

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 4 – Imprisonment for Term of Under 12 Months

Imprisonment with or without “custody plus” order

Section 197: Imprisonment with or without a custody plus order

410. This section modifies section 181 of the 2003 Act so as to enable a service court to pass an immediate (i.e. non-suspended) sentence of imprisonment for less than 12 months which does not include a custody plus order. An offender on whom such a sentence is passed will serve a period of custody determined by the court in accordance with section 181 of the 2003 Act, and following his release will be on licence and subject to licence conditions for the remainder of the sentence (the “licence period”), but will not be subject to any of the requirements in section 182 of the 2003 Act.
411. Subsection (3) prohibits a court from including in a custody plus order a requirement to be complied with outside the UK. So, if the court passes an immediate sentence of imprisonment for less than 12 months and expects the offender to reside outside the UK during the licence period (e.g. because he is not being sentenced to dismissal from HM service, and is likely to be posted overseas following his release from custody), the court cannot include a custody plus order in the sentence.

Section 198: Transfer to Scotland or Northern Ireland of custody plus order

412. Paragraphs 2 and 9 of Schedule 11 to the 2003 Act enable a civilian court in England and Wales to make a custody plus order in respect of an offender who resides or will reside in Scotland or Northern Ireland. Subsections (1) and (2) of this section enable service courts to do the same.
413. Schedule 10 to the 2003 Act enables a civilian court in England and Wales to amend or revoke a custody plus order. Part 4 of Schedule 11 modifies Schedule 10 in relation to a custody plus order which requires compliance in Scotland or Northern Ireland (either because it was originally made so as to require such compliance or because it has been amended to that effect under Schedule 10). In certain circumstances the court that can exercise functions in relation to such an order is a court in England and Wales (rather than one in Scotland or Northern Ireland), which might be a magistrates’ court. Where the order was originally made by a service court, however, subsection (3) ensures that the civilian court in England and Wales responsible for exercising these functions is the Crown Court.

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

Section 199: Revocation and amendment of custody plus orders

414. This section modifies Schedule 10 to the 2003 Act (which enables a civilian court in England and Wales to amend or revoke a custody plus order) so that, in the case of a custody plus order made by a service court, the civilian court in England and Wales with power to amend or revoke the order is the Crown Court.