
STATUTORY INSTRUMENTS

2008 No. 1694

**The Armed Forces (Alignment of
Service Discipline Acts) Order 2008**

Suspended sentences of Standing Civilian Courts

27. After paragraph 20 of that Schedule insert—

“21.—(1) Where the suspension of a sentence is determined under paragraph 20(6) above by order of a Standing Civilian Court—

- (a) for the purposes of paragraph 18 above and rules under section 103 of the Army Act 1955 or the Air Force Act 1955 the order is to be treated as a sentence passed on the offender for the offence for which the suspended sentence was passed; and
- (b) on an appeal against the order, the court-martial may quash the order.

(2) Sub-paragraphs (3) to (5) apply where the suspension of a sentence is determined under paragraph 20(6) above by order of a court-martial.

(3) For the purposes of the Courts-Martial (Appeals) Act 1968 (c. 20) (“the 1968 Act”)—

- (a) the order is to be treated as a sentence passed on the offender for the offence for which the sentence was passed;
- (b) the offender is to be treated as having been convicted by court-martial of that offence;
- (c) any appeal, or application for leave to appeal, against the sentence passed in respect of the fresh offence is to be treated as also being an appeal or application for leave to appeal against the order; and
- (d) any appeal, or application for leave to appeal, against the order is to be treated as also being an appeal or application for leave to appeal against the sentence passed in respect of the fresh offence.

(4) In relation to any appeal against the order, section 16A of the 1968 Act (powers on appeals against sentence) is to be read as conferring power to quash the order.

(5) Where the Appeal Court quashes the order, in relation to any appeal against the sentence passed in respect of the fresh offence—

- (a) section 16A of the 1968 Act has effect as if the words “and which is not of greater severity than that for which it is substituted” were omitted; but
- (b) the Appeal Court may not exercise its powers under that section 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 court-martial.

(6) Where a court-martial passing sentence on a person has power to determine the suspension of a sentence under paragraph 20(6) above but does not do so—

- (a) on an appeal against the sentence passed by the court-martial, the power of the Appeal Court under section 16A of the 1968 Act to pass a sentence in substitution

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for the sentence of the court-martial includes power to make an order under paragraph 20(6) above in respect of the suspended sentence; but

- (b) the court may not exercise that power 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 court-martial.
- (7) In this paragraph—
- (a) “the fresh offence” means the offence mentioned in paragraph 20(6) above; and
 - (b) “the Appeal Court” means the Courts-Martial Appeal Court.”