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STATUTORY INSTRUMENTS

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**2008 No. 1694**

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

**Suspended sentences and committal orders under the 1957 Act**

**31.** For section 91 of the 1957 Act<sup>(1)</sup> (committal or re-committal of persons under suspended sentence) substitute—

**“91. Activation of suspended sentence by court-martial**

(1) Where, while a sentence of imprisonment or detention is suspended under section 90 of this Act, the person sentenced is convicted by court-martial of an offence committed since the sentence was suspended, the court may make an order determining the suspension of the sentence (whether or not it also makes a committal order under section 81(3) of this Act).

(2) A court-martial which makes an order under subsection (1) may direct that the sentence shall begin to run from the end of another term of imprisonment or detention which—

- (a) has been passed on the offender on a previous occasion; or
- (b) the court passes on him on the same occasion.

(3) In subsection (2) the reference to another term of imprisonment does not include a term from which the person has been released early under Part 2 of the [Criminal Justice Act 1991 \(c. 53\)](#) or Chapter 6 of Part 12 of the [Criminal Justice Act 2003 \(c. 44\)](#).

(4) Subsection (2) is subject to section 89 of this Act (limitation of total period of sentences of detention).

(5) Subsection (1) does not apply if—

- (a) the sentence was passed by a court-martial or the Courts-Martial Appeal Court; and
- (b) the person was tried by court-martial for the offence mentioned in subsection (1) in pursuance of an election for court-martial trial.

**91A. Activation of suspended sentence by court-martial: appeals**

(1) Subsections (2) to (4) apply where a court-martial makes an order under section 91(1) of this Act.

(2) 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) if the offender was not convicted by court-martial of that offence, he is to be treated as having been so convicted;

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<sup>(1)</sup> Section 91 of the 1957 Act was amended by the Defence (Transfer of Functions) (No. 1) Order 1964 ([S.I. 1964/488](#)), Schedule 1.

- (c) any appeal, or application for leave to appeal, against the sentence passed in respect of the new 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 new offence.
- (3) 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—
- (a) to quash the order; or
  - (b) if the court-martial gave a direction under section 91(2) of this Act, to quash the direction.
- (4) Where the Appeal Court quashes the order, or a direction under section 91(2) of this Act, then in relation to any appeal against the sentence passed in respect of the new 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.
- (5) Subsections (6) and (7) apply where a court-martial has power to make an order under section 91(1) of this Act in respect of a sentence (“the suspended sentence”) but does not do so.
- (6) On any appeal against the sentence passed in respect of the new offence, the Appeal Court’s power under section 16A of the 1968 Act to pass a sentence in substitution for the sentence of the court-martial includes—
- (a) power to make an order under section 91(1) of this Act in respect of the suspended sentence; and
  - (b) if the court makes such an order, power to give a direction under section 91(2) of this Act in relation to the order.
- (7) But the Appeal Court may not exercise its powers under subsection (6) 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.
- (8) In this section—
- (a) “the new offence” means the offence mentioned in section 91(1) of this Act;
  - (b) “the Appeal Court” means the Courts-Martial Appeal Court.

#### **91B. Activation of suspended sentence by commanding officer**

- (1) Where, while a sentence of detention is suspended under section 90 of this Act—
- (a) an officer finds the offender guilty on summary trial of an offence committed since the sentence was suspended, or
  - (b) the offender is convicted of an offence in the British Islands committed since the sentence was suspended and subsequently appears before the officer in command of the ship or naval establishment to which he belongs,
- the officer may make an order determining the suspension of the sentence (whether or not he also makes a committal order under section 81(3) of this Act, in a case in which he is not prohibited by section 81(4) from doing so).

(2) Subsections (3) to (8) apply where an officer makes an order under subsection (1).

(3) If the sentence is for a term of more than 90 days, the order has effect as if the sentence were for a term of 90 days; but this is subject to section 91C of this Act (partial activation by commanding officer of suspended sentence for more than 90 days).

(4) The sentence in respect of which the order is made is to be treated for the purposes of section 85A of this Act (commencement of sentence of detention awarded on summary trial) as a sentence awarded on summary trial at the time at which the order is made.

(5) The reference in subsection (3) of that section to the signature of the warrant by the officer by whom the offender was tried is to be read, in relation to the sentence in respect of which the order is made, as a reference to the making, in accordance with regulations made under section 52F of this Act, of an application to higher authority for permission to make the order.

(6) The officer may direct that the sentence in respect of which the order is made (“the subsequent sentence”) shall begin to run from the end of another sentence of detention (“the current sentence”) which—

- (a) has been passed on the offender on a previous occasion; or
- (b) where the order is made by virtue of subsection (1)(a), the officer passes on him on the same occasion.

(7) Subsection (6) is subject to section 89 of this Act (limitation of total period of sentences of detention), as modified by section 91C of this Act in a case where that section applies.

(8) Where the officer gives a direction under subsection (6)—

- (a) section 85A of this Act applies to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were to the expiry of the current sentence, and subsection (3) of that section were omitted; and
- (b) where the suspension of the subsequent sentence by virtue of subsection (4) or (5) of that section would end before the expiry of the current sentence, the subsequent sentence shall run from the expiry of the current sentence.

### **91C. Partial activation by commanding officer of suspended sentence for more than 90 days**

(1) This section applies where an officer has made an order under section 91B(1) of this Act (activation of suspended sentence by commanding officer) in respect of a sentence for a term of more than 90 days.

(2) That part of the term which exceeds 90 days is not to be remitted by virtue of section 89(2) of this Act (limitation of total period of sentences of detention).

(3) Unless the order is quashed on appeal, sections 91 and 91B of this Act (activation of suspended sentence by court-martial and by commanding officer respectively) have effect as if—

- (a) the sentence were for that part of the term which exceeds 90 days; and
- (b) no order determining the suspension of the sentence had been made.

(4) For the purposes of section 92(3) of this Act (remission of suspended sentence) the date on which the order was made is to be treated as the date on which the suspension of the sentence took effect.

### **91D. Activation of suspended sentence by commanding officer: appeals etc.**

(1) For the purposes of sections 52FF to 52FR and 71B of this Act (appeals and review) an order under section 91B(1) of this Act is to be treated as a punishment awarded for the offence for which the sentence was passed.

(2) In relation to any appeal against such an order, section 52FM(4) of this Act (powers of the summary appeal court on an appeal against punishment) has effect as if for paragraphs (a) and (b) there were substituted—

- “(a) may confirm the order;
- (b) may quash the order; or
- (c) if the officer who made the order gave a direction under section 91B(6) of this Act, may confirm the order but quash the direction.”.

(3) Subsections (4) to (6) apply where an officer makes an order under section 91B(1) of this Act by virtue of paragraph (a) of that subsection.

(4) Any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of the offence mentioned in that paragraph (“the new offence”) is for the purposes of sections 52FF to 52FR of this Act to be treated as also being an appeal or application for leave to appeal against the order.

(5) Any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment awarded in respect of the new offence.

(6) Where the summary appeal court quashes the order, or a direction under section 91B(6) of this Act, then—

- (a) in relation to any appeal against the finding of guilt in respect of the new offence, the references in section 52FM(2)(b)(ii) and (3)(b) of this Act to the punishment originally awarded include the order and any such direction given in relation to it (as well as the punishment awarded in respect of the new offence); and
- (b) in relation to any appeal against the punishment awarded in respect of the new offence, the reference in section 52FM(4)(b)(ii) of this Act to the punishment originally awarded includes the order and any such direction given in relation to it (as well as the punishment awarded in respect of the new offence).

(7) Subsections (8) and (9) apply where an officer has power to make an order under section 91B(1) of this Act by virtue of paragraph (a) of that subsection but does not do so.

(8) On any appeal against the finding of guilt or the punishment awarded in respect of the new offence, the summary appeal court’s powers under section 52FM(2)(b), (3) and (4) (b) of this Act to vary the punishment or substitute another punishment include—

- (a) power to make the order under section 91B(1) of this Act which the officer could have made; and
- (b) power to give any direction under section 91B(6) of this Act which the officer could have given if he had made the order.

(9) But the court may not exercise its powers under subsection (8) 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 officer who tried him for the new offence.”