.

VALID FROM 28/03/2009

PART 9

SENTENCING: PRINCIPLES AND PROCEDURES

CHAPTER 1

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS AND SUMMARY HEARINGS

General sentencing principles

237 Duty to have regard to purposes of sentencing etc

(1) A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing—

(a) the punishment of offenders;

(b) the maintenance of discipline;

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(c) the reduction of service offences and other crime (including reduction by deterrence);

(d) the reform and rehabilitation of offenders;

(e) the protection of the public;

(f) the making of reparation by offenders to persons affected by their offences.

(2) If the offender is aged under 18 the court or officer must also have regard to his welfare.

(3) This section does not apply in relation to—

(a) an offence the sentence for which is fixed by law;

(b) an offence the sentence for which, as a result of subsection (2) of any of sections 219 to 222 and 225 to 227 of this Act (required custodial sentences), falls to be imposed under—

any of sections 225 to 228 of the 2003 Act;

section 110(2) or 111(2) of the Sentencing Act; or

section 51A(2) of the Firearms Act 1968 (c. 27).

(4) In this section "sentencing" includes the making of any order when dealing with an offender in respect of his offence.

238 Deciding the seriousness of an offence

(1) A court or officer dealing with an offender for a service offence ("the current offence") must in considering the seriousness of the offence—

(a) consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;

(b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated;

(c) if the offender committed the current offence while—

(i) charged with another service offence and released from service custody, or

(ii) on bail,

treat the fact that it was committed in those circumstances as an aggravating factor.

(2) In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard (in particular) to—

(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and

(b) the time that has elapsed since the conviction.

(3) Any reference in subsection (1) or (2) to a previous conviction is to be read as a reference to—

(a) a previous conviction of a service offence; or

(b) a previous conviction by a court in the British Islands of an offence other than a service offence.

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(4) Nothing in this section prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so.

239 Reduction in sentences for guilty pleas

(1) This section applies where an offender—

(a) has pleaded guilty to a service offence in proceedings before a court; or

(b) at a summary hearing in respect of a service offence, has admitted the offence.

(2) In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account—

(a) the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing; and

(b) the circumstances in which this indication was given.

(3) In subsection (2) "sentence" includes any order made when dealing with the offender in respect of his offence.

(4) Subsection (5) applies in the case of an offence the sentence for which, as a result of section 225(2) or 226(2) of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act.

(5) Nothing in section 110(2) or 111(2) of that Act prevents the court, after taking into account any matter mentioned in subsection (2) above, from imposing any sentence which is at least 80% of that specified in section 110(2) or 111(2) of that Act.

240 Increase in sentence for racial or religious aggravation

(1) This section applies where a court or officer dealing with an offender for a service offence (other than an offence mentioned in subsection (3)) is considering the seriousness of the offence.

(2) If the offence was racially or religiously aggravated the court or officer—

(a) must treat that fact as an aggravating factor; and

(b) must state in open court that the offence was so aggravated.

(3) This section does not apply in relation to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under any of sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).

(4) Section 28 of the Crime and Disorder Act 1998 (meaning of "racially or religiously aggravated") applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

241 Increase in sentence for aggravation related to disability or sexual orientation

(1) This section applies where a court or officer dealing with an offender for a service offence within subsection (2) is considering the seriousness of the offence.

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(2) A service offence is within this subsection if—

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

(i) the sexual orientation (or presumed sexual orientation) of the victim; or

(ii) a disability (or presumed disability) of the victim; or

(b) the offence is motivated (wholly or partly)—

(i) by hostility towards persons who are of a particular sexual orientation; or

(ii) by hostility towards persons who have a disability or a particular disability.

(3) The court or officer—

(a) must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in paragraph (a) or (b) of subsection (2); and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether the offender's hostility is also based to any extent on any other factor not mentioned in that paragraph.

(5) In this section "disability" means any physical or mental impairment.

Service detention and custodial sentences

242 Service detention: general restriction

(1) A court may not pass a sentence of service detention in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) In forming any such opinion as is mentioned in subsection (1) or section 243(2) (length of sentence), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

(3) In subsections (1) and (2) "court" does not include the Summary Appeal Court.

(4) A sentence of service detention may not be—

(a) passed by an officer at a summary hearing, or

(b) passed or confirmed by the Summary Appeal Court,

unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.

(5) In forming any such opinion as is mentioned in subsection (4) or section 243(3) (length of sentence), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

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243 Length of term of service detention: general provision

(1) This section applies where a sentence of service detention is passed in respect of a service offence.

(2) Where the detention is imposed by a court other than the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.

(3) Where the detention is imposed by an officer at a summary hearing or by the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the officer or court is commensurate with the seriousness of the offence (or, if it is imposed in respect of two or more offences, the seriousness of them taken together).

244 Limit on combined term of sentences of service detention

(1) A court or officer may not—

(a) pass a sentence of service detention,

(b) make a direction under section 189 (consecutive terms of service detention), or

(c) make an order under section 191 or 193 (activation of suspended sentence of service detention),

whose effect would be that a person would (at the relevant time) be subject to sentences of service detention the combined term of which exceeds two years.

(2) In subsection (1) "the relevant time" is the time immediately after the passing of the sentence or the making of the direction or order.

(3) For the purposes of this section, the combined term of sentences of service detention is—

(a) if none of the sentences overlap, the aggregate of the terms of the sentences;

(b) otherwise, the aggregate of—

(i) the period (or periods) during which any of the sentences overlaps any other of them; and

(ii) the period (or periods) for which none of the sentences overlap.

(4) Where subsection (1) is contravened, any part of any sentence of service detention which would (apart from this subsection) have effect after the end of the permitted period is remitted by virtue of this subsection.

(5) In subsection (4) "permitted period" means the period—

(a) beginning with the date of contravention; and

(b) equal in length to the longest sentence of service detention that could have been passed on that date without contravening subsection (1).

(6) For the purposes of the reference in subsection (4) to a part of a sentence which would have effect after the end of the permitted period, any prospect of early release is to be disregarded.

(7) In subsection (1)(a) "sentence of service detention" does not include a suspended sentence of service detention.

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245 Section 244: supplementary

(1) Subsections (2) to (5) apply for the purposes of section 244.

(2) A person is to be regarded as not subject to any sentence from which he has been released early.

(3) A person is to be regarded as not subject to a suspended sentence of service detention unless an order that the sentence shall take effect has been made.

(4) Subject to subsection (3), a person is to be regarded as subject to any sentence of service detention that has been passed on him but—

(a) has not taken effect; or

(b) as a result of section 290(5) or (6) or 291(6) or (7), has ceased to have effect and has not resumed effect.

(5) A person who has been detained continuously pursuant to two or more sentences of service detention is to be regarded as subject to all of those sentences (whether or not any of them has been served in full).

(6) For the purposes of subsection (5), any periods of detention which would be continuous but for section 290(3), (5) or (6) or 291(5), (6) or (7) are to be treated as continuous.

246 Crediting of time in service custody: terms of imprisonment and detention

(1) This section applies where—

(a) a court or officer sentences an offender to a term of imprisonment or service detention in respect of a service offence ("the offence in question"); and

(b) the offender has been kept in service custody, in connection with the offence in question or any related offence, for any period since being charged with the offence in question or any related offence.

(2) The court must direct that the number of days for which the offender has been kept in service custody in connection with the offence in question or any related offence since being so charged is to count as time served by him as part of the sentence.

(3) Subsection (2) does not apply if and to the extent that—

(a) rules made by the Secretary of State so provide in the case of—

(i) a period of service custody which is wholly or partly concurrent with a sentence of imprisonment or service detention; or

(ii) sentences of imprisonment or service detention for consecutive terms or for terms which are wholly or partly concurrent; or

(b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.

(4) Where the court gives a direction under subsection (2) it must state in open court—

(a) the number of days for which the offender was kept in service custody as mentioned in that subsection; and

(b) the number of days in relation to which the direction is given.

(5) Where the court does not give a direction under subsection (2), or gives such a direction in relation to a number of days less than that for which the offender was kept in service custody as mentioned in that subsection, it must state in open court—

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(a) that its decision is in accordance with rules made under paragraph (a) of subsection (3); or

(b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.

(6) This section applies to—

(a) a determinate sentence of detention under section 209, and

(b) a sentence of detention under section 228 of the 2003 Act passed as a result of section 222 of this Act,

as it applies to an equivalent sentence of imprisonment.

(7) References in this section to "the court" are to the court or officer mentioned in subsection (1).

247 Crediting of time in service custody: supplementary

(1) For the purposes of section 246(1) offences are related if the charges for them were founded on the same facts or evidence.

(2) It is immaterial for the purposes of section 246(1) whether the offender has also been kept in service custody in connection with other offences, or has also been detained in connection with other matters.

(3) For the purposes of section 246 a suspended sentence of imprisonment or a suspended sentence of service detention—

(a) is to be treated as a sentence of imprisonment or (as the case may be) service detention when an order that it shall take effect is made; and

(b) is to be treated as being imposed by that order.

(4) Subsections (5) to (7) apply for the purposes of the reference in section 246(2) to the term of imprisonment or detention to which a person has been sentenced (that is to say, the reference to his "sentence").

(5) Consecutive terms of service detention, and terms of service detention which are wholly or partly concurrent, are to be treated as a single term.

(6) Consecutive relevant custodial terms, and relevant custodial terms which are wholly or partly concurrent, are to be treated as a single term if—

(a) the sentences were passed on the same occasion; or

(b) where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the 2003 Act at any time during the period beginning with the first and ending with the last of those occasions.

(7) For the purposes of subsection (6) any sentence within paragraph (a), (b) or (c) of section 188(4) is a relevant custodial term.

Forfeiture of seniority and reduction in rank

248 Forfeiture of seniority and reduction in rank or disrating: general restriction

(1) A court may not pass a sentence of forfeiture of seniority, reduction in rank or disrating in respect of an offence unless it is of the opinion that the offence, or the

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combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) In forming any such opinion as is mentioned in subsection (1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

(3) In subsections (1) and (2) "court" does not include the Summary Appeal Court.

(4) A sentence of forfeiture of seniority, reduction in rank or disrating may not be—

(a) passed by an officer at a summary hearing, or

(b) passed or confirmed by the Summary Appeal Court,

unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence.

(5) In forming any such opinion as is mentioned in subsection (4), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors.

Financial punishments

249 Fixing of fines

(1) A court or officer fixing a fine to be imposed on an offender in respect of a service offence must, before fixing the amount of the fine, inquire into the offender's financial circumstances.

(2) The amount of any fine fixed by a court or officer in respect of a service offence must be such as, in the opinion of the court or officer, reflects the seriousness of the offence.

(3) In fixing the amount of any fine to be imposed on an offender in respect of a service offence, a court or officer must take into account the circumstances of the case including, among other things, the offender's financial circumstances so far as they are known, or appear, to the court or officer.

(4) Subsection (3) applies whether taking into account the offender's financial circumstances has the effect of increasing or reducing the amount of the fine.

(5) Where—

(a) the court has inquired into the offender's financial circumstances as required by this section,

(b) the offender has failed to co-operate with the court in its inquiry (whether by failing to comply with a financial statement order under section 266 or otherwise), and

(c) the court considers that it has insufficient information to make a proper determination of the offender's financial circumstances,

the court may make such determination of his financial circumstances as it considers appropriate.

(6) References in subsection (5) to "the court" are to the court or officer fixing a fine in respect of a service offence.

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250 Determination of service compensation order

(1) In determining whether to make a service compensation order against any person, and in determining the amount to be paid by any person under such an order, a court or officer must have regard to that person's financial circumstances so far as they appear or are known to the court or officer.

(2) Where the court or officer considers—

(a) that it would be appropriate both to impose a fine and to make a service compensation order, but

(b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court or officer must give preference to compensation (but may impose a fine as well).

251 Power to allow payment of fine or service compensation order by instalments

(1) A court or officer awarding a fine or service compensation order in respect of a service offence may make an order under this section.

(2) An order under this section is an order—

(a) allowing time for payment of the amount due in respect of the fine or service compensation order ("the amount due"); or

(b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order.

(3) If no order under this section is made when the fine or service compensation order is imposed, at any later time the appropriate court may make such an order on the application of the person by whom the amount due is payable ("the relevant person").

(4) The appropriate court may on the application of the relevant person vary an order made under this section.

(5) In this section "the appropriate court" means—

(a) if the fine or service compensation order was imposed by an officer and subsection (6) applies, the commanding officer of the relevant person;

(b) if the fine or service compensation order was imposed by a court and subsection (6) or (7) applies, the Court Martial.

(6) This subsection applies if the relevant person is for the time being—

(a) subject to service law;

(b) a member of a volunteer reserve force; or

(c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

(7) This subsection applies if the relevant person is for the time being a civilian subject to service discipline.

Reasons

252 Duty to give reasons and explain sentence

(1) Any court or officer passing sentence on an offender for a service offence—

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(a) must state in open court, in ordinary language and in general terms and in accordance with section 253, its (or his) reasons for deciding on the sentence passed; and

(b) must explain to the offender in ordinary language—

(i) the effect of the sentence;

(ii) where the offender is required to comply with any order forming part of the sentence, the effects of non-compliance with the order;

(iii) any power, on the application of the offender or any other person, to vary or review any order forming part of the sentence; and

(iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.

(2) Subsection (1)(a) does not apply—

(a) to an offence the sentence for which is fixed by law; or

(b) to an offence the sentence for which, as a result of subsection (2) of section 225, 226 or 227 of this Act (required custodial sentences), falls to be imposed under section 110(2) or 111(2) of the Sentencing Act or section 51A(2) of the Firearms Act 1968 (c. 27).

(3) The Secretary of State may by order—

(a) prescribe cases in which subsection (1)(a) or (b) does not apply;

(b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.

(4) In this section and section 253 "sentence" includes any order made when dealing with the offender in respect of his offence.

253 Duties in complying with section 252

(1) In complying with section 252(1)(a) an officer or the Summary Appeal Court must—

(a) mention any aggravating or mitigating factors which he (or it) has regarded as being of particular importance;

(b) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the officer or court has imposed a punishment on the offender which is less severe than the punishment that would otherwise have been imposed, state that fact;

(c) where the sentence is one of service detention, state that he (or it) is of the opinion mentioned in section 242(4) and why; and

(d) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that he (or it) is of the opinion mentioned in section 248(4) and why.

(2) In complying with section 252(1)(a) a court other than the Summary Appeal Court must—

(a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind or is outside that range, state the court's reasons for deciding on a sentence of a different kind or outside that range;

(b) mention any aggravating or mitigating factors which the court has regarded as being of particular importance;

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(c) if section 239 (guilty pleas) applies and as a result of taking into account a matter mentioned in section 239(2) the court has imposed a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact;

(d) where the sentence is a custodial sentence and section 260 applies (and the case does not fall within section 260(3)), state that it is of the opinion mentioned in section 260(2) and why;

(e) where the sentence is one of dismissal or dismissal with disgrace, state that it is of the opinion mentioned in section 265(1) and why;

(f) where the sentence is one of service detention, state that it is of the opinion mentioned in section 242(1) and why;

(g) where the sentence is one of forfeiture of seniority, reduction in rank or disrating, state that it is of the opinion mentioned in section 248(1) and why; and

(h) where the sentence consists of or includes a community punishment (and the case does not fall within section 151(2) of the 2003 Act as applied by section 270 of this Act), state that it is of the opinion mentioned in section 270(1) and why.

(3) In this section "guidelines" has the same meaning as in section 259.

Savings

254 Savings for powers to mitigate sentence etc

(1) Nothing in any of sections 242, 243, 248, 249, 250, 256, 258, 260, 261, 265 and 270 prevents a court or officer from mitigating an offender's sentence by taking into account any such matters as, in the court's or officer's opinion, are relevant in mitigation of sentence.

(2) Nothing in those sections prevents a court or officer from mitigating any punishment included in an offender's sentence by taking into account any other punishment included in that sentence.

(3) Nothing in those sections or section 255 prevents a court, in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

(4) Subsections (2) and (3) do not affect the generality of subsection (1).

CHAPTER 2

PRINCIPLES AND PROCEDURES APPLYING TO SERVICE COURTS ONLY

General

255 Individual sentence for each offence

Where the Court Martial or the Service Civilian Court convicts a person, the court must pass a separate sentence in respect of each offence of which he is convicted.

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256 Pre-sentence reports

(1) Subject to subsection (2), a court must obtain and consider a pre-sentence report before—

(a) forming any such opinion as is mentioned in—

section 242(1) or 243(2) (service detention);

section 260(2) or 261(2) (custodial sentence); or

section 265(1) (dismissal or dismissal with disgrace);

(b) forming any such opinion as is mentioned in section 270(1) or (2)(b) (community punishment) or any opinion as to the suitability for the offender of the particular requirement or requirements to be included in a community punishment; or

(c) forming the required opinion for the purposes of section 219(2), 220(2), 221(2) or 222(1) (minimum sentences for dangerous offenders and sexual or violent offences).

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (2) unless—

(a) there exists a previous pre-sentence report obtained in respect of the offender; and

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(4) No sentence is invalidated by a failure of a court to obtain and consider a pre-sentence report before doing any of the things mentioned in paragraphs (a) to (c) of subsection (1).

(5) However, any court on appeal against a custodial sentence in respect of a service offence, a sentence of dismissal or dismissal with disgrace, a sentence of service detention or a community punishment—

(a) must (subject to subsection (6)) obtain a pre-sentence report if none was obtained by the court below; and

(b) must consider any such report obtained by it or by that court.

(6) Subsection (5)(a) does not apply if the court is of the opinion—

(a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or

(b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court it is unnecessary to obtain a pre-sentence report.

(7) Where the offender is aged under 18, the court must not form the opinion mentioned in subsection (6) unless—

(a) there exists a previous pre-sentence report obtained in respect of the offender; and

(b) the court has had regard to the information contained in that report or, if there is more than one such report, the most recent report.

(8) Subsections (5) to (7) do not apply to the Summary Appeal Court on an appeal to it.

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(9) Subsections (1) to (4) do apply to the Summary Appeal Court in relation to a sentence of service detention, but as if the opinions referred to in subsection (1)(a) were any such opinion as is mentioned in section 242(4) or 243(3).

257 Pre-sentence reports: supplementary

(1) In section 256 and this section "pre-sentence report" has the meaning given by section 158(1) of the 2003 Act.

(2) In section 158(1) of that Act as applied by this section, "an appropriate officer" includes any registered social worker (as well as any person who is an appropriate officer within the meaning given by section 158(2) of that Act).

(3) In this section "registered social worker" means a person registered as a social worker in a register maintained by—

(a) the General Social Care Council;

(b) the Care Council for Wales;

(c) the Scottish Social Services Council; or

(d) the Northern Ireland Social Care Council.

(4) Section 159(1) to (3) and (5) of the 2003 Act (disclosure of reports) apply in relation to a pre-sentence report obtained by a court for the purposes of section 256 of this Act as they apply in relation to a report obtained by a court for the purposes of section 156 of that Act.

258 Mentally disordered offenders: requirement for medical report

(1) Subject to subsection (2), before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must obtain and consider a medical report.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence for a service offence on an offender who is or appears to be mentally disordered, a court must consider—

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by a failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) must obtain a medical report if none was obtained by the court below; and

(b) must consider any such report obtained by it or by that court.

(5) In this section—

"custodial sentence" does not include a custodial sentence fixed by law;

"medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983

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(c. 20) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

(6) Nothing in this section is to be taken to limit the generality of—

section 256 (pre-sentence reports); or

section 260(4) (information to be taken into account).

259 Sentencing guidelines

(1) A court must—

(a) in sentencing an offender for a service offence, have regard to any guidelines that are relevant to the offender's case; and

(b) in exercising any other function relating to the sentencing of offenders for service offences, have regard to any guidelines which are relevant to the exercise of the function.

(2) However, the court may depart from the guidelines mentioned in subsection (1)(a) or (b) if in its opinion the departure is justified by any features of service life or of the service disciplinary system that are relevant to the case.

(3) Subsection (2) does not limit any power existing apart from that subsection to depart from guidelines.

(4) References in subsection (1)(a) and (b) to sentencing an offender for a service offence include making any order when dealing with an offender in respect of such an offence.

(5) In this section—

"guidelines" means sentencing guidelines issued by the Sentencing Guidelines Council under section 170(9) of the 2003 Act as definitive guidelines, as revised by subsequent guidelines so issued;

"sentencing guidelines" has the meaning given by section 170(1) of that Act.

Custodial sentences and service detention

260 Discretionary custodial sentences: general restrictions

(1) This section applies where a court is dealing with an offender for a service offence punishable with a custodial sentence, other than an offence the sentence for which—

(a) is fixed by law; or

(b) falls to be imposed as a result of subsection (2) of any of sections 219 to 222 and 225 to 227.

(2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no less severe sentence can be justified for the offence.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence where—

(a) the court had proposed to award a community punishment; and

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(b) the offender failed to express his willingness to comply with a requirement which the court proposed to include in the community punishment and which required an expression of such willingness.

(4) In forming any such opinion as is mentioned in subsection (2) or section 261(2) (length of sentence), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

(5) For the purposes of this section a sentence falls to be imposed as a result of subsection (2) of section 225, 226 or 227 if it is required by that subsection and the court is not of the opinion there mentioned.

261 Length of discretionary custodial sentences: general provision

(1) This section applies where a court passes a custodial sentence for a service offence, other than a sentence fixed by law or falling to be imposed as a result of section 219(2) or 221(2).

(2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.

(3) Subsection (2) is subject to sections 220, 222, 225, 226 and 227 (required minimum sentences for certain offences).

262 Power to recommend licence conditions

In section 238(1) of the 2003 Act (court imposing prison term of 12 months or more may recommend licence conditions) "court" includes a court dealing with an offender for a service offence.

263 Restriction on imposing custodial sentence or service detention on unrepresented offender

(1) A sentence of—

(a) imprisonment, or

(b) service detention,

must not be passed by the Court Martial or the Service Civilian Court, or passed or confirmed by the Summary Appeal Court, in respect of an offender who is not legally represented in that court.

(2) Subsection (1) does not apply if the offender—

(a) having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply; or

(b) was aged 21 or over when convicted, and has previously been sentenced to imprisonment by a civilian court in any part of the United Kingdom or for a service offence.

(3) The Court Martial or the Service Civilian Court must not—

(a) pass a sentence of detention under section 209 or 218 (young offenders' detention), or

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(b) make an order under section 211 (detention and training),

on or in respect of an offender who is not legally represented in that court unless the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.

(4) For the purposes of this section an offender is "legally represented" in the Court Martial or the Service Civilian Court only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.

(5) For the purposes of this section an offender is "legally represented" in the Summary Appeal Court—

(a) in a case where his appeal was only against punishment, if he has the assistance of counsel or a solicitor to represent him at some time during the proceedings in that court;

(b) in any other case, only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after the court confirms or substitutes the finding and before it confirms or passes sentence.

(6) For the purposes of subsection (2)(b)—

(a) a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded;

(b) "sentence of imprisonment" does not include a committal for contempt of court or any kindred offence.

264 Effect of duties to pass custodial sentences on other powers of punishment

(1) Where a provision of this Act requires a court to impose a particular custodial sentence in respect of an offence, it is not to be taken to prevent the court from including in its sentence for that offence any other authorised punishment.

(2) In this section an "authorised punishment" means any punishment authorised by this Act apart from—

service detention;

a service supervision and punishment order;

minor punishments;

a community punishment;

a conditional or absolute discharge.

Dismissal

265 Dismissal: general restrictions

(1) A court may not pass a sentence of dismissal or dismissal with disgrace in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) In forming any such opinion as is mentioned in subsection (1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

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(3) The Court Martial must not pass a sentence of dismissal or dismissal with disgrace on an offender who is not legally represented in that court.

(4) Subsection (3) does not apply if the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply.

(5) For the purposes of this section an offender is "legally represented" in the Court Martial only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.

Financial punishments

266 Financial statement orders

(1) Before sentencing a person who has been convicted of a service offence, a court may make a financial statement order; but this does not apply to the Summary Appeal Court.

(2) A financial statement order is an order requiring the person to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.

(3) A person who without reasonable excuse fails to comply with a financial statement order commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

(4) A person who in providing any statement in pursuance of a financial statement order—

(a) makes a statement which he knows to be false in a material particular,

(b) recklessly provides a statement which is false in a material particular, or

(c) knowingly fails to disclose any material fact,

commits an offence and is liable to a fine not exceeding level 4 on the standard scale.

267 Power of court to remit fine

(1) This section applies where a court has, in fixing the amount of a fine in respect of a service offence, determined the offender's financial circumstances under section 249(5).

(2) If on subsequently inquiring into the offender's financial circumstances the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—

(a) have fixed a smaller amount, or

(b) not have fined him,

it may remit the whole or part of the fine.

268 Order for service parent or service guardian to pay fine or compensation

(1) This section applies where—

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(a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court;

(b) he is a civilian subject to service discipline;

(c) he has a service parent or service guardian; and

(d) the court is of the opinion that the case would best be met by the imposition of a fine or the making of a service compensation order (with or without any other punishment).

(2) The court may, and if the offender is under 16 when convicted must, order that the fine or compensation awarded be paid by the service parent or service guardian instead of by the offender himself; but this is subject to subsection (3).

(3) Where (apart from this subsection) the court would be required by subsection (2) to make an order against a service parent or service guardian, the court need not make such an order if it is satisfied—

(a) that no service parent or service guardian can be found; or

(b) that it would be unreasonable to make such an order having regard to the circumstances of the case.

(4) No order may be made under this section without giving the parent or guardian an opportunity of being heard, unless the parent or guardian has failed to attend having been required to do so.

(5) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—

(a) an order under this section is to be treated as a sentence passed on the parent or guardian for the offence; and

(b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.

(6) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

(7) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

(8) A parent or guardian is a "service parent" or "service guardian" for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.

269 Fixing of fine or compensation to be paid by parent or guardian

(1) For the purposes of any order under section 268 against the parent or guardian of an offender—

(a) section 249 (fixing of fine) has effect as if any reference to the offender's financial circumstances were to the parent's or guardian's financial circumstances, and as if the reference in subsection (5)(b) to the offender were to the parent or guardian;

(b) section 250(1) (determination of service compensation order) has effect as if any reference to the financial circumstances of the person against whom the service compensation order is made were to the financial circumstances of the parent or guardian;

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(c) section 250(2) (preference to be given to compensation if insufficient means to pay both compensation and fine) has effect as if the reference to the offender were to the parent or guardian;

(d) section 267 (power to remit fine) has effect as if any reference to the offender's financial circumstances were to the parent's or guardian's financial circumstances.

(2) Before making an order under section 268 against a parent or guardian, the court may make a financial statement order with respect to him.

(3) In subsection (2) "financial statement order" has the meaning given by subsection (2) of section 266, and subsections (3) and (4) of that section apply in relation to a financial statement order made under this section as they apply in relation to such an order made under that section.

Community punishments

270 Community punishments: general restrictions etc

(1) A court must not award a community punishment in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a punishment.

(2) Where a court awards a community punishment—

(a) the particular requirement (or requirements) included in the order must be such as the court considers the most suitable for the offender; and

(b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) In forming any such opinion as is mentioned in subsection (1) or (2)(b), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.

(4) In forming an opinion for the purposes of subsection (2)(a) the court may take into account any information about the offender which is before it.

(5) In determining the restrictions on liberty to be imposed by a community punishment in respect of an offence, the court may have regard to any period for which the offender has, since being charged with the offence or any related offence, been kept in service custody in connection with the offence or any related offence.

(6) In subsection (5) "related offence" has the meaning given by section 247.

(7) Section 151 of the 2003 Act (community order for persistent offender previously fined) applies to a court dealing with an offender for a service offence as it applies to a civilian court in England and Wales, but as if—

(a) in subsection (1)(c), the reference to a community sentence were to a community punishment and the reference to section 143(2) of that Act were to section 238(1)(b) of this Act;

(b) in subsection (2), the reference to making a community order were to awarding a community punishment and the words "instead of imposing a fine" were omitted; and

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(c) in subsection (7), the reference to section 143(2) of that Act were to section 238(1)(b) and (2) of this Act.

(8) Accordingly, subsections (1) and (2)(b) above are subject to section 151(2) of the 2003 Act as applied by this section.

CHAPTER 3

SUPPLEMENTARY

271 Civilian courts dealing with service offences

(1) Nothing in this Part affects a civilian court dealing with an offender for a service offence.

(2) The Secretary of State may by regulations modify—

(a) any provision of Chapter 1 of Part 12 of the 2003 Act (sentencing principles etc for civilian courts),

(b) any other enactment that confers functions on sentencing courts,

in its application to a civilian court dealing with an offender for a service offence.

VALID FROM 01/01/2008

PART 10

COURT MARTIAL DECISIONS: APPEALS AND REVIEW

CHAPTER 1

APPEALS FROM COURT MARTIAL

272 Appeals to the Court Martial Appeal Court

(1) The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court.

(2) Schedule 8 (amendment of the Courts-Martial (Appeals) Act 1968) has effect.

VALID FROM 28/03/2009

CHAPTER 2

REVIEW OF COURT MARTIAL SENTENCE

273 Review of unduly lenient sentence by Court Martial Appeal Court

(1) If the Attorney General considers—

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(a) that a sentence passed by the Court Martial in respect of an offence under section 42 (criminal conduct) is unduly lenient, and

(b) that condition A or B is satisfied,

he may refer the case to the Court Martial Appeal Court for it to review the sentencing of the offender.

(2) Condition A is that the corresponding offence under the law of England and Wales is under that law an offence which, if committed by an adult, is triable only on indictment.

(3) Condition B is that the case is of a description specified for the purposes of this subsection in an order made by the Secretary of State.

(4) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court.

(5) On a reference under subsection (1), the Court Martial Appeal Court may—

(a) quash the sentence passed by the Court Martial; and

(b) pass in substitution for it any sentence which the Court Martial Appeal Court thinks appropriate and which is a sentence that the Court Martial had power to pass in respect of the offence.

(6) For the purposes of subsection (1)(a), the Attorney General may consider that a sentence passed by the Court Martial is unduly lenient if he considers—

(a) that the Court Martial erred in law as to its powers of sentencing; or

(b) that the sentence is not that required by section 219, 220, 221, 222, 225, 226 or 227;

but nothing in this subsection limits subsection (1)(a).

(7) Where a reference under subsection (1) relates to an order under section 269(2) of the 2003 Act (determination of minimum term in relation to mandatory life sentence), the Court Martial Appeal Court may not, in deciding what order under section 269 of that Act is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time.

(8) The reference in subsection (1)(a) to a sentence passed by the Court Martial does not include one passed on an appeal under section 285 (appeal from Service Civilian Court).

(9) In this section and section 274 "sentence" includes any order made by a court when dealing with an offender.

274 Reference of point of law to Supreme Court

(1) Where the Court Martial Appeal Court has concluded its review of a case referred to it under section 273(1), the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed on the offender in the proceedings.

(2) A reference under subsection (1) may not be made without the leave of the Court Martial Appeal Court or the Supreme Court.

(3) Such leave may not be given unless—

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(a) the Court Martial Appeal Court has certified that the point of law is of general public importance; and

(b) it appears to the Court Martial Appeal Court or the Supreme Court (as the case may be) that the point is one which should be considered by the Supreme Court.

(4) The Supreme Court must give its opinion on any point of law referred to it under subsection (1) and must—

(a) remit the case to the Court Martial Appeal Court to be dealt with; or

(b) deal with the case itself.

(5) For the purposes of dealing with a case itself the Supreme Court may exercise any powers of the Court Martial Appeal Court.

275 Power to make supplementary provision about review of sentence

(1) The Secretary of State may by regulations make supplementary provision with respect to references under section 273(1) or 274(1) (including provision with respect to applications, proceedings and other matters in connection with such references).

(2) The regulations may in particular include provision which is equivalent to that made by, or capable of being made under, any provision of—

(a) this Act,

(b) the Court Martial Appeals Act 1968 (c. 20), or

(c) Schedule 3 to the Criminal Justice Act 1988 (c. 33) (reviews of sentencing; supplementary),

subject to such modifications as the Secretary of State considers appropriate.

VALID FROM 28/03/2009

CHAPTER 3

COMPENSATION FOR MISCARRIAGES OF JUSTICE

276 Compensation for miscarriages of justice

(1) Where—

(a) a person has been convicted by the 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 him or, if he is dead, to his personal representatives; but this is subject to subsections (2) and (3).

(2) Compensation under this section is not payable if the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

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(3) Compensation under this section is not payable unless an application for such compensation has been made to the Secretary of State.

(4) The question whether there is a right to compensation under this section is to be determined by the Secretary of State.

(5) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation is to be assessed by an assessor appointed by the Secretary of State.

(6) In assessing the amount of compensation payable to or in respect of a person that is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—

(a) the seriousness of the offence of which the person was convicted and the severity of the resulting sentence;

(b) the conduct of the investigation and prosecution of the offence; and

(c) any other convictions of the person and any resulting sentences.

(7) The reference in subsection (1) to a conviction having been reversed is to be read as a reference to a conviction having been quashed—

(a) on an appeal out of time;

(b) on a reference under section 34 of the Court Martial Appeals Act 1968 (c. 20); or

(c) on a reference under section 12A of the Criminal Appeal Act 1995.

(8) Schedule 9 (provision with regard to assessors) has effect.

VALID FROM 28/03/2009

PART 11

THE SERVICE CIVILIAN COURT

The Service Civilian Court: court and proceedings

277 The Service Civilian Court

(1) There shall be a court, to be known as the Service Civilian Court.

(2) The Service Civilian Court may sit in any place other than in the British Islands.

278 Constitution and proceedings of the Service Civilian Court

(1) In any proceedings, the Service Civilian Court is to consist of a single judge advocate.

(2) The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General.

(3) Schedule 10 (proceedings of the Service Civilian Court) has effect.

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279 Court must consider whether trial by Court Martial more appropriate

(1) Before arraignment, the Service Civilian Court must decide whether it or the Court Martial should try the charge.

(2) Before making a decision under this section, the court must—

(a) give the Director of Service Prosecutions ("the Director") an opportunity to inform the court of the defendant's previous convictions (if any); and

(b) give the Director and the defendant an opportunity to make representations as to whether the Service Civilian Court or the Court Martial should try the charge.

(3) In making a decision under this section, the court must consider—

(a) the nature of the case;

(b) the seriousness of the offence;

(c) whether its powers of punishment in respect of the offence would be adequate;

(d) any other circumstances it considers to be relevant; and

(e) any representations made by the Director and the defendant.

(4) If the court decides that the charge should be tried by the Court Martial—

(a) it must refer the charge to that court; and

(b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.

(5) Section 238(3) (meaning of "previous conviction") applies for the purposes of subsection (2)(a) above.

280 Right to elect trial by Court Martial instead of by SCC

(1) This section applies where the Service Civilian Court decides (under section 279) that it should try a charge.

(2) Before arraignment the court must, in the way specified by SCC rules, give the defendant the opportunity of electing Court Martial trial of the charge.

(3) If the defendant or (if more than one person is jointly charged) any of the defendants elects Court Martial trial of the charge—

(a) the Service Civilian Court must refer the charge to the Court Martial; and

(b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.

(4) If subsection (3) does not apply, the Service Civilian Court must try the charge (but this is subject to the exercise by the Director of Service Prosecutions of the power under section 126(2)(b), (d) or (e)).

(5) Where the Service Civilian Court is, in accordance with SCC rules, to try together two or more charges against the defendant, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.

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281 Power of SCC to convict of offence other than that charged

Section 161 (power of Court Martial to convict of offence other than that charged) applies in relation to the Service Civilian Court as it applies in relation to the Court Martial.

Punishments available to Service Civilian Court

282 Punishments available to Service Civilian Court

(1) Section 164 and Schedule 3 (punishments available to Court Martial) apply in relation to the Service Civilian Court as they apply in relation to the Court Martial.

(2) Subsection (1) is subject to—

(a) sections 283 and 284 (maximum imprisonment, fine or compensation order that may be awarded by SCC); and

(b) subsection (3).

(3) Where the Service Civilian Court sentences an offender to whom Part 2 of Schedule 3 applies, it may not award a punishment mentioned in any of rows 2 to 5 or 8 of the Table in section 164 (as modified by that Part of that Schedule).

283 Imprisonment: maximum term

(1) The Service Civilian Court may not impose imprisonment for more than 12 months in respect of any one offence.

(2) Where the Service Civilian Court imposes two or more terms of imprisonment to run consecutively their aggregate must not exceed 65 weeks.

284 Fines and compensation orders: maximum amounts

(1) The Service Civilian Court may not in respect of any one offence impose a fine exceeding the prescribed sum.

(2) Where the Service Civilian Court convicts a person of an offence under section 42 (criminal conduct), it may not impose a fine which a magistrates' court in England or Wales could not impose on him for the corresponding offence under the law of England and Wales.

(3) The compensation to be paid under a service compensation order made by the Service Civilian Court in respect of any offence of which the court has convicted the offender must not exceed the amount for the time being mentioned in section 131(1) of the Sentencing Act (limit on compensation order made by magistrates' court).

(4) The compensation or total compensation to be paid under a service compensation order or service compensation orders made by the Service Civilian Court in respect of any offence or offences taken into consideration in determining sentence must not exceed the difference (if any) between—

(a) the amount or total amount which under subsection (3) is the maximum for the offence or offences of which the offender has been convicted; and

(b) the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

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Appeals from Service Civilian Court

285 Right of appeal from SCC

(1) A person convicted by the Service Civilian Court may appeal to the Court Martial—
- (a) if he pleaded guilty, against his sentence;
- (b) if he did not plead guilty, against his conviction or sentence.

(2) It is immaterial for the purposes of subsection (1)(a), and of subsection (1)(b) so far as relating to sentence, whether the sentence was passed on conviction or in subsequent proceedings.

(3) Subject to subsection (4), any appeal under this section must be brought—
- (a) within the period of 28 days beginning with the date on which the person was sentenced ("the initial period"); or
- (b) within such longer period as the Court Martial may allow by leave given before the end of the initial period.

(4) The Court Martial may at any later time give leave for an appeal to be brought within such period as it may allow.

(5) The respondent to an appeal under this section is the Director of Service Prosecutions.

(6) In this section "sentence" includes any order made by a court when dealing with an offender.

286 Hearing of appeals from SCC

(1) This section applies in relation to appeals under section 285.

(2) An appeal against conviction is to be by way of a rehearing of the charge (including, where the appellant is convicted, a rehearing as respects sentence).

(3) An appeal against sentence is to be by way of a rehearing as respects sentence.

(4) Subject to subsections (5) and (6) and to such modifications as may be contained in Court Martial rules, Parts 7 to 9 of this Act apply in relation to appeals as they apply in relation to trials by the Court Martial.

(5) The following may not be a member of the court hearing the appeal—
- (a) the judge advocate who tried or sentenced the appellant;
- (b) any other judge advocate before whom there was (in the proceedings under appeal) a hearing.

(6) The Court Martial may only pass a sentence that the Service Civilian Court had power to pass in respect of the offence.

(7) In this section and section 287—
- (a) "sentence" includes any order;
- (b) references to the passing of a sentence include references to the making of an order.

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287 Findings made and sentences passed by Court Martial on appeal from SCC

(1) Any finding made, or sentence passed, by the Court Martial on an appeal under section 285 replaces the finding or sentence of the Service Civilian Court.

(2) Unless the Court Martial otherwise directs, any sentence passed on such an appeal takes effect from the beginning of the day on which the Service Civilian Court passed sentence.

(3) Subsection (4) applies where a sentence is passed on a person on an appeal under section 285 against sentence.

(4) The person is to be treated, for the purpose of enabling him to appeal under the Court Martial Appeals Act 1968 (c. 20) against the sentence, as if he had been convicted by the Court Martial of the offence in respect of which the sentence was passed.

SCC rules

288 SCC rules

(1) The Secretary of State may by rules (referred to in this Act as "SCC rules") make provision with respect to the Service Civilian Court.

(2) SCC rules may in particular make provision with respect to—
- (a) sittings of the court, including the place of sitting and changes to the place of sitting;
- (b) trials and other proceedings of the court;
- (c) the practice and procedure of the court;
- (d) evidence, including the admissibility of evidence;
- (e) the representation of the defendant.

(3) Without prejudice to the generality of subsections (1) and (2), SCC rules may make provision—
- (a) as to oaths and affirmations for judge advocates, witnesses and other persons;
- (b) as to objections to, and the replacement of, judge advocates;
- (c) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
  - (i) the payment of expenses to persons summoned to attend the court;
  - (ii) the issue by the court of warrants for the arrest of persons;
- (d) as to the amendment of charges;
- (e) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
- (f) for the discharge of a court (including provision as to retrials and rehearings following discharge);
- (g) for the making and retention of records of proceedings of the court;
- (h) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
- (i) conferring functions in relation to the court on the court administration officer;
- (j) for the delegation by the court administration officer of any of his functions in relation to the court.

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(4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.

(5) Provision that may be made by the rules by virtue of subsection (3)(c)(ii) includes provision—

(a) conferring powers of arrest;

(b) requiring any arrested person to be brought before the court;

(c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).

(6) SCC rules must secure that, after arraignment, charges may not be amended—

(a) in circumstances substantially different from those in which charges may be amended in magistrates' courts in England and Wales; or

(b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which charges may be so amended.

(7) SCC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.

VALID FROM 28/03/2009

PART 12

SERVICE AND EFFECT OF CERTAIN SENTENCES

Commencement of sentence

289 Commencement of sentences of the Court Martial and Service Civilian Court

(1) A sentence passed by the Court Martial or the Service Civilian Court takes effect from the beginning of the day on which it is passed.

(2) Subsection (1) does not apply to—

(a) a suspended sentence of imprisonment or service detention; or

(b) a sentence passed by the Court Martial on appeal from the Service Civilian Court.

(3) Subsection (1) is subject to any power conferred by or under any Act (including this Act) to direct that a sentence shall take effect otherwise than as mentioned in subsection (1).

290 Commencement of term of service detention awarded by CO

(1) This section applies where an officer—

(a) awards a term of service detention (other than a suspended sentence of service detention); and

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(b) does not make a direction under section 189(3) in respect of the award (consecutive sentences of service detention).

(2) If the offender so elects at the time of the award, the award takes effect from the beginning of the day on which the award is made.

(3) If no election is made under subsection (2), the award—

(a) takes effect from the end of the appeal period (unless an appeal is brought within that period);

(b) if an appeal is brought within that period, takes effect from the beginning of the day when the appeal is abandoned or determined.

(4) An election under subsection (2) may be withdrawn at any time until the end of the appeal period.

(5) If an election is withdrawn, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—

(a) from the end of the appeal period (unless an appeal is brought within that period);

(b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.

(6) If an award takes or resumes effect under subsection (2), (3)(a) or (5)(a) and an appeal is subsequently brought, the remainder of the award—

(a) ceases to have effect from the beginning of the day when the appeal is brought; and

(b) resumes effect from the beginning of the day when the appeal is abandoned or determined.

(7) In this section "appeal period" means the period mentioned in section 141(2) for the bringing of an appeal.

(8) Nothing in subsection (3)(b), (5)(b) or (6)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

291 Commencement of consecutive term of service detention awarded by CO

(1) This section applies where an officer—

(a) awards a term of service detention; and

(b) directs under section 189(3) that the award shall take effect from the end of another sentence of service detention ("the initial sentence").

(2) The offender may at the time of the award make an election under this subsection.

(3) Such an election may be withdrawn at any time until the end of the appeal period.

(4) If the offender—

(a) makes an election under subsection (2), and

(b) does not withdraw the election, or bring an appeal, before the end of the initial sentence,

the award takes effect from the end of the initial sentence.

(5) If subsection (4) does not apply, the award—

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(a) takes effect from the end of the initial sentence or (if later) the end of the appeal period (unless an appeal is brought before that time);

(b) if an appeal is brought before the end of the initial sentence or (if later) the end of the appeal period, takes effect from the end of the initial sentence or (if later) the beginning of the day when the appeal is abandoned or determined.

(6) If an election is withdrawn after the end of the initial sentence, the remainder of the award ceases to have effect from the beginning of the day of withdrawal and resumes effect—

(a) from the end of the appeal period (unless an appeal is brought within that period);

(b) if an appeal is brought within that period, from the beginning of the day when the appeal is abandoned or determined.

(7) If an award takes or resumes effect under subsection (4), (5)(a) or (6)(a) and an appeal is subsequently brought, the remainder of the award—

(a) ceases to have effect from the beginning of the day when the appeal is brought; and

(b) resumes effect from the beginning of the day when the appeal is abandoned or determined.

(8) In this section "appeal period" means the period mentioned in section 141(2) for the bringing of an appeal against the award mentioned in subsection (1)(a) above.

(9) Nothing in subsection (5)(b), (6)(b) or (7)(b) applies where the appeal is determined and, on that determination, the award is quashed or another punishment is substituted for it.

292 Commencement of suspended sentence activated by CO

(1) This section applies where an officer makes an order ("the activation order") under section 193(3) (activation of suspended award of service detention).

(2) If the activation order does not provide that the suspended sentence shall take effect from the end of another sentence, section 290(2) to (8) apply, but with the following modifications—

(a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;

(b) the reference in subsection (2) to the day on which the award is made is to be read as to the day on which the activation order is made;

(c) any other reference to "the award" in subsections (2) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);

(d) the reference in subsection (7) to an appeal is to an appeal against the activation order; and

(e) in subsection (8)—

(i) the reference to the award is to be read as to the activation order; and

(ii) the reference to another punishment is to be read as to another order under section 193(3).

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(3) If the activation order provides that the suspended sentence shall take effect from the end of another sentence ("the initial sentence"), section 291(2) to (9) apply, but with the following modifications—

(a) the reference in subsection (2) to the time of the award is to be read as to the time when the activation order is made;

(b) any reference to "the initial sentence" is to the initial sentence as defined by this subsection;

(c) any reference to "the award" in subsections (4) to (7) is to the award of service detention to which the activation order relates (with any modification of its term made by the activation order);

(d) the reference in subsection (8) to the award mentioned in section 291(1)(a) is to be read as to the activation order; and

(e) in subsection (9)—

(i) the reference to the award is to be read as to the activation order; and

(ii) the reference to another punishment is to be read as to another order under section 193(3).

Effect of custodial sentence or detention on rank or rate

293 Effect on rank or rate of WOs and NCOs of custodial sentence or sentence of service detention

(1) This section applies where a custodial sentence or sentence of service detention is passed on a warrant officer or non-commissioned officer ("the offender") in respect of a service offence without a sentence of dismissal or dismissal with disgrace also being passed on the offender in respect of that or any other offence.

(2) The offender's rank or rate is reduced from the beginning of the day on which the sentence takes effect to the lowest rank or rate to which it could be reduced under section 164.

(3) For the purposes of this section, the making of an order under section 214 (detention for commission of offence during currency of order) in respect of a person is to be treated as the passing of a custodial sentence on him in respect of a service offence.

294 Rank or rate of WOs and NCOs while in custody pursuant to custodial sentence etc

(1) While a warrant officer or non-commissioned officer is in custody in pursuance of a sentence or order to which this section applies, he is for all purposes to be treated as being—

(a) if he is a member of any of Her Majesty's air forces, of the highest rank he has held in that force as an airman;

(b) otherwise, of the rank or rate of able rate, marine or soldier (as the case may be).

(2) The sentences to which this section applies are—

(a) a custodial sentence passed in respect of a service offence;

(b) a sentence of service detention;

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(c) a sentence of imprisonment, or a sentence corresponding to any other custodial sentence, passed by a civilian court in the British Islands.

(3) The orders to which this section applies are—

(a) an order under section 214 (detention for commission of offence during currency of order);

(b) an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements);

(c) an order made by a civilian court in the British Islands corresponding to an order within paragraph (a) or (b).

Effect of dismissal

295 Effect of sentence of dismissal

(1) This section applies where a sentence of dismissal or dismissal with disgrace is passed on an offender.

(2) If the offender is a commissioned officer, his commission is forfeit with effect from the beginning of the day on which the sentence is passed.

(3) If the offender is not a commissioned officer, the competent authority must discharge him from the regular or reserve force of which he is a member.

(4) If the offender is a warrant officer or non-commissioned officer, his rank or rate is reduced from the beginning of the day on which the sentence is passed—

(a) if he is a member of any of Her Majesty's air forces, to the highest rank he has held in that force as an airman;

(b) otherwise, to able rate, marine or soldier (as the case may be).

(5) Nothing in subsection (3) requires the offender to be discharged before he is released from any sentence of service detention—

(a) which is passed on him on the same occasion as the sentence mentioned in subsection (1); or

(b) to which he is subject when that sentence is passed.

Service of sentence

296 Service detention

(1) A person sentenced to service detention—

(a) may be detained in service custody; but

(b) may not be detained in a prison.

(2) Subsection (1)(a) does not apply if—

(a) the sentence has not taken effect; or

(b) the sentence has ceased to have effect by virtue of section 290 or 291 and has not resumed effect.

(3) A person detained in service custody in pursuance of a sentence of service detention is deemed to be in legal custody.

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297 Detention in service custody following passing of custodial sentence etc

(1) Where—

(a) a custodial sentence has been passed on a person in respect of a service offence, or

(b) an order under section 214 (detention for commission of offence during currency of order) has been made in respect of a person,

the person may be detained in service custody until he is committed to the appropriate establishment.

(2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.

(3) A person in service custody under subsection (1) is deemed to be in legal custody.

298 Removal to England and Wales following passing of custodial sentence etc

(1) If a person is outside England and Wales when—

(a) a custodial sentence is passed on him in respect of a service offence, or

(b) an order under section 214 (detention for commission of offence during currency of order) is made in respect of him,

he must as soon as practicable be removed to England and Wales.

(2) For the purposes of subsection (1), a suspended sentence of imprisonment is to be treated as passed when an order that the sentence shall take effect is made.

299 Duty to receive prisoners

The governor of a prison in England or Wales must—

(a) receive any person who, in accordance with rules under section 300, has been sent to the prison; and

(b) confine that person until he is lawfully discharged or delivered over.

300 Service custody etc rules

(1) The Secretary of State may make rules about service custody and the service of relevant sentences.

(2) The rules may in particular contain provision about—

(a) the provision, classification, regulation and management of service custody premises;

(b) the appointment, powers and duties of inspectors and visitors of service custody premises and of persons who work at such premises;

(c) the classification, treatment, employment, discipline and control of persons in service custody;

(d) the places in which persons may be required to serve sentences of service detention;

(e) the removal of persons serving relevant sentences from one place or type of custody to another;

(f) the committal of persons under relevant sentences to the appropriate establishment;

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(g) the circumstances in which persons serving relevant sentences who are unlawfully at large are to be treated as not being unlawfully at large;

(h) the release (including the temporary or early release) of persons serving sentences of service detention.

(3) The rules may confer on any person—

(a) a power to use reasonable force where necessary for the purpose of carrying out a search of service custody premises or of a person in service custody;

(b) a power to seize and detain unauthorised property (as defined by the rules).

(4) The rules may contain provision in respect of the award of additional days to a person guilty of a disciplinary offence created by the rules.

(5) The rules may provide for the determination of any matter by a judge advocate, and may contain provision for and in connection with appeals against such determinations.

(6) The rules may apply (with or without modifications), in relation to service custody premises and persons detained there, any of—

(a) sections 39 to 42 of the Prison Act 1952 (c. 52) (offences by persons other than prisoners etc);

(b) section 22(2) of the Criminal Justice Act 1961 (c. 39) (harbouring escaped prisoners etc).

(7) In this section—

"relevant sentence" means—

(a) a custodial sentence passed in respect of a service offence;

(b) a sentence of service detention; or

(c) an order under section 214 (detention for commission of offence during currency of order);

"service custody premises" means premises under the control of the Secretary of State for the keeping of persons in service custody.

301 Duration of sentences: persons unlawfully at large or on temporary release

(1) In calculating the period for which a person sentenced to service detention is liable to be detained, no account shall be taken of any period within subsection (3).

(2) In calculating the period for which a person on whom a custodial sentence has been passed in respect of a service offence is liable to be detained, no account shall be taken of any period within subsection (3) occurring before the person is committed to the appropriate establishment.

(3) The following periods are within this subsection—

(a) any period when the person is unlawfully at large;

(b) any period of temporary release on compassionate grounds (pursuant to rules under section 300).

(4) A person who has been temporarily released pursuant to rules under section 300 is unlawfully at large for the purposes of this section if—

(a) he was released subject to complying with a condition, and he fails to comply with the condition; or

(b) he is at large after the end of the period for which he was released.

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(5) In this section—

"period when the person is unlawfully at large" means the period beginning with the day when he becomes unlawfully at large and ending with the day when he is taken back into custody (whether service or otherwise) or returns to the place at which he was serving his sentence;

"period of temporary release on compassionate grounds" means the period beginning with the day after the day when the person is released and ending with the day when he is required to return to custody (or, if earlier, the day when he returns to custody).

302 Remission of certain sentences on passing of custodial sentence etc

(1) Any unserved part of any relevant sentence passed on a person is remitted by—

(a) the passing on him of a custodial sentence in respect of a service offence; or

(b) the passing on him by a civilian court in the British Islands of a sentence of imprisonment or a sentence corresponding to any other custodial sentence.

(2) In subsection (1) "relevant sentence" means—

(a) a sentence of service detention;

(b) a service supervision and punishment order; or

(c) a minor punishment.

(3) Subsection (1) applies in relation to—

(a) the making of an order under section 214 (detention for commission of offence during currency of order),

(b) the making of an order under section 104 of the Sentencing Act (detention of offender subject to detention and training order for breach of supervision requirements), or

(c) the making by a civilian court in the British Islands of an order corresponding to an order within paragraph (a) or (b),

as it applies in relation to the passing of a sentence mentioned in subsection (1)(a).

(4) For the purposes of subsection (1), a suspended sentence of imprisonment or a sentence corresponding to such a sentence is to be treated as passed when an order that the sentence shall take effect is made.

303 Power of service policeman to arrest person unlawfully at large

(1) A person who has been sentenced to service detention and who is unlawfully at large—

(a) may be arrested by a service policeman; and

(b) may be taken to the place in which he is required in accordance with law to be detained.

(2) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

(3) A person may use reasonable force, if necessary, in the exercise of a power conferred by subsection (1).

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Supplementary

304 Sentences passed by civilian courts

(1) In this Part any reference to a custodial sentence passed in respect of a service offence excludes a sentence of imprisonment passed by a civilian court in respect of such an offence.

(2) In each of sections 297(2) and 298(2) the reference to an order excludes an order made by a civilian court.

VALID FROM 28/03/2009

PART 13

DISCIPLINE: MISCELLANEOUS AND SUPPLEMENTARY

CHAPTER 1

TESTING FOR ALCOHOL AND DRUGS

305 Testing for drugs

(1) A drug testing officer may, in order for it to be ascertained whether or to what extent a person subject to service law has or has had drugs in his body, require the person to provide a sample of his urine for analysis.

(2) A drug testing officer may not impose a requirement under subsection (1) if—
(a) he or his commanding officer is the person's commanding officer; or
(b) the sample is sought in connection with an investigation under this Act of an offence or an investigation of an incident within section 306(1)(a).

(3) A person commits an offence if he fails to comply with a requirement imposed under subsection (1).

(4) In this section—

"drug" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38); and

"drug testing officer" means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with regulations made by the Defence Council for the purpose of obtaining samples for analysis for drugs.

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment or service detention imposed in respect of the offence must not exceed 51 weeks.

306 Testing for alcohol and drugs after serious incident

(1) This section applies where—

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(a) an incident has occurred which in the opinion of an officer resulted in, or created a risk of, death or serious injury to any person or serious damage to any property; and

(b) in the opinion of the officer, it is possible that a person within subsection (3) ("A") may have caused or in any way contributed to—

(i) the occurrence of the incident;

(ii) any death or serious injury to any person, or serious damage to any property, resulting from it; or

(iii) the risk of any such death, injury or damage.

(2) The officer may, in order for it to be ascertained whether or to what extent A has or has had alcohol or drugs in his body, require A to provide a sample for analysis.

(3) A person is within this subsection if—

(a) he is a person subject to service law or a civilian subject to service discipline; and

(b) the officer mentioned in subsection (1) is his commanding officer.

(4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under subsection (2).

(5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment or service detention imposed in respect of the offence must not exceed 51 weeks.

(6) The Defence Council may by regulations provide for the delegation by an officer of—

(a) functions conferred by this section;

(b) functions conferred by regulations under section 308 so far as relating to the obtaining of samples under subsection (2) of this section.

307 Definitions etc for purposes of section 306

(1) This section applies for the purposes of section 306.

(2) "Drug" means—

(a) a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38); or

(b) any other drug specified, or of a description specified, in an order made by the Secretary of State for the purposes of this paragraph.

(3) "Sample" means—

(a) where the sample is required in order for it to be ascertained whether or to what extent a person has or has had alcohol in his body, a sample of urine or breath;

(b) where the sample is required in order for it to be ascertained whether or to what extent a person has or has had drugs in his body, a sample of urine; and

(c) in either case, any other sample specified by the Secretary of State in an order made for the purposes of this paragraph.

(4) The power conferred by subsection (3)(c) does not include power to specify a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person's body orifice (other than the mouth).

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(5) Any reference to a person being required to provide a sample includes, in relation to a sample within subsection (3)(c), a reference to a person being required to consent to the taking from him of a sample.

308 Sections 305 and 306: supplementary

(1) The Defence Council may by regulations make provision about the obtaining of samples under sections 305(1) and 306(2) and the analysis of such samples, including in particular provision—

(a) as to the number of samples which a person may be required to provide;

(b) as to the circumstances in which a person may be required under section 306(2) to provide more than one type of sample;

(c) enabling the person imposing a requirement under section 305(1) or 306(2) to specify the way in which the sample is to be provided;

(d) prescribing circumstances in which a requirement under section 305(1) or 306(2) may not be imposed;

(e) as to the equipment to be used, and the procedures to be followed, in obtaining or analysing samples;

(f) as to the qualifications and training of any persons engaged in obtaining or analysing samples.

(2) In subsection (1), any reference to a person being required to provide a sample includes, in relation to a sample within section 307(3)(c), a reference to a person being required to consent to the taking from him of a sample.

(3) The results of any analysis of a sample provided pursuant to a requirement imposed under section 305(1) or section 306(2) are not admissible in evidence against any person in proceedings in respect of a service offence.

(4) Nothing in this Chapter limits the powers conferred by—

(a) any provision of the Road Traffic Act 1988 (c. 52), or

(b) any provision of an order under section 113(1) of PACE which makes provision equivalent to any provision of Part 5 of PACE (questioning and treatment of persons by police),

or affects the admissibility in any proceedings of evidence obtained under those powers.

CHAPTER 2

CONTEMPT OF COURT

309 Offences of misbehaviour in court etc

(1) A qualifying service court has jurisdiction under this section to deal with any person ("the offender") who at a time when he is within subsection (6)—

(a) refuses to take an oath or make an affirmation when duly required by the court to do so;

(b) when a witness, refuses to answer any question which the court has lawfully required him to answer;

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(c) when attending or brought before the court refuses to produce any document or other thing which is in his custody or under his control and which the court has lawfully required him to produce;

(d) intentionally interrupts the proceedings of the court or otherwise misbehaves in court; or

(e) intentionally insults or intimidates—

(i) any member of the court while that member is acting as such a member or is going to or returning from the court; or

(ii) any witness or other person whose duty it is to attend the court, while that witness or other person is attending the court or going to or returning from the court.

(2) If the offender is a person subject to service law or a civilian subject to service discipline, the court may—

(a) commit the offender to service custody for a specified period not exceeding 28 days;

(b) impose on him a fine not exceeding level 4 on the standard scale; or

(c) do both.

(3) If the offender is not a person subject to service law or a civilian subject to service discipline, the court may impose on him a fine not exceeding level 4 on the standard scale.

(4) A qualifying service court may at any time revoke an order of committal made by it under this section and, if the offender is in custody, order his discharge.

(5) The following are qualifying service courts for the purposes of this section—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Service Civilian Court.

(6) A person is within this subsection at any time when—

(a) he is in the United Kingdom; or

(b) he is outside the United Kingdom but is subject to service law or is a civilian subject to service discipline.

310 Power to detain before dealing with section 309 offence

(1) Where a court with power to deal with a person under section 309 does not immediately exercise that power, it may order a service policeman, an officer of a UK police force or a member of court staff to take the offender into service custody and detain him in service custody until the rising of the court.

(2) If at the end of that detention—

(a) the court considers that a decision whether to exercise that power should not be taken without a further hearing, and

(b) any of the conditions in subsection (4) is satisfied,

the court may give orders for the further detention of the offender in service custody.

(3) An authorisation of detention under subsection (2) ends not more than 48 hours after the time when the offender was first detained under subsection (1).

(4) The conditions referred to in subsection (2)(b) are—

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(a) that the court is satisfied that there are substantial grounds for believing that the offender, if released from service custody, would—

(i) fail to attend any hearing in the proceedings against him;

(ii) commit an offence while released; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(b) that the court is satisfied that he should be kept in service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests;

(c) that the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of deciding whether the condition in paragraph (a) or (b) is met.

(5) A person may use reasonable force, if necessary, in the exercise of any power arising from an order of a court under this section.

311 Certification to civil courts

(1) This section applies if, in relation to proceedings before a qualifying service court, a person within section 309(6) does any act ("the offence") that would constitute contempt of court if the proceedings were before a court having power to commit for contempt.

(2) The qualifying service court, unless it has exercised any power conferred by section 309 in relation to the offence, may certify the offence—

(a) if it took place in a part of the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt;

(b) if it took place outside the United Kingdom, to the High Court in England and Wales.

(3) The court to which the offence is certified may inquire into the matter, and after hearing—

(a) any witness who may be produced against or on behalf of the person, and

(b) any statement that may be offered in defence,

may deal with him in any way in which it could deal with him if the offence had taken place in relation to proceedings before that court.

(4) Where under this section a qualifying service court certifies an offence, it may not exercise any power conferred by section 309 in relation to the offence.

(5) In this section—

"qualifying service court" has the same meaning as in section 309;

"act" includes an omission and references to the doing of an act are to be read accordingly.

312 Decisions of court under section 309: making and effect

(1) Nothing in—

(a) section 149 (findings etc of the SAC), or

(b) section 160 (findings etc of the Court Martial),

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applies in relation to a decision of the Summary Appeal Court or the Court Martial under any of sections 309 to 311.

(2) Any such decision is to be taken by the judge advocate.

(3) Where the Court Martial or the Service Civilian Court commits a person to service custody under section 309, it may direct that the committal shall take effect from the end of any sentence of service detention—

(a) that has been passed on the person on a previous occasion; or

(b) (in the case of the Court Martial) that the court passes on the person on the same occasion.

(4) Where the Summary Appeal Court commits a person to service custody under section 309 it may direct that the committal shall take effect from the end of any sentence of service detention that has been passed on the person on a previous occasion.

(5) A court imposing a fine under section 309 may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.

(6) In the provisions mentioned in subsection (7)—

(a) any reference to a sentence of service detention includes a reference to a committal to service custody under section 309; and

(b) references to persons sentenced to service detention are to be read accordingly.

(7) Those provisions are—

section 294 (rank or rate while in custody pursuant to sentence);
section 296 (prohibition of detention in a prison, etc);
section 300 (service custody etc rules);
section 301 (duration of sentences: persons unlawfully at large);
section 302 (remission on passing of custodial sentence);
section 303 (arrest by service police of persons unlawfully at large);
section 318 (arrest by civilian police of persons unlawfully at large).

CHAPTER 3

ARREST AND DETENTION BY CIVIL AUTHORITIES

Arrest for service offences

313 Arrest by civilian police under warrant of judge advocate

(1) Where a judge advocate is satisfied by evidence given under oath or affirmation that there are reasonable grounds for doing so, he may issue a warrant for the arrest of a person who is reasonably suspected of having committed a service offence.

(2) A warrant issued under this section—

(a) shall be addressed to an officer or officers of a UK police force or British overseas territory police force; and

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(b) shall specify the name of the person for whose arrest it is issued and the offence which he is alleged to have committed.

(3) The Secretary of State may make rules with respect to the practice and procedure which is to apply in connection with warrants issued under this section.

(4) A person arrested under a warrant issued under this section must as soon as practicable be transferred to service custody.

Arrest etc for desertion or absence without leave

314 Arrest by civilian police of deserters and absentees without leave

(1) An officer of a UK police force or British overseas territory police force may arrest without a warrant a person ("a relevant suspect") who is reasonably suspected of being a person subject to service law who has deserted or is absent without leave.

(2) If an authorised person is satisfied by evidence given under oath or affirmation that a relevant suspect is or is reasonably suspected of being within his jurisdiction, he may issue a warrant for the arrest of the relevant suspect.

(3) In subsection (2) "authorised person" means a person who has authority in a relevant territory to issue a warrant for the arrest of a person suspected of an offence.

(4) A person arrested under this section must as soon as practicable be brought before a court of summary jurisdiction in the relevant territory in which he was arrested.

(5) In this section "relevant territory" means—
(a) England and Wales;
(b) Scotland;
(c) Northern Ireland;
(d) the Isle of Man; or
(e) a British overseas territory.

315 Deserters and absentees without leave surrendering to civilian police

(1) Where—
(a) a person surrenders to a civilian policeman as being a person subject to service law who has deserted or is absent without leave, and
(b) the surrender occurs at a place in a relevant territory which is not a police station,

he must be taken to a police station.

(2) Subsection (3) applies where a person—
(a) is brought to a police station under subsection (1), or
(b) surrenders to a civilian policeman, at a police station in a relevant territory, as being a person subject to service law who has deserted or is absent without leave.

(3) The person in charge of the police station, or a person authorised by him, must consider the case.

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(4) If it appears to the person considering the case that the person who has surrendered is a person subject to service law who has deserted or is absent without leave, he may—

(a) arrange for him to be transferred to service custody;

(b) arrange for him to be brought, as soon as practicable, before a court of summary jurisdiction in the relevant territory in which the police station is situated; or

(c) release him subject to a condition that he reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling him to be taken into service custody.

(5) In this section "civilian policeman" means an officer of a UK police force or British overseas territory police force.

(6) In this section "relevant territory" has the same meaning as in section 314.

316 Proceedings before civilian court where person suspected of illegal absence

(1) This section applies where a person is brought before a court of summary jurisdiction in a relevant territory under section 314(4) or 315(4)(b).

(2) Subsection (3) applies if—

(a) the person admits to the court that he is a person subject to service law who has deserted or is absent without leave; or

(b) the court has in its possession evidence of a description prescribed by regulations made by the Secretary of State.

(3) Where this subsection applies—

(a) if the person is not in custody for some other cause, the court must either—

(i) arrange for him to be transferred to service custody; or

(ii) release him subject to a condition that he reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling him to be taken into service custody;

(b) if the person is in custody for some other cause, the court may arrange for him to be transferred to service custody.

(4) Where subsection (3) does not apply—

(a) if the person is not in custody for some other cause, the court must release him;

(b) if the person is in custody for some other cause, the court may release him.

(5) If there is likely to be a delay before a person can be transferred to service custody under subsection (3)(a)(i) or (b), the court may commit him to be held in custody pending his transfer—

(a) in a prison,

(b) in a police station, or

(c) in any other place provided for the confinement of persons in custody,

which is situated in the relevant territory in which the court is situated.

(6) The release of a person under subsection (4) does not prevent him from being subsequently arrested under section 67, or under a warrant issued under section 313,

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as a person who is reasonably suspected of having committed an offence under section 8 or 9.

(7) In this section "relevant territory" has the same meaning as in section 314.

317 Warrant for the arrest of persons released under section 315(4)(c) or 316(3)(a)(ii)

(1) Where a person who is released under section 315(4)(c) or 316(3)(a)(ii) fails to comply with the condition subject to which he was released, a warrant for his arrest may be issued—

(a) where he was released under section 315(4)(c), by a judge advocate;

(b) where he was released under section 316(3)(a)(ii), by a judge advocate or by a person who is authorised to issue the warrant by the court that imposed the condition.

(2) A warrant issued under this section—

(a) shall be addressed to an officer or officers of a UK police force or British overseas territory police force; and

(b) shall specify the name of the person for whose arrest it is issued.

(3) The Secretary of State may make rules with respect to the practice and procedure which is to apply in connection with warrants issued under this section by judge advocates.

(4) A person arrested under a warrant issued under this section must as soon as practicable be transferred to service custody.

Arrest of persons unlawfully at large

318 Arrest by civilian police of persons unlawfully at large

(1) A person who has been sentenced to service detention and who is unlawfully at large—

(a) may be arrested without a warrant by an officer of a UK police force or British overseas territory police force; and

(b) may be taken to the place in which he is required in accordance with law to be detained.

(2) Section 301(4) (cases where persons temporarily released from service detention are unlawfully at large) applies for the purposes of this section.

Supplementary

319 Certificates in connection with transfer to service custody etc

(1) The Secretary of State may by regulations make provision requiring a certificate to be supplied when a person—

(a) is transferred to service custody under this Chapter; or

(b) is released under section 315(4)(c) or 316(3)(a)(ii).

(2) Regulations under this section may in particular make provision with respect to—

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(a) the information to be included in a certificate;
(b) the person who is to sign a certificate;
(c) the person to whom a certificate is to be supplied;
(d) the payment of a fee for the supply of a certificate.

320 Power to use reasonable force

Where a power of arrest is conferred on any person by virtue of this Chapter, he may use reasonable force, if necessary, in the exercise of the power.

CHAPTER 4

POWERS OF THE CRIMINAL CASES REVIEW COMMISSION

321 Powers of the Criminal Cases Review Commission

Schedule 11 (powers of the Criminal Cases Review Commission) has effect.

CHAPTER 5

SUPPLEMENTARY

Financial penalty enforcement orders

322 Financial penalty enforcement orders

(1) The Secretary of State may by regulations make provision for the purpose of enabling the Defence Council, or persons authorised by them, to make orders for the enforcement of financial penalties by prescribed courts in England and Wales, Scotland, Northern Ireland or the Isle of Man.

(2) Regulations under this section may in particular make provision—
(a) with respect to the cases in which such orders may be made;
(b) with respect to the form and content of such orders, including the matters to be certified in such orders;
(c) with respect to the effect of such orders;
(d) conferring functions in relation to such orders on the Defence Council;
(e) for the delegation by the Defence Council of any of their functions in relation to such orders.

(3) Provision that may be made by the regulations by virtue of subsection (2)(c) includes provision—
(a) that a sum certified in such an order as outstanding is to be treated as if it had been a fine imposed on a conviction by a court specified in the order;
(b) for prescribed enforcement procedures to cease to be available, or to become available, on the occurrence of prescribed events.

(4) In this section—
"financial penalty" means—

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(a) a fine or service compensation order imposed by virtue of this Act (including a fine or service compensation order with respect to which an order under section 268 (order for service parent or guardian to pay fine or compensation) has been made);

(b) a sum adjudged to be paid under section 236(3) (forfeiture of recognizance);

(c) an order as to the payment of costs made by virtue of regulations under section 26, or made under section 27, of the Armed Forces Act 2001 (c. 19);

"prescribed" means prescribed, or of a description prescribed, by regulations under this section.

Power to make provision in consequence of criminal justice enactments

323 Power to make provision in consequence of criminal justice enactments

(1) The Secretary of State may make an order under this section if he considers it appropriate to do so in consequence of a criminal justice enactment (see section 324).

(2) An order under this section may make provision in relation to—

(a) service policemen,

(b) service courts (see section 324),

(c) persons subject to service law,

(d) civilians subject to service discipline, or

(e) service law proceedings (see section 324),

which is equivalent to that made by a relevant provision, subject to such modifications as the Secretary of State considers appropriate.

(3) In this section "relevant provision" means—

(a) the criminal justice enactment;

(b) any enactment relating to a criminal justice matter (see section 324) which is amended by the criminal justice enactment; or

(c) any subordinate legislation made under—

(i) the criminal justice enactment; or

(ii) any Act which is amended by the criminal justice enactment.

(4) An order under this section may make provision in such way as the Secretary of State considers appropriate and may, in particular—

(a) be made in relation to all or any cases to which the order-making power extends;

(b) apply the relevant provision (with or without modifications);

(c) amend, repeal or revoke any enactment or subordinate legislation (including the relevant provision and any provision of or made under this Act).

324 Section 323: definitions

(1) In section 323 a "criminal justice enactment" means an enactment which—

(a) is contained in an Act passed after 1st January 2001; and

(b) amends the law of England and Wales relating to any criminal justice matter.

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(2) In section 323 and subsection (1) "criminal justice matter" means—

(a) the powers of the police in connection with the investigation of offences or the detection of offenders;

(b) powers of arrest and detention in connection with crime or criminal proceedings;

(c) the functions of any authority in relation to criminal prosecutions;

(d) remand in custody or on bail;

(e) the rights and duties of a defendant in relation to proceedings in civilian courts;

(f) evidence or procedure in civilian courts;

(g) the powers of civilian courts, including powers in relation to sentence;

(h) such other matters relating to criminal justice as the Secretary of State may by order prescribe for the purposes of this paragraph.

(3) For the purposes of section 323, section 5 of the Criminal Justice (International Co-operation) Act 1990 (c. 5) (transfer of UK prisoner to give evidence etc overseas) is to be taken to be a criminal justice enactment.

(4) In section 323 "service court" means—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Service Civilian Court;

(d) the Court Martial Appeal Court; or

(e) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

(5) In section 323 "service law proceedings" means proceedings under this Act or the Court Martial Appeals Act 1968 (c. 20) (and does not include proceedings relating to offences under sections 344 to 346 or under regulations made by virtue of section 328(4)(b) or 343(5)(b)).

Other supplementary provisions

325 Evidential burden as respects excuses

(1) This section applies to an offence under any of sections 1 to 41, 107, 229, 266 and 306 which is such that a person who would otherwise commit the offence—

(a) does not do so if he has a lawful excuse; or

(b) does not do so if he has a reasonable excuse.

(2) In proceedings for an offence to which this section applies, the defendant is to be treated as not having had a lawful excuse or reasonable excuse (as the case may be) unless sufficient evidence is adduced to raise an issue as to whether he had such an excuse.

326 Exclusion of enactments requiring consent of Attorney General or DPP

Subject to section 61(2), no enactment requiring the consent of the Attorney General or the Director of Public Prosecutions in connection with any proceedings has effect in relation to proceedings under this Act for a service offence.

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327 Local probation boards

For section 5A of the Criminal Justice and Court Services Act 2000 (c. 43) (inserted by Schedule 16 to this Act) substitute—

"**5A Local probation boards and service justice**

(1) A local probation board may, in pursuance of arrangements made with the Secretary of State, carry out activities anywhere in the world in relation to persons who are or have been subject to proceedings before the Court Martial, the Summary Appeal Court or the Service Civilian Court.

(2) Any activities carried out in relation to such persons must correspond to activities which the board is required or authorised to carry out in relation to persons who have been charged with or convicted of criminal offences."

SECOND GROUP OF PARTS

MISCELLANEOUS MATTERS

VALID FROM 01/01/2008

PART 14

ENLISTMENT, TERMS OF SERVICE ETC

VALID FROM 28/03/2009

Enlistment, terms of service etc

328 Enlistment

(1) The Defence Council may by regulations make provision with respect to the enlistment of persons in the regular forces (including enlistment outside the United Kingdom).

(2) The regulations may in particular make provision—

(a) requiring the enlistment of persons in the regular forces to be undertaken by recruiting officers;

(b) as to the persons, whether or not members of the regular forces, who may be appointed as recruiting officers;

(c) prohibiting the enlistment of persons under the age of 18 without the consent of prescribed persons;

(d) deeming a person, in prescribed circumstances, to have attained (or not to have attained) that age;

(e) as to the procedure for enlistment (including requiring a recruiting officer to attest the enlistment);

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(f) creating offences relating to knowingly giving false answers during the enlistment procedure;

(g) as to the approval for service of persons who have enlisted.

(3) The regulations may also in particular make provision in connection with the validity of a person's enlistment, including provision—

(a) as to when, how and on what basis the validity of a person's enlistment may be challenged;

(b) deeming a person, in prescribed circumstances, to have been validly enlisted;

(c) conferring on a person a right to discharge in prescribed circumstances;

(d) as to the status of a person until he is discharged.

(4) Where the regulations create an offence they may provide—

(a) that the offence is a service offence and is punishable by any punishment mentioned in rows 2 to 12 of the Table in section 164; or

(b) that the offence is an offence triable summarily by a civilian court in the United Kingdom and is punishable by a fine not exceeding level 1 on the standard scale.

(5) In this section and sections 329 to 331 "prescribed" means prescribed by regulations made by the Defence Council.

329 Terms and conditions of enlistment and service

(1) The Defence Council may by regulations make provision with respect to the terms and conditions of enlistment and service of persons enlisting, or who have enlisted, in the regular forces.

(2) The regulations may in particular make provision for the purposes of—

(a) specifying the duration of the term for which a person is enlisted (whether by reference to a number of years or another criterion or both);

(b) requiring any such term to be one of service with a regular force, or to be in part service with a regular force and in part service with a reserve force;

(c) enabling a person to end his service with a regular force at a prescribed time, or to transfer at a prescribed time to a reserve force;

(d) restricting a person, in consideration of the acceptance by him of any benefit or advantage, from exercising any right referred to in paragraph (c);

(e) enabling a person enlisted for a term of service of a prescribed description to be treated as if he had enlisted for a term of service of a different description;

(f) enabling a person to extend or reduce the term of his service (whether with a regular force or a reserve force, or both);

(g) enabling a person to continue in service after completion of the term of his service;

(h) enabling a person in a reserve force to re-enter service with a regular force;

(i) enabling a person to restrict his service to service in a particular area;

(j) requiring a person who has restricted his service to service in a particular area to serve outside that area for a number of days in any year not exceeding a prescribed maximum.

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(3) The exercise of any right conferred on a person by virtue of subsection (2) may be made subject to prescribed conditions.

(4) The Defence Council may also by regulations make provision enabling—

(a) a member of the regular army of or below the rank of warrant officer, or

(b) a member of the Army Reserve of or below the rank of warrant officer who is in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14),

to be transferred between corps without his consent in prescribed circumstances.

(5) Regulations under subsection (4) may in particular make provision for varying the terms and conditions of service of a person transferred between corps.

(6) In this section "corps" means any body of the regular army that may from time to time be declared by Royal Warrant to be a corps.

330 Desertion and absence without leave: forfeiture of service etc

(1) The Defence Council may by regulations make provision—

(a) with respect to the making of a confession by a member of the regular forces that he is guilty of an offence under section 8 (desertion);

(b) for the making of a determination as to whether a trial may be dispensed with in the case of a person who makes such a confession;

(c) for the forfeiture of a period of service of such a person where a trial is so dispensed with.

(2) The Defence Council may also by regulations make provision for the forfeiture of a period of service of a member of the regular forces who is convicted of an offence under section 8.

(3) Regulations under subsection (1) or (2) may include provision for enabling a determination to be made in prescribed circumstances restoring (in whole or in part) a forfeited period of service.

(4) The Defence Council may also by regulations make provision with respect to—

(a) the issue of a certificate of absence in respect of a member of the regular forces absent without leave for more than a prescribed period;

(b) the effects of such a certificate (in particular in connection with the pay and allowances of the person in respect of whom it is issued).

331 Discharge etc from the regular forces and transfer to the reserve forces

(1) The Defence Council may by regulations make provision with respect to—

(a) the discharge of members of the regular forces of or below the rank or rate of warrant officer;

(b) the transfer of such persons to the reserve forces.

(2) The regulations may in particular make provision with respect to—

(a) authorisation of a person's discharge or transfer to a reserve force;

(b) the status of a person who is entitled to be, but has not yet been, discharged or transferred to a reserve force.

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(3) The regulations may also in particular make provision conferring on a warrant officer (other than an acting warrant officer) a right to be discharged—

(a) following his reduction in rank or rate; or

(b) following his reduction in rank or rate in prescribed circumstances.

(4) The regulations may also in particular make provision enabling—

(a) the discharge of a person from the regular forces (including by virtue of subsection (3)), or

(b) the transfer of a person to a reserve force,

to be postponed in prescribed circumstances.

332 Restriction on administrative reduction in rank or rate

(1) The rank or rate of a warrant officer or non-commissioned officer ("the relevant person") may be reduced only by an order within subsection (2).

(2) An order is within this subsection if—

(a) it is made by the relevant person's commanding officer; and

(b) it reduces the rank or rate of the relevant person—

(i) by one acting rank or rate; or

(ii) if he has no acting rank or rate, by one substantive rank or rate.

(3) An order reducing the rank of a person who is a corporal in any of Her Majesty's air forces is within subsection (2)(b)(i) (if he is an acting corporal) or (2)(b)(ii) (if he is not) if, and only if, it reduces his rank to the highest rank he has held in that force as an airman.

(4) A commanding officer who is of or below the rank of commodore, brigadier or air commodore may make an order within subsection (2) only with the permission of higher authority; but this does not apply if the relevant person is a lance corporal or lance bombardier.

(5) Nothing in this section applies to a reduction in rank or rate by virtue of a sentence.

(6) Nothing in this section applies in relation to the reversion of a person, otherwise than on account of his conduct, from his acting rank or rate to his substantive rank or rate.

333 Pay, bounty and allowances

(1) Her Majesty may by warrant make provision with respect to pay, bounty and allowances for members of the regular or reserve forces.

(2) A Royal Warrant made under this section may in particular—

(a) provide for the way in which pay, bounty and allowances are to be paid;

(b) impose conditions or restrictions on the making of such payments;

(c) confer a discretion on any person.

(3) Provision that may be made by virtue of subsection (2)(b) includes in particular provision authorising the making of a deduction from a payment to a person—

(a) in respect of anything (including any service) supplied to him;

(b) in order to recover any overpayment or advance; or

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(c) in order to reclaim any relevant payment.

(4) For the purposes of subsection (3)(c) a payment is "relevant" if—

(a) it was made on condition that it would or might be repayable in specified circumstances; and

(b) any such circumstance has occurred.

(5) A Royal Warrant under this section may not authorise the forfeiture of pay.

(6) A Royal Warrant under this section may not make provision about money distributable under the Naval Agency and Distribution Act 1864 (c. 24).

(7) Section 373(5) (power to make supplementary provision etc) applies in relation to Royal Warrants under this section.

(8) A Royal Warrant under this section may be amended or revoked by a further Royal Warrant under this section.

(9) Nothing in this section prevents provision as to rates of allowances from being made otherwise than under this section.

Redress of individual grievances

334 Redress of individual grievances: service complaints

(1) If—

(a) a person subject to service law thinks himself wronged in any matter relating to his service, or

(b) a person who has ceased to be subject to service law thinks himself wronged in any such matter which occurred while he was so subject,

he may make a complaint about the matter under this section (a "service complaint").

(2) But a person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State.

(3) The Defence Council must by regulations make provision with respect to the procedure for making and dealing with service complaints.

(4) The regulations must in particular make provision requiring—

(a) a service complaint to be made to an officer of a prescribed description;

(b) the officer to whom a service complaint is made to decide whether to consider the complaint himself or to refer it to a superior officer of a prescribed description or to the Defence Council;

(c) a service complaint considered by the officer to whom the complaint is made to be referred, on the application of the complainant, to a superior officer of a prescribed description or (if the officer considers it appropriate) to the Defence Council;

(d) a superior officer to whom a service complaint is referred by virtue of paragraph (b) or (c) to decide whether to consider the complaint himself or to refer it to the Defence Council;

(e) a service complaint considered by a superior officer to whom the complaint is referred by virtue of paragraph (b) or (c) to be referred, on the application of the complainant, to the Defence Council.

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(5) Without prejudice to the generality of subsections (3) and (4), the regulations may also make provision—

(a) as to the way in which a service complaint is to be made (including provision as to the information to be provided by the complainant);

(b) that a service complaint, or an application of a kind mentioned in subsection (4)(c) or (e), may not be made, except in prescribed circumstances, after the end of a prescribed period.

(6) A period prescribed under subsection (5)(b) must not be less than three months beginning with the day on which the matter complained of occurred.

(7) If, under provision made by virtue of subsections (3) and (4)—

(a) an officer decides to consider a service complaint himself, or

(b) a service complaint is referred to the Defence Council,

the officer or the Defence Council ("the appropriate person") must decide whether the complaint is well-founded.

(8) If the appropriate person decides that the complaint is well-founded, he must—

(a) decide what redress (if any), within his authority, would be appropriate; and

(b) grant any such redress.

(9) In this section "prescribed" means prescribed by regulations made by the Defence Council.

335 Service complaints: role of Defence Council and service complaint panels

(1) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a panel of persons (a "service complaint panel") all or any of the functions conferred on the Defence Council by or under section 334.

(2) The delegation under subsection (1) of a function may relate to—

(a) a particular service complaint; or

(b) any service complaint of a description determined by the Defence Council.

(3) The members of a service complaint panel, other than any member appointed by virtue of section 336(6)(a), are to be appointed by the Defence Council (see further section 336).

(4) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a person employed in the civil service of the State or an officer—

(a) their function of deciding whether, and if so to what extent and subject to what conditions, they should delegate any of their functions to a service complaint panel under subsection (1);

(b) their function of appointing members of service complaint panels under subsection (3).

(5) The delegation under subsection (4) of a function may relate to—

(a) a particular service complaint;

(b) any service complaint of a description determined by the Defence Council; or

(c) all service complaints.

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(6) The Defence Council may require a service complaint panel to assist them in carrying out any of the functions conferred on them by or under section 334.

(7) The Defence Council may authorise a person (whether or not a service complaint panel or a member of such a panel) to investigate on their behalf—

(a) a particular service complaint; or

(b) any service complaint of a description determined by them.

(8) In this section "service complaint" has the same meaning as in section 334.

(9) Nothing in this section affects the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (c. 15) (discharge by Service Boards of Defence Council's functions under any enactment etc) to the functions of the Defence Council (in particular, the functions conferred on them by or under section 334 and this section).

336 Composition and procedure of service complaint panels

(1) A person may not be a member of a service complaint panel unless he is—

(a) a senior officer (see subsection (4)); or

(b) a person employed in the civil service of the State;

but this is subject to any regulations made by virtue of subsection (6)(a) (appointment of independent members).

(2) A service complaint panel must consist of at least two members.

(3) At least one member of a service complaint panel must be a senior officer.

(4) In this section "senior officer" means an officer who is—

(a) subject to service law; and

(b) of or above the rank of commodore, brigadier or air commodore.

(5) The Secretary of State may by regulations—

(a) make further provision with respect to the composition of service complaint panels;

(b) make provision as to the procedure of service complaint panels (either generally or in prescribed circumstances).

(6) The regulations may in particular—

(a) require, in the case of any service complaint of a prescribed description, a service complaint panel to include one independent member;

(b) impose, in the case of all service complaints or any service complaint of a prescribed description, any requirement in addition to those imposed by subsections (1) to (4);

(c) impose, in the case of any service complaint of a prescribed description, a greater requirement than that imposed by any provision of those subsections (for example, requiring an officer to be of or above a higher rank than those specified in subsection (4) in order to be a senior officer for the purposes of this section).

(7) In this section—

"independent member" means a person appointed by the Secretary of State who is not—

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(a) a member of the regular or reserve forces; or

(b) a person employed in the civil service of the State;

"prescribed" means prescribed by regulations under this section;

"service complaint" has the same meaning as in section 334;

"service complaint panel" has the same meaning as in section 335.

337 Reference of individual grievance to Her Majesty

(1) This section applies if conditions A to C are met.

(2) Condition A is that a service complaint is made about a matter by—

(a) an officer; or

(b) a person who was an officer at the time the matter occurred.

(3) Condition B is that—

(a) a decision on the complaint is taken by the Defence Council under section 334; and

(b) the Defence Council's function of taking that decision is not delegated to a service complaint panel to any extent.

(4) Condition C is that the complainant makes an application to the Defence Council stating why, in his view—

(a) he should be given redress; or

(b) he should be given different or additional redress.

(5) The Defence Council must make a report on the complaint to Her Majesty, in order to receive the directions of Her Majesty on the complaint.

(6) In this section—

"service complaint" has the same meaning as in section 334;

"service complaint panel" has the same meaning as in section 335.

Role of Service Complaints Commissioner

338 Referral by Service Complaints Commissioner of certain allegations

(1) This section applies where the Service Complaints Commissioner ("the Commissioner") considers that any communication made to him contains an allegation that a person named in such a communication—

(a) is subject to service law and has been wronged in a prescribed way; or

(b) was wronged in such a way while he was so subject.

(2) The Commissioner may refer the allegation to the officer whom he considers to be the relevant officer.

(3) If the allegation is referred under subsection (2), the officer to whom it is referred must as soon as is reasonably practicable—

(a) inform the person that the allegation has been so referred;

(b) ensure that the person is aware of—

(i) the procedure for making a service complaint; and

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(ii) the effect on the making of service complaints of any regulations made by virtue of section 334(5)(b) (time limits for service complaints); and

(c) ascertain whether he wishes to make a service complaint in respect of the alleged wrong.

(4) Regulations made by the Secretary of State must provide that where the allegation is referred under subsection (2), the prescribed person must within the prescribed period notify the Commissioner of prescribed matters.

(5) In this section—

"prescribed" means prescribed by regulations made by the Secretary of State;

"relevant officer" means the officer to whom a service complaint made by the person in respect of the alleged wrong is (under regulations made under section 334) to be made;

"service complaint" has the same meaning as in that section.

339 Reports by Commissioner on system for dealing with service complaints etc

(1) The Service Complaints Commissioner ("the Commissioner") must prepare and give to the Secretary of State, as soon as practicable after the end of each relevant period, a report as to—

(a) the efficiency, effectiveness and fairness with which the system under this Part for dealing with service complaints has operated during that period;

(b) the exercise by the Commissioner during that period of his function under section 338 of referring allegations; and

(c) such other aspects of the system mentioned in paragraph (a), and such matters relating to the function mentioned in paragraph (b), as the Commissioner considers appropriate or the Secretary of State may direct.

(2) The Secretary of State must lay before Parliament each report under subsection (1) received by him.

(3) The Secretary of State may exclude from any report laid under subsection (2) any material whose publication he considers—

(a) would be against the interests of national security; or

(b) might jeopardise the safety of any person.

(4) The Secretary of State may require the Commissioner to prepare and give to him a report on—

(a) any aspect of the system mentioned in subsection (1)(a);

(b) any matter relating to the function mentioned in subsection (1)(b).

(5) In this section—

"relevant period" means a period of one year beginning with—

(a) the date this section comes into force; or

(b) an anniversary of that date;

"service complaint" has the same meaning as in section 334.

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VALID FROM 28/03/2009

Restriction on aliens

340 Restriction on aliens in regular forces etc

(1) An alien may not be a member of—

(a) the regular forces; or

(b) any of Her Majesty's forces raised under the law of a British overseas territory.

(2) But the Defence Council may make regulations providing for subsection (1) not to apply to an alien who satisfies prescribed conditions.

(3) Such a condition may require the alien—

(a) to be of a prescribed nationality; and

(b) to serve in a prescribed unit.

(4) Section 3 of the Act of Settlement (1700 c. 2) does not prevent any person from being a member of any of Her Majesty's forces.

(5) In this section "prescribed" means prescribed by regulations made by the Defence Council.

VALID FROM 28/03/2009

PART 15

FORFEITURES AND DEDUCTIONS

341 Forfeitures and deductions: general provisions

(1) No forfeiture of the pay of a person subject to service law may be imposed unless authorised by or under this Act or any other Act.

(2) No deduction from the pay of a person subject to service law may be made unless authorised by or under this Act or any other Act.

(3) Subsections (1) and (2) do not prevent the making by a Royal Warrant under section 333, or by any regulation, order or instruction of the Defence Council, of provision—

(a) for the imposition of any forfeiture authorised by or under an Act;

(b) for the making of any deduction so authorised;

(c) for the time at which and the way in which amounts may be deducted from pay to give effect to authorised deductions;

(d) as to the appropriation of amounts deducted;

(e) for the determination of questions relating to forfeitures and deductions.

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(4) A person subject to service law shall, notwithstanding any deduction from his pay but subject to any forfeiture, remain in receipt of pay at not less than such minimum rate as may be prescribed by regulations made by the Defence Council.

(5) Notwithstanding the forfeiture of the pay of a person subject to service law for any period, he may remain in receipt of pay at such minimum rate as may be prescribed by regulations made by the Defence Council; but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of a person subject to service law may also be deducted from any bounty, allowance or grant which may be due to him; and references in this section and section 342 to the making of deductions from pay are to be read accordingly.

342 Permitted forfeitures and deductions

(1) The Secretary of State may by regulations make provision for the purpose of enabling the Defence Council, or officers authorised by them, to make orders—

(a) authorising the pay of a person subject to service law to be forfeited for or in respect of any period of prescribed absence from duty;

(b) authorising deductions to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of any amount paid by or on behalf of a service authority to meet the whole or part of a sum that the person has been ordered to pay by a civilian court (anywhere);

(c) authorising deductions to be made from the pay of a relevant person and to be appropriated as or towards compensation for any loss of, or damage to, public or service property which a prescribed person is satisfied has been caused by the relevant person's wrongful act or negligence;

(d) authorising deductions to be made from the pay of a person subject to service law and to be appropriated in or towards satisfaction of any payment which he is required to make in respect of a financial penalty;

(e) authorising deductions to be made from the pay of a relevant person and to be appropriated in or towards satisfaction of—

(i) any prescribed payment which he is required to make under, or in connection with, a prescribed maintenance order;

(ii) any obligation on his part to make periodical payments in accordance with a prescribed maintenance assessment or maintenance calculation; or

(iii) any amount required to be paid by him by virtue of any judgment or order enforceable by a court in the United Kingdom;

(f) authorising deductions to be made from the pay of a relevant person and to be appropriated towards the maintenance of a spouse, civil partner, former spouse, former civil partner, child or prescribed person.

(2) Regulations under this section may in particular make provision—

(a) with respect to the duration, variation, revocation, continuation or suspension of such orders;

(b) conferring functions in relation to such orders on the Defence Council;

(c) for the delegation by the Defence Council of any of their functions in relation to such orders;

(d) limiting the amount which may be deducted from a person's pay;

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(e) requiring prescribed persons to provide prescribed information, or to supply copies of prescribed documents, to the Defence Council or persons authorised by them;

(f) with respect to the computation of time for the purposes of orders made by virtue of subsection (1)(a);

(g) with respect to the carrying out of investigations in connection with orders made by virtue of subsection (1)(c);

(h) with respect to the standard of proof which is to apply in connection with orders made by virtue of subsection (1)(c);

(i) for any prescribed forfeiture of a person's pay to apply only to so much of his pay as remains after any deduction from that pay in accordance with an order made by virtue of subsection (1)(e) or (f);

(j) with respect to the procedure which is to apply in connection with orders made by virtue of subsection (1)(f).

(3) Any forfeiture or deduction imposed by virtue of subsection (1)(a), (b) or (c) may be remitted—

(a) by the Defence Council; or

(b) by an officer authorised by the Defence Council.

(4) In this section—

"financial penalty" means—

(a) a fine or service compensation order imposed by virtue of this Act (including a fine or service compensation order with respect to which an order under section 268 (order for service parent or guardian to pay fine or compensation) has been made);

(b) a sum adjudged to be paid under section 236(3) (forfeiture of recognizance); or

(c) an order as to the payment of costs made by virtue of regulations under section 26, or made under section 27, of the Armed Forces Act 2001 (c. 19);

"prescribed" means prescribed, or of a description prescribed, by regulations under this section;

"public property" has the meaning given by section 26(2);

"relevant person" means a person subject to service law by reason of section 367(1) or (2)(a), (b), (c) or (e);

"service property" has the meaning given by section 26(3).

(5) The reference in subsection (1)(e)(iii) to a judgment or order enforceable by a court in the United Kingdom includes a judgment enforceable by the Enforcement of Judgments Office.

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VALID FROM 01/10/2008

PART 16

INQUIRIES

343 Service inquiries

(1) The Secretary of State may make regulations for causing inquiries, to be known as service inquiries, to be held (whether or not in the United Kingdom) in prescribed circumstances in relation to matters connected with any of Her Majesty's forces.

(2) The regulations may in particular make provision with respect to—

(a) the persons, to be known as a service inquiry panel, who are to conduct a service inquiry;

(b) the functions of a service inquiry panel;

(c) the matters that may, or must, be referred to a service inquiry panel;

(d) the persons who may convene, and refer matters to, a service inquiry panel;

(e) the procedure of service inquiry panels;

(f) evidence, including the admissibility of evidence;

(g) the representation of witnesses and other persons.

(3) Without prejudice to the generality of subsections (1) and (2), the regulations may make provision—

(a) conferring on a person designated for the purpose by the Secretary of State power to determine, in prescribed circumstances, that a matter of a kind that must be referred to a service inquiry panel need not be so referred (and as to the recording of such a determination);

(b) as to oaths and affirmations for witnesses and other persons;

(c) conferring on prescribed persons a right, subject to such exceptions as may be prescribed, to be present at proceedings of a service inquiry panel;

(d) for procuring the attendance of witnesses and other persons and the production of documents and other things (including the giving of notices by judge advocates);

(e) about the payment of expenses to persons attending proceedings of service inquiry panels;

(f) for the making and retention of records of the proceedings of service inquiry panels;

(g) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;

(h) for evidence given before service inquiry panels not to be admissible at a summary hearing or in proceedings before a court of a prescribed description, except in the case of proceedings for an offence of a prescribed description.

(4) The regulations may also make provision which is equivalent to that made by any provision of section 35 of the Inquiries Act 2005 (c. 12) (offences in connection with inquiries), subject to such modifications as the Secretary of State considers appropriate.

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(5) Where the regulations create an offence they may provide—

(a) that the offence is a service offence and is punishable by any punishment mentioned in rows 7 to 12 of the Table in section 164; or

(b) that the offence is an offence triable summarily by a civilian court in the United Kingdom, the Isle of Man or a British overseas territory and is punishable by a fine not exceeding level 3 on the standard scale.

(6) In this section "prescribed" means prescribed by regulations under this section.

PART 17

MISCELLANEOUS

VALID FROM 28/03/2009

Offences relating to service matters punishable by civilian courts

344 Aiding or abetting etc desertion or absence without leave

(1) A person commits an offence if he aids, abets, counsels or procures the commission by another person of an offence under section 8 (desertion) or 9 (absence without leave).

(2) A person commits an offence if—

(a) he knows that another person ("B") is subject to service law;

(b) he does an act intending to cause B to be absent without leave; and

(c) it causes B to be absent without leave.

(3) A person ("A") commits an offence if—

(a) another person ("B") has committed an offence under section 8 or 9;

(b) A knows or believes B to be guilty of that offence; and

(c) A does an act intending to impede B's apprehension or prosecution.

(4) Subsections (1) to (3) apply to any aiding, abetting, counselling or procuring, or (as the case may be) any act, done—

(a) in a relevant territory;

(b) otherwise than in a relevant territory, by a United Kingdom national (see section 347) or a person resident in a relevant territory.

(5) In subsection (4) "relevant territory" means—

(a) the United Kingdom;

(b) the Isle of Man; or

(c) a British overseas territory.

(6) In subsection (2) (and subsection (4) so far as relating to that subsection) "act" includes an omission, and the references to the doing of an act are to be read accordingly.

(7) A person guilty of an offence under this section is liable—

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(a) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(8) In subsection (7) "the relevant maximum" is—

(a) in relation to England and Wales, 12 months;

(b) otherwise, 6 months.

345 Aiding or abetting etc malingering

(1) A person commits an offence if he aids, abets, counsels or procures the commission by another person of an offence under section 16 (malingering).

(2) A person commits an offence if—

(a) he knows that a person ("B") is subject to service law; and

(b) intending to cause B to avoid service, by any act—

(i) he causes B an injury; or

(ii) he aggravates or prolongs any injury of B's.

(3) A person commits an offence if—

(a) he knows that a person ("B") is subject to service law; and

(b) intending to cause B to avoid service, by any act—

(i) he causes B to believe that B has an injury; or

(ii) he causes another person to believe that B has an injury.

(4) Subsections (1) to (3) apply to any aiding, abetting, counselling or procuring, or (as the case may be) any act, done—

(a) in a relevant territory;

(b) otherwise than in a relevant territory, by a United Kingdom national (see section 347) or a person resident in a relevant territory.

(5) In subsection (4) "relevant territory" means—

(a) the United Kingdom;

(b) the Isle of Man; or

(c) a British overseas territory.

(6) In this section "injury" and "service" have the same meanings as in section 16.

(7) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant maximum or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(8) In subsection (7) "the relevant maximum" is—

(a) in relation to England and Wales, 12 months;

(b) otherwise, 6 months.

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346 Obstructing persons subject to service law in course of duty

(1) A person commits an offence if—

(a) he intentionally obstructs a person ("B");

(b) B is a person subject to service law acting in the course of his duty; and

(c) he knows or has reasonable cause to believe that B is subject to service law.

(2) Subsection (1) applies to anything done in—

(a) the United Kingdom;

(b) the Isle of Man; or

(c) a British overseas territory.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the relevant maximum, or to a fine not exceeding level 3 on the standard scale, or to both.

(4) In subsection (3) "the relevant maximum" is—

(a) in relation to England and Wales, 51 weeks;

(b) otherwise, 6 months.

347 Sections 344 to 346: supplementary provisions

(1) If an offence under section 344 or 345 is committed in a British overseas territory—

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in the United Kingdom or the Isle of Man (without prejudice to the right to take proceedings in that British overseas territory).

(2) If an offence under section 344 or 345 is committed otherwise than in the United Kingdom, the Isle of Man or a British overseas territory—

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed,

in any place in the United Kingdom, the Isle of Man or a British overseas territory.

(3) In sections 344 and 345 a "United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

(4) In sections 344 to 346 any reference to a person knowing or having reasonable cause to believe that another person is subject to service law is a reference to—

(a) his knowing the circumstances by virtue of which that other person is subject to service law; or

(b) (as the case may be) his having reasonable cause to believe that those circumstances exist.

348 British overseas territories: references to maximum penalties

(1) This section applies in relation to any provision of—

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(a) section 344, 345 or 346, or

(b) regulations made by virtue of section 343(5)(b),

specifying the maximum term of imprisonment, or the maximum fine, to which a person guilty of an offence under that section, or under those regulations, is liable.

(2) In relation to any such provision as it extends to a British overseas territory, the law of the British overseas territory may—

(a) provide for the maximum term of imprisonment to be longer or shorter than that provided for by the provision;

(b) provide for the maximum fine to be higher or lower than that provided for by the provision;

(c) specify the amount of the local currency that is to be treated as equivalent to the maximum fine provided for by the provision or provided for by virtue of paragraph (b).

VALID FROM 28/03/2009

Exemptions from certain civil matters

349 Exemption from tolls and charges

(1) No toll or charge within subsection (2) is payable in respect of a vehicle which—

(a) belongs to any of Her Majesty's forces; or

(b) is in use for the purposes of any of those forces.

(2) A toll or charge is within this subsection if it is payable—

(a) for passing over a road or bridge, or through a tunnel, in the United Kingdom or the Isle of Man; or

(b) under a scheme for imposing charges in respect of the keeping or use of vehicles on particular roads in the United Kingdom or the Isle of Man.

350 Exemption of property used for service purposes from execution

A judgment or order given or made by a court in—

(a) any part of the United Kingdom,

(b) the Isle of Man, or

(c) a British overseas territory,

against a member of any of Her Majesty's forces may not be enforced by the levying of execution on, or (in Scotland) the execution of diligence on, any weapon, equipment, instrument or clothing of his which is used by him in the course of his service in that force.

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VALID FROM 28/03/2009

Powers of officers etc

351 Detention etc of persons in overseas service hospitals

Schedule 12 (powers to admit persons to and detain them in overseas service hospitals etc) has effect.

352 Power to take affidavits and declarations

(1) An authorised officer may, at a place outside the British Islands, take an affidavit or declaration from a person subject to service law or a civilian subject to service discipline.

(2) An authorised officer before whom such an affidavit or declaration is taken must state in the jurat or attestation his full name and rank and the date on which and the place at which the affidavit or declaration was taken.

(3) A document containing such a statement and purporting to be signed by an authorised officer shall be admitted in evidence without proof of the signature or of the facts set out in the statement.

(4) For the purposes of this section an officer is "authorised" if he is subject to service law and—

(a) is of or above the rank of lieutenant commander, major or squadron leader; or

(b) is of the rank of naval lieutenant, military or marine captain or flight lieutenant and—

(i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(ii) is an advocate or solicitor in Scotland;

(iii) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(iv) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(5) In this section "relevant territory" means—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) a Commonwealth country; or

(d) a British overseas territory.

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VALID FROM 28/03/2009

Protection of children of service families

353 Protection of children of service families

Schedule 13 (amendments relating to protection of children of service families) has effect.

Miscellaneous

VALID FROM 28/03/2009

354 Extension of powers of command dependent on rank or rate

An officer, warrant officer or non-commissioned officer of a regular or reserve force who is subject to service law ("A") has, over members of any other such force who are of inferior rank or rate to A, such powers of command as are dependent on rank or rate.

VALID FROM 28/03/2009

355 Service of process

(1) The Secretary of State may by regulations make provision with respect to the service of process on a relevant person in connection with proceedings of a description prescribed by the regulations.

(2) Regulations under this section may in particular make provision—

(a) for any process served on a person's commanding officer to be treated as duly served on the person;

(b) with respect to cases in which service of process is to be of no effect.

(3) In this section "relevant person" means—

(a) a person subject to service law by reason of section 367(1) or (2)(a), (b), (c) or (e); or

(b) a civilian subject to service discipline.

VALID FROM 28/03/2009

356 Avoidance of assignment of or charge on pay and pensions etc

(1) Each of the following shall be void—

(a) every assignment (or, in Scotland, assignation) of any relevant pay or pension;

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(b) every charge on any relevant pay or pension;

(c) every agreement to assign or charge any relevant pay or pension.

(2) In this section "relevant pay or pension" means any pay, pension, benefit, bounty, grant or allowance payable to any person in respect of his or any other person's service in Her Majesty's forces.

(3) No order may be made by a court the effect of which would be—

(a) to prevent any person from receiving any relevant pay or pension; and

(b) to direct payment of it to another person.

(4) Nothing in this section—

(a) applies to the making or variation of attachment of earnings orders or of earnings arrestments; or

(b) prejudices any enactment or subordinate legislation providing for the payment of any sum to—

(i) a bankrupt's trustee in bankruptcy, or

(ii) a permanent trustee in a sequestration under the Bankruptcy (Scotland) Act 1985 (c. 66),

for distribution among creditors.

(5) In this section—

(a) "enactment" includes any provision of an Act of the Scottish Parliament or Northern Ireland legislation;

(b) the reference to subordinate legislation includes an instrument made under such an Act or under Northern Ireland legislation.

VALID FROM 28/03/2009

357 Power of British overseas territory to apply Act, etc

Where any of Her Majesty's forces is raised under the law of a British overseas territory, any such law—

(a) may make provision in relation to that force and its members so as to have effect when they are outside that territory (as well as when they are within it); and

(b) may apply in relation to the force and its members all or any of the provisions of this Act, with or without modifications.

VALID FROM 15/10/2007

358 Amendments relating to reserve forces

Schedule 14 (amendments relating to the reserve forces) has effect.

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359 Pardons for servicemen executed for disciplinary offences: recognition as victims of First World War

(1) This section applies in relation to any person who was executed for a relevant offence committed during the period beginning with 4 August 1914 and ending with 11 November 1918.

(2) Each such person is to be taken to be pardoned under this section in respect of the relevant offence (or relevant offences) for which he was executed.

(3) In this section "relevant offence" means any of the following—

(a) an offence under any of the following provisions of the Army Act 1881 (c. 58) —

(i) section 4(2) (casting away arms etc);
(ii) section 4(7) (cowardice);
(iii) section 6(1)(b) (leaving post etc without orders);
(iv) section 6(1)(k) (sentinel sleeping etc on post or leaving post);
(v) section 7 (mutiny and sedition);
(vi) section 8(1) (striking etc superior officer);
(vii) section 9(1) (disobedience in defiance of authority);
(viii) section 12(1) (desertion or attempt etc to desert);

(b) an offence under any of the following provisions of the Indian Army Act 1911 (Indian Act, No 8 of 1911)—

(i) section 25(b) (casting away arms, cowardice, etc);
(ii) section 25(g) (sentry sleeping on post or quitting post);
(iii) section 25(i) (quitting guard etc);
(iv) section 27 (mutiny, disobedience, etc);
(v) section 29 (desertion or attempt to desert).

(4) This section does not—

(a) affect any conviction or sentence;
(b) give rise to any right, entitlement or liability; or
(c) affect the prerogative of mercy.

(5) Any reference in this section to a provision of the Army Act 1881 (c. 58) includes a reference to that provision as applied by any enactment, wherever enacted.

THIRD GROUP OF PARTS

GENERAL

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VALID FROM 15/10/2007

PART 18

COMMANDING OFFICER AND OTHER PERSONS WITH FUNCTIONS UNDER ACT

Officers

360 Meaning of "commanding officer"

The officer who is the "commanding officer" of a person for the purposes of any provision made by or under this Act shall be determined by or under regulations made by the Defence Council.

VALID FROM 28/03/2009

361 Meaning of "higher authority"

In this Act "higher authority", in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer.

VALID FROM 28/03/2009

Court officials

362 Judge advocates

In this Act "judge advocate" means—

(a) the Judge Advocate General;

(b) a person appointed under section 30(1)(a) or (b) or (2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (assistants to the Judge Advocate General); or

(c) a puisne judge of the High Court in England and Wales who (following a request by the Judge Advocate General) is nominated by or on behalf of the Lord Chief Justice of England and Wales to sit as a judge advocate.

363 Court administration officer

(1) There shall be a court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court.

(2) The court administration officer is to be appointed by the Defence Council.

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VALID FROM 24/06/2008

Service Prosecuting Authority

364 Director of Service Prosecutions

(1) Her Majesty may appoint a person as the Director of Service Prosecutions.

(2) A person may be appointed as the Director of Service Prosecutions only if he—

(a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);

(b) is an advocate or solicitor in Scotland of at least ten years' standing;

(c) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing; or

(d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least ten years, and is subject to punishment or disability for breach of professional rules.

(3) The Director of Service Prosecutions shall hold and vacate office in accordance with the terms of his appointment.

(4) In this section "relevant territory" means—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) a Commonwealth country; or

(d) a British overseas territory.

VALID FROM 28/03/2009

365 Prosecuting officers

(1) The Director of Service Prosecutions ("the Director") may appoint officers to be prosecuting officers.

(2) An officer may be appointed as a prosecuting officer only if he—

(a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(b) is an advocate or solicitor in Scotland;

(c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(3) A prosecuting officer shall hold and vacate office in accordance with the terms of his appointment.

(4) A prosecuting officer may, unless the Director otherwise directs, exercise any function of the Director.

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(5) In this section "relevant territory" has the same meaning as in section 364.

VALID FROM 01/01/2008

Service Complaints Commissioner

366 Service Complaints Commissioner

(1) There shall be a Service Complaints Commissioner.

(2) The Service Complaints Commissioner is to be appointed by the Secretary of State.

(3) A person may not be appointed as the Service Complaints Commissioner if he is—
(a) a member of the regular or reserve forces; or
(b) a person employed in the civil service of the State.

(4) The Service Complaints Commissioner shall hold and vacate office in accordance with the terms of his appointment.

(5) The Service Complaints Commissioner is not to be regarded—
(a) as the servant or agent of the Crown; or
(b) as enjoying any status, immunity or privilege of the Crown.

PART 19

SUPPLEMENTARY

VALID FROM 01/01/2008

CHAPTER 1

APPLICATION OF ACT

Persons subject to service law

367 Persons subject to service law: regular and reserve forces

(1) Every member of the regular forces is subject to service law at all times.

(2) Every member of the reserve forces is subject to service law while—
(a) in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14) or under any other call-out obligation of an officer;
(b) in home defence service on call-out under section 22 of the Reserve Forces Act 1980;

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(c) in full-time service under a commitment entered into under section 24 of the Reserve Forces Act 1996;

(d) undertaking any training or duty (whether or not in pursuance of an obligation); or

(e) serving on the permanent staff of a reserve force.

368 References to members of the regular forces

(1) Subsections (2) and (3) apply for the purposes of this Act.

(2) A person recalled to service under—

(a) any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or

(b) any other recall obligation of an officer,

is to be regarded as being a member of the regular forces from acceptance into service to release or discharge.

(3) Subject to subsection (2), an officer who is not on the active list is not to be regarded as being a member of the regular forces.

(4) For the purposes of subsection (3), an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list—

(a) Queen's Regulations;

(b) Royal Warrant;

(c) an order under section 2 of the Air Force (Constitution) Act 1917 (c. 51).

369 Members of British overseas territories' forces serving with UK forces

(1) While a member of a British overseas territory force is undertaking any duty with or training with a regular or reserve force ("the relevant force")—

(a) subsection (2) applies to him; and

(b) nothing in section 357 (power of British overseas territory to apply this Act, etc) applies in relation to him.

(2) A person to whom this subsection applies—

(a) is subject to service law; and

(b) shall (subject to subsection (3)) be treated as if he were a member of the relevant force of relative rank or rate.

(3) The Secretary of State may by order modify any provision of this Act in its application to a member of a British overseas territory force who is or has been within subsection (1).

(4) In this section—

"British overseas territory force" means any of Her Majesty's forces that is raised under the law of a British overseas territory;

"relative rank or rate", in relation to a person to whom subsection (2) applies, means such rank or rate of the relevant force as may be prescribed by Queen's Regulations for a person of his description.

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VALID FROM 28/03/2009

Civilians subject to service discipline

370 Civilians subject to service discipline

(1) In this Act "civilian subject to service discipline" means a person who—

(a) is not subject to service law; and

(b) is within any paragraph of Part 1 of Schedule 15.

(2) Part 2 of Schedule 15 (exclusion and definitions relating to Part 1) has effect.

VALID FROM 28/03/2009

Naval chaplains

371 Naval chaplains

(1) The Secretary of State may by regulations provide that such references in this Act—

(a) to an officer, or

(b) to an officer of a particular description,

as may be prescribed by the regulations include references to a naval chaplain or to a naval chaplain of a description prescribed by the regulations.

(2) The regulations may make such modifications of this Act as appear appropriate in consequence of the fact that naval chaplains do not have a rank.

(3) In this section "naval chaplain" means a chaplain in the Royal Navy, the Royal Fleet Reserve or the Royal Naval Reserve.

CHAPTER 2

OTHER SUPPLEMENTARY PROVISIONS

VALID FROM 28/03/2009

372 Evidence in proceedings before civilian courts

The Secretary of State may by regulations make provision with respect to evidence, including the admissibility of evidence, in proceedings for an offence created by or under this Act before a civilian court in—

(a) any part of the United Kingdom;

(b) the Isle of Man; or

(c) a British overseas territory.

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373 Orders, regulations and rules

(1) Any power to make orders, regulations or rules conferred by this Act on the Secretary of State is exercisable by statutory instrument.

(2) The powers conferred by sections 36, 132, 135, 164, 173, 174, 328 to 331 and 340 on the Defence Council to make regulations are exercisable by statutory instrument; and the Statutory Instruments Act 1946 (c. 36) applies in relation to those powers as if the Defence Council were a Minister of the Crown.

(3) A statutory instrument containing—

(a) an order under section 53, 89, 113, 324(2)(h), 379 or 381,

(b) an order under section 323 which by virtue of section 323(4)(c) makes any provision adding to, replacing or omitting any part of the text of an Act,

(c) regulations under section 128 which make provision of a kind mentioned in section 128(2)(c) or (e) or prescribe documents for the purposes of section 118(2)(b),

(d) regulations under section 271, 334(2), 336(5)(a) or 338,

(e) regulations under section 328 which make provision of a kind mentioned in section 328(2)(c),

(f) rules under section 163 which—

(i) by virtue of section 155 make provision about the constitution of the Court Martial, or

(ii) make provision authorised by section 165, or

(g) rules under section 246,

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) Any other statutory instrument under this Act, except one containing only an order under any of sections 382 to 384, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Any order, regulations or rules made under this Act may—

(a) contain incidental, supplemental, consequential, transitional, transitory and saving provision;

(b) make different provision for different cases.

(6) Where a provision of this Act confers a power to make an order containing provision equivalent to a provision of PACE, the order may apply that provision of PACE with modifications.

VALID FROM 01/01/2008

CHAPTER 3

INTERPRETATION

374 Definitions applying for purposes of whole Act

In this Act, unless the context otherwise requires—

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"the 2003 Act" means the Criminal Justice Act 2003 (c. 44);

"absolute discharge" has the meaning given by section 185;

"additional duties commitment" means a commitment entered into under section 25 of the Reserve Forces Act 1996 (c. 14), and references to a person being subject to such a commitment are to be read in accordance with section 377(4) of this Act;

"aircraft" means any machine capable of flight (whether or not propelled by mechanical means), including any description of balloon;

"airman" means a person whose rank is junior technician, senior aircraftman, leading aircraftman or aircraftman;

"associated", in relation to offences, is to be read in accordance with section 161(1) of the Sentencing Act;

"British overseas territory police force" has the meaning given by section 375;

"capable of being heard summarily", in relation to a charge, is to be read in accordance with section 52;

"civilian court" means a court of ordinary criminal jurisdiction;

"civilian subject to service discipline" has the meaning given by section 370;

"commanding officer" is to be read in accordance with section 360;

"Commonwealth country" means a country, other than the United Kingdom, that is a member of the Commonwealth;

"Commonwealth force" means a force of a Commonwealth country;

"community punishment" means—

(a) a service community order; or

(b) an overseas community order;

"conditional discharge" has the meaning given by section 185;

"the corresponding offence under the law of England and Wales", in relation to an offence under section 42, has the meaning given by that section;

"the court administration officer" means the court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court appointed under section 363;

"Court Martial rules" has the meaning given by section 163(1);

"the Crown Court" means the Crown Court in England and Wales;

"custodial sentence" means—

(a) a sentence of imprisonment (as to which, see section 208);

(b) a sentence of detention under section 209 (certain young offenders);

(c) an order under section 211 (detention and training for young offenders);

(d) a sentence of detention during Her Majesty's pleasure under section 218;

(e) a sentence of detention for public protection under section 226 of the 2003 Act passed as a result of section 221 of this Act; or

(f) a sentence of detention under section 228 of that Act passed as a result of section 222 of this Act;

"deserting" has the meaning given by section 8, and references to desertion are to be read accordingly;

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"the Director of Service Prosecutions" means the person appointed under section 364;

"enemy" includes—

(a) all persons engaged in armed operations against any of Her Majesty's forces or against any force co-operating with any of Her Majesty's forces;

(b) all pirates; and

(c) all armed mutineers, armed rebels and armed rioters;

"an ex-regular reserve force" means the Royal Fleet Reserve, the Army Reserve or the Royal Air Force Reserve;

"fit to stand trial" is to be read in accordance with section 166(2);

"guardian" has the same meaning as in the Children and Young Persons Act 1933 (c. 12);

"Her Majesty's air forces", "Her Majesty's forces" and "Her Majesty's military forces" do not include any Commonwealth force;

"higher authority" has the meaning given by section 361;

"judge advocate" has the meaning given by section 362;

"mental disorder" has the same meaning as in the Mental Health Act 1983 (c. 20) and "mentally disordered" is to be read accordingly;

"minor punishment" means a punishment under row 7 of the Table in section 132 or row 11 of the Table in section 164;

"non-commissioned officer" includes a person whose rate is chief petty officer, petty officer or leading rate;

"officer" includes a midshipman;

"overseas community order" has the meaning given by section 182;

"overseas police force" has the meaning given by section 375;

"PACE" means the Police and Criminal Evidence Act 1984 (c. 60);

"the prescribed sum" has the meaning given by section 32(9) of the Magistrates' Courts Act 1980 (c. 43);

"property" includes—

(a) real property in England, Wales or Northern Ireland;

(b) heritable property in Scotland;

(c) property outside the United Kingdom in the nature of real property;

"provost officer" means an officer who is a service policeman;

"the regular army" means any of Her Majesty's military forces other than—

(a) the Army Reserve;

(b) the Territorial Army; and

(c) forces raised under the law of a British overseas territory;

"the regular forces" means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force, and references to "a regular force" are to be read accordingly;

"the reserve forces" means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to "a reserve force" are to be read accordingly;

"SAC rules" has the meaning given by section 151(1);

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"SCC rules" has the meaning given by section 288(1);

"the Sentencing Act" means the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

"service community order" has the meaning given by section 178;

"service compensation order" has the meaning given by section 175;

"the Service Complaints Commissioner" means the person appointed under section 366;

"service detention" means detention under row 1 of the Table in section 132 or row 4 of the Table in section 164;

"service offence" has the meaning given by section 50;

"service police force" and "service policeman" have the meanings given by section 375;

"the Service Prosecuting Authority" means the Director of Service Prosecutions and the persons appointed under section 365 (prosecuting officers);

"service supervision and punishment order" has the meaning given by section 173;

"ship" includes a hovercraft and any description of vessel;

"standard scale" is to be read in accordance with section 377(5) and (7);

"statutory maximum" is to be read in accordance with section 377(6) and (7);

"subject to service law" is to be read in accordance with sections 367 to 369 of this Act and section 4(3)(a) (attached Commonwealth personnel) of the Visiting Forces (British Commonwealth) Act 1933 (c. 6);

"superior officer", in relation to a person ("A"), means an officer, warrant officer or non-commissioned officer who is subject to service law and—

(a) is of superior rank or rate to A; or

(b) is of equal rank or rate to A and is exercising authority as A's superior;

"suspended sentence of imprisonment" means a sentence to which an order under section 189(1) of the 2003 Act relates;

"suspended sentence of service detention" has the meaning given by section 190;

"UK police force" has the meaning given by section 375;

"unfit to stand trial" is to be read in accordance with section 166(2);

"a volunteer reserve force" means the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army or the Royal Auxiliary Air Force.

375 Definitions relating to police forces

(1) In this Act "service police force" means—

(a) the Royal Navy Police;

(b) the Royal Military Police; or

(c) the Royal Air Force Police;

and "service policeman" means a member of a service police force.

(2) In this Act "UK police force" means—

(a) the Ministry of Defence Police;

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(b) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London);

(c) the metropolitan police force;

(d) the City of London police force;

(e) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c. 77);

(f) the Police Service of Northern Ireland; or

(g) the Isle of Man Constabulary.

(3) In this Act "British overseas territory police force" means any force or body which—

(a) is constituted in a British overseas territory; and

(b) is engaged in the carrying on of activities similar to any carried on by a service police force or UK police force.

(4) In this Act "overseas police force" means any force or body which—

(a) is constituted outside the United Kingdom and the Isle of Man; and

(b) is engaged in the carrying on of activities similar to any carried on by a service police force or UK police force.

(5) For the purposes of this Act—

(a) a Provost Marshal is to be taken to be a member of the appropriate service police force (if he is not a member of that force);

(b) an officer in the Royal Air Force or the Royal Auxiliary Air Force who is appointed to exercise functions conferred by or under this Act on service policemen is to be taken to be a member of the Royal Air Force Police.

VALID FROM 28/03/2009

376 "Conviction", "sentence" etc in relation to summary hearings and the SAC

(1) Where a charge against a person in respect of an offence is heard summarily by an officer, subsections (2) to (4) apply for the purposes of references in this Act to conviction, acquittal, sentence or passing sentence, or to any related expressions.

(2) If the officer records a finding that the charge has been proved, or the Summary Appeal Court substitutes a finding that a charge in respect of another offence has been proved, that shall be treated as a conviction.

(3) Any punishment awarded by the officer, or by the Summary Appeal Court, shall be treated as a sentence.

(4) If the officer dismisses the charge under section 131, or the Summary Appeal Court quashes a finding that the charge has been proved, that shall be treated as an acquittal.

(5) In this Act "in open court", in relation to a summary hearing by an officer, means in the presence of the offender.

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VALID FROM 28/03/2009

377 Further interpretive provisions

(1) For the purposes of any provision of this Act which requires the determination of the age of a person by the court, an officer or a judge advocate, his age is to be taken to be that which it appears to the court, officer or judge advocate to be after considering any available evidence.

(2) Any reference in this Act to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed on the imprisonment of young offenders.

(3) The question whether a member of a regular or reserve force ("force A") is for the purposes of any provision of this Act of inferior, equal or superior rank or rate to a member of any other such force ("force B") is to be decided by reference to any provision made by Queen's Regulations which lays down how the ranks or rates in force A relate to the ranks or rates in force B.

(4) For the purposes of this Act, a person is subject to an additional duties commitment if—

(a) he has entered into such a commitment; and

(b) the commitment is still in force.

(5) Any reference in this Act to a specified level on the standard scale is to the amount specified, in relation to that level, in the standard scale for the time being set out in section 37 of the Criminal Justice Act 1982 (c. 48).

(6) Any reference in this Act to the statutory maximum is to the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).

(7) But subsections (5) and (6) do not apply in relation to any offence in Scotland or Northern Ireland under—

(a) section 344, 345 or 346; or

(b) regulations made by virtue of section 328(4)(b) or 343(5)(b).

CHAPTER 4

FINAL PROVISIONS

378 Minor and consequential amendments and repeals

(1) Schedule 16 (minor and consequential amendments) has effect.

(2) The provisions specified in Schedule 17 are hereby repealed or revoked to the extent specified there.

Commencement Information

I1 S. 378(1) in force at 4.6.2007 for specified purposes by S.I. 2007/1442, **art. 2(1)**

Status: *Point in time view as at 04/06/2007. This version of this Act contains provisions that are not valid for this point in time.*
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379 Power to make further amendments and repeals

(1) The Secretary of State may by order—

(a) amend or repeal any enactment passed before or in the same session as this Act;

(b) amend or revoke subordinate legislation made before the passing of this Act.

(2) In subsection (1)—

(a) "enactment" includes an Act of the Scottish Parliament and Northern Ireland legislation;

(b) the reference to subordinate legislation includes an instrument made under such an Act or under Northern Ireland legislation.

(3) An order under subsection (1) may be made only for the purposes of—

(a) supplementing or giving full effect to this Act; or

(b) making provision consequential on the passing of this Act.

Commencement Information

I2 S. 379 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(2)**

VALID FROM 28/03/2009

380 Power to make transitional and transitory provision

(1) The Secretary of State may by order make transitional provision in connection with the coming into force of any provision made by or under this Act, including savings from the effect of any repeal or revocation so made.

(2) An order under subsection (1) may in particular make provision—

(a) about the effect of liabilities incurred and other things done before commencement, including provision for and about the investigation, trial and punishment of offences committed before commencement;

(b) for and about the continuation of any proceedings begun before commencement;

(c) about the punishments and orders available to courts or other persons before whom proceedings take place in respect of offences committed before commencement;

(d) about the effect of punishments awarded and orders made in respect of offences committed before commencement.

(3) An order under subsection (1) may—

(a) confer jurisdiction on any court;

(b) confer functions on a person's commanding officer, the Director of Service Prosecutions, the prosecuting authority within the meaning of any of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53), or on service policemen;

(c) confer powers of arrest, search and entry;

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(d) authorise the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).

(4) The Secretary of State may by order provide that—

(a) until the coming into force of any enactment specified in the order, or

(b) in relation to any offence committed or other thing done before the coming into force of such an enactment,

any provision of this Act or amended by or under this Act has effect with such modifications as may be specified by the order.

(5) In subsection (4)(a) and (b) "enactment" includes any provision of this Act.

(6) If any provision made by or under this Act is to come into force before the day on which section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) (abolition of certain custodial sentences for young offenders) comes into force (or fully into force), an order under subsection (4) may provide for custodial punishments specified in the order to be available in respect of offenders who are convicted aged 18 or over but under 21.

(7) The powers conferred by this section may not be exercised so as to allow the imposition in respect of an offence of a punishment more severe than that which was applicable when the offence was committed.

(8) An order under this section may modify, exclude or apply (with or without modifications) any enactment or subordinate legislation, including—

(a) any provision of or made under this Act;

(b) any provision of or made under an enactment repealed by this Act.

(9) A saving under this section of any provision of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53) is unaffected by the expiry of that Act by reason of section 382.

(10) In this section "commencement" means the commencement of such provisions of this Act as may be specified by the order.

381 Alignment of SDAs etc with this Act

(1) The Secretary of State may by order amend or repeal any provision of an enactment within subsection (3) for the purpose of reducing or eliminating any difference between the effect of the enactments within that subsection and the effect of this Act.

(2) An order under subsection (1) may amend an enactment within subsection (3) in such a way as to confer on any person a power to make subordinate legislation.

(3) The enactments are—

(a) the Army Act 1955;

(b) the Air Force Act 1955;

(c) the Naval Discipline Act 1957;

(d) the Army and Air Force Act 1961 (c. 52);

(e) the Armed Forces Act 1966 (c. 45);

(f) such provisions of the following Acts as are repealed by this Act—

(i) the Armed Forces Act 1976 (c. 52);

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(ii) the Reserve Forces Act 1980 (c. 9);
(iii) the Armed Forces Act 1981 (c. 55);
(iv) the Armed Forces Act 1991 (c. 62);
(v) the Reserve Forces Act 1996 (c. 14);
(vi) the Armed Forces Act 2001 (c. 19).

Commencement Information
I3 S. 381 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(2)**

382 Duration of SDAs and this Act

(1) An Act listed in subsection (2) expires at the end of one year beginning with the day on which this Act is passed; but this is subject to subsection (3).

(2) The Acts are—
this Act;
the Army Act 1955;
the Air Force Act 1955;
the Naval Discipline Act 1957.

(3) Her Majesty may by Order in Council provide that an Act listed in subsection (2) shall (instead of expiring at the time it would otherwise expire) expire at the end of a period of not more than one year from that time.

(4) Such an Order may not provide for the continuation of such an Act beyond the end of the year 2011.

(5) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before, and approved by resolution of, each House of Parliament.

(6) Nothing in this section or in any Order under subsection (3) continues any provision of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53) beyond the time when the repeal of that provision by this Act is brought into force.

383 Commencement

(1) This section and sections 359, 373, 382, 384 and 386, and the repeal by this Act of section 1 of the Armed Forces Act 2001 (c. 19), come into force on the day on which this Act is passed.

(2) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint (and different days may be appointed for different purposes).

384 Extent to Channel Islands, Isle of Man and British overseas territories

(1) Her Majesty may by Order in Council provide for all or any of the provisions of this Act to extend to any of the Channel Islands with such modifications as may be specified in the Order.

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(2) This Act extends to—

(a) the Isle of Man, and

(b) the British overseas territories,

subject to such modifications as Her Majesty may by Order in Council specify.

VALID FROM 28/03/2009

385 Extent of applied enactments

(1) Where a provision of or made under an Act is applied by or under this Act (by whatever words), the extent of the provision as so applied is not affected by anything that limits the extent of the provision as it applies apart from this Act.

(2) The provision as so applied is to be treated for the purposes of section 384 as if it were contained in this Act.

386 Short title

This Act may be cited as the Armed Forces Act 2006.

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SCHEDULES

VALID FROM 28/03/2009

SCHEDULE 1

Sections 53, 54

CRIMINAL CONDUCT OFFENCES THAT MAY BE DEALT WITH AT A SUMMARY HEARING

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 2

Sections 113, 116

"SCHEDULE 2 OFFENCES"

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 3

Section 164

CIVILIANS ETC: MODIFICATIONS OF COURT MARTIAL SENTENCING POWERS

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 4

Section 169

UNFITNESS AND INSANITY: MODIFICATIONS OF MENTAL HEALTH ACT 1983

. . . . . .

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VALID FROM 28/03/2009

SCHEDULE 5

Sections 181, 184

BREACH, REVOCATION AND AMENDMENT OF COMMUNITY PUNISHMENTS

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 6

Section 182

OVERSEAS COMMUNITY ORDERS: YOUNG OFFENDERS

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 7

Section 206

SUSPENDED PRISON SENTENCE: FURTHER CONVICTION OR BREACH OF REQUIREMENT

. . . . . .

VALID FROM 01/01/2008

SCHEDULE 8

Section 272

AMENDMENT OF THE COURTS-MARTIAL (APPEALS) ACT 1968

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 9

Section 276

ASSESSORS OF COMPENSATION FOR MISCARRIAGES OF JUSTICE

. . . . . .

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VALID FROM 28/03/2009

SCHEDULE 10

Section 278

PROCEEDINGS OF THE SERVICE CIVILIAN COURT

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 11

Section 321

POWERS OF THE CRIMINAL CASES REVIEW COMMISSION

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 12

Section 351

DETENTION ETC OF PERSONS IN OVERSEAS SERVICE HOSPITALS

The relevant conditions

1 (1) In this Schedule references to the relevant conditions, in relation to a person, are to the following conditions.

(2) Condition A is that the person is suffering from mental disorder.

(3) Condition B is that the mental disorder is of such a nature or degree as to warrant his detention in a hospital for assessment or treatment for at least a limited period.

(4) Condition C is that it is necessary that the person be so detained—

(a) in the interests of his own health or safety; or

(b) with a view to the protection of others.

Order for person's detention in overseas service hospital

2 (1) This paragraph has effect in relation to—

(a) a person subject to service law, or

(b) a civilian subject to service discipline,

outside the British Islands.

(2) Sub-paragraph (3) applies if it appears to the person's commanding officer that all the relevant conditions are met in the case of the person and—

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(a) two registered medical practitioners make recommendations that an order under that sub-paragraph should be made in relation to the person; or

(b) the case is urgent and one registered medical practitioner makes a recommendation that such an order should be made in relation to the person.

(3) The commanding officer may make an order—

(a) in a case where, at the time the order is made, the person has been admitted to an overseas service hospital and has not been discharged—

(i) for the person's detention in that service hospital for assessment or treatment; or

(ii) for the person's admission to and detention in another overseas service hospital specified in the order for assessment or treatment;

(b) otherwise, for the person's admission to and detention in an overseas service hospital specified in the order for assessment or treatment.

(4) Sub-paragraph (5) applies if—

(a) the person's commanding officer makes an order under sub-paragraph (3) for the person's detention in (or admission to and detention in) a service hospital on the recommendation of one registered medical practitioner; and

(b) while the order is in force, there is produced to him a recommendation of another registered medical practitioner that an order under sub-paragraph (5) should be made in relation to the person.

(5) The commanding officer may make an order—

(a) for the person's further detention in that service hospital for assessment or treatment; or

(b) for the person's admission to and detention in another overseas service hospital specified in the order for assessment or treatment.

(6) See paragraph 4 for requirements as to recommendations under this paragraph.

Effect of order under paragraph 2

3 (1) This paragraph makes provision as to the effect of an order of a person's commanding officer under paragraph 2.

(2) An order under paragraph 2(3) has effect—

(a) if made by virtue of paragraph 2(2)(a), for 28 days;

(b) if made by virtue of paragraph 2(2)(b), for 5 days.

(3) An order under paragraph 2(5) has effect for 28 days from the date of the order under paragraph 2(3) referred to in paragraph 2(4).

(4) While in force, the order is sufficient authority—

(a) in a case where the order is made under paragraph 2(3)(a)(ii) or (b) or (5)(b), for the person to be taken and conveyed to the service hospital specified in the order;

(b) in any case, for the person to be detained in the service hospital specified in the order; and

(c) in a case where arrangements are made for the person to be removed to the United Kingdom for further assessment or treatment, for him to be—

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(i) taken from the service hospital specified in the order and conveyed to the United Kingdom; and

(ii) for that purpose, detained in any place or on board any ship or aircraft.

(5) Where the person is removed to the United Kingdom on the authority of the order, he must not after arriving in the United Kingdom be detained, on that authority, for longer than 24 hours.

Requirements as to recommendations under paragraph 2

4 (1) A recommendation under paragraph 2 must include a statement that the person making it is satisfied that all the relevant conditions are met in the case of the person to whom it relates.

(2) A recommendation under paragraph 2(2)(b) must also include a statement that—

(a) the person needs to be detained in (or admitted to and detained in) a hospital urgently; and

(b) the urgency makes it impracticable for another recommendation to be sought before making an order under paragraph 2(3) in relation to the person.

Exercise of powers under paragraph 2 where person's commanding officer is absent etc

5 (1) This paragraph has effect in relation to a person subject to service law outside the British Islands.

(2) If the person's commanding officer is absent or otherwise not available, any authorised officer may exercise in relation to the person the powers conferred by paragraph 2.

(3) For the purposes of this paragraph, an officer is "authorised" if he is—

(a) subject to service law;

(b) of or above the rank of naval lieutenant, military or marine captain or flight lieutenant; and

(c) under the command of the person's commanding officer.

Power to review order under paragraph 2

6 (1) The Secretary of State may make regulations for enabling a person to apply for the revocation of an order under paragraph 2 as soon as the order is made.

(2) The regulations may in particular make provision as to—

(a) who may make an application;

(b) the persons who are to hear the application;

(c) the procedure for hearing the application (including evidence);

(d) the grounds on which the order may be revoked;

(e) the functions of the persons hearing the application.

(3) Regulations under sub-paragraph (2)(e) may in particular confer on the persons hearing the application—

(a) power to confirm an order under paragraph 2;

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(b) power to revoke such an order and order the immediate release of the person subject to the order.

Detention of resident patients in overseas service hospitals pending order under paragraph 2(3)

7 (1) This paragraph applies if—

(a) a registered medical practitioner determines that all the relevant conditions are met in the case of a patient in an overseas service hospital who is a person subject to service law or a civilian subject to service discipline; or

(b) a prescribed person determines that all the relevant conditions appear to be met in the case of such a patient.

(2) The person making the determination must, as soon as practicable—

(a) make a record of the determination and the reasons for it; and

(b) make a request for an order under paragraph 2(3) to be made in relation to the patient.

(3) The commanding officer of the service hospital may detain the patient at the service hospital for the purpose of enabling such an order to be sought in relation to him.

(4) But the patient may not be detained under this paragraph beyond—

(a) the end of the detention period (see sub-paragraphs (5) to (7)); or

(b) if sooner, the making of a determination whether or not to make such an order in relation to him.

(5) If the person making the determination under sub-paragraph (1) is a registered medical practitioner, the detention period is 24 hours beginning with the time when the record required by sub-paragraph (2) was made.

(6) If that person is not a registered medical practitioner, the detention period is—

(a) 6 hours beginning with that time; or

(b) if before the end of that 6 hour period a registered medical practitioner determines that all the relevant conditions are met in the case of the patient, 24 hours beginning with that time.

(7) But if during that 6 hour period a registered medical practitioner determines that one or more of the relevant conditions are not met in the case of the patient—

(a) the patient must be released immediately; and

(b) the detention period ends with his release.

(8) The person making a determination under sub-paragraph (6)(b) must, as soon as practicable, make a record of the determination and the reasons for it.

(9) In this paragraph "prescribed person" means a person of a description prescribed by regulations made by the Secretary of State.

Urgent removal from service living accommodation to overseas service hospital

8 (1) This paragraph applies if a service policeman has reasonable grounds for believing that—

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(a) there is in any service living accommodation outside the British Islands a person ("the patient") who is a person subject to service law or a civilian subject to service discipline;

(b) the patient is suffering from mental disorder;

(c) the patient is in urgent need of care or control to prevent him causing serious harm to himself or others; and

(d) the urgent need to remove the patient to and detain him in a service hospital makes it impracticable for an order under paragraph 2(3) to be sought before removing and detaining him.

(2) The service policeman may—

(a) enter the service living accommodation; and

(b) remove the patient to an overseas service hospital.

(3) The service policeman must if reasonably practicable be accompanied by—

(a) a registered medical practitioner, or

(b) a person of a description prescribed by regulations made by the Secretary of State,

who may assist the service policeman to exercise the power conferred on him by sub-paragraph (2).

(4) The commanding officer of the service hospital to which the patient is removed may detain him at the service hospital for the purpose of enabling an order under paragraph 2(3) to be sought in relation to him.

(5) But the patient may not be detained under this paragraph beyond—

(a) the end of the detention period (see sub-paragraphs (6) and (7)); or

(b) if sooner, the making of a determination whether or not to make such an order in relation to him.

(6) The detention period is—

(a) 6 hours beginning with his arrival at the service hospital; or

(b) if before the end of that 6 hour period a registered medical practitioner determines that all the relevant conditions are met in the case of the patient, 24 hours beginning with that time.

(7) But if during that 6 hour period a registered medical practitioner determines that one or more of the relevant conditions are not met in the case of the patient—

(a) the patient must be released immediately; and

(b) the detention period ends with his release.

(8) The person making a determination under sub-paragraph (6)(b) must, as soon as practicable, make a record of the determination and the reasons for it.

Urgent removal from other places to overseas service hospital

9 (1) This paragraph applies if a service policeman finds a person ("the patient") in a relevant place outside the British Islands and it appears to the service policeman that—

(a) the patient is a person subject to service law or a civilian subject to service discipline;

(b) the patient is suffering from mental disorder; and

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(c) the urgent need to remove the patient to and detain him in a service hospital makes it impracticable for an order under paragraph 2(3) to be sought before removing and detaining him.

(2) The service policeman may remove the patient to an overseas service hospital.

(3) The commanding officer of the service hospital to which the patient is removed may detain him at the service hospital for the purpose of enabling an order under paragraph 2(3) to be sought in relation to him.

(4) But the patient may not be detained under this paragraph beyond—

(a) the end of the detention period (see sub-paragraphs (5) and (6)); or

(b) if sooner, the making of a determination whether or not to make such an order in relation to him.

(5) The detention period is—

(a) 6 hours beginning with his arrival at the service hospital; or

(b) if before the end of that 6 hour period a registered medical practitioner determines that all the relevant conditions are met in the case of the patient, 24 hours beginning with that time.

(6) But if during that 6 hour period a registered medical practitioner determines that one or more of the relevant conditions are not met in the case of the patient—

(a) the patient must be released immediately; and

(b) the detention period ends with his release.

(7) The person making a determination under sub-paragraph (5)(b) must, as soon as practicable, make a record of the determination and the reasons for it.

(8) In this paragraph "relevant place" means—

(a) a place to which the public have access; or

(b) any premises (within the meaning of Part 3) which are permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces but are not service living accommodation.

Use of force

10 Where a power is conferred on any person by virtue of this Schedule, he may use reasonable force, if necessary, in the exercise of the power.

Service custody

11 While a person is being conveyed, removed or detained by virtue of any provision of this Schedule, the person is deemed to be in service custody.

Definitions

12 (1) In this Schedule "overseas service hospital" means a service hospital outside the British Islands.

(2) In this Schedule "service hospital" means—

(a) a military, air-force or naval unit or establishment, or

(b) a ship,

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at or in which medical or surgical treatment is provided for persons subject to service law.

(3) In this Schedule "service living accommodation" has the same meaning as in Part 3 (see section 96).

VALID FROM 28/03/2009

SCHEDULE 13

Section 353

PROTECTION OF CHILDREN OF SERVICE FAMILIES

. . . . . .

VALID FROM 15/10/2007

SCHEDULE 14

Section 358

AMENDMENTS RELATING TO RESERVE FORCES

. . . . . .

VALID FROM 28/03/2009

SCHEDULE 15

Section 370

CIVILIANS SUBJECT TO SERVICE DISCIPLINE

. . . . . .

SCHEDULE 16

Section 378

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 28/03/2009

Metropolitan Police Act 1860 (c. 135)

1 In section 2 of the Metropolitan Police Act 1860 (swearing of constables to act on military land etc), for "subject to naval or marine or military or air force

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discipline" substitute " who are subject to service law, or are civilians subject to service discipline, within the meaning of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Naval and Marine Pay and Pensions Act 1865 (c. 73)

2 In section 3 of the Naval and Marine Pay and Pensions Act 1865 (payment of naval and marine pay and pensions according to Order in Council) for the words from "pay" to "thereof" substitute " pensions and grants ".

3 In section 9 of that Act (Order in Council not to contain provision inconsistent with Naval Discipline Act), for the words from "pay" to the end substitute " pensions contained in the Armed Forces Act 2006. "

VALID FROM 28/03/2009

Naval Pensions Act 1884 (c. 44)

4 In section 2 of the Naval Pensions Act 1884 (application of certain enactments to Greenwich Hospital pensions), for "or section 128G of the Naval Discipline Act 1957" substitute " or section 356 of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Foreign Marriage Act 1892 (c. 23)

5 In section 22 of the Foreign Marriage Act 1892 (marriages abroad by members of armed forces etc)—

(a) in subsection (1A)—

(i) in paragraph (a)(i) for the words from "employed" to the end substitute " a relevant civilian who is employed in that territory; or ";

(ii) in paragraph (b) for "so prescribed" substitute " prescribed by Order in Council ";

(b) after that subsection insert—

"(1AA) In subsection (1A)(a)(i) "relevant civilian" means a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006) of a description prescribed by Order in Council."

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Regimental Debts Act 1893 (c. 5)

6 In the Regimental Debts Act 1893, for the words "military law", in each place, substitute " service law ".

7 In section 23 of that Act (application of Act to deserters etc), omit the words "is sentenced to death or".

8 In section 29 of that Act (definitions)—

(a) in the definition of "desert" for the words from "against paragraph (a)" to the end substitute " under section 8 of the Armed Forces Act 2006; ";

(b) for the words after that definition substitute—

""Subject to service law" has the same meaning as in the Armed Forces Act 2006."

9 After that section insert—

"**29A Application of Act to members of naval, marine or air forces**

(1) Regulations may provide that any provision of this Act does not apply, or applies with prescribed modifications, in relation to a relevant person.

(2) In this section "relevant person" means a person subject to service law who is not a member of Her Majesty's military forces."

10 In section 33 of that Act (short title) for "Regimental Debts Act 1893" substitute " Debts (Deceased Servicemen etc) Act 1893 ".

VALID FROM 28/03/2009

Uniforms Act 1894 (c. 45)

11 In section 4 of the Uniforms Act 1894 (interpretation)—

(a) in the definition of "Her Majesty's Military Forces", for "Army Act 1955" substitute " Armed Forces Act 2006 ";

(b) for the definition of "Her Majesty's Naval Forces" substitute—

""Her Majesty's Naval Forces" does not include any Commonwealth force."

VALID FROM 28/03/2009

Criminal Evidence Act 1898 (c. 36)

12 (1) Section 6 of the Criminal Evidence Act 1898 (application of Act) is amended as follows.

(2) In subsection (1) omit the words from "including" to the end.

Status: *Point in time view as at 04/06/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(3) After that subsection insert—

"(1A) This Act applies in relation to service proceedings as it applies in relation to criminal proceedings before a court in England and Wales.

(1B) In this section "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

VALID FROM 28/03/2009

Air Force (Constitution) Act 1917 (c. 51)

13 In section 2(1) of the Air Force (Constitution) Act 1917 (government, discipline and pay of the Royal Air Force)—

(a) omit ", pay, allowances,";

(b) after "Air Force", in the second place where it occurs, insert " (except pay and allowances) ".

VALID FROM 28/03/2009

Visiting Forces (British Commonwealth) Act 1933 (c. 6)

14 (1) Section 4 of the Visiting Forces (British Commonwealth) Act 1933 (attached personnel) is amended as follows.

(2) In subsection (2)(ii), for the words from the beginning to "may" substitute " may, with his consent, ".

(3) In subsection (3)—

(a) for the words before the proviso substitute—

"(3) While a member of another force is by virtue of this section attached temporarily to a home force—

(a) he is subject to service law for the purposes of the Armed Forces Act 2006 at all times at which he would be so subject if he were a member of that force; and

(b) he shall be treated as if he were a member of the home force of relative rank:";

(b) in the proviso, for the words from "the Naval Discipline Act" to "as the case may be," substitute " the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Defence (Armed Forces) Regulations 1939 (S.I. 1939/1304)

15 In Regulation 6 of the Defence (Armed Forces) Regulations 1939—

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(a) for "the Naval Discipline Act, military law or air-force law" substitute " service law within the meaning of the Armed Forces Act 2006 ";

(b) omit the words from "within the meaning of" to the end;

and the text of the Regulation set out in Part C of Schedule 2 to the Emergency Laws (Repeal) Act 1959 (c. 19) is amended accordingly.

VALID FROM 01/01/2008

Courts-Martial (Appeals) Act 1951 (c. 46)

16 In section 29 of the Courts-Martial (Appeal) Act 1951 (appointment of Judge Advocate General) for "His Majesty's regular, auxiliary and reserve land and air forces" substitute " Her Majesty's regular and reserve naval, land and air forces ".

VALID FROM 28/03/2009

Prison Act 1952 (c. 52)

17 In section 43 of the Prison Act 1952 (young offender institutions etc), after subsection (7) add—

"(8) The application of this Act to a person on whom a custodial sentence (within the meaning of the Armed Forces Act 2006) has been passed in respect of a service offence (within the meaning of that Act) is not affected by the omission from subsection (1) of a reference to that sentence."

VALID FROM 28/03/2009

Visiting Forces Act 1952 (c. 67)

18 (1) Section 13 of the Visiting Forces Act 1952 (apprehension etc of deserters and absentees of visiting forces) is amended as follows.

(2) In subsection (1)—

(a) for the words from "sections one hundred and eighty-six" to "regular forces)" substitute " sections 314 to 317 of the Armed Forces Act 2006 (which relate to the apprehension and transfer to service custody of deserters and absentees without leave who are subject to service law) ";

(b) for "from the regular forces" substitute " who are subject to service law ".

(3) In subsection (2) for the words from "the said sections" to "eighty-eight" substitute " sections 314 and 315 of that Act ".

(4) For subsection (3) substitute—

"(3) In sections 315 to 317 of that Act as applied by subsection (1) above—

(a) references to the transfer of a person to service custody are to be read as references to the handing over of that person to such

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authority of the country to which he belongs, at such place in the United Kingdom, as may be designated by the appropriate authority of that country;

(b) references to the taking of a person into service custody are to be read as references to the taking of a person into the custody of such authority of the country to which he belongs as may be designated by the appropriate authority of that country."

19 In section 14 of that Act (evidence for purposes of section 13) for "Army Act 1955" substitute " Armed Forces Act 2006 ".

VALID FROM 15/10/2007

Army Act 1955 (3 & 4 Eliz. 2 c. 18)

VALID FROM 01/01/2008

20 After section 91 of the Army Act 1955 insert—

"Preliminary hearings as to plea

91A Preliminary hearings as to plea

(1) Subsections (2) to (4) apply in relation to a charge against a person ("the accused") preferred by the prosecuting authority.

(2) The accused shall be arraigned at a hearing before a judge advocate.

(3) That hearing may take place at any time before the time when the court-martial that is to try the charge first sits.

(4) The arraignment is to be treated as having occurred before the court-martial.

(5) Rules under section 103 may make provision for and in connection with the making of orders and rulings by a judge advocate at a hearing at which the accused is arraigned, including in particular—

(a) provision corresponding to any provision of, or that may be made by virtue of, sections 31, 33, 34 and 37 of the Criminal Procedure and Investigations Act 1996, subject to such modifications as the Secretary of State considers appropriate;

(b) provision for the variation or discharge of such orders and rulings.

(6) The reference in subsection (1) to a charge preferred by the prosecuting authority includes—

(a) a charge substituted by the prosecuting authority; and

(b) where a charge is amended by the prosecuting authority before the accused is arraigned in respect of it, the charge as so amended.

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(7) Nothing in this section applies in relation to a charge preferred or substituted after the time when the court-martial first sits."

VALID FROM 01/01/2008

21 (1) Section 103 of that Act (rules) is amended as follows.

(2) In subsection (2)—

(a) after paragraph (b) insert—

"(ba) appeals against orders or rulings made in preliminary proceedings;";

(b) after paragraph (mm) insert—

"(mn) appeals against any orders (including directions) of courts-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings;".

(3) After subsection (2) insert—

"(2A) In subsection (2)(a), (b) and (ba), the references to proceedings preliminary to trials include hearings at which the accused is arraigned.

(2B) Rules made by virtue of subsection (2)(ba) or (mn) may confer jurisdiction on the Courts-Martial Appeal Court, and rules under section 49 of the Courts-Martial (Appeals) Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of subsection (2)(ba) or (mn)."

22 In section 120 of that Act (suspension of sentences), after subsection (7) insert—

"(7A) Subsection (5) does not apply if the person was tried by court-martial for the fresh offence in pursuance of an election for court-martial trial."

VALID FROM 15/10/2007

Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)

VALID FROM 01/01/2008

23 After section 91 of the Air Force Act 1955 insert—

"Preliminary hearings as to plea

91A Preliminary hearings as to plea

(1) Subsections (2) to (4) apply in relation to a charge against a person ("the accused") preferred by the prosecuting authority.

(2) The accused shall be arraigned at a hearing before a judge advocate.

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(3) That hearing may take place at any time before the time when the court-martial that is to try the charge first sits.

(4) The arraignment is to be treated as having occurred before the court-martial.

(5) Rules under section 103 may make provision for and in connection with the making of orders and rulings by a judge advocate at a hearing at which the accused is arraigned, including in particular—

(a) provision corresponding to any provision of, or that may be made by virtue of, sections 31, 33, 34 and 37 of the Criminal Procedure and Investigations Act 1996, subject to such modifications as the Secretary of State considers appropriate;

(b) provision for the variation or discharge of such orders and rulings.

(6) The reference in subsection (1) to a charge preferred by the prosecuting authority includes—

(a) a charge substituted by the prosecuting authority; and

(b) where a charge is amended by the prosecuting authority before the accused is arraigned in respect of it, the charge as so amended.

(7) Nothing in this section applies in relation to a charge preferred or substituted after the time when the court-martial first sits."

VALID FROM 01/01/2008

24 (1) Section 103 of that Act (rules) is amended as follows.

(2) In subsection (2)—

(a) after paragraph (b) insert—

"(ba) appeals against orders or rulings made in preliminary proceedings;";

(b) after paragraph (mm) insert—

"(mn) appeals against any orders (including directions) of courts-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings;".

(3) After subsection (2) insert—

"(2A) In subsection (2)(a), (b) and (ba), the references to proceedings preliminary to trials include hearings at which the accused is arraigned.

(2B) Rules made by virtue of subsection (2)(ba) or (mn) may confer jurisdiction on the Courts-Martial Appeal Court, and rules under section 49 of the Courts-Martial (Appeals) Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of subsection (2)(ba) or (mn)."

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25 In section 120 of that Act (suspension of sentences), after subsection (7) insert—

"(7A) Subsection (5) does not apply if the person was tried by court-martial for the fresh offence in pursuance of an election for court-martial trial."

Naval Discipline Act 1957 (c. 53)

VALID FROM 01/01/2008

26 In section 47M of the Naval Discipline Act 1957 (judicial officers), for "Judge Advocate of Her Majesty's Fleet", in both places, substitute " Judge Advocate General ".

VALID FROM 01/01/2008

27 In section 52C(4) of that Act (powers of higher authority), for "of the accused" substitute " or appropriate superior authority ".

28 (1) Section 52D of that Act (summary trial) is amended as follows.

(2) For subsections (2) and (2ZA) substitute—

"(2) The commanding officer or appropriate superior authority (as the case may be) shall afford the accused the opportunity of electing court-martial trial."

(3) In subsection (4) for paragraph (b) substitute—

"(b) if the accused is an officer below the rank of captain whose commanding officer satisfies the conditions in section 52B(6A)(a) and (b), refer the charge back to the commanding officer of the accused;

(c) if the accused is an officer other than one within paragraph (b) above, refer the charge back to the appropriate superior authority;".

(4) In subsection (4A) for "Subsections (2) and (2ZA) above do not" substitute " Subsection (2) above does not ".

(5) In subsection (4C) for "subsection (2) or (2ZA) above" substitute " subsection (2) above ".

Commencement Information

I4 Sch. 16 para. 28 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

VALID FROM 01/01/2008

29 In section 52FG(1) of that Act (judge advocates of the summary appeal court), for "Judge Advocate of Her Majesty's Fleet" substitute " Judge Advocate General ".

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VALID FROM 01/01/2008

30 In section 52FJ(3) of that Act (constitution of summary appeal court), for "Judge Advocate of Her Majesty's Fleet" substitute " Judge Advocate General ".

VALID FROM 01/01/2008

31 In section 53B(1) of that Act (judge advocate of a court-martial), for "Judge Advocate of Her Majesty's Fleet" substitute " Judge Advocate General ".

VALID FROM 01/01/2008

32 In section 53C(2) of that Act (ordering of courts martial), for "Judge Advocate of Her Majesty's Fleet" substitute " Judge Advocate General ".

VALID FROM 01/01/2008

33 (1) Section 58 of that Act (rules) is amended as follows.

(2) In subsection (2)—

(a) after paragraph (b) insert—

"(ba) appeals against orders or rulings made in preliminary proceedings;";

(b) after paragraph (nn) insert—

"(no) appeals against any orders (including directions) of courts-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings;".

(3) After subsection (2) insert—

"(2A) In subsection (2)(a), (b) and (ba), the references to proceedings preliminary to trials include hearings at which the accused is arraigned.

(2B) Rules made by virtue of subsection (2)(ba) or (no) may confer jurisdiction on the Courts-Martial Appeal Court, and rules under section 49 of the Courts-Martial (Appeals) Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of subsection (2)(ba) or (no)."

VALID FROM 01/01/2008

34 After section 58 of that Act insert—

"**58A Preliminary hearings as to plea**

(1) Subsections (2) to (4) apply in relation to a charge against a person ("the accused") preferred by the prosecuting authority.

(2) The accused shall be arraigned at a hearing before a judge advocate.

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(3) That hearing may take place at any time before the time when the court-martial that is to try the charge first sits.

(4) The arraignment is to be treated as having occurred before the court-martial.

(5) Rules under section 58 may make provision for and in connection with the making of orders and rulings by a judge advocate at a hearing at which the accused is arraigned, including in particular—

(a) provision corresponding to any provision of, or that may be made by virtue of, sections 31, 33, 34 and 37 of the Criminal Procedure and Investigations Act 1996, subject to such modifications as the Secretary of State considers appropriate;

(b) provision for the variation or discharge of such orders and rulings.

(6) The reference in subsection (1) to a charge preferred by the prosecuting authority includes—

(a) a charge substituted by the prosecuting authority; and

(b) where a charge is amended by the prosecuting authority before the accused is arraigned in respect of it, the charge as so amended.

(7) Nothing in this section applies in relation to a charge preferred or substituted after the time when the court-martial first sits.”

VALID FROM 01/01/2008

35 In section 59(4A) of that Act (challenge by accused), for “Judge Advocate of Her Majesty's Fleet” substitute “ Judge Advocate General ”.

VALID FROM 01/01/2008

36 In section 63A(5)(b) of that Act (powers to deal with person unfit to stand trial etc), for “Judge Advocate of Her Majesty's Fleet” substitute “ Judge Advocate General ”.

VALID FROM 01/01/2008

37 In section 64 of that Act (summoning of witnesses)—

(a) omit subsection (1);

(b) in subsection (2) for “notice under this section” substitute “ summons issued in accordance with rules under section 58 ”.

VALID FROM 01/01/2008

38 In section 73 of that Act (saving for functions of JAF), including in the sidenote to that section, for “Judge Advocate of Her Majesty's Fleet” substitute “ Judge Advocate General ”.

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VALID FROM 28/03/2009

Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58)

39 (1) Section 1 of the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (records of births, marriages and deaths among armed forces etc overseas) is amended as follows.

(2) In subsection (1)—

(a) omit the words ", or among the families of";

(b) for paragraph (b) substitute—

"(b) civilians subject to service discipline."

(3) In subsection (3)—

(a) for the words from ", or the family" to "of this section" substitute " a civilian subject to service discipline ";

(b) for "more particular description" substitute " particular description of such civilians ".

(4) For subsection (5) substitute—

"(6) In this section "civilian subject to service discipline" has the same meaning as in the Armed Forces Act 2006."

40 In section 2(1) of that Act (records of births and deaths in HM ships and aircraft etc)—

(a) omit paragraphs (a) and (b);

(b) in paragraph (c) for "such an aircraft" substitute " one of Her Majesty's aircraft (as defined by paragraph 1(4) of Schedule 15 to the Armed Forces Act 2006) ".

41 In section 4 of that Act (validation of certain entries)—

(a) in subsection (1) for the words from "of any description" to "section one of this Act" substitute " within subsection (1A) below ";

(b) after that subsection insert—

"(1A) A person is within this subsection if—

(a) he serves Her Majesty in, or is otherwise employed in any capacity connected with, Her Majesty's naval, military or air forces; or

(b) he belongs to or is employed by any organisation concerned with the welfare of members of those forces."

42 In section 5(1)(b) of that Act (registration of births of legitimated persons), for the words from "a person of" to the end substitute " a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006), ".

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VALID FROM 28/03/2009

Public Records Act 1958 (c. 51)

43 In Schedule 1 to the Public Records Act 1958 (definition of public records), in paragraph 4(1), after paragraph (f) insert—

"(fa) records of the Court Martial, the Summary Appeal Court or the Service Civilian Court;".

VALID FROM 28/03/2009

Coroners Act (Northern Ireland) 1959 (c. 15)

44 In section 18 of the Coroners Act (Northern Ireland) 1959 (jury to be summoned in certain cases), after subsection (3) add—

"(4) This section and section 39(3) of the Prison Act (Northern Ireland) 1953 (prison officers etc not to be jurors) shall apply where a death occurs on service custody premises within the meaning of section 300 of the Armed Forces Act 2006 as they apply where a death occurs in prison."

VALID FROM 28/03/2009

Administration of Justice Act 1960 (c. 65)

45 (1) Section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court) is amended as follows.

(2) In subsection (2)(c) for "and from an order or decision of the Court of Criminal Appeal or the Courts-Martial Appeal Court" substitute " and from an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial Appeal Court ".

(3) In subsection (5) after paragraph (c) insert—

"(d) to an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial, the Summary Appeal Court or the Service Civilian Court under section 309 of the Armed Forces Act 2006,".

VALID FROM 28/03/2009

Criminal Justice Act 1961 (c. 39)

46 In section 22 of the Criminal Justice Act 1961 (assisting escaped prisoners etc), for subsection (3) substitute—

"(2A) The reference in subsection (2) to a person who has been sentenced as mentioned there includes—

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(a) a person on whom a custodial sentence within the meaning of the Armed Forces Act 2006 has been passed (anywhere) in respect of a service offence within the meaning of that Act;

(b) a person in respect of whom an order under section 214 of that Act (detention for commission of offence during currency of order) has been made."

47 In section 39 of that Act (interpretation) for subsection (2) substitute—

"(2) Except as otherwise expressly provided, references in this Act to a court do not include the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court."

VALID FROM 28/03/2009

Parliamentary Commissioner Act 1967 (c. 13)

48 In Schedule 3 to the Parliamentary Commissioner Act 1967 (matters not subject to investigation)—

(a) in paragraph 6 for the words from "proceedings at any place" to "Air Force Act 1955" substitute " service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006) (anywhere) ";

(b) in paragraph 7 for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ".

VALID FROM 28/03/2009

Criminal Justice Act 1967 (c. 80)

49 In section 72 of the Criminal Justice Act 1967 (power to issue warrant for arrest of escaped prisoners etc) after subsection (5) add—

"(6) References in this section to offences include service offences within the meaning of the Armed Forces Act 2006."

50 In section 104(1) of that Act (interpretation), in the definition of "court" for "a court-martial" substitute " the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court ".

VALID FROM 28/03/2009

Civil Evidence Act 1968 (c. 64)

51 (1) Section 11 of the Civil Evidence Act 1968 (convictions as evidence in civil proceedings) is amended as follows.

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(2) In subsection (1) for "by a court-martial there or elsewhere" substitute " of a service offence (anywhere) ".

(3) In subsection (2) for "by a court-martial there or elsewhere" substitute " of a service offence ".

(4) In subsection (5) after paragraph (a) insert—

"(aa) section 187 of the Armed Forces Act 2006 (which makes similar provision in respect of service convictions);".

(5) For subsection (6) substitute—

"(7) In this section—

"service offence" has the same meaning as in the Armed Forces Act 2006;

"conviction" includes anything that under section 376(1) and (2) of that Act is to be treated as a conviction, and "convicted" is to be read accordingly."

52 In section 13 of that Act (conclusiveness of convictions for purposes of defamation actions)—

(a) in subsection (3) for "by a court-martial there or elsewhere" substitute " (in the case of a service offence) a conviction (anywhere) of that service offence ";

(b) in subsection (4) for "(6)" substitute " (7) ".

53 In section 18 of that Act (general interpretation etc)—

(a) in subsection (2), in the definition of "court" for "court-martial" substitute " service court ";

(b) after that subsection insert—

"(2A) In subsection (2) "service court" means the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court."

VALID FROM 01/01/2008

Equal Pay Act 1970 (c. 41)

54 (1) Section 7A of the Equal Pay Act 1970 (service pay and conditions) is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint in respect of the claim ";

(b) in paragraph (b) for "complaint" substitute " service complaint ".

(3) In subsection (7), for "the service redress procedures" substitute " the service complaint procedures ".

(4) In subsection (12), for the definition of "the service redress procedures" substitute—

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""service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section."

55 In section 7AB of that Act ("arrears date" for purposes of section 7A(9)(a) (proceedings in England and Wales))—

(a) in subsection (2), in paragraph (b) of the definitions of "concealment case" and "disability case", for "complaint under the service redress procedures" substitute " service complaint ";

(b) in subsection (3) for "complaint under the service redress procedures" substitute " service complaint ";

(c) in subsection (5) for the words from "complaint" to the end substitute " service complaint having been made. ";

(d) in subsection (6) for "complaint under the service redress procedures" substitute " service complaint ".

56 In section 7AC of that Act (determination of "period" for purposes of section 7A(9)(b) (proceedings in Scotland))—

(a) in subsection (2) for "complaint under the service redress procedures" substitute " service complaint ";

(b) in subsection (4) for the words from "complaint" to the end substitute " service complaint having been made. ";

(c) in subsection (5) for "complaint under the service redress procedures" substitute " service complaint ".

VALID FROM 01/01/2008

Equal Pay Act (Northern Ireland) 1970 (c. 32)

57 (1) Section 6A of the Equal Pay Act (Northern Ireland) 1970 (service pay and conditions) is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint in respect of the claim ";

(b) in paragraph (b) for "complaint" substitute " service complaint ".

(3) In subsection (7), for "the service redress procedures" substitute " the service complaint procedures ".

(4) In subsection (12), for the definition of "the service redress procedures" substitute—

""service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section."

58 In section 6AB of that Act ("arrears date" in proceedings under section 6A(9))—

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(a) in subsection (2), in paragraph (b) of the definitions of "concealment case" and "disability case", for "complaint under the service redress procedures" substitute " service complaint ";

(b) in subsection (3) for "complaint under the service redress procedures" substitute " service complaint ";

(c) in subsection (5) for the words from "complaint" to the end substitute " service complaint having been made. ";

(d) in subsection (6) for "complaint under the service redress procedures" substitute " service complaint ".

VALID FROM 28/03/2009

Civil Evidence Act (Northern Ireland) 1971 (c. 36)

59 (1) Section 7 of the Civil Evidence Act (Northern Ireland) 1971 (convictions as evidence in civil proceedings) is amended as follows.

(2) In subsection (1) for "by a court-martial there or elsewhere" substitute " of a service offence (anywhere) ".

(3) In subsection (2) for "by a court-martial there or elsewhere" substitute " of a service offence ".

(4) In subsection (5) after paragraph (b) insert—

"(bb) section 187 of the Armed Forces Act 2006 (which makes similar provision in respect of service convictions);".

(5) For subsection (6) substitute—

"(7) In this section—

"service offence" has the same meaning as in the Armed Forces Act 2006;

"conviction" includes anything that under section 376(1) and (2) of that Act is to be treated as a conviction, and "convicted" is to be read accordingly."

60 In section 9 of that Act (conclusiveness of convictions for purposes of defamation actions)—

(a) in subsection (3) for "by a court-martial there or elsewhere" substitute " (in the case of a service offence) a conviction (anywhere) of that service offence ";

(b) in subsection (4) for "(6)" substitute " (7) ".

61 In section 14 of that Act (general interpretation etc)—

(a) in subsection (2), in the definition of "court" for "court-martial" substitute " service court ";

(b) after that subsection insert—

"(2A) In subsection (2) "service court" means the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court."

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 28/03/2009

Juries Act 1974 (c. 23)

62 In Schedule 1 to the Juries Act 1974 (persons disqualified from jury service, etc)—

(a) in paragraph 7(c) after "Channel Islands" insert " or a service community order or overseas community order under the Armed Forces Act 2006 ";

(b) in paragraph 8(a) for "by a court-martial" substitute " (anywhere) in respect of a service offence within the meaning of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Rehabilitation of Offenders Act 1974 (c. 53)

63 In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent convictions), in subsection (4) after "2000" insert " or section 187 of the Armed Forces Act 2006 ".

64 In section 2 of that Act (rehabilitation of persons dealt with in service disciplinary proceedings)—

(a) in subsection (5) after "any of the following—" insert—

"(za) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);";

(b) after that subsection add—

"(6) Section 376(1) to (3) of the Armed Forces Act 2006 ("conviction" and "sentence" in relation to summary hearings and the SAC) apply for the purposes of this Act as they apply for the purposes of that Act."

65 (1) Section 5 of that Act (rehabilitation periods for particular sentences) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (d)—

(i) after "Powers of Criminal Courts (Sentencing) Act 2000," insert " or under section 209 or 218 of the Armed Forces Act 2006, ";

(ii) after "said Act of 2000" insert " or section 209 of the said Act of 2006 ";

(iii) omit "or a corresponding court-martial punishment";

(b) in paragraph (f), at the end insert " (including any sentence within this paragraph passed as a result of any of sections 219 to 222 of the Armed Forces Act 2006) ".

(3) For subsection (1A) substitute—

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"(1A) In subsection (1)(d)—

(a) references to section 209 of the Armed Forces Act 2006 include references to section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;

(b) the reference to section 218 of the Armed Forces Act 2006 includes a reference to section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957."

(4) In subsection (2)—

(a) in Table A, in the fifth entry for "Any sentence of detention" substitute " Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, ";

(b) in Table B—

(i) in the fourth entry, after "2000" insert " or under section 209 of the Armed Forces Act 2006 ";

(ii) in the fifth entry, for "either of those provisions" substitute " any provision mentioned in the fourth entry in this Table ".

(5) Before subsection (3) insert—

"(2A) Table B applies in relation to a sentence under section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957 as it applies in relation to one under section 209 of the Armed Forces Act 2006."

(6) In subsection (4A) after "2003" insert " or a service community order or overseas community order under the Armed Forces Act 2006 ".

(7) In subsection (6A) after "2000" insert " , or an order under section 211 of the Armed Forces Act 2006 was made ".

(8) In subsection (9)(b) after "2000" insert " or section 209 of the Armed Forces Act 2006 ".

66 In the Schedule to that Act (service disciplinary convictions referred to in section 6(6)(bb)), after paragraph 6 add—

"Provisions of the Armed Forces Act 2006

7 Any service offence within the meaning of the Armed Forces Act 2006 except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years."

VALID FROM 28/03/2009

House of Commons Disqualification Act 1975 (c. 24)

67 In section 1 of the House of Commons Disqualification Act 1975 (disqualification of holders of certain offices)—

(a) in subsection (1)(c) omit "or the Ulster Defence Regiment";

(b) in subsection (3), in the definition of "regular armed forces of the Crown", for the words from "the regular forces" to the end substitute "

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the Royal Marines, the regular army (as defined by section 374 of the Armed Forces Act 2006) or the Royal Air Force. ”

68 In Part 1 of Schedule 1 to that Act (judicial offices disqualifying for membership), for “Judge of the Courts-Martial Appeal Court.” substitute “ Judge of the Court Martial Appeal Court. ”

VALID FROM 28/03/2009

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

69 In section 1 of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of holders of certain offices)—

(a) in subsection (1)(c) omit the words from “or” to the end;

(b) in subsection (2), in the definition of “regular armed forces of the Crown”, for the words from “the regular forces” to the end substitute “ the Royal Marines, the regular army (as defined by section 374 of the Armed Forces Act 2006) or the Royal Air Force. ”

70 In Part 1 of Schedule 1 to that Act (judicial offices disqualifying for membership), for “Judge of the Courts-Martial Appeal Court.” substitute “ Judge of the Court Martial Appeal Court. ”

VALID FROM 01/01/2008

Sex Discrimination Act 1975 (c. 65)

71 (1) Section 85 of the Sex Discrimination Act 1975 (application to Crown etc) is amended as follows.

(2) In subsection (9B)—

(a) in paragraph (a) for the words from “a complaint” to “those procedures” substitute “ a service complaint in respect of the act complained of ”;

(b) in paragraph (b) for “complaint” substitute “ service complaint ”.

(3) In subsection (9D) for “the service redress procedures” substitute “ the service complaint procedures ”.

(4) In subsection (10) for the definition of “the service redress procedures” substitute—

““service complaint” means a complaint under section 334 of the Armed Forces Act 2006;

“the service complaint procedures” means the procedures prescribed by regulations under that section;”.

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VALID FROM 28/03/2009

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14)

72 In section 1(4) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (investigation of death and application for public inquiry)—

(a) after paragraph (b) insert—

"(ba) he is detained in, or is subject to detention in, service custody premises (within the meaning of section 300 of the Armed Forces Act 2006);";

(b) in paragraph (c)(i) for "and (b)" substitute " , (b) and (ba) ".

VALID FROM 28/03/2009

Bail Act 1976 (c. 63)

73 In section 2(2) of the Bail Act 1976 (definitions), for the definition of "Courts-Martial Appeal rules" substitute—

"Court Martial Appeal Rules" means rules made under section 49 of the Court Martial Appeals Act 1968,".

74 In section 5(10) of that Act (meaning of "prescribed" for purposes of section 5), for "Courts-Martial Appeal rules" substitute " Court Martial Appeal Rules ".

75 In section 6(9)(c)(v) of that Act (meaning of the "appropriate officer" of the court), for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ".

76 In section 8(4) of that Act (persons before whom recognizance may be entered into)—

(a) in paragraph (d)—

(i) for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ";

(ii) for "Courts-Martial Appeal rules" substitute " Court Martial Appeal Rules ";

(b) in the words after paragraph (d) for "Courts-Martial Appeal rules" substitute " Court Martial Appeal Rules ".

77 In section 13(3) of that Act (application of Act), for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ".

78 In Schedule 1 to that Act (persons entitled to bail: supplementary provisions)—

(a) in paragraph 4 of each of Parts 1 and 2, for the words from "the sentence" to the end substitute " a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006. "; and

(b) in paragraph 4 of Part 3 omit the definition of "the Services Acts".

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VALID FROM 01/01/2008

Race Relations Act 1976 (c. 74)

VALID FROM 28/03/2009

79 In section 57(4B) of the Race Relations Act 1976 (claims under Part 3), in the words after the definition of "public investigator functions", for the words from "any offence" to "1957" substitute " any service offence within the meaning of the Armed Forces Act 2006 ".

80 (1) Section 75 of that Act (application to Crown etc) is amended as follows.

(2) In subsection (9)—

(a) in paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint in respect of the act complained of ";

(b) in paragraph (b) for "complaint" substitute " service complaint ".

(3) In subsection (9B) for "the service redress procedures" substitute " the service complaint procedures ".

(4) In subsection (10), for paragraph (ab) substitute—

"(ac) "service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

(ad) "the service complaint procedures" means the procedures prescribed by regulations under that section;".

VALID FROM 28/03/2009

81 In section 78(1) of that Act (general interpretation provisions), for the definition of "criminal proceedings" substitute—

""criminal proceedings" includes service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006);".

VALID FROM 01/01/2008

Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))

82 (1) Article 82 of the Sex Discrimination (Northern Ireland) Order 1976 (application to Crown etc) is amended as follows.

(2) In paragraph (9B)—

(a) in sub-paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint in respect of the act complained of ";

(b) in sub-paragraph (b) for "complaint" substitute " service complaint ".

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(3) In paragraph (9D) for "the service redress procedures" substitute " the service complaint procedures ".

(4) In paragraph (10) for the definition of "the service redress procedures" substitute—

""service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section;".

VALID FROM 28/03/2009

Judicature (Northern Ireland) Act 1978 (c. 23)

83 In section 44 of the Judicature (Northern Ireland) Act 1978 (appeals in cases of contempt of court)—

(a) in subsection (2)(b) for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ";

(b) in subsection (5) after paragraph (c) insert—

"(d) to an order or decision of the Court Martial or the Summary Appeal Court under section 309 of the Armed Forces Act 2006;".

VALID FROM 28/03/2009

Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))

84 In Article 2 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (interpretation), in paragraph (2), in the definition of "service disciplinary proceedings", after "any of the following—" insert—

"(za) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);".

85 In Article 4 of that Order (rehabilitation of persons dealt with in service disciplinary proceedings), after paragraph (1) insert—

"(1A) Section 376(1) to (3) of the Armed Forces Act 2006 ("conviction" and "sentence" in relation to summary hearings and the SAC) apply for the purposes of this Order as they apply for the purposes of that Act."

86 (1) Article 6 of that Order (rehabilitation periods for particular sentences) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (c) omit the "and" at the end;

(b) in sub-paragraph (d) omit "or a corresponding court-martial punishment";

(c) after that sub-paragraph insert—

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"(e) a sentence of detention for life, or for a term exceeding thirty months, passed under section 209 of the Armed Forces Act 2006;

(f) a sentence of detention during Her Majesty's pleasure under section 218 of that Act; and

(g) any of the following passed as a result of any of sections 219 to 222 of that Act—

(i) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003;

(ii) a sentence of detention for public protection under section 226 of that Act;

(iii) an extended sentence under section 227 or 228 of that Act;".

(3) In paragraph (2)—

(a) in Table A, in the fifth entry for "Any sentence of detention" substitute " Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, ";

(b) in Table B—

(i) in the fourth entry, after "1998" insert " or under section 209 of the Armed Forces Act 2006 ";

(ii) in the fifth entry, after "Article 45" insert " or that section 209 ".

(4) After paragraph (4) insert—

"(4A) Where in respect of a conviction an order under section 211 of the Armed Forces Act 2006 (detention and training order) was made, the rehabilitation period applicable to the sentence shall be—

(a) in the case of a person aged 15 or over on conviction, five years if the order was for a term exceeding six months, or three and a half years if it was for six months or less;

(b) in the case of a person aged under 15 on conviction, a period beginning with the date of conviction and ending one year after the date on which the order ceases to have effect.

(4B) Where in respect of a conviction a service community order under the Armed Forces Act 2006 or an overseas community order under that Act was made, the rehabilitation period applicable to the sentence shall be—

(a) in the case of a person aged 18 or over on conviction, 5 years from the date of conviction;

(b) in the case of a person aged under 18 on conviction, two and a half years from the date of conviction or a period beginning with the date of conviction and ending when the order ceases to have effect, whichever is the longer."

(5) In paragraph (9)—

(a) omit sub-paragraph (a);

(b) in sub-paragraph (c) after "1998" insert " or section 209 of the Armed Forces Act 2006 ".

(6) After paragraph (9) insert—

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"(9A) In this Article—

(a) references in paragraphs (1) and (2) to section 209 of the Armed Forces Act 2006 include references to section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;

(b) the reference in paragraph (1) to section 218 of the Armed Forces Act 2006 includes a reference to section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957."

87 In the Schedule to that Order (service disciplinary convictions referred to in Article 7(6)(bb)), after paragraph 6 add—

"Provisions of the Armed Forces Act 2006

7 Any service offence within the meaning of the Armed Forces Act 2006 except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years."

VALID FROM 28/03/2009

Magistrates' Courts Act 1980 (c. 43)

88 In section 19(5) of the Magistrates' Courts Act 1980 (decision as to allocation), for paragraph (b) substitute—

"(b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction)."

89 In section 125D(3) of that Act (execution by person not in possession of warrant), for paragraph (b) substitute—

"(b) a warrant under section 313, 314 or 317 of the Armed Forces Act 2006;".

VALID FROM 28/03/2009

Public Passenger Vehicles Act 1981 (c. 14)

90 In Schedule 3 to the Public Passenger Vehicles Act 1981 (supplementary provisions as to qualifications for PSV operator's licence), in paragraph 1—

(a) in sub-paragraph (6) after "1978" insert " or a service community order or overseas community order under the Armed Forces Act 2006 ";

(b) in sub-paragraph (7) for the words from "a civil offence" to the end substitute " an offence under section 42 of the Armed Forces Act 2006. "

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VALID FROM 28/03/2009

Contempt of Court Act 1981 (c. 49)

91 In section 19 of the Contempt of Court Act 1981 (interpretation), for "Courts-Martial Appeal Court", in both places, substitute " Court Martial Appeal Court ".

92 In Schedule 1 to that Act (times when proceedings are active for purposes of section 2), after paragraph 1 insert—

"**1A** In paragraph 1 the reference to an offence includes a service offence within the meaning of the Armed Forces Act 2006."

VALID FROM 28/03/2009

Senior Courts Act 1981 (c. 54)

93 In section 29 of the Senior Courts Act 1981 (mandatory, prohibiting and quashing orders), for subsection (3A) substitute—

"(3A) The High Court shall have no jurisdiction to make mandatory, prohibiting or quashing orders in relation to the jurisdiction of the Court Martial in matters relating to—

(a) trial by the Court Martial for an offence; or

(b) appeals from the Service Civilian Court."

VALID FROM 28/03/2009

Criminal Justice Act 1982 (c. 48)

94 (1) Section 32 of the Criminal Justice Act 1982 (early release of prisoners) is amended as follows.

(2) In subsection (1) at the end of paragraph (b) add "or

(c) imprisonment to which they were sentenced for an offence under section 42 of the Armed Forces Act 2006 (criminal conduct) as respects which the corresponding offence under the law of England and Wales (within the meaning of that section) is—

(i) an excluded offence;

(ii) an attempt to commit an excluded offence;

(iii) conspiracy to commit an excluded offence; or

(iv) aiding or abetting, counselling, procuring or inciting the commission of an excluded offence,".

(3) After that subsection insert—

"(1A) The reference in subsection (1)(a) to sentences of imprisonment for public protection under section 225 of the Criminal Justice Act 2003 and to extended sentences under 227 of that Act includes such sentences passed as a result of section 219 or 220 of the Armed Forces Act 2006."

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(4) After subsection (2) insert—

"(2A) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of subsection (1)(c)(ii) to (iv) above as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (1)(c)(ii) to (iv).".

(5) In subsection (3)(b) after "(iv)" insert " or (1)(c) ".

VALID FROM 28/03/2009

Representation of the People Act 1983 (c. 2)

95 In section 3(2)(a) of the Representation of the People Act 1983 (disenfranchisement of offenders in prison etc), for the words from "court-martial" to "1976" substitute " court of a service offence within the meaning of the Armed Forces Act 2006 ".

96 In section 3A of that Act (disenfranchisement of offenders detained in mental hospitals), for subsection (5) substitute—

"(5) The reference in subsection (2)(a)(i) to an order under section 37 or 38 of the Mental Health Act 1983 includes such an order made by virtue of Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968)."

VALID FROM 28/03/2009

Mental Health Act 1983 (c. 20)

97 (1) Section 47 of the Mental Health Act 1983 (removal to hospital of prisoners etc) is amended as follows.

(2) In subsection (5)(a)—

(a) after "proceedings" insert " or service disciplinary proceedings ";

(b) after "trial" insert " or a sentence of service detention within the meaning of the Armed Forces Act 2006 ".

(3) After subsection (5) add—

"(6) In subsection (5)(a) "service disciplinary proceedings" means proceedings in respect of a service offence within the meaning of the Armed Forces Act 2006."

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VALID FROM 28/03/2009

Repatriation of Prisoners Act 1984 (c. 47)

98 In section 1 of the Repatriation of Prisoners Act 1984 (warrants for transfer of prisoners etc into or out of UK), after subsection (7) insert—

"(7A) In subsection (7)(a) the reference to an order made by a court or tribunal in the United Kingdom in the course of the exercise of its criminal jurisdiction includes an order made (anywhere) by—

(a) the Court Martial;

(b) the Service Civilian Court;

(c) the Court Martial Appeal Court; or

(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court."

VALID FROM 28/03/2009

Inheritance Tax Act 1984 (c. 51)

99 In section 154(2) of the Inheritance Tax Act 1984 (death on active service etc), for the words from "(not being a member" to "any body of those forces" substitute " a civilian subject to service discipline within the meaning of the Armed Forces Act 2006 ".

Police and Criminal Evidence Act 1984 (c. 60)

100 In section 63A(1B) of the Police and Criminal Evidence Act 1984 (fingerprints and samples: supplementary provisions)—

(a) in paragraph (h) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ";

(b) omit paragraph (k).

Commencement Information

I5 Sch. 16 para. 100(a) in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

VALID FROM 28/03/2009

101 In section 67 of that Act (codes of practice: supplementary), for subsection (12) substitute—

"(12) In subsection (11) "criminal proceedings" includes service proceedings.

(13) In this section "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service

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offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

VALID FROM 28/03/2009

102 (1) Section 72 of that Act (provision supplementary to Part 7 (documentary evidence in criminal proceedings)) is amended as follows.

(2) In subsection (1), in the definition of "proceedings", for paragraphs (a) to (c) substitute " service proceedings. "

(3) After that subsection insert—

"(1A) In subsection (1) "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

VALID FROM 28/03/2009

103 In section 75(3) of that Act (supplementary provision about conviction as evidence of commission of offence), after paragraph (a) insert—

"(aa) section 187 of the Armed Forces Act 2006 (which makes similar provision in respect of service convictions);".

VALID FROM 28/03/2009

104 (1) Section 82 of that Act (interpretation of Part 8 (evidence in criminal proceedings: general)) is amended as follows.

(2) In subsection (1)—

(a) omit the definition of "court-martial";

(b) in the definition of "proceedings", for paragraphs (a) to (c) substitute " service proceedings; ";

(c) in the definition of "Service court" for "a court-martial or a Standing Civilian Court" substitute " the Court Martial or the Service Civilian Court ".

(3) After that subsection insert—

"(1A) In subsection (1) "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

(4) Omit subsection (2).

VALID FROM 28/03/2009

105 (1) Section 113 of that Act (application of Act to armed forces) is amended as follows.

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(2) For subsection (1) substitute—

"(1) The Secretary of State may by order make provision in relation to—

(a) investigations of service offences,

(b) persons arrested under a power conferred by or under the Armed Forces Act 2006,

(c) persons charged under that Act with service offences,

(d) persons in service custody, or

(e) persons convicted of service offences,

which is equivalent to that made by any provision of Part 5 of this Act (or this Part of this Act so far as relating to that Part), subject to such modifications as the Secretary of State considers appropriate."

(3) In subsection (2) for the words from "offences" to the end substitute " service offences ".

(4) In subsection (3) for the words from "concerned with" to the end substitute "concerned with—

(a) the exercise of powers conferred by or under Part 3 of the Armed Forces Act 2006; or

(b) investigations of service offences."

(5) In subsection (4) for "enquiries" substitute " investigations ".

(6) For subsection (9) substitute—

"(9) Subsection (8) above applies to proceedings in respect of an offence under a provision of Part 1 of the Armed Forces Act 2006 other than section 42 (criminal conduct)."

(7) Omit subsection (11).

(8) In subsection (12) for the words from "proceedings" to the end of paragraph (c) substitute " service proceedings ".

(9) After that subsection insert—

"(12A) In this section—

"service offence" has the meaning given by section 50 of the Armed Forces Act 2006;

"criminal proceedings" includes service proceedings;

"service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and

"civilian court" has the meaning given by section 374 of the Armed Forces Act 2006;

and section 376(1) and (2) of that Act (meaning of "convicted" in relation to summary hearings and the SAC) apply for the purposes of subsection (1)(e) above as they apply for the purposes of that Act."

(10) After subsection (13) add—

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***Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

"(14) Section 373(5) and (6) of the Armed Forces Act 2006 (supplementary provisions) apply in relation to an order under this section as they apply in relation to an order under that Act."

VALID FROM 28/03/2009

106 (1) Section 120 of that Act (extent) is amended as follows.

(2) For subsections (6) and (7) substitute—

"(6) Nothing in subsection (1) affects—

(a) the extent of section 113(1) to (7) and (12) to (14);

(b) the extent of the relevant provisions so far as they relate to service proceedings."

(3) In subsection (8)—

(a) for paragraphs (a) and (b) substitute—

"(a) section 67(11) to (13);";

(b) for paragraphs (d) and (e) substitute—

"(d) section 113(8) to (10)."

(4) For subsection (9) substitute—

"(8A) In this section "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

(8B) Section 384 of the Armed Forces Act 2006 (Channel Islands, Isle of Man and British overseas territories) applies in relation to the provisions mentioned in subsection (6)(a) and (b) above as it applies in relation to that Act."

VALID FROM 28/03/2009

Prosecution of Offences Act 1985 (c. 23)

107 In section 19 of the Prosecution of Offences Act 1985 (provision for orders as to costs in other circumstances)—

(a) in subsection (3)(c)(ii) for the words from "to which" to the end substitute " within subsection (3B) below; ";

(b) after subsection (3A) insert—

"(3B) A request is within this subsection if—

(a) it is a request to a registered medical practitioner to make a written or oral report on the medical condition of an offender or defendant; and

(b) it is made by a court—

(i) for the purpose of determining whether or not to include in a community order (within the

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meaning of Part 12 of the Criminal Justice Act 2003) a mental health treatment requirement under section 207 of that Act or make an order under section 37 of the Mental Health Act 1983 (hospital orders and guardianship orders) or otherwise for the purpose of determining the most suitable method of dealing with an offender; or

(ii) in exercise of the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand of a defendant for medical examination).”

VALID FROM 28/03/2009

Housing Act 1985 (c. 68)

108 In section 622(1) of the Housing Act 1985 (minor definitions), for the definition of “regular armed forces of the Crown” substitute—

“ “regular armed forces of the Crown” means the regular forces as defined by section 374 of the Armed Forces Act 2006;”.

VALID FROM 28/03/2009

Debtors (Scotland) Act 1987 (c. 18)

109 In section 73(3)(b) of the Debtors (Scotland) Act 1987, for the words from “section 203” to “Council” substitute “ section 356 of the Armed Forces Act 2006 ”.

VALID FROM 28/03/2009

Coroners Act 1988 (c. 13)

110 In section 8 of the Coroners Act 1988 (duty to hold inquest) after subsection (6) add—

“(7) This section applies in relation to service custody premises (within the meaning of section 300 of the Armed Forces Act 2006) and persons detained in such premises as it applies in relation to prisons and prisoners.”

111 In section 19 of that Act (post-mortem examination without inquest) in subsection (4)(b) after “prison” insert “ or in service custody premises (within the meaning of section 300 of the Armed Forces Act 2006), ”.

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VALID FROM 28/03/2009

Criminal Justice Act 1988 (c. 33)

112 In the Criminal Justice Act 1988, omit section 50 (suspended sentences on certain civilians in service courts).

113 In section 146 of that Act (evidence before service courts)—

(a) in the sidenote, for "courts-martial etc" substitute " certain service courts "; and

(b) for "courts-martial, the Courts-Martial Appeal Court and Standing Civilian Courts" substitute " certain service courts ".

114 In section 172 of that Act (extent), for subsections (7) to (9) substitute—

"(7) Nothing in subsection (1) above affects the extent of section 146 or Schedule 13."

115 (1) Schedule 13 to that Act (evidence before service courts) is amended as follows.

(2) In the title for "courts-martial etc" substitute " service courts ".

(3) In paragraph 1—

(a) in the definition of "procedural instruments", for paragraphs (a) to (d) substitute—

"(a) Court Martial rules within the meaning of the Armed Forces Act 2006;

(b) SCC rules within the meaning of that Act; and

(c) rules under section 49 of the Court Martial Appeals Act 1968;";

(b) in the definition of "Service courts", for paragraphs (a) to (d) substitute—

"(a) the Court Martial;

(b) the Service Civilian Court; and

(c) the Court Martial Appeal Court."

(4) Omit paragraphs 7, 9 and 10.

VALID FROM 28/03/2009

Road Traffic Act 1988 (c. 52)

116 In section 183 of the Road Traffic Act 1988 (application to the Crown), in subsection (6) for the words from "subject to" to "air force law" substitute " subject to service law (within the meaning of the Armed Forces Act 2006) ".

117 (1) Section 184 of that Act (application of sections 5 to 10 to persons subject to service discipline) is amended as follows.

(2) In subsection (1)—

(a) in the words before paragraph (a) for "persons subject to service discipline" substitute " persons subject to service law and civilians subject to service discipline ";

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(b) in paragraph (a) for "the corresponding service offence" substitute " an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales is that offence ";

(c) in paragraph (b) for "naval, military or air force authority" substitute " officer ";

(d) in paragraph (e)—

(i) for "persons subject to service discipline" substitute " persons subject to service law or civilians subject to service discipline ";

(ii) omit "and" at the end of the paragraph;

(e) in paragraph (f) for "the corresponding service offence" substitute " an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales is a traffic offence within the meaning of section 6 ";

(f) after that paragraph add—

"(g) in section 6E as it applies by virtue of paragraph (c) above, subsection (2) were omitted and the reference in subsection (1) to any place were to—

(i) service living accommodation (as defined by section 96 of the Armed Forces Act 2006), or

(ii) premises occupied as a residence (alone or with other persons) by the person on whom the requirement is to be imposed or the person to be arrested."

(3) In subsection (2), for the words from "a person" to "without warrant" substitute " without warrant a person who is subject to service law or is a civilian subject to service discipline ".

(4) For subsection (3) substitute—

"(3) In this section—

"civilian subject to service discipline" has the same meaning as in the Armed Forces Act 2006;

"corresponding offence under the law of England and Wales", in relation to an offence under section 42 of that Act, has the meaning given by that section;

"member of the provost staff" means—

(a) anyone who is, or by reason of section 375(5) of that Act is to be treated as, a service policeman for the purposes of that Act; or

(b) a person lawfully exercising authority on behalf of a provost officer (within the meaning of that Act);

"subject to service law" has the same meaning as in that Act."

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VALID FROM 28/03/2009

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

118 In Article 66 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (codes of practice – supplementary), for paragraph 11 substitute—

"(11) In paragraph (10) "criminal proceedings" includes service proceedings.

(11A) In this Article "service proceedings" means proceedings before a court (other than a civilian court) in respect of a service offence; and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

119 In Article 70 of that Order (interpretation of Part IX (evidence in criminal proceedings – general))—

(a) in paragraph (1), in the definition of "Service court" for "a court-martial or a Standing Civilian Court" substitute " the Court Martial or the Service Civilian Court ";

(b) omit paragraph (2).

120 In Article 73(3) of that Order (supplementary provision about conviction as evidence of commission of offence), before sub-paragraph (b) insert—

"(aa) section 187 of the Armed Forces Act 2006 (which makes similar provision in respect of service convictions);".

VALID FROM 28/03/2009

Courts and Legal Services Act 1990 (c. 41)

121 In section 119(1) of the Courts and Legal Services Act 1990 (interpretation), in the definition of "court"—

(a) in paragraph (a), at the end insert " and ";

(b) omit paragraph (b).

VALID FROM 28/03/2009

Armed Forces Act 1991 (c. 62)

122 In section 24 of the Armed Forces Act 1991 (extent etc) for subsections (4) and (5) substitute—

"(4) Section 384 of the Armed Forces Act 2006 applies in relation to Part 3 of this Act as it applies in relation to that Act."

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VALID FROM 28/03/2009

Local Government Finance Act 1992 (c. 14)

123 (1) Schedule 1 to the Local Government Finance Act 1992 (persons disregarded for purposes of discount) is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)(a) for "of a court" substitute " or award ";

(b) for sub-paragraph (2) substitute—

"(2) This sub-paragraph applies to—

(a) an order of a court in the United Kingdom;

(b) an order or award (whether or not of a court) made (anywhere) in proceedings in respect of a service offence within the meaning of the Armed Forces Act 2006.";

(c) in sub-paragraph (3), omit "or" at the end of paragraph (a) and after that paragraph insert—

"(aa) is temporarily released under rules under section 300 of the Armed Forces Act 2006; or";

(d) in sub-paragraph (6)(a) for the words from "imprisoned" to the end substitute " in service custody; and ".

(3) In paragraph 6(2)(b) for the words from "subject to" to the end substitute " subject to service law within the meaning of the Armed Forces Act 2006. "

VALID FROM 28/03/2009

Sexual Offences (Amendment) Act 1992 (c. 34)

124 In section 2 of the Sexual Offences (Amendment) Act 1992 (offences to which the Act applies), for subsection (4) substitute—

"(4) This Act applies to an offence under section 42 of the Armed Forces Act 2006 if the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence within a paragraph of subsection (1) above."

125 In section 3 of that Act (power to displace restrictions in section 1), after subsection (6A) insert—

"(6B) Where a person is charged with an offence to which this Act applies by virtue of section 2(4), this section applies as if—

(a) in subsections (1) and (2) for any reference to the judge there were substituted a reference to the court; and

(b) subsections (6) and (6A) were omitted."

126 In section 4 of that Act (special rules for cases of incest or buggery), omit subsection (9).

127 (1) Section 6 of that Act (interpretation etc) is amended as follows.

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(2) In subsection (1) omit the definitions of "corresponding civil offence" and "service offence".

(3) After that subsection insert—

"(1A) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this Act as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to any provision of this Act."

(4) In subsection (3) for "a service offence" substitute " an offence under section 42 of the Armed Forces Act 2006 ".

(5) In subsection (3A) for the words from "a service offence" to " as charged with the offence " substitute " an offence under section 42 of the Armed Forces Act 2006 if he is charged (under Part 5 of that Act) with the offence ".

128 Omit section 7 of that Act (courts-martial).

129 In section 8 of that Act (short title, commencement and extent, etc) omit subsection (7).

VALID FROM 28/03/2009

Criminal Justice and Public Order Act 1994 (c. 33)

130 In section 39 of the Criminal Justice and Public Order Act 1994 (power to apply sections 34 to 38 to armed forces), for subsection (2) substitute—

"(2) This section applies to any proceedings before an officer or court in respect of a service offence (other than proceedings before a civilian court); and "service offence" and "civilian court" here have the same meanings as in the Armed Forces Act 2006."

VALID FROM 28/03/2009

Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)

131 In Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995, in paragraph 5 for sub-paragraph (1) substitute—

"(1) In paragraph 1(3)(a) the reference to an offence mentioned in paragraph 5 of Schedule 2 includes an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence mentioned in that paragraph.

(1A) In paragraphs 3 and 4, references to an offence under the law of any part of the United Kingdom include an offence under section 42 of that Act.

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(1B) In paragraph 3(2)(c) the reference to a community order includes a service community order or overseas community order under that Act.”

VALID FROM 28/03/2009

Pensions Act 1995 (c. 26)

132 In section 166(5)(a) of the Pensions Act 1995 (pensions on divorce etc), for the words from “section 203(1) and (2) of the Army Act 1955” to “1957” substitute “ section 356 of the Armed Forces Act 2006 ”.

VALID FROM 28/03/2009

Criminal Procedure (Scotland) Act 1995 (c. 46)

133 In section 307 of the Criminal Procedure (Scotland) Act 1995 (interpretation)—

(a) in subsection (2)—

(i) for “court-martial”, both times it occurs, substitute “ service court ”;

(ii) for the words “under the” to the end substitute “ for an offence under section 42 of the Armed Forces Act 2006. ”;

(b) after that subsection insert—

“(2A) In subsection (2), “service court” means—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Court Martial Appeal Court; or

(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.”

VALID FROM 28/03/2009

Disability Discrimination Act 1995 (c. 50)

134 In section 68 of the Disability Discrimination Act 1995 (interpretation)—

(a) in subsection (1) for the definition of “criminal proceedings” substitute—

““criminal proceedings” includes service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006);”;

(b) in subsection (1C), in the definition of “offence” for the words from “any offence” to “1957” substitute “ any service offence within the meaning of the Armed Forces Act 2006 ”.

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VALID FROM 28/03/2009

Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

135 In Article 162(5)(a) of the Pensions (Northern Ireland) Order 1995 (pensions on divorce etc), for the words from "section 203(1) and (2) of the Army Act 1955" to "1957" substitute " section 356 of the Armed Forces Act 2006 ".

VALID FROM 01/01/2008

Employment Rights Act 1996 (c. 18)

136 In section 192 of the Employment Rights Act 1996 (armed forces)—

(a) in subsection (4)—

(i) in paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint ";

(ii) in paragraph (b) for "complaint" substitute " service complaint ";

(b) in subsection (5)(b) for "the service procedures for the redress of complaints" substitute " the service complaint procedures ";

(c) for subsection (6) substitute—

"(6A) In subsections (4) and (5)—

"service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section."

VALID FROM 28/03/2009

Criminal Procedure and Investigations Act 1996 (c. 25)

137 For section 78 of the Criminal Procedure and Investigations Act 1996 substitute—

"**78 Application to armed forces**

(1) Subject to subsection (2), nothing in this Act applies in relation to—

(a) proceedings before a court (other than a civilian court) in respect of a service offence; or

(b) any investigation conducted with a view to its being ascertained whether a person should be charged with a service offence or whether a person charged with such an offence is guilty of it.

(2) The Secretary of State may by order—

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(a) make as regards any proceedings mentioned in subsection (1)(a) provision equivalent to the provisions contained in or made under Part 1, subject to such modifications as he considers appropriate;

(b) make as regards any investigation mentioned in subsection (1)(b) provision equivalent to the provisions contained in or made under Part 2, subject to such modifications as he considers appropriate.

(3) An order under this section may make provision in such way as the Secretary of State considers appropriate, and may in particular apply any of the provisions concerned, with or without modifications.

(4) In this section—

(a) "civilian court" and "service offence" have the same meanings as in the Armed Forces Act 2006;

(b) references to charges are to charges brought under Part 5 of that Act."

VALID FROM 28/03/2009

Armed Forces Act 1996 (c. 46)

138 In section 6 of the Armed Forces Act 1996 (abrogation of common law corroboration rules), in subsection (3) for the words from "for any offence" to the end substitute "before—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Service Civilian Court;

(d) the Court Martial Appeal Court; or

(e) the Supreme Court on an appeal brought from the Court Martial Appeal Court."

VALID FROM 28/03/2009

F15 . . .

Textual Amendments

F15 Sch. 16 para. 139 and cross-heading repealed (1.12.2008) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), **Sch. 16**; S.I. 2008/3068, art. 5, Sch. (with arts. 6-13)

F15 139 . . . . . .

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VALID FROM 28/03/2009

Social Security (Recovery of Benefits) Act 1997 (c. 27)

140 In Part 1 of Schedule 1 to the Social Security (Recovery of Benefits) Act 1997 (compensation payments), in paragraph 2 after "2000" insert " or section 175 of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Crime (Sentences) Act 1997 (c. 43)

141 In section 31A(5) of the Crime (Sentences) Act 1997 (termination of licences of persons serving preventive sentences), in the definition of "preventive sentence", at the end insert " (including such a sentence of imprisonment or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) ".

142 (1) Section 34 of that Act (meaning of "life sentence" for purposes of Chapter 2 of Part 2) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (d) at the end insert " (including one passed as a result of section 219 of the Armed Forces Act 2006 ";

(b) in paragraph (e) at the end insert " (including one passed as a result of section 221 of the Armed Forces Act 2006) ";

(c) after that paragraph add—

"(f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;

(g) a sentence under section 218 of that Act (detention at Her Majesty's pleasure)."

(3) Omit subsection (3).

143 In section 47(4) of that Act (application of section 47), at the end of paragraph (b) insert " or " and for paragraphs (c) and (d) substitute—

"(c) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968)."

144 In section 57 of that Act (extent etc), for subsection (8) substitute—

"(8) Nothing in subsection (4) above affects the extent of section 47 of this Act so far as it confers a power on the Court Martial or the Court Martial Appeal Court."

145 In Schedule 1 to that Act (transfer of prisoners within the British Islands), in paragraph 20(1) (interpretation)—

(a) before the definition of "prison" insert—

"detention and training order" includes an order under section 211 of the Armed Forces Act 2006;";

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(b) in the definition of "sentence of imprisonment", after "detention" insert " (except a sentence of service detention within the meaning of the Armed Forces Act 2006) ".

Police Act 1997 (c. 50)

146 (1) Section 93 of the Police Act 1997 (authorisations to interfere with property etc) is amended as follows.

(2) In subsection (3)(aa) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

(3) In subsection (5)(eb) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

(4) In subsection (6A)(a) for "subject to service discipline" substitute " who is subject to service law or is a civilian subject to service discipline ".

(5) For subsection (6B) substitute—

"(6B) In subsection (6A) "subject to service law" and "civilian subject to service discipline" have the same meanings as in the Armed Forces Act 2006."

Commencement Information
I6 Sch. 16 para. 146(1) in force at 4.6.2007 for specified purposes by S.I. 2007/1442, **art. 2(1)**
I7 Sch. 16 para. 146(2)(3) in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

147 In section 94(2)(db) of that Act (authorisations given in absence of authorising officer), for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

Commencement Information
I8 Sch. 16 para. 147 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

VALID FROM 28/03/2009

148 In section 108(1) of that Act (interpretation of Part 3), in the definition of "criminal proceedings", for paragraphs (a) to (c) substitute " proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006; ".

149 In section 113B(10) of that Act (enhanced criminal record certificates: meaning of "police force"), for paragraphs (a) and (b) substitute—

"(a) the Royal Navy Police;".

Commencement Information
I9 Sch. 16 para. 149 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

Status: *Point in time view as at 04/06/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/01/2008

Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6))

150 (1) Article 71 of the Race Relations (Northern Ireland) Order 1997 (application to Crown etc) is amended as follows.

(2) In paragraph (8)—

(a) in sub-paragraph (a) for the words from "a complaint" to "those procedures" substitute " a service complaint in respect of the act complained of ";

(b) in sub-paragraph (b) for "complaint" substitute " service complaint ".

(3) In paragraph (10) for "the service redress procedures" substitute " the service complaint procedures ".

(4) In paragraph (12), for the definition of "the service redress procedures" substitute—

""service complaint" means a complaint under section 334 of the Armed Forces Act 2006;

"the service complaint procedures" means the procedures prescribed by regulations under that section;".

VALID FROM 28/03/2009

Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (S.I. 1997/1183 (N.I. 12))

151 In Part 1 of Schedule 1 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (compensation payments), in paragraph 2 after "1994" insert " or section 175 of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Landmines Act 1998 (c. 33)

152 In section 5(7) of the Landmines Act 1998 (international military operations), in the definition of "Her Majesty's armed forces" for "Army Act 1955" substitute " Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Crime and Disorder Act 1998 (c. 37)

153 In section 38(4)(h) of the Crime and Disorder Act 1998 (youth justice services), after "detention and training order" insert " (including an order under section 211 of the Armed Forces Act 2006) ".

Status: *Point in time view as at 04/06/2007. This version of this Act contains provisions that are not valid for this point in time.*
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154 In section 41(5) of that Act (functions of Youth Justice Board)—

(a) in paragraph (i), for sub-paragraphs (i) and (ii) substitute—

"(i) secure accommodation, within the meaning given by section 107 of the Powers of Criminal Courts (Sentencing) Act 2000, for the purpose of detaining persons subject to orders under section 100, 104(3)(a) or 105(2) of that Act or section 211 or 214 of the Armed Forces Act 2006;

(ii) accommodation which is or may be used for the purpose of detaining persons sentenced under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 209 or 218 of the Armed Forces Act 2006;";

(b) in paragraph (j), for sub-paragraphs (i) and (ii) substitute—

"(i) secure accommodation, within the meaning given by section 107 of the Powers of Criminal Courts (Sentencing) Act 2000, to be used for detaining a person in accordance with a determination under section 102(1), 104(3)(a) or 105(2) of that Act or section 214(3) of the Armed Forces Act 2006; or

(ii) accommodation to be used for detaining a person in accordance with a direction by the Secretary of State under section 92 of the Powers of Criminal Courts (Sentencing) Act 2000 or a determination by the Secretary of State under section 210 or 218(3) of the Armed Forces Act 2006;".

155 In Schedule 3 to that Act (procedure where persons sent for trial under section 51), in paragraph 9(5) (definition of "previous conviction") for paragraph (b) substitute—

"(b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction)."

VALID FROM 28/03/2009

Human Rights Act 1998 (c. 42)

156 In section 4(5)(c) of the Human Rights Act 1998 (declaration of incompatibility), for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ".

157 In section 5(5) of that Act (right of Crown to intervene), for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ".

Status: *Point in time view as at 04/06/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 28/03/2009

Youth Justice and Criminal Evidence Act 1999 (c. 23)

158 In section 44(13)(c) of the Youth Justice and Criminal Evidence Act 1999 (reporting restrictions on alleged offences involving persons under 18: meaning of "person subject to service law"), for sub-paragraphs (i) and (ii) substitute—

"(i) a person subject to service law within the meaning of the Armed Forces Act 2006; or

(ii) a civilian subject to service discipline within the meaning of that Act."

159 In section 63(1) of that Act (interpretation of Part 2), in the definition of "service court", for paragraphs (a) to (c) substitute—

"(a) the Court Martial;

(b) the Service Civilian Court; or

(c) the Court Martial Appeal Court."

160 In section 68 of that Act (extent etc), omit subsection (10).

161 In Schedule 7 to that Act (transitional provision), in paragraph 6(6)—

(a) in paragraph (a) for the words from "the prosecuting authority" to the end substitute " the charge is brought under section 122 of the Armed Forces Act 2006; ".

(b) for paragraph (b) substitute—

"(b) proceedings on appeal are to be taken to be instituted—

(i) in the case of an appeal under the Court Martial Appeals Act 1968, when the application for leave to appeal is lodged in accordance with section 9 of that Act;

(ii) in the case of an appeal under section 285 of the Armed Forces Act 2006 (except one for which leave is required), when the notice of appeal is given;

(iii) in the case of an appeal under that section for which leave is required, when the application for leave to appeal is lodged;

(iv) in the case of a reference under section 34 of the Court Martial Appeals Act 1968 or section 12A or 12B of the Criminal Appeal Act 1995, when the reference is made."

VALID FROM 28/03/2009

Welfare Reform and Pensions Act 1999 (c. 30)

162 In section 44(1)(a) of the Welfare Reform and Pensions Act 1999 (disapplication of restrictions on alienation), for the words from "section 203(1) and (2) of the

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Army Act 1955" to "1957" substitute " section 356 of the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

163 (1) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of tariffs for discretionary life sentences) is amended as follows.

(2) In subsection (3)(b) for the words from "below" to "custody)" substitute " (crediting periods of remand in custody) or under section 246 of the Armed Forces Act 2006 (equivalent provision for service courts) ".

(3) In each of subsections (7) and (8) for "a court-martial" substitute " the Court Martial ".

164 In section 99 of that Act (conversion of sentence of detention to sentence of imprisonment)—

(a) in subsection (5) after paragraph (a) insert—

"(aa) a sentence of detention under section 209 or 218 of the Armed Forces Act 2006,";

(b) after that subsection add—

"(6) References in this section to a sentence under section 226 or 228 of the Criminal Justice Act 2003 include such a sentence passed as a result of section 221 or 222 of the Armed Forces Act 2006."

165 (1) Section 106A of that Act (which relates to the interaction of detention and training orders with sentences of detention, and is modified by section 213 of this Act) is amended as follows.

(2) In subsection (1) (definitions)—

(a) in paragraph (a) of the definition of "sentence of detention", after "above" insert " or section 209 of the Armed Forces Act 2006 ";

(b) after that definition insert " and references in this section to a sentence of detention under section 228 of the 2003 Act include such a sentence passed as a result of section 222 of the Armed Forces Act 2006. "

(3) In subsection (8) (provisions for the purposes of which a person subject to a sentence of detention and a detention and training order is to be treated as subject only to the sentence of detention)—

(a) in paragraph (b), for "and section 235" to the end substitute " , section 235 of the 2003 Act and section 210 of the Armed Forces Act 2006 (place of detention etc), ";

(b) at the end of paragraph (c) add ", and

(d) section 214 of the Armed Forces Act 2006 (offences committed during a detention and training order under that Act)."

166 For section 114 of that Act substitute—

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"**114 Offences under service law**

(1) Where—

(a) a person has at any time been convicted of an offence under section 42 of the Armed Forces Act 2006, and

(b) the corresponding offence under the law of England and Wales (within the meaning given by that section) was a class A drug trafficking offence or a domestic burglary,

the relevant section of this Chapter shall have effect as if he had at that time been convicted in England and Wales of that corresponding offence.

(2) Subsection (3) of section 113 applies for the purposes of this section as it applies for the purposes of that section.

(3) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this section as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this section."

167 (1) Section 134 of that Act (effect of compensation order on subsequent award of damages in civil proceedings) is amended as follows.

(2) In subsections (1) and (2) omit "or award".

(3) For subsection (3) substitute—

"(3) In this section "service compensation order" means a service compensation order under the Armed Forces Act 2006."

168 In section 163 of that Act (general definitions), in the definition of "court", for "a court-martial" substitute " the Court Martial ".

Regulation of Investigatory Powers Act 2000 (c. 23)

VALID FROM 28/03/2009

169 In section 18(11) of the Regulation of Investigatory Powers Act 2000 (exceptions to section 17: meaning of "relevant judge"), for paragraph (c) substitute—

"(c) in relation to proceedings before the Court Martial, the judge advocate for those proceedings; or".

170 In section 32(6)(g) of that Act (senior authorising officers for intrusive surveillance), for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

Commencement Information

I10 Sch. 16 para. 170 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

171 (1) Section 33 of that Act (rules for grant of authorisations of surveillance etc) is amended as follows.

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(2) In subsection (6)(d)—

(a) for "Royal Navy Regulating Branch," substitute " Royal Navy Police ";

(b) for "person subject to service discipline" substitute " person subject to service law or a civilian subject to service discipline ".

(3) For subsection (7) substitute—

"(7) In subsection (6) "subject to service law" and "civilian subject to service discipline" have the same meanings as in the Armed Forces Act 2006."

Commencement Information

I11 Sch. 16 para. 171(1) in force at 4.6.2007 for specified purposes by S.I. 2007/1442, **art. 2(1)**

I12 Sch. 16 para. 171(2)(a) in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

172 In section 34(4)(g) of that Act (persons entitled to grant authorisation in the senior officer's absence)—

(a) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ";

(b) for "that Branch" substitute " that force ".

Commencement Information

I13 Sch. 16 para. 172 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

173 In section 41(7) of that Act (Secretary of State authorisations), for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

Commencement Information

I14 Sch. 16 para. 173 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

174 In section 56(1) of that Act (interpretation of Part 3 (investigation of certain electronic data)), in the definition of "chief officer of police", in paragraph (f) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

Commencement Information

I15 Sch. 16 para. 174 in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

175 (1) Section 81 of that Act (general interpretation) is amended as follows.

(2) In subsection (1)—

(a) in the definition of "Her Majesty's forces", for "Army Act 1955" substitute " Armed Forces Act 2006 ";

(b) in the definition of "legal proceedings" after "tribunal" insert " or proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006 ";

(c) in the definition of "police force", in paragraph (g) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ".

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(3) In subsection (4), for paragraphs (a) to (c) substitute " proceedings before a court in respect of a service offence within the meaning of the Armed Forces Act 2006, ".

(4) In subsection (6)(b)—

(a) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ";

(b) for the words from "that Branch" to the end substitute " that force who is not for the time being attached to or serving either with that force or with another of those police forces ".

Commencement Information

I16 Sch. 16 para. 175(1) in force at 4.6.2007 for specified purposes by S.I. 2007/1442, **art. 2(1)**

I17 Sch. 16 para. 175(2)(c)(4) in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

VALID FROM 28/03/2009

Freedom of Information Act 2000 (c. 36)

176 In section 30 of the Freedom of Information Act 2000 (investigations and proceedings conducted by public authorities), for subsection (5) substitute—

"(5) In this section—

"criminal proceedings" includes service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006);

"offence" includes a service offence (as defined by section 50 of that Act)."

VALID FROM 01/01/2008

Criminal Justice and Court Services Act 2000 (c. 43)

VALID FROM 28/03/2009

177 In section 1 of the Criminal Justice and Court Services Act 2000 (purposes of Chapter 1 of Part 1 (national probation service)), in subsection (2)(a) after "2003)" insert " and service community orders and overseas community orders under the Armed Forces Act 2006 ".

178 After section 5 of that Act insert—

"**5A Local probation boards and service justice**

(1) A local probation board may, in pursuance of arrangements made with the Secretary of State, carry out activities anywhere in the world in relation to persons who are or have been subject to proceedings before service courts.

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(2) Any activities carried out in relation to such persons must correspond to activities which the board is required or authorised to carry out in relation to persons who have been charged with or convicted of criminal offences.

(3) In this section "service court" means—

(a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);

(b) a summary appeal court constituted under section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957; or

(c) a Standing Civilian Court."

VALID FROM 28/03/2009

179 (1) Section 27 of that Act (armed forces offences equivalent to "an offence against a child") is amended as follows.

(2) In subsection (2) for "an armed forces offence" substitute " an offence under section 42 of the Armed Forces Act 2006 ".

(3) For subsections (3) to (5) substitute—

"(3) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of subsection (2) of this section as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (2) of this section."

VALID FROM 28/03/2009

180 (1) Section 30 of that Act (disqualification from working with children: supplemental) is amended as follows.

(2) In subsection (1)—

(a) in the definition of "guardianship order", omit the words from "the Army" to "1957 or";

(b) in the definition of "qualifying sentence"—

(i) in paragraph (d) after "2000" insert " or section 209 of the Armed Forces Act 2006 ";

(ii) in paragraph (e) after "or more" insert " under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 211 of the Armed Forces Act 2006 ";

(iii) omit paragraph (f);

(c) in the definition of "relevant order", for "a court-martial or the Courts-Martial Appeal Court" substitute " the Court Martial or the Court Martial Appeal Court ";

(d) in the definition of "superior court", for "a court-martial or the Courts-Martial Appeal Court" substitute " the Court Martial or the Court Martial Appeal Court ".

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(3) Omit subsection (2).

(4) In subsection (3), omit ", or to a sentence of detention imposed by a court-martial or the Courts-Martial Appeal Court,".

VALID FROM 28/03/2009

181 In section 31(2) of that Act (appeals) for "a court-martial", in both places, substitute " the Court Martial ".

VALID FROM 28/03/2009

182 In section 33 of that Act (provisions relating to application for review of disqualification)—

(a) in subsection (7), in the definition of "order for admission to hospital", omit paragraph (a);

(b) in subsection (8)(a), for "(f)" substitute " (e) ".

VALID FROM 28/03/2009

183 In section 42 of that Act (interpretation of Part 2 (protection of children)) omit—

(a) in subsection (1), the definition of "armed forces offence";

(b) subsection (2).

VALID FROM 28/03/2009

184 In section 62(5) of that Act (meaning of "sentence of imprisonment" for purposes of section 62)—

(a) in paragraph (f) at the end insert " (including one passed as a result of section 221 or 222 of the Armed Forces Act 2006) ";

(b) after that paragraph insert—

"(g) a sentence of detention under section 209 or 218 of the Armed Forces Act 2006, and

(h) an order under section 211 of that Act,".

VALID FROM 28/03/2009

185 In section 64(5) of that Act (meaning of "sentence of imprisonment" for purposes of section 64)—

(a) in paragraph (f) at the end insert " (including one passed as a result of section 221 or 222 of the Armed Forces Act 2006) ";

(b) after that paragraph insert—

"(g) a sentence of detention under section 209 or 218 of the Armed Forces Act 2006, and

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(h) an order under section 211 of that Act,".

VALID FROM 28/03/2009

186 In section 81(2) of that Act (extent)—

(a) in paragraph (a) for "courts-martial or the Courts-Martial Appeal Court" substitute " the Court Martial or the Court Martial Appeal Court ";

(b) omit paragraph (h).

Criminal Justice and Police Act 2001 (c. 16)

187 In section 88(8) of the Criminal Justice and Police Act 2001 (functions of Central Police Training and Development Authority)—

(a) in paragraph (g) for "Royal Navy Regulating Branch" substitute " Royal Navy Police ";

(b) omit paragraph (j).

Commencement Information

I18 Sch. 16 para. 187(a) in force at 4.6.2007 by S.I. 2007/1442, **art. 2(1)**

VALID FROM 28/03/2009

International Criminal Court Act 2001 (c. 17)

188 In section 32(6) of the International Criminal Court Act 2001 (meaning of "prisoner" in that section) for "detention" substitute " service detention (within the meaning of the Armed Forces Act 2006) ".

189 In section 67(3) of that Act (definition of person subject to UK service jurisdiction), for paragraphs (a) to (c) substitute " a person subject to service law, or a civilian subject to service discipline, within the meaning of the Armed Forces Act 2006. "

190 In section 75 of that Act (meaning of "national court" and "service court" in that Act) for the definition of "service court" substitute—

""service court" means—

(a) the Court Martial;

(b) the Service Civilian Court;

(c) the Court Martial Appeal Court; or

(d) the Supreme Court on an appeal brought from the Court Martial Appeal Court."

191 In Part 1 of Schedule 2 to that Act (delivery up of persons subject to criminal proceedings etc), in paragraph 5(5)(b) (meaning of "prisoner" in paragraph 5)

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for "detention" substitute " service detention (within the meaning of the Armed Forces Act 2006) ".

VALID FROM 28/03/2009

Armed Forces Act 2001 (c. 19)

192 (1) Section 26 of the Armed Forces Act 2001 (power to make provision for orders as to costs) is amended as follows.

(2) In subsection (1) for the words from "courts-martial" to "services Acts" substitute " any of the Court Martial, the Summary Appeal Court, the Service Civilian Court and the Court Martial Appeal Court, in any case where the court is satisfied that one party to proceedings before that court ".

(3) In subsection (2)(d) for "a Standing Civilian Court" substitute " the Service Civilian Court ".

(4) In subsection (3)—

(a) in paragraph (a) for the words from "a court-martial" to the end substitute " the Court Martial under the regulations may appeal to the Court Martial Appeal Court; ";

(b) in paragraph (b) for "a summary appeal court or a Standing Civilian Court" substitute " the Summary Appeal Court or the Service Civilian Court ".

(5) Omit subsection (4).

193 (1) Section 27 of that Act (costs against legal representatives) is amended as follows.

(2) In subsection (1) for the words from the beginning to "may disallow" substitute "In any proceedings before—

(a) the Court Martial,

(b) the Summary Appeal Court,

(c) the Service Civilian Court, or

(d) the Court Martial Appeal Court,

the court may disallow ".

(3) In subsection (2)—

(a) in paragraph (a) for the words from "a court-martial" to the end substitute " the Court Martial under subsection (1) may appeal to the Court Martial Appeal Court; ";

(b) in paragraph (b) for "a summary appeal court or a Standing Civilian Court" substitute " the Summary Appeal Court or the Service Civilian Court ".

(4) In subsection (3), in the definition of "legal or other representative" for paragraph (b) substitute—

"(b) a person appointed under section 365 of the Armed Forces Act 2006 (prosecuting officers);".

194 (1) Section 28 of that Act (provisions supplementary to sections 26 and 27) is amended as follows.

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(2) In subsection (1)—

(a) for "prosecuting authority of its" substitute " Director of Service Prosecutions ("the Director") of his ";

(b) for "under the services Acts" substitute " before a court mentioned in section 27(1) ";

(c) for "prosecuting authority" in the second place where it occurs substitute " Director ".

(3) In subsection (2) for "prosecuting authority" in both places substitute " Director ".

(4) Omit subsections (3) to (5).

195 (1) Section 30 of that Act (conditional release from custody) is amended as follows.

(2) In subsection (1) for "a court-martial, a summary appeal court or a Standing Civilian Court" substitute " the Court Martial, the Summary Appeal Court or the Service Civilian Court ".

(3) In subsection (2)—

(a) in paragraph (a) for the words from "a court-martial" to the end substitute " the Court Martial, the determination of an appeal to the Court Martial Appeal Court, ";

(b) in paragraph (b) for the words from "a summary appeal court" to "1957 Act" substitute " the Summary Appeal Court, the determination of an appeal to the High Court under section 149(2) of the Armed Forces Act 2006 ";

(c) in paragraph (c) for the words from "a Standing Civilian Court" to the end substitute " the Service Civilian Court, the determination of an appeal to the Court Martial or of an appeal from the Court Martial to the Court Martial Appeal Court. "

(4) In subsection (4)—

(a) for paragraph (d) substitute—

"(d) create service offences punishable by any of the punishments mentioned in the Table in section 164 of the Armed Forces Act 2006,";

(b) in paragraph (e) for the words from "1955 Acts" to "Armed Forces Act 1976 (c. 52)" substitute " Court Martial Appeals Act 1968 or the Armed Forces Act 2006 ".

(5) For subsections (5) and (6) substitute—

"(5A) Where an order under this section creates an offence punishable with imprisonment, the maximum term it may authorise is two years."

VALID FROM 28/03/2009

Anti-terrorism, Crime and Security Act 2001 (c. 24)

196 In Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash), in paragraph 16(3)(a) (case where compensation order made),

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after "2000 (c. 6)," insert " or in pursuance of a service compensation order under the Armed Forces Act 2006, ".

VALID FROM 28/03/2009

Proceeds of Crime Act 2002 (c. 29)

197 In section 308(4)(a) of the Proceeds of Crime Act 2002 (general exceptions), after "2000 (c. 6)" insert " or in pursuance of a service compensation order under the Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Railways and Transport Safety Act 2003 (c. 20)

198 In section 90(1) of the Railways and Transport Safety Act 2003 (Crown application etc), for the words from "Her Majesty's" to "Army Act 1955 (c. 18)," substitute " any of Her Majesty's forces (within the meaning of the Armed Forces Act 2006) ".

199 In section 101(1) of that Act (military application), for the words from "Her Majesty's" to "Army Act 1955 (c. 18)" substitute " any of Her Majesty's forces (within the meaning of the Armed Forces Act 2006) ".

VALID FROM 28/03/2009

Extradition Act 2003 (c. 41)

200 In section 3 of the Extradition Act 2003 (arrest under certified Part 1 warrant)—

(a) for subsections (3) and (4) substitute—

"(3) The warrant may be executed by a service policeman anywhere, but only if the person is subject to service law or is a civilian subject to service discipline.";

(b) omit subsection (6).

201 In section 5 of that Act (provisional arrest), for subsections (3) to (5) substitute—

"(3) A service policeman may arrest a person under subsection (1) only if the person is subject to service law or is a civilian subject to service discipline.

(4) If a service policeman has power to arrest a person under subsection (1) he may exercise the power anywhere."

202 In section 71 of that Act (arrest warrant following extradition request)—

(a) for subsection (6) substitute—

"(6) If a warrant issued under this section—

(a) is directed to a service policeman, and

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(b) is in respect of a person subject to service law or a civilian subject to service discipline,

it may be executed anywhere.";

(b) omit subsection (8).

203 In section 73 of that Act (provisional warrant)—

(a) for subsection (7) substitute—

"(7) If a warrant issued under this section—

(a) is directed to a service policeman, and

(b) is in respect of a person subject to service law or a civilian subject to service discipline,

it may be executed anywhere.";

(b) omit subsection (9).

204 In section 155 of that Act (service personnel) for the words from "military law" to the end substitute " service law. "

205 In section 216 of that Act (interpretative provisions)—

(a) after subsection (7) insert—

"(7A) "Civilian subject to service discipline" has the same meaning as in the Armed Forces Act 2006."

(b) for subsections (13) and (14) substitute—

"(13) "Service policeman" means anyone who is, or by reason of section 375(5) of the Armed Forces Act 2006 is to be treated as, a service policeman for the purposes of that Act.

(13A) "Subject to service law" has the same meaning as in that Act."

VALID FROM 28/03/2009

Sexual Offences Act 2003 (c. 42)

206 In section 81(3)(b) of the Sexual Offences Act 2003 (persons formerly subject to Part 1 of Sex Offenders Act 1997), omit "or a term of service detention".

207 In section 116 of that Act (qualifying offenders for purposes of section 114)—

(a) in subsection (2)(c), after "93" insert " or 93A ";

(b) after subsection (2) insert—

"(2A) In subsection (2)(c) references to the corresponding civil offence are to be read, in relation to an offence within paragraph 93A of Schedule 3, as references to the corresponding offence under the law of England and Wales."

208 (1) Section 131 of that Act (young offenders: application) is amended as follows.

(2) In paragraph (a) after "detention and training order" insert " (including an order under section 211 of the Armed Forces Act 2006) ".

(3) In paragraph (h) after "2000 (c. 6)," insert " section 209 or 218 of the Armed Forces Act 2006, ".

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(4) In paragraph (k) after "2003" insert " (including one passed as a result of section 221 of the Armed Forces Act 2006) ".

(5) In paragraph (l) for "that Act" substitute " the Criminal Justice Act 2003 (including one passed as a result of section 222 of the Armed Forces Act 2006) ".

209 (1) Section 133 (Part 2: general interpretation) is amended as follows.

(2) In subsection (1)—

(a) for the definition of "order for conditional discharge" substitute—

""order for conditional discharge" means an order under any of the following provisions discharging the offender conditionally—

(a) section 12 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) Article 4 of the Criminal Justice (Northern Ireland) Order 1996;

(c) section 185 of the Armed Forces Act 2006;

(d) paragraph 3 of Schedule 5A to the Army Act 1955 or Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;";

(b) in the definition of "the period of conditional discharge" for paragraphs (c) to (e) substitute—

"(c) section 185(2) of the Armed Forces Act 2006;";

(c) after the definition of "risk of sexual harm order" insert—

""service detention" has the meaning given by section 374 of the Armed Forces Act 2006;";

(d) omit the definition of "term of service detention".

(3) In subsection (1A) after paragraph (b) insert—

"(ba) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968),".

210 In section 134(1) of that Act (conditional discharges and probation orders), after paragraph (c) insert—

"(ca) section 187(1) of the Armed Forces Act 2006 (conviction with absolute or conditional discharge deemed not to be a conviction);".

211 (1) Section 137 of that Act (service courts) is amended as follows.

(2) In subsection (1)(d), for the words from "the offence under section 70" to the end substitute " an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence. "

(3) In subsection (4) for "a court-martial or Standing Civilian Court" substitute " the Court Martial or the Service Civilian Court ".

(4) After that subsection add—

"(5) In subsection (1)(a) the reference to a service court includes a reference to the following—

(a) the Court Martial Appeal Court;

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(b) the Supreme Court on an appeal brought from the Court Martial Appeal Court;

(c) a court-martial;

(d) a Standing Civilian Court."

212 (1) Schedule 3 to that Act (sexual offences for purposes of Part 2) is amended as follows.

(2) In paragraph 93—

(a) in sub-paragraph (2) omit "service";

(b) after that sub-paragraph add—

"(3) In sub-paragraph (2), the reference to detention is to detention awarded under section 71(1)(e) of the Army Act 1955 or Air Force Act 1955 or section 43(1)(e) of the Naval Discipline Act 1957."

(3) After that paragraph insert—

"93A(1) An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence listed in any of paragraphs 1 to 35.

(2) A reference in any of those paragraphs to being made the subject of a community sentence of at least 12 months is to be read, in relation to an offence under that section, as a reference to—

(a) being made the subject of a service community order or overseas community order under the Armed Forces Act 2006 of at least 12 months; or

(b) being sentenced to a term of service detention of at least 112 days.

(3) Section 48 of that Act (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this paragraph as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to this paragraph."

213 In Schedule 5 to that Act (other offences for purposes of Part 2), after paragraph 172 insert—

"172A (1) An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence listed in any of paragraphs 1 to 63A.

(2) Section 48 of that Act (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this paragraph as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to this paragraph."

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VALID FROM 28/03/2009

Criminal Justice Act 2003 (c. 44)

214 (1) Section 94 of the Criminal Justice Act 2003 (extension of section 31 of the Armed Forces Act 2001) is amended as follows.

(2) For subsection (1) substitute—

"(1) Section 323 of the Armed Forces Act 2006 (provision in consequence of criminal justice enactments) applies in relation to an enactment contained in this Part so far as relating to matters not specified in subsection (2) of section 324 of that Act as it applies in relation to a criminal justice enactment (within the meaning given by that section)."

(3) In subsection (2) for "that section" substitute " section 323 of that Act ".

(4) For subsection (3) substitute—

"(3) In subsection (2) "service offence" has the same meaning as in the Armed Forces Act 2006."

215 In section 112(1) of that Act (interpretation of Chapter 1 of Part 11 (evidence of bad character)), for the definition of "service offence" substitute—

""service offence" has the same meaning as in the Armed Forces Act 2006;".

216 In section 143(4) of that Act (meaning of "previous conviction"), for paragraph (b) substitute—

"(b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction)."

217 (1) Section 151 of that Act (community order for persistent offender previously fined) is amended as follows.

(2) In subsection (4) for the words from "the finding of guilt" to the end substitute " conviction in service disciplinary proceedings ".

(3) In subsection (5) after "compensation order" insert " , or a service compensation order awarded in service disciplinary proceedings, ".

(4) After subsection (7) add—

"(8) In this section—

(a) "service disciplinary proceedings" means proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006; and

(b) any reference to conviction or sentence, in the context of service disciplinary proceedings, includes anything that under section 376(1) to (3) of that Act is to be treated as a conviction or sentence."

218 For section 233 of that Act substitute—

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"**233 Offences under service law**

(1) Where—

(a) a person has at any time been convicted of an offence under section 42 of the Armed Forces Act 2006 (criminal conduct), and

(b) the corresponding offence under the law of England and Wales, within the meaning given by that section, was a relevant offence,

section 229 has effect as if he had at that time been convicted in England and Wales of that corresponding offence.

(2) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this section as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this section."

219 In section 237 of that Act (meaning of " fixed-term prisoner "), at the end of the title insert " etc " and after subsection (1) insert—

"(1B) In this Chapter—

(a) references to a sentence of imprisonment include such a sentence passed by a service court;

(b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;

(c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006; and

(d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act.

(1C) Nothing in subsection (1B) has the effect that section 240 or 265 (provision equivalent to which is made by the Armed Forces Act 2006) applies to a service court."

220 In section 241 of that Act (effect of direction under section 240 on release on licence), after subsection (1) insert—

"(1A) In subsection (1) the reference to a direction under section 240 includes a direction under section 246 of the Armed Forces Act 2006."

221 In section 246 of that Act (disapplication of power to release prisoners on licence early), after subsection (4) insert—

"(4A) In subsection (4)—

(a) the reference in paragraph (d) to a community order includes a service community order or overseas community order under the Armed Forces Act 2006; and

(b) the reference in paragraph (i) to a direction under section 240 includes a direction under section 246 of that Act."

222 In section 250 of that Act (licence conditions) after subsection (2) insert—

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"(2A) If the sentence (or, if more than one, each sentence) that the prisoner is serving is one in relation to which no custody plus or intermittent custody order is in force, subsection (2) has effect as if there were omitted—

(a) paragraph (a)(i);

(b) the words "so far as not inconsistent with them," in paragraph (a)(ii); and

(c) the words from "and which" in paragraph (b)(i)."

223 In section 251(3) of that Act (licence conditions on re-release of prisoner serving sentence of less than 12 months) after "relevant court order" add " (if any) ".

224 (1) Section 252 of that Act (duty to comply with licence conditions) is renumbered as subsection (1) of that section.

(2) After that subsection insert—

"(2) But where—

(a) the licence relates to a sentence of imprisonment passed by a service court,

(b) no custody plus order was made in relation to the sentence, or such an order was made but subsequently revoked, and

(c) the person is residing outside the British Islands,

the conditions specified in the licence apply to him only so far as it is practicable for him to comply with them where he is residing."

225 In section 260 of that Act (disapplication of power to remove prisoner liable to removal from UK), after subsection (3) insert—

"(3A) In subsection (3)(e) the reference to a direction under section 240 includes a direction under section 246 of the Armed Forces Act 2006."

226 In section 263(1)(a) of that Act (concurrent terms), omit "by any court".

227 In section 268 of that Act (interpretation of Chapter 6 of Part 12), in the definition of "fixed-term prisoner" after "237(1)" insert " (as extended by section 237(1B)) ".

228 In section 269(3)(b) of that Act (determination of minimum term in relation to mandatory life sentence), after "custody)" insert " or under section 246 of the Armed Forces Act 2006 (equivalent provision for service courts) ".

229 In section 272 of that Act (review of minimum term on a reference by the Attorney General), omit subsections (2) and (3).

230 In section 277 of that Act (interpretation of Chapter 7 of Part 12 (effect of life sentence)), in the definition of "court", for "a court-martial" substitute " the Court Martial ".

231 In section 305(1) of that Act (interpretation of Part 12)—

(a) at the end of the definition of "court" insert " , but this does not apply where a contrary intention appears from any provision of the Armed Forces Act 2006; "; and

(b) for the definitions of "service court" and "service disciplinary proceedings" substitute—

""service court" means—

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(a) the Court Martial;
(b) the Summary Appeal Court;
(c) the Service Civilian Court;
(d) the Court Martial Appeal Court; or
(e) the Supreme Court on an appeal brought from the Court Martial Appeal Court;".

232 In section 329 of that Act (civil proceedings for trespass to the person brought by offender), for subsection (7) substitute—

"(7) Where—
(a) a person is convicted of an offence under section 42 of the Armed Forces Act 2006 (criminal conduct), and
(b) the corresponding offence under the law of England and Wales (within the meaning given by that section) is an imprisonable offence,

he is to be treated for the purposes of this section as having been convicted in the United Kingdom of that corresponding offence; and in paragraph (a) the reference to conviction includes anything that under section 376(1) and (2) of that Act is to be treated as a conviction."

233 (1) Section 337 of that Act (extent) is amended as follows.

(2) In subsection (12)—
(a) in paragraph (a) for "by a court-martial" substitute " in respect of service offences within the meaning of the Armed Forces Act 2006 ";
(b) in paragraph (b) for "courts-martial or the Courts-Martial Appeal Court" substitute " the Court Martial or the Court Martial Appeal Court ".

(3) After that subsection insert—

"(12A) Nothing in subsection (1) affects the extent of section 94; and section 384 of the Armed Forces Act 2006 applies in relation to section 94 of this Act as it applies in relation to that Act."

(4) In subsection (13)—
(a) in paragraph (a)—
(i) omit sub-paragraphs (i) to (iii), (v), (vii) and (viii);
(ii) in sub-paragraph (iv) for "Courts-Martial (Appeals) Act 1968" substitute " Court Martial Appeals Act 1968 ", and at the end of that sub-paragraph insert " or ";
(b) omit paragraph (b).

234 (1) Schedule 6 to that Act (modifications for armed forces of provisions about evidence of bad character) is amended as follows.

(2) In paragraph 3—
(a) in sub-paragraph (1) for "courts-martial" substitute " the Court Martial ";
(b) in sub-paragraph (2)—
(i) in paragraph (a) for "judge and jury" substitute " a judge and jury ";
(ii) also in paragraph (a) for "court-martial" substitute " the Court Martial ";
(iii) in paragraph (c) for "dissolve" substitute " discharge ";

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(c) in sub-paragraph (4)—

(i) in the paragraph substituted by paragraph (a), for the words from "section 115B(2) of the Army" to "1957" substitute " section 167 of the Armed Forces Act 2006 ";

(ii) in paragraph (c) for "dissolve" substitute " discharge ";

(d) in the subsection substituted by sub-paragraph (5), for "dissolve" substitute " discharge ".

(3) In the subsection substituted by paragraph 4 of that Schedule—

(a) in paragraph (a) for "a court-martial" substitute " the Court Martial ";

(b) in paragraph (b) for "a Standing Civilian Court" substitute " the Summary Appeal Court or the Service Civilian Court ".

(4) For paragraph 6 substitute—

"6 In this Schedule "service court" means—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Service Civilian Court; or

(d) the Court Martial Appeal Court."

235 (1) Schedule 7 to that Act (modifications for armed forces of provisions about hearsay evidence) is amended as follows.

(2) In paragraph 2—

(a) for sub-paragraph (2) substitute—

"(2) In section 116(2) for paragraph (c) substitute—

"(c) that either of the following applies—

(i) the court is sitting neither in the United Kingdom nor in a British overseas territory and it is not reasonably practicable to secure the attendance of the relevant person; or

(ii) the court is sitting in the United Kingdom or a British overseas territory but the relevant person is outside the United Kingdom or outside that territory (as the case may be) and it is not reasonably practicable to secure his attendance.""

(b) in the subsection inserted by sub-paragraph (3), for the words from " "criminal proceedings"" to the end substitute " the reference to criminal proceedings includes proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006. ";

(c) in the paragraph substituted by sub-paragraph (4), for "a court-martial" substitute " the Court Martial ";

(d) for sub-paragraph (5) substitute—

"(5) In section 127—

(a) in subsection (1)(c)—

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(i) for "the appropriate rules" substitute " rules made under the Armed Forces Act 2006 or the Court Martial Appeals Act 1968 ";

(ii) for "section 9 of the Criminal Justice Act 1967 (c. 80)" substitute " such rules ";

(b) omit subsection (7).";

(e) in the subsection inserted by sub-paragraph (7), for paragraphs (a) and (b) substitute " to proceedings before an officer, the Court Martial or the Service Civilian Court in respect of a service offence within the meaning of the Armed Forces Act 2006. "

(3) In paragraph 3—

(a) in sub-paragraph (1) for "courts-martial" substitute " the Court Martial ";

(b) in sub-paragraph (2)—

(i) for "judge and jury" substitute " a judge and jury ";

(ii) for "court-martial" substitute " the Court Martial ".

(4) In paragraph 4—

(a) in sub-paragraph (1) for "courts-martial" substitute " the Court Martial ";

(b) in sub-paragraph (2)—

(i) in paragraph (a) for "judge and jury" substitute " a judge and jury ";

(ii) also in paragraph (a) for "court-martial" substitute " the Court Martial ";

(iii) in paragraph (c) for "dissolve" substitute " discharge ";

(c) in sub-paragraph (4)—

(i) in the paragraph substituted by paragraph (a), for the words from "section 115B(2) of the Army" to "1957" substitute " section 167 of the Armed Forces Act 2006 ";

(ii) in paragraph (c) for "dissolve" substitute " discharge ";

(d) in the subsection substituted by sub-paragraph (5), for "dissolve" substitute " discharge ".

(5) Omit paragraphs 5 to 7.

(6) For paragraph 8 substitute—

"8 In this Schedule, and in any provision of this Part as applied by this Schedule, "service court" means—

(a) the Court Martial;

(b) the Summary Appeal Court;

(c) the Service Civilian Court; or

(d) the Court Martial Appeal Court."

236 In Schedule 21 to that Act (determination of minimum term in relation to mandatory life sentence), at the end of paragraph 12 (but not as part of sub-paragraph (c)) insert " or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006. "

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VALID FROM 28/03/2009

Crime (International Co-operation) Act 2003 (c. 32)

237 In section 47(9) of the Crime (International Co-operation) Act 2003 (transfer of UK prisoner to assist investigation abroad) for "(3A)" substitute " (4) ".

VALID FROM 28/03/2009

Domestic Violence, Crime and Victims Act 2004 (c. 28)

238 (1) Section 8 of the Domestic Violence, Crime and Victims Act 2004 (evidence and procedure: courts-martial) is amended as follows.

(2) In the sidenote for "courts-martial" substitute " the Court Martial ".

(3) In subsection (1) for "courts-martial" substitute " the Court Martial ".

(4) For subsection (2) substitute—

"(2) A reference to an offence—

(a) of murder,

(b) of manslaughter, or

(c) under section 5,

is to be read as a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence."

239 In section 45(1) of that Act (interpretation of sections 35 to 44), in the definition of "court", for "a court-martial or the Courts-Martial Appeal Court" substitute " the Court Martial or the Court Martial Appeal Court ".

240 For section 62(4) of that Act (extent) substitute—

"(4) Nothing in subsection (1) affects the extent of section 8 or of any provision of section 6 as applied by section 8."

VALID FROM 28/03/2009

Human Tissue Act 2004 (c. 30)

241 In section 39(6)(c) of the Human Tissue Act 2004 (criminal justice purposes), for the words from "offences" to the end substitute " service offences within the meaning of the Armed Forces Act 2006. "

242 In Part 2 of Schedule 4 to that Act (use for an excepted purpose), in paragraph 5(4)(c) for the words from "offences" to the end substitute " service offences within the meaning of the Armed Forces Act 2006. "

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VALID FROM 28/03/2009

Civil Partnership Act 2004 (c. 33)

243 In section 245(2) of the Civil Partnership Act 2004 (interpretation), for "Army Act 1955 (3 & 4 Eliz 2 c. 18)" substitute " Armed Forces Act 2006 ".

VALID FROM 28/03/2009

Constitutional Reform Act 2005 (c. 4)

244 In Part 2 of Schedule 14 to the Constitutional Reform Act 2005 (the Judicial Appointments Commission: relevant offices and enactments), in the table, in the entry relating to a judge of the Courts-Martial Appeal Court—

(a) in the first column for "Courts-Martial Appeal Court" substitute " Court Martial Appeal Court ";

(b) in the second column for "Courts-Martial (Appeals) Act 1968 (c. 20)" substitute " Court Martial Appeals Act 1968 (c. 20) ".

VALID FROM 28/03/2009

Gambling Act 2005 (c. 19)

245 In section 354(2) of the Gambling Act 2005 (Crown application), for the words from "Her Majesty's" to the end substitute " any of Her Majesty's forces (within the meaning of the Armed Forces Act 2006). "

246 In Part 1 of Schedule 7 to that Act (relevant offences)—

(a) for paragraphs 14 to 16 substitute—

"14A An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence listed elsewhere in this Schedule.";

(b) after paragraph 22 insert—

"22A Section 48 of the Armed Forces Act 2006 (attempts, conspiracy, incitement and aiding and abetting outside England and Wales) applies for the purposes of this Act as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to any provision of this Act."

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SCHEDULE 17

Section 378

REPEALS AND REVOCATIONS

Commencement Information

I19 Sch. 17 partly in force; the repeal by this Act of s. 1 of the Armed Forces Act 2001 (c. 19) in force at Royal Assent, see **s. 383(1)**

Reference	*Extent of repeal or revocation*
Naval Agency and Distribution Act 1864 (c. 24)	Section 16.
Naval and Marine Pay and Pensions Act 1865 (c. 73)	Section 6. Section 8.
Regimental Debts Act 1893 (c. 5)	In section 23, the words "is sentenced to death or".
Criminal Evidence Act 1898 (c. 36)	In section 6(1), the words from "including" to the end.
Air Force (Constitution) Act 1917 (c. 51)	In section 2(1), the words ", pay, allowances,". In section 3, in the sidenote the words "and attaching", in subsection (1) the words from ", or attached" to "four years:", and subsection (4).
Coastguard Act 1925 (c. 88)	Section 2.
Colonial Naval Defence Act 1931 (c. 9)	The whole Act.
Visiting Forces (British Commonwealth) Act 1933 (c. 6)	Sections 6 and 7.
Defence (Armed Forces) Regulations 1939 (S.I. 1939/1304)	In Regulation 6, the words from "within the meaning of" to the end.
Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 (c. 24)	The whole Act.
Army and Air Force (Women's Service) Act 1948 (c. 21)	The whole Act.
Criminal Justice Act 1948 (c. 58)	In section 80(1), the definition of "Court".
Colonial Naval Defence Act 1949 (c. 18)	The whole Act.
Courts-Martial (Appeals) Act 1951 (c. 46)	Section 28.
Emergency Laws (Miscellaneous Provisions) Act 1953 (c. 47)	Section 10.
Army Act 1955 (3 & 4 Eliz. 2 c. 18)	The whole Act.
Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	The whole Act.

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Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 (3 & 4 Eliz. 2 c. 20)	Sections 1 and 2. Schedule 1. In Schedule 2, paragraphs 5 and 9.
Ghana Independence Act 1957 (c. 6)	Section 4(2) and (3).
Homicide Act 1957 (c. 11)	Section 13(3). In section 17(3), the words ", except as regards courts-martial,".
Naval Discipline Act 1957 (c. 53)	The whole Act.
Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58)	In section 1(1), the words ", or among the families of". Section 2(1)(a) and (b).
Federation of Malaya Independence Act 1957 (c. 60)	In Schedule 1, paragraph 2.
Emergency Laws (Repeal) Act 1959 (c. 19)	In Part C of Schedule 2, in the text of Regulation 6 of the Defence (Armed Forces) Regulations 1939, the words from "within the meaning of" to the end.
Cyprus Act 1960 (c. 52)	In the Schedule, paragraph 4.
Nigeria Independence Act 1960 (c. 55)	Section 3(2) and (3).
Sierra Leone Independence Act 1961 (c. 16)	Section 3(2).
Criminal Justice Act 1961 (c. 39)	In section 38, in subsection (2)(b) the words from "a sentence passed by a court-martial" to "1955), and", and in subsection (3)(b) the words "a sentence passed by a court-martial for any offence, and". In section 39(1), the definition of "court martial".
Army and Air Force Act 1961 (c. 52)	The whole Act.
Tanganyika Independence Act 1961 (c. 1)	Section 3(2) and (3).
Jamaica Independence Act 1962 (c. 40)	Section 3(2).
Trinidad and Tobago Independence Act 1962 (c. 54)	Section 3(2).
Uganda Independence Act 1962 (c. 57)	Section 3(2) and (3).
Malaysia Act 1963 (c. 35)	In Schedule 2, paragraph 3.
Kenya Independence Act 1963 (c. 54)	Section 4(2) and (3).
Zanzibar Act 1963 (c. 55)	In Schedule 1, paragraph 5.
Defence (Transfer of Functions) Act 1964 (c. 15)	In section 1— (a) in subsection (3), paragraph (b) and the word "or" immediately before it; (b) subsection (4); (c) in subsection (5), the words "of reviewing the findings or sentences of courts-martial and other functions".

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Malawi Independence Act 1964 (c. 46)	Section 4(2) and (3).
Zambia Independence Act 1964 (c. 65)	In Schedule 1, paragraphs 5 and 11.
Malta Independence Act 1964 (c. 86)	Section 4(2) and (3).
Gambia Independence Act 1964 (c. 93)	Section 4(2) and (3).
Murder (Abolition of Death Penalty) Act 1965 (c. 71)	Section 1(4). In section 3(3), the words ", except as regards courts-martial,".
Guyana Independence Act 1966 (c. 14)	Section 5(2).
Botswana Independence Act 1966 (c. 23)	In the Schedule, paragraphs 5 and 10.
Lesotho Independence Act 1966 (c. 24)	In the Schedule, paragraphs 5 and 11.
Singapore Act 1966 (c. 29)	In the Schedule, paragraph 2.
Barbados Independence Act 1966 (c. 37)	Section 4(2) and (3).
Armed Forces Act 1966 (c. 45)	The whole Act.
Criminal Law Act 1967 (c. 58)	Section 11(2)(a)(ii).
Criminal Justice Act 1967 (c. 80)	Sections 11 and 12. Section 32. In section 89(1), the words from "or in proceedings" to "Air Force Act 1955".
Mauritius Independence Act 1968 (c. 8)	Section 4(2).
Courts-Martial (Appeals) Act 1968 (c. 20)	Section 4(2). Section 8(1A) to (4). Section 10. In section 11(1), the words "the Judge Advocate of Her Majesty's Fleet or". Section 15. Section 16(6). Section 17(2). Sections 17A and 18. In section 20, subsection (5) and in subsection (6) the words from "of this Act" to the end. In section 21(1), the words from "; and in relation to" to the end. Section 23. Section 24(2). In section 25B(2), the words "under the Mental Health Act 1983". Section 26. Section 29(2). In section 34, in subsection (1)(a) the words "the Judge Advocate of Her Majesty's Fleet or", and subsection (3). In section 36(1), the words "under this Part of this Act", paragraph (a) and in paragraph (g) the words from "and the power" to the end.

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	Section 46. In section 57, in subsection (1) the definitions of— (a) "the Air Force Act"; (b) "air force court-martial"; (c) "the Army Act"; (d) "army court-martial"; (e) "court-martial"; (f) "duly approved"; (g) "the Judge Advocate General"; (h) "judicial officer"; (i) "the Naval Discipline Act"; (j) "naval court-martial"; (k) "restriction order"; (l) "supervision order"; and in the definition of "appellant" the words "has been tried by court-martial and", and subsections (2) to (2B). Section 58. Schedules 3 and 4.
Swaziland Independence Act 1968 (c. 56)	In the Schedule, paragraphs 5 and 11(a).
Tonga Act 1970 (c. 22)	In the Schedule, paragraphs 4 and 9(a).
Fiji Independence Act 1970 (c. 50)	Section 4(2).
Armed Forces Act 1971 (c. 33)	Sections 2 to 25. Sections 27 to 48. Section 49(1) and (2). Sections 50 to 68. Sections 70 to 72. Section 73(3). Section 74. Section 76. Section 77(2). Schedule 1. In Schedule 2, paragraphs 1(2) to (5), 2 and 3. In Schedule 3, paragraphs 4, 5 and 7.
Criminal Justice Act 1972 (c. 71)	In section 66(2), the words " "court" does not include a court-martial;".
Bahamas Independence Act 1973 (c. 27)	Section 4(2).
Bangladesh Act 1973 (c. 49)	In the Schedule, paragraph 1.
Rehabilitation of Offenders Act 1974 (c. 53)	In section 5(1)(d), the words "or a corresponding court-martial punishment".
House of Commons Disqualification Act 1975 (c. 24)	In section 1(1)(c), the words "or the Ulster Defence Regiment". In Schedule 1, in Part 3 the words "Judge Advocate of the Fleet."
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In section 1(1)(c), the words from "or" to the end.

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	In Schedule 1, in Part 3 the words "Judge Advocate of the Fleet."
Seychelles Act 1976 (c. 19)	In the Schedule, paragraph 2.
Armed Forces Act 1976 (c. 52)	Sections 2 to 4. Sections 6 to 16. Sections 18 and 19. Schedules 1 to 8. In Schedule 9, paragraphs 3 to 8, 10, 11, 13, 14, 16 and 17.
Bail Act 1976 (c. 63)	In Part 3 of Schedule 1, in paragraph 4 the definition of "the Services Acts".
Solomon Islands Act 1978 (c. 15)	Section 7(2) and (3).
Oaths Act 1978 (c. 19)	Section 7(4) and (5). Section 8(4).
Tuvalu Act 1978 (c. 20)	Section 4(2).
Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))	Article 4(5). In Article 6, in paragraph (1), the word "and" at the end of sub-paragraph (c), and in sub-paragraph (d) the words "or a corresponding court-martial punishment", and paragraph (9)(a).
Kiribati Act 1979 (c. 27)	In the Schedule, paragraph 2.
Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980 (c. 2)	In the Schedule, paragraphs 10 to 12.
Reserve Forces Act 1980 (c. 9)	Section 10(5). Section 18(2)(b). Section 19(4). Section 21(4). Sections 24 and 25. Section 26(2)(g). Section 44. Section 139. Sections 141 to 144. Section 145(2). Section 146(2). In section 156, in subsection (1) the definition of "regular air force", and subsection (2). In Schedule 8, paragraphs 5(3), 10, 16(2) and (5) and 19.
New Hebrides Act 1980 (c. 16)	In Schedule 1, paragraph 2.
Magistrates' Courts Act 1980 (c. 43)	Section 143(2)(g), (h) and (k).
Contempt of Court Act 1981 (c. 49)	In Schedule 1, paragraph 8.
Belize Act 1981 (c. 52)	In Schedule 2, paragraph 1.

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Armed Forces Act 1981 (c. 55)	Sections 2 to 8. Sections 10 and 11. Section 13. Sections 15 to 19. Section 21. Section 23. Section 25. Section 27. Schedules 1 and 2. In Part 1 of Schedule 3, paragraph 2. In Schedule 4, paragraph 1.
Criminal Justice Act 1982 (c. 48)	Section 58. Section 81(9) and (10). Schedule 8. In Schedule 16, the entries relating to the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957 and the Armed Forces Act 1976.
Police and Criminal Evidence Act 1984 (c. 60)	Section 51(c). Section 63A(1B)(k). In section 82, in subsection (1) the definition of "court-martial", and subsection (2). Section 113(11). In Schedule 2, the entries relating to the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. In Schedule 6, paragraphs 8, 28 and 29.
Brunei and Maldives Act 1985 (c. 3)	In the Schedule, paragraph 4.
Armed Forces Act 1986 (c. 21)	The whole Act.
Criminal Justice Act 1988 (c. 33)	Section 50. In Schedule 13, paragraphs 7, 9 and 10.
Road Traffic Act 1988 (c. 52)	Section 144(2)(d). In section 184(1)(e), the word "and" at the end.
Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	Article 51(c). Article 70(2).
Criminal Justice (International Co-operation) Act 1990 (c. 5)	Section 5(3A).
Pakistan Act 1990 (c. 14)	In the Schedule, paragraph 3.
Courts and Legal Services Act 1990 (c. 41)	In section 119(1), in the definition of "court", paragraph (b).
Namibia Act 1991 (c. 4)	In the Schedule, paragraph 2.
Criminal Justice Act 1991 (c. 53)	Section 71. In Part 1 of Schedule 4, the entry relating to the Army Act 1955 and Air Force Act 1955

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	and the entry relating to the Armed Forces Act 1976. Schedule 9.
Armed Forces Act 1991 (c. 62)	Sections 2 to 15. Section 16(1) and (2). In section 18, in subsection (8) the words "on him" and the words from "shall be liable" to the end, and subsection (9). Section 19(7). Section 23(2). Section 24(1) to (3). Section 25. Schedule 1. In Schedule 2, paragraphs 1, 2, 4 to 7, 10 and 11.
Local Government Finance Act 1992 (c. 14)	In Schedule 1, in paragraph 1(3)(a), the word "or" at the end.
Sexual Offences (Amendment) Act 1992 (c. 34)	Section 4(9). In section 6(1), the definitions of "corresponding civil offence" and "service offence". Section 7. Section 8(7).
Army Act 1992 (c. 39)	The whole Act.
Judicial Pensions and Retirement Act 1993 (c. 8)	In Schedule 1, in Part 2 the words "Judge Advocate of Her Majesty's Fleet". In Schedule 5, the words "Judge Advocate of Her Majesty's Fleet".
Criminal Justice and Public Order Act 1994 (c. 33)	In section 146(4), the words from "or, in the case" to the end. In section 147(3), the words from "or, in the case" to the end.
South Africa Act 1995 (c. 3)	In the Schedule, paragraph 3.
Criminal Appeal Act 1995 (c. 35)	In section 30(2)(c), the word "and" at the end.
Reserve Forces Act 1996 (c. 14)	Section 7. Section 9(5). Section 24(2)(b). Section 25(2)(a). Section 27(3). Section 53(8)(b). Section 55(8)(b). Section 57(8)(b). Section 72(5) and (6). In section 95, in subsection (1) paragraph (b) and in the words after paragraph (e) the words "triable by court-martial or summarily

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	by a civil court", and in subsection (2)(b)(i) the words ", (b),". Section 98(5). Section 99. Sections 102 and 103. Section 104(3). Section 105(2). Section 106. In section 107(1), the words from "either—" to the end of paragraph (a). Sections 123 and 124. Section 126. In section 127(1), the definition of "regular air force". In Schedule 1— (a) in paragraph 5(1), the words "or recklessly"; (b) paragraph 7 and the heading before it. Schedules 2 and 3. Schedule 7. In Schedule 9, in Part 2, paragraphs 22 and 23. In Schedule 10, paragraphs 1 to 13 and 23.
Criminal Procedure and Investigations Act 1996 (c. 25)	Section 74(2) and (3). Section 79(5) and (6).
Armed Forces Act 1996 (c. 46)	Sections 2 to 4. Section 6(2). Sections 9 to 12. Sections 15 and 16. Section 17(3), (5) and (6). Section 20. Section 32. Section 34. Section 36(6). In Schedule 1, paragraphs 1 to 64, 66 to 99, 102 to 107 and 110. Schedule 3. Schedule 5. In Schedule 6, paragraphs 2 to 15.
Crime (Sentences) Act 1997 (c. 43)	In section 34, in subsection (2)(d) the word "and" at the end, and subsection (3).
Human Rights Act 1998 (c. 42)	Section 21(5). Section 22(7).
Youth Justice and Criminal Evidence Act 1999 (c. 23)	Section 68(10).
Armed Forces Discipline Act 2000 (c. 4)	The whole Act.
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In section 134, in subsections (1) and (2) the words "or award".

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Criminal Justice and Court Services Act 2000 (c. 43)	In section 30— (a) in subsection (1), in the definition of "guardianship order" the words from "the Army" to "1957 or", and in the definition of "qualifying sentence" paragraph (f); (b) subsection (2); (c) in subsection (3), the words ", or to a sentence of detention imposed by a court-martial or the Courts-Martial Appeal Court,". In section 33(7), in the definition of "order for admission to hospital", paragraph (a). In section 42, in subsection (1) the definition of "armed forces offence", and subsection (2). In section 62(5), the word "and" at the end of paragraph (e). In section 64(5), the word "and" immediately before paragraph (f). Section 81(2)(h).
Criminal Justice and Police Act 2001 (c. 16)	Section 88(8)(j).
International Criminal Court Act 2001 (c. 17)	Section 74. Section 79(5). In Schedule 10, the entries relating to the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957.
Armed Forces Act 2001 (c. 19)	Sections 1 to 12. Section 13(2) and (3). Sections 14 to 22. Sections 24 and 25. Section 26(4). Section 28(3) to (5). Section 29. Sections 31 to 33. In section 35— (a) in subsection (2), paragraphs (a) and (b) and in paragraph (c) the words "or 31(3)" and "or 31(6)(c)"; (b) subsection (3)(a)(i), (ii), (iv) and (v) (except the "or" at the end of (v)) and (b)(i). Section 36(1) and (3)(a), (d) and (e). Section 37. Schedules 1 to 5. In Schedule 6, paragraphs 14 to 27 and 33 to 56.
Justice (Northern Ireland) Act 2002 (c. 26)	In Schedule 4, paragraphs 10 to 12.
Commonwealth Act 2002 (c. 39)	In Schedule 2, paragraph 1.

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Communications Act 2003 (c. 21)	In Schedule 17, paragraphs 23, 24 and 26.
Extradition Act 2003 (c. 41)	Section 3(6). Section 71(8). Section 73(9).
Sexual Offences Act 2003 (c. 42)	In section 81(3)(b), the words "or a term of service detention". In section 133(1), the definition of "term of service detention". In Schedule 3, in paragraph 93(2) the word "service". In Schedule 6, paragraphs 9, 10 and 12.
Criminal Justice Act 2003 (c. 44)	In section 263(1)(a), the words "by any court". Section 272(2) and (3). In section 337(13), in paragraph (a) sub-paragraphs (i) to (iii), (v), (vii) and (viii), and paragraph (b). In Schedule 1, paragraph 15. In Schedule 3, paragraphs 37, 38, 40 and 65. In Schedule 7, paragraphs 5 to 7. In Schedule 25, paragraphs 36 to 51. In Schedule 32, paragraphs 19, 140, 155 to 157 and 162. In Schedule 36, paragraphs 81 to 84.
Domestic Violence, Crime and Victims Act 2004 (c. 28)	In Schedule 3, paragraphs 1 to 5, 9, 10, 14(3) and 15.
Constitutional Reform Act 2005 (c. 4)	In Schedule 11, in Part 2, in paragraph 4(3) the entries relating to the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. In Schedule 14, in Part 1, in the table the entry relating to the Judge Advocate of Her Majesty's Fleet.
Serious Organised Crime and Police Act 2005 (c. 15)	Section 170. In Part 3 of Schedule 7, paragraph 50.
Armed Forces Act 2006	In Schedule 16, paragraphs 20 to 38 and 178.

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