

ARMED FORCES ACT 2006

EXPLANATORY NOTES

SCHEDULES

Schedule 5 – Breach, Revocation and Amendment of Community Punishments

Part 1 – Service community orders

789. This part of the Schedule modifies Schedule 8 to the Criminal Justice Act 2003 (“the 2003 Act”) so as to enable the Crown Court to deal with breaches of service community orders and to revoke or amend such orders. The effect is as follows:
790. If the responsible officer thinks that the offender has failed without reasonable excuse to comply with the order, he can (and, if the offender has been warned about such failure within the previous 12 months, must) lay an information before the Crown Court. That court can then issue a summons or warrant. If the court is satisfied that the offender has failed without reasonable excuse to comply with the order, it must either amend the order so as to make the requirements more onerous or re-sentence the offender for the original offence. If the offender is aged 18 or over and the failure to comply is wilful and persistent, the court can impose a sentence of imprisonment even if the original offence was not punishable with imprisonment.
791. The offender or the responsible officer can apply to the Crown Court for the order to be revoked. The court can revoke the order if it thinks this is in the interests of justice, having regard to developments since the order was made (such as the offender’s making good progress or responding satisfactorily to supervision or treatment). If the court does revoke the order it can also re-sentence the offender for the original offence.
792. The offender or the responsible officer can apply to the Crown Court for the order to be amended. The court can substitute for the local justice area specified in the order a different local justice area to which the offender has moved or is moving, cancel any of the requirements in the order, or substitute other requirements of the same kind. Certain kinds of requirement may not be amended unless the offender agrees to comply with the amended requirement, but if he does not agree the court can re-sentence him for the original offence.
793. If the offender is convicted of another offence by a magistrates’ court while the order is in force, that court can refer the offender to the Crown Court. The Crown Court can then revoke the order, with or without re-sentencing the offender for the original offence. The same powers are available if the Crown Court itself convicts the offender of another offence while the order is in force.
794. In each case where the Crown Court has power to re-sentence the offender for the original offence, it can exercise its ordinary sentencing powers rather than those of the service court that made the order (except that, where it was the SCC that made the order, the Crown Court cannot impose a term of imprisonment, or a fine, greater than the SCC could have imposed). The offender can appeal against the new sentence as if he had been convicted by the Crown Court of the original offence.

Part 2 – Overseas community orders

795. This part of the Schedule modifies Schedule 8 to the 2003 Act so as to enable the Court Martial and the SCC to deal with breaches of overseas community orders and to revoke or amend such orders. The effect is as follows:
796. If the responsible officer thinks that the offender has failed without reasonable excuse to comply with the order, he can (and, if the offender has been warned about such failure within the previous 12 months, must) make an application to the court that made the order (or, if the order was made on appeal, to the Court Martial). That court can then issue a summons or warrant. If the court is satisfied that the offender has failed without reasonable excuse to comply with the order, it must either amend the order so as to make the requirements more onerous or re-sentence the offender for the original offence. If the offender is aged 18 or over and the failure to comply is wilful and persistent, the court can impose a custodial sentence even if the original offence was not punishable with such a sentence.
797. The offender or the responsible officer can apply to the court that made the order (or, if the order was made on appeal, the Court Martial) for the order to be revoked. The court can revoke the order if it thinks this is in the interests of justice, having regard to developments since the order was made. If the court does revoke the order it can also re-sentence the offender for the original offence.
798. The offender or the responsible officer can apply to the court that made the order (or, if the order was made on appeal, the Court Martial) for the order to be amended. The court can cancel any of the requirements in the order, or substitute other requirements of the same kind. Certain kinds of requirement may not be amended unless the offender agrees to comply with the amended requirement, but if he does not agree the court can re-sentence him for the original offence.
799. If the offender is convicted by the Court Martial of a further offence while the order is in force, the court can revoke the order, with or without re-sentencing the offender for the original offence. The SCC has a similar power, but only where it was the SCC that made the order.
800. Where the order was not made by the Court Martial, and that court re-sentences the offender for the original offence, he can appeal against the new sentence as if it had been the Court Martial that convicted him of the original offence.
801. Court Martial rules can enable the powers conferred on the Court Martial by Schedule 8 to the 2003 Act (as applied by this Schedule) to be exercised by a judge advocate sitting alone.