

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

408. This chapter deals with the powers of service courts to pass sentences of imprisonment for less than 12 months. It applies, with modifications, provisions of the 2003 Act which enable civilian courts in England and Wales to pass sentences of “custody plus” and to suspend a sentence of imprisonment.

Application of provisions in the 2003 Act

Section 196: Term of sentence etc

409. Under section 181 of the 2003 Act, a sentence of imprisonment for less than 12 months passed by a civilian court in England and Wales must include an order requiring the offender to comply, after his release from custody, with one or more of the requirements listed in section 182 (a “custody plus” order), unless the sentence is one of intermittent custody or is suspended in accordance with section 189 (as to which, see section 200 below). This section extends these provisions (except those relating to intermittent custody) to service courts, subject to modifications made by the rest of this Chapter.

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.

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.

Suspended sentences of imprisonment

Section 200: Suspended sentence orders with or without community requirements

415. Section 189 of the 2003 Act allows a civilian court in England and Wales, when passing a sentence of imprisonment for less than 12 months, to make an order (a "suspended sentence order") that the sentence is not to take effect immediately, but can be brought into effect if the offender commits a further offence within a specified period (the "operational period") or fails to comply with one or more requirements ("community requirements") which the order must impose. The requirements available for this purpose include all those available for inclusion in a custody plus order, plus some additional options. This section modifies section 189 so that a service court can not only make a suspended sentence order including community requirements, but (unlike a civilian court) can also make one without such requirements.
416. Subsection (5) further modifies section 189 of the 2003 Act so that a suspended sentence order made by a service court can take effect not only if the offender fails to comply with the community requirements (if any) or commits a civilian offence during the operational period of the order, but also if he commits another service offence during that period.
417. Subsection (6) prohibits a court from including a community requirement to be complied with outside the UK. So, if the court passes a suspended sentence of imprisonment and expects the offender to reside outside the UK, the order must be one without community requirements.

Section 201: Order without community requirements: provisions not applying

418. This section ensures that the provisions of the 2003 Act relating to community requirements do not apply to a suspended sentence order without such requirements.

Section 202: Order with community requirements: disapplication of certain provisions

419. This section prevents certain provisions of the 2003 Act, which would not make sense in relation to a suspended sentence order made by a service court, from applying to such an order.

Section 203: Review of order with community requirements

420. Section 191 of the 2003 Act enables a suspended sentence order to provide for the order to be periodically reviewed by a court. Subsection (1) of this section modifies section 191 so that, where a service court makes a suspended sentence order which includes community requirements and provides for periodic review, the court required to review the order is the Crown Court.
421. Section 210 of the 2003 Act enables, and in some cases requires, a suspended sentence order imposing a drug rehabilitation requirement to provide for that requirement to be periodically reviewed by a court. Subsection (2) modifies section 210 so that, where a service court makes a suspended sentence order which includes a drug rehabilitation requirement and provides for its periodic review, the court required to review it is the Crown Court.
422. Section 211 of the 2003 Act provides for the powers of a court reviewing a drug rehabilitation requirement imposed under a suspended sentence order. In certain circumstances the court can re-sentence the offender for the original offence. Subsection (3) modifies section 211 of the 2003 Act so that the Crown Court can exercise its ordinary sentencing powers rather than those of the service court that made the order. Subsection (4) enables an offender re-sentenced by the Crown Court to appeal to the civilian Court of Appeal.

Section 204: Transfer to Scotland or Northern Ireland of order with community requirements

423. Paragraphs 1 and 6 of Schedule 13 to the 2003 Act enable a civilian court in England and Wales to make a suspended sentence order in respect of an offender who resides or will reside in Scotland or Northern Ireland. Subsections (1) and (2) of this section extend this power to service courts.
424. Schedule 12 to the 2003 Act enables a civilian court in England and Wales to make further orders in relation to a suspended sentence order where the offender has failed to comply with its requirements or has been convicted of a further offence, or to amend the order. Part 3 of Schedule 13 to the 2003 Act modifies Schedule 12 to the 2003 Act in relation to a suspended sentence order which requires compliance in Scotland or Northern Ireland. In certain circumstances the court that can exercise functions in relation to such an order is a court in England and Wales, 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.

Section 205: Amendment of order with community requirements

425. This section modifies Part 3 of Schedule 12 to the 2003 Act (which enables a civilian court in England and Wales to amend a suspended sentence order) so that, if the order was made by a service court and includes community requirements, the court with power to amend it is the Crown Court. When there is power to re-sentence the offender for the original offence, the Crown Court has its ordinary sentencing powers (subject to the limits on the powers of the SCC, if it was the SCC that made the order). Subsection (4) enables an offender re-sentenced by the Crown Court to appeal to the civilian Court of Appeal.

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

Section 206: Suspended sentence: further conviction or breach of community requirement

426. This section gives effect to Schedule 7, which modifies Part 2 of Schedule 12 to the 2003 Act, which provides for the activation of a suspended sentence following a breach of the community requirements or a conviction of a further offence.