



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

#### CHAPTER 1

DEFINITION ETC OF CERTAIN SENTENCES

*Service supervision and punishment orders*

#### **173 Service supervision and punishment orders**

- (1) A service supervision and punishment order is an order that—
  - (a) imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe; and
  - (b) provides that one-sixth of his gross pay for that period is forfeit.
- (2) The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made.
- (3) The requirements that regulations under this section may prescribe include, in particular—
  - (a) requirements to perform activities of a prescribed description;
  - (b) requirements not to use entitlement to leave;and the descriptions of activities that may be prescribed include extra work and drill.
- (4) A requirement included in regulations under this section may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may—

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- (a) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when;
  - (b) provide for the delegation by the commanding officer of any of his functions under the regulations.
- (5) Regulations under this section may prescribe different requirements for different parts of the period of the order.
- (6) In this section "prescribed" means prescribed by regulations under this section.

#### **174 Review of service supervision and punishment orders**

- (1) The commanding officer of a person subject to a service supervision and punishment order must, at times prescribed by regulations made by the Defence Council, consider whether the order should continue in force.
- (2) If on a review under subsection (1) the commanding officer decides that the order should not continue in force, he must order that it shall immediately cease to have effect.
- (3) Regulations made by the Defence Council may—
- (a) prescribe criteria to be applied by a commanding officer in deciding whether an order should continue in force;
  - (b) make provision about procedure in relation to orders under subsection (2).
- (4) Where a commanding officer makes an order under subsection (2), there remains forfeit one-sixth of the offender's gross pay for the period—
- (a) beginning with the day the service supervision and punishment order is made; and
  - (b) ending with the day before the date of the commanding officer's order.

#### *Service compensation orders*

#### **175 Service compensation orders**

- (1) A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from—
- (a) the offence of which he has been convicted; or
  - (b) where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration.
- (2) A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor.
- (3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of this section as having resulted from the offence, however and by whomever the damage was caused.
- (4) No service compensation order may be made in respect of—

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- (a) bereavement;
  - (b) funeral expenses; or
  - (c) loss of any other kind suffered by the dependants of a person in consequence of his death.
- (5) No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless—
- (a) it is in respect of damage treated by subsection (3) as resulting from an offence of unlawfully obtaining any property; or
  - (b) it is in respect of injury, loss or damage as respects which—
    - (i) the offender is uninsured in relation to the use of the vehicle; and
    - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party.
- (6) Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.
- (7) For the purposes of subsection (5) a person is not uninsured in relation to the use of a vehicle if—
- (a) the vehicle is in the public service of the Crown; or
  - (b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 (c. 52) or Article 90(2) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).
- (8) The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so.
- (9) References in this section to “the court” are references to the court or officer sentencing the offender.

## **176 Service compensation orders: appeals etc**

- (1) A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (2) Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made.
- (3) Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
  - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

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## **177 Review of service compensation orders**

- (1) The appropriate court may, on the application of the person against whom a service compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) and (3).
- (2) The appropriate court may exercise a power conferred by subsection (1) only at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect.
- (3) The appropriate court may exercise a power conferred by subsection (1) only if it appears to the court—
  - (a) that the injury, loss or damage in respect of which the service compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order;
  - (b) in the case of a service compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
  - (c) that the person against whom the service compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.
- (4) In this section “the appropriate court” means—
  - (a) if the service compensation order was awarded by an officer and subsection (5) applies, the commanding officer of the person against whom the service compensation order was made;
  - (b) in any other case, the Court Martial.
- (5) This subsection applies if the person against whom the service compensation order was made is for the time being—
  - (a) subject to service law;
  - (b) a member of a volunteer reserve force; or
  - (c) a member of an ex-regular reserve force who is subject to an additional duties commitment.

*Service community orders (civilians and dismissed servicemen only)*

## **178 Service community orders**

- (1) A service community order is an order—
  - (a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and
  - (b) specifying the local justice area in England and Wales, or (as the case may be) the locality in Scotland or the petty sessions district in Northern Ireland, where the offender resides or will reside.
- (2) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is subject to—
  - (a) any restriction that section 177(1) imposes in relation to a particular requirement;

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- (b) the provisions of the 2003 Act mentioned in the paragraphs of section 177(2) of that Act; and
  - (c) section 218 of that Act.
- (3) In the following provisions of the 2003 Act “community order” includes a service community order under this Act—
- section 177(3) to (6) (provision about the making of community orders);
  - section 178 (power to provide for court review of community orders);
  - Chapter 4 of Part 12 (further provision about orders).
- (4) In those provisions in their application in relation to a service community order under this Act, “court” includes a relevant service court.
- (5) The following provisions of the 2003 Act do not apply in relation to a service community order under this Act—
- section 207(3)(a)(ii) (condition for mental health treatment requirement);
  - section 219(3) (requirement to give copy of order to magistrates' court).
- (6) For the purposes of this section each of the following is a relevant service court—
- (a) the Court Martial;
  - (b) the Service Civilian Court;
  - (c) the Court Martial Appeal Court;
  - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

## **179 Periodic review etc of service community orders**

- (1) In section 210 of the 2003 Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to a service community order under this Act—
- (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (2) to (4) shall be treated as omitted.
- (2) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if for subsections (3) to (5) there were substituted—
- “(3A) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may revoke the service community order and deal with him, for the offence in respect of which the order was made—
- (a) if that offence is an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment;
  - (b) if it is not an offence punishable with imprisonment, in any way in which it could deal with him if he had just been convicted before the court of an offence not punishable with imprisonment.
- (3B) In dealing with the offender under subsection (3A) the court—
- (a) must take into account the extent to which the offender has complied with the requirements of the order, and
  - (b) where subsection (3A)(a) applies, may impose a sentence of imprisonment notwithstanding anything in section 152(2).

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- (3C) A term of imprisonment or fine imposed under subsection (3A)—
- (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
  - (b) where the order was made by the Service Civilian Court, must not exceed—
    - (i) in the case of a term of imprisonment, 12 months;
    - (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43)."
- (3) Where a sentence is passed under section 211(3A) of the 2003 Act as substituted by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

### **180 Transfer of service community order to Scotland or Northern Ireland**

- (1) In Schedule 9 to the 2003 Act (transfer of community orders to Scotland or Northern Ireland)—
- (a) “community order” includes a service community order under this Act; and
  - (b) in the provisions mentioned in subsection (2), “court” includes a relevant service court.
- (2) Those provisions are paragraphs 1(1) and (5), 2(1), 3(1), 4(1), 6, 9 (except 9(b)) and 10(c) and (d).
- (3) In its application to a service community order under this Act, that Schedule has effect as if—
- (a) the reference in paragraph 9(c) to the powers of the court making or amending the order were to the powers of the Crown Court;
  - (b) the reference in paragraph 11 to a community order made in England and Wales included a service community order made (anywhere) under this Act;
  - (c) the reference in paragraph 11 to the court which made the order or the court which last amended the order in England and Wales were to the Crown Court; and
  - (d) the reference in paragraph 15 to the court which made the order were to the Crown Court.
- (4) In this section “relevant service court” has the meaning given by section 178(6).

### **181 Breach, revocation or amendment of service community order**

Part 1 of Schedule 5 (application of Schedule 8 to the 2003 Act to service community orders) has effect.

*Overseas community orders (civilians only)*

### **182 Overseas community orders**

- (1) An overseas community order is an order—
- (a) imposing on the offender one or more of the requirements mentioned in section 177(1) of the 2003 Act (community orders under that Act); and

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- (b) not specifying anywhere as an area where the offender resides or will reside.
- (2) The order may include a particular requirement mentioned in section 177(1) of the 2003 Act only if the court is satisfied—
  - (a) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and
  - (b) that arrangements will be made for the supervision of his compliance with the requirement.
- (3) The power to include in the order one or more of the requirements mentioned in section 177(1) of the 2003 Act is also subject to—
  - (a) the provisions mentioned in the paragraphs of section 177(2) of that Act; and
  - (b) Schedule 6 to this Act (special provisions for young offenders).
- (4) Subject to section 183 below, in the following provisions of the 2003 Act “community order” includes an overseas order—
  - section 177(5) and (6) (provision about the making of community orders);
  - Chapter 4 of Part 12 (further provision about orders).
- (5) In those provisions in their application in relation to an overseas community order, “court” includes a relevant service court.
- (6) For the purposes of this section each of the following is a relevant service court—
  - (a) the Court Martial;
  - (b) the Service Civilian Court;
  - (c) the Court Martial Appeal Court;
  - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

### **183 Overseas community orders: modifications of 2003 Act**

- (1) The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to overseas community orders—
  - section 197(1) and (2) (meaning of “the responsible officer”);
  - section 207(3)(a)(ii) (condition for mental health treatment requirement);
  - sections 210 and 211 (periodic review of drug rehabilitation requirement);
  - section 215 (electronic monitoring requirement);
  - section 216 (requirement to specify local justice area);
  - section 218 (availability of arrangements in local justice area etc).
- (2) The references in sections 201(7) and 202(7) of the 2003 Act to the local probation board for the area in which the premises are situated are to be read in relation to an overseas community order as references to a local probation board.
- (3) The court by which an overseas community order is made must (as well as complying with so much as is applicable of section 219 of the 2003 Act) provide a copy of the order without delay—
  - (a) to the offender’s commanding officer;
  - (b) if the offender is aged under 14, to his parent or guardian; and
  - (c) if the order imposes an education requirement under Schedule 6 to this Act, to Service Children’s Education.

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- (4) For the purposes of Part 12 of the 2003 Act “the responsible officer”, in relation to an offender to whom an overseas community order relates, means the officer of a local probation board who, as respects the offender, is for the time being responsible for discharging the functions conferred by that Part on the responsible officer.
- (5) The power conferred on the Secretary of State by section 197(3)(a) of the 2003 Act includes power to amend subsection (4) above.

#### **184 Breach, revocation or amendment of overseas community order**

Part 2 of Schedule 5 (application of Schedule 8 to the 2003 Act to overseas community orders) has effect.

*Conditional or absolute discharge (civilians only)*

#### **185 Conditional or absolute discharge**

- (1) A conditional discharge is an order discharging the offender subject to the condition that he commits no service offence during a period specified in the order.
- (2) The period specified in the order (“the period of conditional discharge”) must—
  - (a) begin with the date of the order; and
  - (b) not exceed the maximum period for the time being specified in section 12(1) (b) of the Sentencing Act (maximum period of civilian conditional discharge).
- (3) An absolute discharge is an order discharging the offender absolutely.
- (4) Where by virtue of Schedule 3 a court sentences an offender by conditionally or absolutely discharging him, the sentence must not include any other punishment except a service compensation order.

#### **186 Commission of further offence by person conditionally discharged**

- (1) This section applies where a person who has been conditionally discharged by virtue of Schedule 3 is convicted by the Court Martial or the Service Civilian Court (“the convicting court”) of an offence committed during the period of conditional discharge.
- (2) If the convicting court is the Court Martial, it may deal with him for the offence for which he was conditionally discharged in any way in which the court that conditionally discharged him could deal with him if it had just convicted him of that offence.
- (3) If the convicting court is the Service Civilian Court, it may deal with him for the offence for which he was conditionally discharged in any way in which it could deal with him if it had just convicted him of that offence.
- (4) If a person conditionally discharged is subsequently dealt with under this section for the offence in respect of which the order conditionally discharging him was made, that order ceases to have effect.
- (5) A person who—
  - (a) is sentenced by a court under subsection (2) or (3) for an offence for which he was conditionally discharged, and
  - (b) was not convicted of that offence by that court,



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is to be treated, for the purpose of enabling him to appeal against the sentence under section 285 below or the Court Martial Appeals Act 1968 (c. 20), as if he had been so convicted.

- (6) Where subsection (3) applies and the offence for which the person was conditionally discharged is not one that the Service Civilian Court would have jurisdiction to try, it shall be assumed for the purposes of that subsection that it could have convicted him of the offence.

## **187 Effect of discharge**

- (1) A conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 186.
- (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently dealt with under section 186 for that offence, subsection (1) ceases to apply to the conviction.
- (3) Without prejudice to subsections (1) and (2), a conviction of an offence for which an order under section 185 discharging the offender absolutely or conditionally is made is in any event to be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability on convicted persons; or
  - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) In subsection (3)—
- “enactment” includes an enactment contained in an Act of the Scottish Parliament, in Northern Ireland legislation or in a local Act;
  - “instrument” means an instrument having effect by virtue of an Act or Northern Ireland legislation (and “Act” here includes an Act of the Scottish Parliament).
- (5) Subsections (1) to (4) do not affect—
- (a) any appeal, whether against conviction or otherwise;
  - (b) any right of the offender to rely on his conviction in bar of any subsequent proceedings for the same offence; or
  - (c) the restoration of any property in consequence of the conviction.

## **CHAPTER 2**

### **CONSECUTIVE SENTENCES**

## **188 Consecutive custodial sentences**

- (1) This section applies where a court passes a qualifying custodial sentence on a person in respect of a service offence.
- (2) In this section “qualifying custodial sentence” means—
- (a) a determinate sentence of imprisonment;

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- (b) a determinate sentence of detention under section 209; or
  - (c) a sentence of detention under section 228 of the 2003 Act passed as a result of section 222 of this Act.
- (3) The court may direct—
- (a) that the sentence shall take effect from the end of any other qualifying custodial sentence that the court passes on the person on the same occasion;
  - (b) that the sentence shall take effect from the end of any sentence to which this paragraph applies that was passed on the person on a previous occasion; or
  - (c) that the sentence shall take effect from the date when the person is (or but for the direction would be) released from custody under any sentence to which this paragraph applies that was passed on him on a previous occasion.
- (4) Subsection (3)(b) applies to any of the following sentences, other than one from which the person has already been released early under Chapter 6 of Part 12 of the 2003 Act—
- (a) a determinate sentence of imprisonment passed in respect of a service offence or by a civilian court in England and Wales;
  - (b) a determinate sentence of detention under section 209 of this Act or section 91 of the Sentencing Act;
  - (c) a sentence of detention under section 228 of the 2003 Act (whether or not passed as a result of section 222 of this Act).
- (5) Subsection (3)(c) applies to any of the following sentences (wherever passed)—
- (a) a determinate sentence of imprisonment not falling within paragraph (a) of subsection (4);
  - (b) a sentence not falling within paragraph (b) or (c) of subsection (4) but corresponding to a sentence so falling.
- (6) In subsection (1) “court” does not include a civilian court.

### **189 Consecutive sentences of service detention**

- (1) A court which passes a sentence of service detention on a person may direct that the sentence shall take effect from the end of any other sentence of service detention—
- (a) that has been passed on him on a previous occasion; or
  - (b) that the court passes on him on the same occasion.
- (2) In subsection (1) “court” does not include the Summary Appeal Court.
- (3) Where an officer or the Summary Appeal Court awards a person a term of service detention, the officer or court may direct that the award shall take effect from the end of any other sentence of service detention that has been passed on him on a previous occasion.
- (4) This section is subject to section 244 (limit on combined term of sentences of service detention).

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## CHAPTER 3

### SUSPENDED SENTENCE OF SERVICE DETENTION

#### 190 Suspension of sentence of service detention

- (1) A court which, or officer who, passes a sentence of service detention may order that the sentence shall not have effect unless—
  - (a) during a period specified in the order (“the operational period”) the offender commits another service offence or an offence in the British Islands; and
  - (b) a court or officer orders under section 191 or 193 that the sentence shall take effect.
- (2) The operational period must be a period of at least three months and not more than twelve months beginning with the date of the order made under this section.
- (3) In this Act “suspended sentence of service detention” means a sentence to which an order under this section relates.

#### 191 Activation by Court Martial of suspended sentence of service detention

- (1) The Court Martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of service detention passed on him.
- (2) The Court Martial may also make an order under subsection (3) if—
  - (a) the Court Martial has passed a suspended sentence of service detention on a person;
  - (b) the person has been convicted of another service offence, or an offence in the British Islands, committed during the operational period of the suspended sentence; and
  - (c) the person appears or is brought before the Court Martial following the issue of a summons or warrant under subsection (6).
- (3) An order under this subsection is an order—
  - (a) that the suspended sentence shall take effect with the original term unaltered; or
  - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either—
  - (a) that the suspended sentence shall take effect immediately; or
  - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.
- (5) Where—
  - (a) by virtue of subsection (2) the Court Martial orders that a suspended sentence shall take effect, and
  - (b) the conviction mentioned in subsection (2)(b) is a conviction by an officer or the Summary Appeal Court,

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any unserved part of any service supervision and punishment order or minor punishment awarded by the officer or the Summary Appeal Court is remitted by the making of the order.

- (6) If it appears to the Court Martial—
  - (a) that subsection (2)(a) and (b) apply, and
  - (b) that the offender has not been dealt with in respect of the suspended sentence, the court may issue a summons requiring him to appear at the time and place specified in it, or a warrant for his arrest.
- (7) In subsection (2)(a) the reference to the Court Martial includes—
  - (a) the Court Martial Appeal Court; and
  - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court.
- (8) This section is subject to section 244 (limit on combined term of sentences of service detention).

### **192 Activation by Court Martial: appeals**

- (1) This section applies where an order under section 191 is made.
- (2) For the purposes of the Court Martial Appeals Act 1968 (c. 20)—
  - (a) the order is to be treated as a sentence passed on the offender by the Court Martial for the offence for which the suspended sentence was passed; and
  - (b) if the offender was not convicted of that offence by the Court Martial, he is to be treated for the purpose of enabling him to appeal against the order as if he had been so convicted.
- (3) For the purposes of any appeal against the order references in section 16A of that Act to passing a sentence include making an order.
- (4) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.

### **193 Activation by CO of suspended sentence of service detention**

- (1) This section applies in relation to a suspended sentence of service detention passed on an offender by an officer or the Summary Appeal Court.
- (2) If—
  - (a) an officer records a finding that a charge against the offender in respect of an offence committed during the operational period of the suspended sentence is proved, or
  - (b) the offender is convicted of an offence in the British Islands which was committed during that operational period, and subsequently appears before his commanding officer,
 the officer may (subject to section 194) make an order under subsection (3).
- (3) An order under this subsection is an order—
  - (a) that the suspended sentence shall take effect with the original term unaltered; or
  - (b) that the suspended sentence shall take effect with the substitution of a lesser term for the original term.

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- (4) An order under subsection (3) may provide either—
  - (a) that the suspended sentence shall take effect immediately; or
  - (b) that the suspended sentence shall take effect from the end of another sentence of service detention which has been passed on the offender on a previous occasion or which the officer passes on the offender on the same occasion as he makes the order.
- (5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to section 292 (postponement of commencement of suspended sentence on activation by CO).

#### **194 Activation by CO: maximum term**

- (1) The term of a suspended sentence as it takes effect by virtue of an order under section 193 must not exceed 28 days unless the officer has extended powers for the purposes of this section.
- (2) If—
  - (a) section 193(2)(a) applies and the officer awards a term of service detention in respect of the offence mentioned there (“the new sentence”), and
  - (b) the officer makes an order under section 193 and the order provides for the suspended sentence to take effect from the end of the new sentence,the aggregate of the terms of the two sentences must not exceed 28 days or, if the officer has extended powers for the purposes of this section, 90 days.
- (3) Nothing in subsection (2) affects section 133 (which determines the maximum length etc of the new sentence).
- (4) An officer has extended powers for the purposes of this section if he has, before the relevant time—
  - (a) applied to higher authority for extended powers for the purposes of this section; and
  - (b) been notified by higher authority that his application has been granted.
- (5) An officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.
- (6) In subsection (4) “the relevant time” means—
  - (a) where section 193(2)(a) applies, the beginning of the summary hearing of the charge mentioned there;
  - (b) where section 193(2)(b) applies, the beginning of the hearing as to whether an order under section 193 should be made.
- (7) Section 193 is subject to section 244 (limit on combined term of sentences of service detention).

#### **195 Suspended sentences: powers of SAC**

- (1) For the purposes of Chapters 2 and 3 of Part 6 (appeals and reviews), an order under section 193 is to be treated as a punishment awarded for the offence for which the suspended sentence was awarded.

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- (2) Where an order under section 193 was made by virtue of a finding within section 193(2)(a)—
  - (a) any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of it is for the purposes of Chapter 2 of Part 6 to be treated as also being an appeal or application for leave to appeal against the order;
  - (b) 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.
- (3) Subsections (4) to (7) apply on an appeal to the Summary Appeal Court in a case in which section 193(2)(a) applied (power of CO to activate suspended sentence following finding of guilt).
- (4) If the officer made an order under section 193, the Summary Appeal Court may (as an alternative to confirming the order)—
  - (a) quash the order; or
  - (b) make, in substitution for the order, any order under that section that the officer could have made.
- (5) If the officer did not make an order under that section, the Summary Appeal Court may make any order under that section that the officer could have made.
- (6) Section 147(3) has effect, as regards the Summary Appeal Court's powers of punishment in respect of the officer's finding (or any substituted finding), as if paragraph (b)(ii) were omitted.
- (7) But the court may not exercise its powers under section 147(3) or subsection (4) or (5) above 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.
- (8) On an appeal against an order under section 193 made by virtue of section 193(2)(b), the Summary Appeal Court may (as an alternative to confirming the order)—
  - (a) quash the order; or
  - (b) make, in substitution for the order, any order under section 193 that—
    - (i) the officer could have made; and
    - (ii) is no more severe than the order appealed against.
- (9) In determining in any case—
  - (a) whether to substitute an order under section 193, or
  - (b) the terms of any such substituted order,the Summary Appeal Court must take account of any period of the suspended sentence that the appellant served.

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## CHAPTER 4

### IMPRISONMENT FOR TERM OF UNDER 12 MONTHS

#### *Application of provisions in the 2003 Act*

#### **196 Term of sentence etc**

- (1) In the following provisions of the 2003 Act, “court” includes a relevant service court—  
sections 181 and 182 (imprisonment for under 12 months: term of sentence and “custody plus” orders);  
sections 189 and 190 (suspended sentences of imprisonment);  
Chapter 4 of Part 12 (further provision about orders) in its application in relation to a custody plus order or suspended sentence order.
- (2) For the purposes of this Chapter, each of the following is a relevant service court—
  - (a) the Court Martial;
  - (b) the Service Civilian Court;
  - (c) the Court Martial Appeal Court;
  - (d) the Supreme Court on an appeal brought from the Court Martial Appeal Court.

#### *Imprisonment with or without “custody plus” order*

#### **197 Imprisonment with or without a custody plus order**

- (1) Subsection (2) applies where a relevant service court—
  - (a) imposes a sentence of imprisonment on an offender; and
  - (b) would (apart from this section) be required by section 181(3)(b) of the 2003 Act to make a custody plus order.
- (2) Section 181(3)(b) of the 2003 Act shall be read as conferring on the court a power rather than a duty to make a custody plus order (but this does not affect the duty of the court under section 181(3)(a) of that Act).
- (3) A relevant service court may not specify in a custody plus order a requirement to be complied with outside the United Kingdom.
- (4) Section 219(3) of the 2003 Act (requirement to give copy of order to magistrates' court) does not apply in relation to a custody plus order made by a relevant service court.

#### **198 Transfer to Scotland or Northern Ireland of custody plus order**

- (1) In paragraphs 2(1) and (2) and 9(1) and (2) of Schedule 11 to the 2003 Act (court making custody plus order may require compliance in Scotland or Northern Ireland), “court” includes a relevant service court.
- (2) In paragraphs 4, 6 and 12 of that Schedule (ancillary provisions) “court” (where the context allows) includes a relevant service court.
- (3) Where Part 4 of that Schedule applies to a custody plus order made by a relevant service court, references in that Part to “the original court” are to be read as references to the Crown Court.

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- (4) Paragraph 22(7)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a custody plus order made by a relevant service court.

### **199 Revocation and amendment of custody plus orders**

- (1) In Schedule 10 to the 2003 Act (revocation and amendment) as it applies to a custody plus order made by a relevant service court—
- (a) “the appropriate court” means the Crown Court; and
  - (b) the following shall be treated as omitted—
    - (i) the definition of “the appropriate court” in paragraph 1(1);
    - (ii) paragraph 2.
- (2) Paragraph 9(1)(b)(ii) and (2) of that Schedule (requirement to give copy of revoking or amending order etc to magistrates' court) do not apply in relation to a custody plus order made by a relevant service court.

### *Suspended sentences of imprisonment*

### **200 Suspended sentence orders with or without community requirements**

- (1) Subsection (2) applies where (apart from this section) a relevant service court would have power under section 189 of the 2003 Act to make a suspended sentence order.
- (2) Section 189(1) of that Act shall be read as conferring on the court a power either—
- (a) to make a suspended sentence order with community requirements; or
  - (b) to make a suspended sentence order without community requirements.
- (3) In this Chapter “a suspended sentence order with community requirements” means a suspended sentence order that—
- (a) includes all the provision required by section 189(1) of the 2003 Act (as modified by subsection (5) below); and
  - (b) complies with section 189(3) and (4) of that Act.
- (4) In this Chapter “a suspended sentence order without community requirements” means a suspended sentence order made as if in section 189 of the 2003 Act (as modified by subsection (5) below) the following were omitted—
- (a) paragraph (a) of subsection (1);
  - (b) in paragraph (b) of that subsection, sub-paragraph (i) (and the word “either” before that sub-paragraph);
  - (c) subsection (4) and the reference in subsection (3) to the supervision period.
- (5) In section 189(1) of the 2003 Act (suspended sentence orders) as it applies to a relevant service court, paragraph (b)(ii) (commission of UK offence in operational period of order) has effect as if for the words from “commits” to the end of sub-paragraph (ii) there were substituted “commits—
- (a) another service offence (within the meaning of the Armed Forces Act 2006), or
  - (b) an offence in the British Islands,”.



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- (6) A relevant service court may not specify in a suspended sentence order with community requirements a requirement to be complied with outside the United Kingdom.

## **201 Order without community requirements: provisions not applying**

Nothing in the following provisions of the 2003 Act applies in relation to a suspended sentence order without community requirements—

- sections 190 to 192 (imposition of community requirements and periodic reviews);
- Chapter 4 of Part 12 (further provisions about orders);
- Part 3 of Schedule 12 (amendment of order);
- Schedule 13 (transfer of order to Scotland or Northern Ireland).

## **202 Order with community requirements: disapplication of certain provisions**

The following provisions of Chapter 4 of Part 12 of the 2003 Act do not apply in relation to a suspended sentence order with community requirements made by a relevant service court—

- section 207(3)(a)(ii) (condition for mental health treatment requirement);
- section 219(3) (requirement to give copy of order to magistrates' court).

## **203 Review of order with community requirements**

- (1) In section 191 of the 2003 Act (provision for periodic reviews of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
- (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (3) to (5) shall be treated as omitted.
- (2) In section 210 of that Act (provision for periodic reviews of drug rehabilitation requirement) as it applies to such an order—
- (a) “the court responsible for the order” means the Crown Court; and
  - (b) subsections (2) to (4) shall be treated as omitted.
- (3) Section 211 of that Act (periodic reviews of drug rehabilitation requirement) has effect in its application to such an order as if—
- (a) in subsection (3)(b) for the words from “he could have been dealt with” to the end there were substituted “it could deal with him if he had just been convicted before the court of an offence punishable with imprisonment”;
  - (b) in subsection (4)(b) the words in brackets were omitted; and
  - (c) after subsection (4) there were inserted—
    - “(4A) A term of imprisonment or fine imposed under subsection (3)(b)—
    - (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
    - (b) where the order was made by the Service Civilian Court, must not exceed—
      - (i) in the case of a term of imprisonment, 12 months;

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(ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”

- (4) Where a sentence is passed under section 211(3)(b) of the 2003 Act as modified by subsection (3) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

#### **204 Transfer to Scotland or Northern Ireland of order with community requirements**

- (1) In paragraphs 1(1) and 6(1) of Schedule 13 to the 2003 Act (court making suspended sentence order with community requirements may require compliance in Scotland or Northern Ireland), “court” includes a relevant service court.
- (2) In paragraphs 1(5) and (6), 3, 6(5) and 8 of that Schedule (ancillary provisions), “court” (where the context allows) includes a relevant service court.
- (3) Where Part 3 of that Schedule applies to a suspended sentence order made by a relevant service court—
- (a) references in that Part to “the original court” are to be read as references to the Crown Court; and
  - (b) the following shall be treated as omitted—
    - (i) the definition of “original court” in paragraph 11;
    - (ii) paragraph 12(3).
- (4) Paragraph 20(6)(b) of that Schedule (requirement to give copy of amending order etc to magistrates' court) does not apply in relation to a suspended sentence order made by a relevant service court.

#### **205 Amendment of order with community requirements**

- (1) In Part 3 of Schedule 12 to the 2003 Act (amendment of order) as it applies to a suspended sentence order with community requirements made by a relevant service court—
- (a) “the appropriate court” means the Crown Court;
  - (b) the reference in paragraph 17 to the court responsible for the order is to be read as a reference to the Crown Court; and
  - (c) paragraphs 13(3), 14(5), 15(6), 16(4), 18(2) and 22(1)(b)(ii) and (d) and (2) shall be treated as omitted.
- (2) Paragraph 15 of that Schedule has effect in its application to such an order as if—
- (a) in sub-paragraph (4)(b) for the words “of the offence” there were substituted “of an offence punishable with imprisonment”; and
  - (b) after sub-paragraph (5) there were inserted—
 

“(5A) A term of imprisonment or fine imposed under sub-paragraph (4) (b)—

    - (a) must not exceed the maximum permitted for the offence in respect of which the order was made, and
    - (b) where the order was made by the Service Civilian Court, must not exceed—

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- (i) in the case of a term of imprisonment, 12 months;
- (ii) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 (c. 43).”

- (3) Paragraphs 2(b) and 3 of that Schedule shall be treated as omitted for the purposes of Part 3 of that Schedule as it applies to such an order.
- (4) Where a sentence is passed under paragraph 15(4)(b) of Schedule 12 to the 2003 Act as modified by subsection (2) above, section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.

#### **206 Suspended sentence: further conviction or breach of community requirement**

Schedule 7 (modification of Schedule 12 to the 2003 Act in relation to suspended sentences passed by relevant service courts) has effect.

#### *Supplementary*

#### **207 Definitions for purposes of Chapter**

In this Chapter—

- “custody plus order” means an order under section 181(3)(b) of the 2003 Act;
- “relevant service court” has the meaning given by section 196(2) of this Act;
- “suspended sentence order” means an order under section 189(1) of the 2003 Act;
- “suspended sentence order with community requirements” has the meaning given by section 200(3) of this Act;
- “suspended sentence order without community requirements” has the meaning given by section 200(4) of this Act.

### **CHAPTER 5**

#### **YOUNG OFFENDERS: CUSTODIAL SENTENCES AVAILABLE TO SERVICE COURTS**

#### *Prohibition on imposing imprisonment on persons under 18*

#### **208 Prohibition on imposing imprisonment on persons under 18**

A person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court shall not be sentenced to imprisonment for the offence.

#### *Detention for certain serious offences*

#### **209 Offenders under 18 convicted of certain serious offences: power to detain for specified period**

- (1) Subsection (5) (power to pass sentence of detention) applies where—

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- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) the case is within any of subsections (2) to (4).
- (2) The case is within this subsection if the corresponding offence under the law of England and Wales is under that law—
- (a) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and
  - (b) not an offence the sentence for which is fixed by law.
- (3) The case is within this subsection if the corresponding offence under the law of England and Wales is an offence under—
- (a) section 3 of the Sexual Offences Act 2003 (c. 42) (sexual assault);
  - (b) section 13 of that Act (child sex offences committed by children or young persons);
  - (c) section 25 of that Act (sexual activity with a child family member); or
  - (d) section 26 of that Act (inciting a child family member to engage in sexual activity).
- (4) The case is within this subsection if it falls within section 227(1) (certain firearms offences).
- (5) Where this subsection applies, the court may pass a sentence of detention under this section if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable.
- (6) A sentence of detention under this section is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under section 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence.
- (7) Subsections (5) and (6) are subject to (in particular)—
- sections 221, 222 and 227 (required custodial sentences for certain offences); and
  - sections 260 and 261 (general restrictions on custodial sentences).

## **210 Detention under section 209: place of detention etc**

- (1) A person sentenced to be detained under section 209 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (2) A person detained in pursuance of a sentence under section 209 shall be deemed to be in legal custody.

### *Detention and training orders*

## **211 Offenders under 18: detention and training orders**

- (1) Where—
  - (a) a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and

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- (b) the court is of the opinion mentioned in section 260(2) or the case falls within section 260(3),  
the sentence that the court is to pass is (subject to subsections (2) and (3)) an order that the person shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.
- (2) In the case of an offender aged under 15 at the time of the conviction, the court may not make an order under this section unless it is of the opinion that he is a persistent offender.
- (3) In the case of an offender aged under 12 at the time of the conviction, the court may not make an order under this section unless—
- (a) it is of the opinion mentioned in subsection (2);
  - (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
  - (c) the offence was committed on or after such date as may be appointed under section 100(2)(b)(ii) of the Sentencing Act (appointed day for purposes of orders under that Act).
- (4) Subsection (1) is also subject to sections 209, 218, 221, 222 and 227 (other custodial sentences that may or must be imposed in particular cases).

## **212 Term of detention and training order: general**

- (1) The term of an order made under section 211 in respect of an offence—
- (a) shall be 4, 6, 8, 10, 12, 18 or 24 months; and
  - (b) may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over.
- (2) Where—
- (a) the offence is an offence under section 42 (criminal conduct),
  - (b) the corresponding offence under the law of England and Wales is under that law a summary offence, and
  - (c) the maximum term of imprisonment with which that offence is punishable in the case of a person aged 18 or over is 51 weeks,
- the term of the order may not exceed 6 months.

## **213 Application of provisions relating to civilian detention and training orders**

- (1) In the following provisions of the Sentencing Act references to a detention and training order include an order under section 211 of this Act—
- section 101(3) to (10) and (13) (power to impose consecutive terms, duty of court to take account of remands, etc);
  - sections 102 to 105, 106A and 107 (period of detention and training, period of supervision, breach of supervision requirements, etc).
- (2) In sections 101(3) to (10) and (13) and 106A of the Sentencing Act “court” includes a relevant service court (within the meaning given by section 196(2)).
- (3) In section 101(8) and (9) of the Sentencing Act in their application to an order under section 211 of this Act, any reference to an offender’s being “remanded in custody” is

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a reference to his being kept in service custody; and section 101(11) and (12) of that Act do not apply in relation to such an order.

## **214 Offences during currency of detention and training order**

- (1) This section applies to a person in respect of whom an order under section 211 has been made if—
  - (a) after his release and before the date on which the term of the order ends, he commits an offence within subsection (2) (“the new offence”); and
  - (b) whether before or after that date, he is convicted of the new offence.
- (2) An offence is within this subsection if it is—
  - (a) a service offence which is punishable with imprisonment; or
  - (b) an offence in the British Islands which is so punishable.
- (3) A court having power to do so under subsection (4) or (5) may order the person to be detained in such secure accommodation as the Secretary of State may determine for the whole or any part of the period which—
  - (a) begins with the date of the court’s order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1).
- (4) Where the Court Martial or the Service Civilian Court convicts the person of the new offence, the court may on the conviction make an order under subsection (3).
- (5) Where the offender is convicted of the new offence otherwise than by the Court Martial or the Service Civilian Court, the Court Martial may make an order under subsection (3) if the offender appears or is brought before it following the issue of a summons or warrant under subsection (7).
- (6) Where an order under subsection (3) is made on the conviction of the new offence, the order must be in addition to the sentence for the new offence, and the period for which the person is ordered under subsection (3) to be detained—
  - (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
  - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) If it appears to the Court Martial—
  - (a) that this section applies to a person,
  - (b) that his conviction of the new offence was not by the Court Martial or the Service Civilian Court, and
  - (c) that no order under subsection (3) or under section 105 of the Sentencing Act has been made in respect of the new offence,

the Court Martial may issue a summons requiring the person to appear at the time and place specified in it, or a warrant for his arrest.
- (8) A person detained in pursuance of an order under subsection (3) shall be deemed to be in legal custody.

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## **215 Section 214: definitions etc**

- (1) Section 101(13) of the Sentencing Act (treatment of concurrent and consecutive terms) applies for the purposes of the reference in section 214(1)(a) of this Act to the term of an order.
- (2) Where the new offence (within the meaning of section 214) is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of that section to have been committed on the last of those days.
- (3) In section 214 “secure accommodation” has the meaning given by section 107 of the Sentencing Act.

## **216 Appeals against orders under section 214**

- (1) This section applies where an order under section 214 (“the relevant order”) is made.
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) the relevant order is to be treated as a sentence passed on the offender, by the court that made the relevant order, for the offence for which the order under section 211 was made; and
  - (b) if the offender was not convicted of that offence by that court he is to be treated for the purpose of enabling him to appeal against the relevant order as if he had been so convicted.
- (3) For the purposes of any appeal against the relevant order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (4) On an appeal to the Court Martial Appeal Court against the relevant order, the court may (as an alternative to exercising its powers under section 16A(2) of the Court Martial Appeals Act 1968) quash the order.

## **CHAPTER 6**

### **MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES**

#### *Mandatory sentences*

## **217 Mandatory life imprisonment**

- (1) This section applies if a person is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is under that law—
  - (a) murder; or
  - (b) any other offence the sentence for which is fixed by law as imprisonment for life.
- (2) The court must sentence him to imprisonment for life unless he is liable to be detained under section 218 (offences committed when offender aged under 18).

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**218 Offenders who commit murder etc when under 18: mandatory detention at Her Majesty’s pleasure**

- (1) This section applies if—
  - (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is under that law—
    - (i) murder; or
    - (ii) any other offence the sentence for which is fixed by law as imprisonment for life; and
  - (c) the offender appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty’s pleasure.
- (3) A person sentenced to be detained under this section is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.
- (4) A person detained in pursuance of a sentence under this section shall be deemed to be in legal custody.

*Required sentences*

**219 Dangerous offenders aged 18 or over**

- (1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.
- (2) If the court is of the required opinion (defined by section 223), then—
  - (a) if the case falls within section 225(2) of the 2003 Act the court must impose the sentence required by section 225(2) of that Act;
  - (b) otherwise, it must impose the sentence required by section 225(3) of that Act.
- (3) In determining for the purposes of this section whether the case falls within section 225(2) of the 2003 Act, references in section 225(2) to “the offence” are to be read as references to the offence under section 42 of this Act.
- (4) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (5) A sentence under section 225 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

**220 Certain violent or sexual offences: offenders aged 18 or over**

- (1) This section applies where a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a specified offence other than a serious offence.
- (2) If the court is of the required opinion (defined by section 223), it must impose the sentence required by section 227(2) to (5) of the 2003 Act.



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- (3) In section 227 of the 2003 Act as applied by this section—
- (a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;
  - (b) the reference in subsection (3)(a) to section 153(2) of that Act is to be read as a reference to section 261(2) of this Act;
  - (c) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
  - (d) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (4) In this section the following expressions—
- “serious offence”,
  - “specified offence”,
  - “specified violent offence”, and
  - “specified sexual offence”,
- have the meanings given by section 224 of the 2003 Act.

## **221 Dangerous offenders aged under 18**

- (1) This section applies where a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) and the corresponding offence under the law of England and Wales is a serious offence.
- (2) If the court is of the required opinion (defined by section 223), then—
- (a) if the case falls within section 226(2) of the 2003 Act the court must impose the sentence required by section 226(2) of that Act (read with subsection (3) (b) below);
  - (b) if the case falls within section 226(3) of that Act the court must impose the sentence required by section 226(3) of that Act.
- (3) In determining for the purposes of this section whether the case falls within section 226(2) of the 2003 Act and what the sentence required by that provision is—
- (a) references in section 226(2) to “the offence” are to be read as references to the offence under section 42 of this Act; and
  - (b) references in section 226(2) to section 91 of the Sentencing Act are to be read as references to section 209 of this Act.
- (4) In determining for the purposes of this section whether the case falls within section 226(3) of the 2003 Act, the reference in section 226(3) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales.
- (5) In this section “serious offence” has the meaning given by section 224 of the 2003 Act.
- (6) A sentence under section 226 of the 2003 Act passed as a result of this section is not to be regarded as a sentence fixed by law.

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## **222 Offenders aged under 18: certain violent or sexual offences**

- (1) This section applies where—
  - (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is a specified offence;
  - (c) the court is of the required opinion (defined by section 223); and
  - (d) where the corresponding offence under the law of England and Wales is a serious offence, the case is not one in which the court is required by section 221 to impose a sentence complying with subsection (2) of that section.
- (2) Where this section applies, the court must impose the sentence required by section 228(2) to (5) of the 2003 Act.
- (3) In section 228 of the 2003 Act as applied by this section—
  - (a) the reference in subsection (2)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales;
  - (b) the reference in subsection (4)(a) to a specified violent offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified violent offence;
  - (c) the reference in subsection (4)(b) to a specified sexual offence is to an offence under section 42 of this Act as respects which the corresponding offence under the law of England and Wales is a specified sexual offence; and
  - (d) references to the maximum term of imprisonment permitted for the offence are to the maximum term of imprisonment that (apart from section 219) is permitted for the offence under section 42 in the case of a person aged 18 or over.
- (4) In this section the following expressions—
  - “serious offence”,
  - “specified offence”,
  - “specified violent offence”, and
  - “specified sexual offence”,
 have the meanings given by section 224 of the 2003 Act.

## **223 “The required opinion” for purposes of sections 219 to 222**

- (1) “The required opinion” for the purposes of sections 219(2), 220(2), 221(2) and 222(1) is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of—
  - (a) further specified offences; or
  - (b) further acts or omissions that would be specified offences if committed in England or Wales.
- (2) For the purposes of the court’s decision whether it is of that opinion, section 229(2) to (4) of the 2003 Act apply as they apply for the purposes of the assessment referred to in section 229(1) of that Act.
- (3) In section 229(2) to (4) of the 2003 Act as applied by this section—

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- (a) any reference to the offence mentioned in section 229(1)(a) of that Act is a reference to the offence under section 42 of this Act; and
  - (b) the reference to such a risk as is mentioned in section 229(1)(b) of that Act is a reference to such a risk as is mentioned in subsection (1) above.
- (4) In this section—
- “serious harm” has the meaning given by section 224 of the 2003 Act;
  - “specified offence” has the meaning given by that section.

#### **224 Place of detention under certain sentences**

Where as a result of section 221 or 222 a court passes a sentence of—

- (a) detention for public protection under section 226(3) of the 2003 Act, or
  - (b) detention under section 228 of that Act,
- section 235 of that Act (place of detention etc) applies accordingly.

#### **225 Third drug trafficking offence**

- (1) This section applies where —
- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 110 of the Sentencing Act (third class A drug trafficking offence) would apply.
- (2) The Court Martial must impose the sentence required by section 110(2) of that Act, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

#### **226 Third domestic burglary**

- (1) This section applies where—
- (a) a person aged over 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct); and
  - (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 111 of the Sentencing Act (third domestic burglary) would apply.
- (2) The Court Martial must impose the sentence required by section 111(2) of that Act, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.

#### **227 Firearms offences**

- (1) This section applies if—
- (a) a person is convicted by the Court Martial of an offence under section 42 (criminal conduct); and

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- (b) if his conviction had been by a civilian court in England and Wales of the corresponding offence under the law of England and Wales, section 51A of the Firearms Act 1968 (c. 27) (minimum sentences for certain firearms offences) would apply.
- (2) The Court Martial must impose the sentence required by section 51A(2) of that Act (as that provision has effect in relation to England and Wales), unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- (3) In section 51A(4)(a)(ii) of that Act (interpretation of section 51A(2)), as applied by this section, the reference to a sentence of detention under section 91 of the Sentencing Act is to be read as a reference to a sentence of detention under section 209 of this Act.

## **228 Appeals where previous convictions set aside**

- (1) Subsection (3) applies where—
  - (a) a sentence has been imposed on a person by virtue of section 219 or 220; and
  - (b) any previous conviction of his without which the court would not have been required to make the assumption mentioned in section 229(3) of the 2003 Act (as applied by section 223) has been subsequently set aside on appeal.
- (2) Subsection (3) also applies where—
  - (a) a sentence has been imposed on any person by virtue of section 225 or 226; and
  - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.
- (3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.
- (4) Subsection (3) has effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

## **CHAPTER 7**

### COURT ORDERS OTHER THAN SENTENCES

#### *Service restraining orders*

## **229 Service restraining orders**

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
  - (a) it convicts or acquits a person (“the defendant”) of an offence; and
  - (b) the defendant is subject to service law or is a civilian subject to service discipline.
- (2) An order under this section—
  - (a) prohibits the defendant from doing anything described in the order; and

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- (b) has effect for a fixed period specified in the order or until further order.
- (3) An order under this section may be made, and a prohibition may be included in the order, only for the purpose of protecting a person mentioned in the order from conduct which amounts to harassment.
- (4) A person subject to service law or a civilian subject to service discipline commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an order under this section.
- (5) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years.
- (6) In proceedings for an order under this section, the Director of Service Prosecutions and the defence may lead (as further evidence) any evidence which would be admissible in proceedings in the High Court in England and Wales for an injunction under section 3 of the Protection from Harassment Act 1997 (c. 40).

### **230 Service restraining orders: supplementary**

- (1) Section 7 (interpretation) of the Protection from Harassment Act 1997 (c. 40) (“the 1997 Act”) applies for the purposes of section 229 of this Act as it applies for the purposes of sections 5 and 5A of that Act.
- (2) Section 12 of the 1997 Act (national security etc) applies for the purposes of section 229 of this Act as if—
  - (a) the reference in subsection (1)(c) to serious crime were a reference to serious service offences or serious crime (committed anywhere);
  - (b) the reference in subsection (1) to the 1997 Act were a reference to section 229 of this Act.
- (3) Where the Court Martial Appeal Court allows an appeal against conviction it may remit the case to the Court Martial for that court to consider whether to proceed under section 229.
- (4) Section 229 applies in relation to a case remitted under subsection (3) as if subsection (1)(a) were omitted.

### **231 Service restraining orders: appeals**

- (1) This section applies where a court makes an order under section 229—
  - (a) after it has acquitted the defendant of an offence; or
  - (b) in respect of a case remitted to it under section 230(3).
- (2) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and
  - (b) the defendant is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court.
- (3) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

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### **232 Service restraining orders: variation and revocation**

- (1) The Court Martial may vary or revoke an order under section 229 on an application made by—
  - (a) the Director of Service Prosecutions;
  - (b) the defendant; or
  - (c) any other person mentioned in the order.
- (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).
- (3) Where a person is convicted of an offence under section 229, the court that convicts him may vary or revoke the order to which the offence relates.

*Order for parent or guardian to enter into recognizance*

### **233 Order for service parent or service guardian to enter into recognizance**

- (1) Where—
  - (a) a person aged under 18 is convicted of an offence by the Court Martial or the Service Civilian Court,
  - (b) he is a civilian subject to service discipline, and
  - (c) he has a service parent or service guardian,
 the court may, and in the circumstances mentioned in subsection (3) must, exercise the powers conferred by this section.
- (2) The powers conferred by this section are as follows—
  - (a) with the consent of the offender’s service parent or service guardian, to order that parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over him; and
  - (b) if the service parent or service guardian refuses consent and the court considers the refusal unreasonable, to order that parent or guardian to pay a fine not exceeding level 3 on the standard scale.
- (3) The circumstances referred to in subsection (1) as those in which the court must exercise the powers conferred by this section are—
  - (a) that the offender is under 16 when convicted; and
  - (b) that the court is satisfied, having regard to the circumstances of the case, that the exercise of those powers would be desirable in the interests of preventing the commission by him of further offences.
- (4) Where the powers conferred by this section are not exercised in a case where subsection (1) applies and the offender is under 16 when convicted, the court must state in open court that it is not satisfied as mentioned in subsection (3)(b) and why it is not so satisfied.
- (5) A parent or guardian is a “service parent” or “service guardian” for the purposes of this section if he is a person subject to service law or a civilian subject to service discipline.
- (6) For the purposes of this section, taking “care” of a person includes giving him protection and guidance and “control” includes discipline.

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### **234 Recognizances and fines under section 233: further provision**

- (1) An order under section 233 must not require the parent or guardian to enter into a recognizance for an amount exceeding level 3 on the standard scale.
- (2) Such an order must not require the parent or guardian to enter into a recognizance—
  - (a) for a period exceeding three years; or
  - (b) where the offender will reach the age of 18 in a period shorter than three years, for a period exceeding that shorter period.
- (3) In fixing the amount of a recognizance under that section, the court must take into account (among other things) the means of the parent or guardian so far as they appear or are known to the court, and this applies whether taking those means into account has the effect of increasing or reducing the amount of the recognizance.
- (4) A recognizance under section 233 may, where the court has passed an overseas community order on the offender, include a provision that the service parent or service guardian ensure that the offender complies with the requirements of that order.
- (5) A court imposing a fine under section 233(2)(b) may make an order under section 251 (power to allow payment by instalments), and in relation to such a fine section 251(2) to (7) have effect as if any reference to a service compensation order were omitted.

### **235 Recognizances: appeals, variation and revocation**

- (1) For the purposes of sections 285 to 287 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968 (c. 20)—
  - (a) an order under section 233 is to be treated as a sentence passed on the parent or guardian for the offence; and
  - (b) the parent or guardian is to be treated for the purpose of enabling him to appeal against the order as if he had been convicted of the offence by the court that made the order.
- (2) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
- (3) On an appeal against the order the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order.
- (4) The Court Martial may vary or revoke an order under section 233 if on the application of the parent or guardian it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

### **236 Forfeiture of recognizance**

- (1) Where—
  - (a) a recognizance under section 233 has been entered into, and
  - (b) the offender commits a service offence during the period of the recognizance, the Court Martial or the Service Civilian Court may on convicting the offender of that offence (and subject to subsection (2)) declare the recognizance to be forfeited.
- (2) The court may not make such a declaration where the parent or guardian is neither a person subject to service law nor a civilian subject to service discipline.
- (3) If a court declares under this section that a recognizance is to be forfeited it must—

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- (a) adjudge the parent or guardian to pay the sum in which he is bound;
  - (b) adjudge him to pay part of that sum; or
  - (c) remit that sum.
- (4) A court declaring under this section that a recognizance is to be forfeited may make an order under section 251 (power to allow payment by instalments); and in relation to a forfeiture under this section, section 251(2) to (7) have effect as if references to the fine or service compensation order were to the forfeiture.