

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 13 – Discipline: Miscellaneous and Supplementary

Chapter 5 – Supplementary

Power to make provision in consequence of criminal justice enactments

Section 323: Power to make provision in consequence of criminal justice enactments

637. The broad purpose of this section is to enable statutory changes in the criminal justice system of England and Wales to be adapted and applied by subordinate legislation to the Services' system of justice. The powers in this section are based on those in section 31 of the Armed Forces Act 2001.
638. Under this section the Secretary of State may by order make in relation to service policemen, service courts, persons subject to service law, civilians subject to service discipline and service law proceedings provision equivalent (subject to modifications) to:
- any enactment (called in the section a “criminal justice enactment”) passed after 1st January 2001 which amends the law of England and Wales relating to any “criminal justice matter”,
 - any other enactment about a criminal justice matter which is itself amended by a criminal justice enactment, and
 - any subordinate legislation made under either of the above types of enactment.
639. The Secretary of State is, for example, able to make for the armed forces provision equivalent to new criminal justice legislation and other legislation about criminal justice which has been altered by such new legislation.
640. A “criminal justice matter” is itself defined in section 324 (2). It covers such matters as police powers of investigation and detention, powers of arrest, custody, bail, evidence, procedure and court powers (including sentence). The Secretary of State may by order extend it to other criminal justice matters, but in such a case the order must be approved in draft by both Houses of Parliament.
641. The power to make equivalent provision is wide enough to allow the Secretary of State to amend existing legislation, but again in such a case the order must be approved in draft by both Houses of Parliament.