



# Armed Forces Act 2011

## 2011 CHAPTER 18

An Act to continue the Armed Forces Act 2006; to amend that Act and other enactments relating to the armed forces and the Ministry of Defence Police; to amend the Visiting Forces Act 1952; to enable judge advocates to sit in civilian courts; to repeal the Naval Medical Compassionate Fund Act 1915; to make provision about the call out of reserve forces; and for connected purposes. [3rd November 2011]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Duration of Armed Forces Act 2006*

#### **1 Duration of Armed Forces Act 2006**

For section 382 of AFA 2006 (duration of armed forces legislation) substitute—

##### **“382 Duration of this Act**

- (1) This Act expires at the end of one year beginning with the day on which the Armed Forces Act 2011 is passed (but this is subject to subsection (2)).
- (2) Her Majesty may by Order in Council provide that, instead of expiring at the time it would otherwise expire, this Act shall expire at the end of a period of not more than one year from that time.
- (3) Such an Order may not provide for the continuation of this Act beyond the end of the year 2016.
- (4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (2) unless a draft of the Order has been laid before, and approved by resolution of, each House of Parliament.”

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*Armed forces covenant report*

**2 Armed forces covenant report**

After section 343 of AFA 2006 insert—

**“PART 16A**

**ARMED FORCES COVENANT REPORT**

**343A Armed forces covenant report**

- (1) The Secretary of State must in each calendar year—
  - (a) prepare an armed forces covenant report; and
  - (b) lay a copy of the report before Parliament.
- (2) An armed forces covenant report is a report about effects of membership, or former membership, of the armed forces on service people, or particular descriptions of such people—
  - (a) in the fields of healthcare, education and housing;
  - (b) in the operation of inquests; and
  - (c) in such other fields as the Secretary of State may determine.
- (3) In preparing an armed forces covenant report the Secretary of State must have regard in particular to—
  - (a) the unique obligations of, and sacrifices made by, the armed forces;
  - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and
  - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (4) For the purposes of preparing an armed forces covenant report, the Secretary of State must obtain the views of any relevant government department, and seek the views of any relevant devolved administration, in relation to the effects to be covered by the report.
- (5) An armed forces covenant report must—
  - (a) set out in full or summarise the views of a relevant government department or relevant devolved administration obtained pursuant to subsection (4); and
  - (b) where the views of a relevant devolved administration have been sought but not obtained, state that fact.
- (6) The Secretary of State may not include in an armed forces covenant report a summary under subsection (5)(a) unless the relevant government department or relevant devolved administration has approved the summary.
- (7) An armed forces covenant report must state whether, in the Secretary of State’s opinion, any effects covered by the report are such that service people or particular descriptions of service people are at a disadvantage as regards

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the field or fields in question, when compared with other persons or such descriptions of other persons as the Secretary of State considers appropriate.

- (8) Where the Secretary of State's opinion is that service people or particular descriptions of service people are at a disadvantage as mentioned in subsection (7), the report must set out the Secretary of State's response to that.
- (9) As regards effects covered by an armed forces covenant report—
  - (a) the Secretary of State must consider whether the making of special provision for service people or particular descriptions of service people would be justified; and
  - (b) where the Secretary of State considers that such provision would be justified, the report must contain a reference to that fact.
- (10) In relation to any particular description of service people covered by a report, the reference in subsection (2)(a) to the fields of healthcare, education and housing is to such of those fields as the Secretary of State considers are ones in which people of that description are affected by membership or former membership of the armed forces.

### **343B Interpretation of Part**

- (1) In section 343A “service people” means—
  - (a) members of the regular forces and the reserve forces;
  - (b) members of British overseas territory forces who are subject to service law;
  - (c) former members of any of Her Majesty's forces who are ordinarily resident in the United Kingdom; and
  - (d) relevant family members.
- (2) In section 343A “relevant government department”, in relation to an effect to be covered by an armed forces covenant report, means a department of the Government of the United Kingdom (apart from the Ministry of Defence) which the Secretary of State considers has functions relevant to that effect.
- (3) In section 343A “relevant devolved administration”, in relation to an effect to be covered by an armed forces covenant report, means whichever of the following the Secretary of State considers to have functions relevant to that effect—
  - (a) the Scottish Executive;
  - (b) the Northern Ireland departments;
  - (c) the Welsh Assembly Government.

- (4) In this Part—

“British overseas territory force” means any of Her Majesty's forces that is raised under the law of a British overseas territory;

“membership or former membership” of a force, in relation to a person, includes any service in that force that that person is undertaking, undertook or may be expected to be called on to undertake;

“relevant family members” means such descriptions of persons connected with service members, or with persons who were service members, as the Secretary of State considers should be covered by a report or part of a report;

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“service member” means a person who falls within any of paragraphs (a) to (c) of subsection (1).

- (5) Any reference in this Part to membership or former membership of the armed forces is to be read, in relation to a person who is—
- (a) a service member, or
  - (b) a relevant family member by reason of connection with a person who is or was a service member,
- as a reference to the service member’s membership or former membership of a force mentioned in subsection (1).”

*Service Police and Ministry of Defence Police*

### **3 Provost Marshal’s duty in relation to independence of investigations**

After section 115 of AFA 2006 insert—

*“Provost Marshal’s duty in relation to independence of investigations*

#### **115A Provost Marshal’s duty in relation to independence of investigations**

- (1) This section applies in relation to each service police force.
- (2) The Provost Marshal of the force has a duty, owed to the Defence Council, to seek to ensure that all investigations carried out by the force are free from improper interference.
- (3) “Improper interference” includes, in particular, any attempt by a person who is not a service policeman to direct an investigation which is being carried out by the force.”

### **4 Inspection of service police investigations**

After section 321 of AFA 2006 insert—

## **“CHAPTER 4A**

### INSPECTION OF SERVICE POLICE INVESTIGATIONS

#### **321A Inspection of service police investigations**

- (1) Her Majesty’s Inspectors of Constabulary (“the inspectors”) are to inspect, and report to the Secretary of State on, the independence and effectiveness of investigations carried out by each service police force.
- (2) In this section “investigations” means investigations of matters where service offences have or may have been committed, and includes investigations outside the United Kingdom.
- (3) For the purposes of subsection (1) the inspectors may—
  - (a) undertake such number of inspections as they think appropriate;

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- (b) undertake inspections when they think it appropriate; and
  - (c) decide which aspects of, or matters related to, investigations by a service police force are to be the subject of a particular inspection;
- but this is subject to subsection (4).

- (4) The Secretary of State may at any time require the inspectors to inspect, and report to the Secretary of State on, any or all of the following—
- (a) the independence of investigations carried out by a particular service police force;
  - (b) the effectiveness of such investigations;
  - (c) a particular aspect of, or matter related to, such investigations.

### **321B Inspectors’ reports to be laid before Parliament**

- (1) The Secretary of State must lay before Parliament each report made under section 321A.
- (2) The Secretary of State may exclude from a report laid before Parliament under this section any material whose publication, in the Secretary of State’s opinion—
- (a) would be against the interests of national security; or
  - (b) might jeopardise the safety of any person.”

## **5 Provost Marshals: appointment**

After section 365 of AFA 2006 insert—

*“Provost Marshals*

### **365A Provost Marshals: appointment**

- (1) No appointment of a person to be Provost Marshal of a service police force may be made except by Her Majesty.
- (2) To be eligible for appointment as a Provost Marshal, a person must be a provost officer.”

## **6 Ministry of Defence Police: performance regulations**

In section 3A of the Ministry of Defence Police Act 1987 (regulations relating to disciplinary matters), in each of subsections (1)(a) and (1A) after “conduct” insert “, efficiency and effectiveness”.

*Powers of entry, search and seizure*

## **7 Power of judge advocate to authorise entry and search**

For section 83 of AFA 2006 (power of judge advocate to authorise entry and search) substitute—

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### **“83 Power of judge advocate to authorise entry and search**

- (1) On an application made by a service policeman, a judge advocate may, if the relevant requirements are met, issue a warrant authorising a service policeman to enter and search—
  - (a) one or more sets of premises specified in the application; or
  - (b) any relevant residential premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified.
- (2) The relevant requirements are met (subject to subsection (3)) if the judge advocate is satisfied that each set of premises specified in the application is relevant residential premises and that there are reasonable grounds for believing—
  - (a) that a relevant offence has been committed;
  - (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is—
    - (i) in the case of a warrant authorising entry and search of specified premises, on those premises;
    - (ii) in the case of a warrant authorising entry and search of any relevant residential premises occupied or controlled by a specified person, on one or more sets of such premises occupied or controlled by that person;
  - (c) that the material would be likely to be admissible in evidence at a trial for the offence;
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
  - (e) that at least one of the conditions specified in subsection (4) applies in relation to each set of premises specified in the application.
- (3) If the application is for a warrant authorising entry and search of any relevant residential premises occupied or controlled by a specified person, the judge advocate must also be satisfied—
  - (a) that, because of the particulars of the offence mentioned in subsection (2)(a), there are reasonable grounds for believing that in order to find the material mentioned in subsection (2)(b) it is necessary to search relevant residential premises that are occupied or controlled by the person in question and are not specified in the application; and
  - (b) that it is not reasonably practicable to specify in the application all the relevant residential premises that the person occupies or controls and that might need to be searched.
- (4) The conditions mentioned in subsection (2)(e) are—
  - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) that entry to the premises will not be granted unless a warrant is produced;

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- (d) in the case of service living accommodation within section 96(1)(b) or (c)—
    - (i) that it is not practicable to communicate with the person or (as the case may be) any of the persons for whom the accommodation is provided; or
    - (ii) that there is no such person with whom it is practicable to communicate who will agree to grant access to the accommodation without the production of a warrant;
  - (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.
- (5) A warrant under this section may authorise entry to and search of premises on more than one occasion if, on the application for the warrant, the judge advocate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued.
- (6) If the warrant authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.
- (7) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).”

## **8 Power to make provision about access to excluded material etc**

- (1) Section 86 of AFA 2006 (power to make provision about access to excluded material etc) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) The Secretary of State may by order make provision that enables a service policeman, for the purposes of an investigation of a relevant offence and by making an application to a judge advocate in accordance with the order—
    - (a) to obtain access to excluded material or special procedure material on relevant residential premises; or
    - (b) to obtain access to material (other than items subject to legal privilege) on premises other than relevant residential premises.
  - (2) An order under this section (an “enabling order”) may in particular—
    - (a) so far as it relates to obtaining access to material on relevant residential premises, make provision equivalent to any provision of Schedule 1 to PACE (special procedure for obtaining production orders and warrants);
    - (b) so far as it relates to obtaining access to material on premises other than relevant residential premises, make provision equivalent to any provision of paragraphs 1 to 11 of that Schedule (special procedure for obtaining production orders);
    - (c) make provision equivalent to section 311(2) and (3) of this Act (certification to civil court of offences akin to contempt) in relation to a failure by a person within section 309(6) to comply with an order made by a judge advocate under the enabling order;

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- (d) authorise the use, in connection with any application made by virtue of the enabling order, of live television or telephone links or similar arrangements.

(2A) Any power under subsection (2) to make provision which is equivalent to another provision includes power to make provision which is equivalent subject to such modifications as the Secretary of State considers appropriate.”

(3) For subsection (4) substitute—

“(4) In this section the following expressions have the meanings given by section 84—

- “excluded material”;
- “items subject to legal privilege”;
- “relevant offence”;
- “special procedure material”.

#### *Alcohol and drugs*

### **9 Unfitness through alcohol or drugs**

In section 20 of AFA 2006 (unfitness or misconduct through alcohol or drugs), after subsection (1) insert—

“(1A) For the purposes of subsection (1) a person is to be taken to be unfit to be entrusted with his duty, or a duty which he might reasonably expect to be called upon to perform, if his ability to carry out the duty in question is impaired.”

### **10 Exceeding alcohol limit for prescribed safety-critical duties**

After section 20 of AFA 2006 insert—

#### **“20A Exceeding alcohol limit for prescribed safety-critical duties**

- (1) A person subject to service law (“P”) commits an offence if the proportion of alcohol in P’s breath, blood or urine exceeds the relevant limit at a time when P—
- (a) is performing, or purporting to perform, a prescribed duty; or
  - (b) might reasonably expect to be called on to perform such a duty.
- (2) In subsection (1) “prescribed duty” means a duty specified, or of a description specified, by regulations; but a duty or description may be specified only if performing that duty (or a duty of that description) with ability impaired by alcohol would result in a risk of—
- (a) death;
  - (b) serious injury to any person;
  - (c) serious damage to property; or
  - (d) serious environmental harm.
- (3) In this section “the relevant limit”, in relation to a duty specified or of a description specified by regulations, means the limit prescribed by regulations in relation to that duty or duties of that description.



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- (4) In this section “regulations” means regulations made by the Defence Council for the purposes of 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 two years.”

## **11 Testing for alcohol and drugs on suspicion of offence**

- (1) After section 93 of AFA 2006 insert—

### **“CHAPTER 3A**

#### TESTING FOR ALCOHOL AND DRUGS ON SUSPICION OF OFFENCE

##### *Preliminary testing for alcohol and drugs*

#### **93A Commanding officer’s power to require preliminary tests**

- (1) This section applies where the commanding officer of a person subject to service law has reasonable cause to believe that that person—
  - (a) is committing a relevant offence; or
  - (b) has committed a relevant offence and still has alcohol or a drug in the body or is still under the influence of a drug.
- (2) In this section “relevant offence” means—
  - (a) an offence under section 20A; or
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I).
- (3) This section also applies where the commanding officer of a person who is a civilian subject to service discipline has reasonable cause to believe that that person—
  - (a) is committing an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003 (maritime and aviation offences); or
  - (b) has committed such an offence under section 42 and still has alcohol or a drug in the body or is still under the influence of a drug.
- (4) The commanding officer may require the person mentioned in subsection (1) or (3) (“the suspected person”) to co-operate with any one or more of—
  - (a) a preliminary breath test (see section 93B);
  - (b) a preliminary impairment test (see section 93C);
  - (c) a preliminary drug test (see section 93D).
- (5) The Defence Council may by regulations provide for the delegation by a commanding officer of the commanding officer’s functions under this section.
- (6) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (4) commits an offence.

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- (7) 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 two years.
- (8) For the purposes of this section, a person does not co-operate with a preliminary test unless the person's co-operation—
  - (a) is sufficient to enable the test to be carried out; and
  - (b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

### **93B Preliminary breath test**

- (1) A preliminary breath test is a procedure administered by a service policeman under which—
  - (a) the suspected person provides a specimen of breath; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether the proportion of alcohol in the person's breath or blood is likely to be such as is necessary for the commission of the suspected offence.
- (2) A preliminary breath test may be administered only—
  - (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) In this section “the suspected offence” means an offence mentioned in section 93A(2) or (3)(a) which the commanding officer has reasonable cause to believe has been committed.

### **93C Preliminary impairment test**

- (1) A preliminary impairment test is a procedure under which a service policeman—
  - (a) observes the suspected person performing tasks specified by the service policeman; and
  - (b) makes such other observations of the suspected person's physical state as the service policeman thinks expedient.
- (2) A preliminary impairment test may be administered only—
  - (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) The Provost Marshals (acting jointly) must issue, and may from time to time revise, a code of practice about—
  - (a) the kind of task that may be specified for the purposes of a preliminary impairment test;

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- (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test;
  - (c) the way in which a preliminary impairment test should be administered; and
  - (d) the inferences that may be drawn by a service policeman from observations made in the course of a preliminary impairment test.
- (4) In subsection (3) “the Provost Marshals” means the Provost Marshals of each of the service police forces.
- (5) A service policeman administering a preliminary impairment test must have regard to the code of practice.
- (6) A service policeman may administer a preliminary impairment test only if the service policeman is approved for that purpose by a Provost Marshal of a service police force.
- (7) A code of practice under this section may include provision about—
- (a) the giving of approval under subsection (6); and
  - (b) in particular, the kind of training that a service policeman should have undergone, or the kind of qualification that a service policeman should possess, before being approved under that subsection.

### **93D Preliminary drug test**

- (1) A preliminary drug test is a procedure administered by a service policeman under which—
- (a) a specimen of sweat or saliva is obtained from the suspected person; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether there is a drug in the person’s body.
- (2) A preliminary drug test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.

#### *Provision of specimens for analysis*

### **93E Provision of specimens for analysis**

- (1) This section applies in relation to an investigation into whether a person has committed—
- (a) an offence under section 20A;
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I); or
  - (c) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under

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section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003.

- (2) In the course of the investigation a service policeman may require the person—
  - (a) to provide two specimens of breath for analysis by means of an approved device;
  - (b) to provide a specimen of blood or urine for a laboratory test.
- (3) A requirement under this section may be imposed only at a service police establishment or a medical establishment.
- (4) For the purposes of this section and section 93F, a person does not provide a specimen of breath for analysis unless the specimen—
  - (a) is sufficient to enable the analysis to be carried out; and
  - (b) is provided in such a way as to enable the objective of the analysis to be satisfactorily achieved.
- (5) For the purposes of this section and section 93F, a person provides a specimen of blood if and only if—
  - (a) he consents to the taking of such a specimen from him;
  - (b) the specimen is taken from him by a registered medical practitioner or registered nurse; and
  - (c) the specimen is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (6) For the purposes of this section and section 93F, a person provides a specimen of urine if and only if the specimen—
  - (a) is provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine; and
  - (b) is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (7) Where the provision of a specimen may be required under this section, the question of whether it is to be breath, blood or urine, and in the case of blood the question of who is to be asked to take it, is to be decided by the service policeman imposing the requirement.
- (8) But where a service policeman decides for the purposes of subsection (7) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
  - (a) the registered medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
  - (b) the registered nurse who is asked to take it is of that opinion and there is no contrary opinion from a registered medical practitioner;
 and where by virtue of this subsection there can be no requirement to provide a specimen of blood, the service policeman may require a specimen of urine instead.
- (9) A service policeman must, on requiring a person to provide a specimen in pursuance of this section, warn the person that a failure to provide it may render the person liable to proceedings for a service offence.

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- (10) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.
- (11) 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 two years.

### **93F Further provision about specimens under section 93E**

- (1) Where two specimens of breath are provided by a person in pursuance of section 93E, the one with the lower proportion of alcohol in the breath is to be used and the other is to be disregarded.
- (2) If the specimen with the lower proportion of alcohol contains no more than a prescribed proportion of alcohol, the person who provided it may claim that it should be replaced by such a specimen of blood or urine as may be required under section 93E.
- (3) If the person then provides such a specimen, neither specimen of breath is to be used.
- (4) In subsection (2) “prescribed” means prescribed by regulations made by the Defence Council for the purposes of this section; and the regulations may prescribe different proportions of alcohol in relation to different kinds of offence.
- (5) On a request made at the time a specimen of blood or urine is provided under section 93E, the person who provided the specimen must be given a part of the specimen sufficient for the purposes of analysis.

### **93G Specimens of blood from persons incapable of consenting**

- (1) A service policeman may request a registered medical practitioner to take a specimen of blood from a person (“the person concerned”), irrespective of whether that person consents, if—
  - (a) the service policeman would (in the absence of any incapacity of the person concerned and of any objection under section 93H) be entitled under section 93E to require the person concerned to provide a specimen of blood for a laboratory test;
  - (b) it appears to the service policeman that the person concerned has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
  - (c) it appears to the service policeman that the person concerned is or may be incapable of giving a valid consent to the taking of a specimen of blood (whether or not consent has purportedly been given); and
  - (d) it appears to the service policeman that that person’s incapacity is attributable to medical reasons.
- (2) It is lawful for a registered medical practitioner to whom a request is made under this section, if that practitioner thinks fit—
  - (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and
  - (b) to provide the specimen to a service policeman.

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- (3) The specimen must be of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (4) If a specimen is taken in pursuance of a request under this section, it must not be subjected to a laboratory test unless the person concerned—
  - (a) has been informed that it was taken;
  - (b) has been required by a service policeman to give permission for a laboratory test of the specimen; and
  - (c) has given permission.
- (5) A service policeman, on requiring a person to give permission for the purposes of this section for a laboratory test of a specimen, must warn the person that a failure to give the permission may render the person liable to proceedings for a service offence.
- (6) On a request made at the time a person gives permission under this section for a laboratory test of a specimen, that person must be given a part of the specimen sufficient for the purposes of analysis.
- (7) A person who, without reasonable excuse, fails to give permission for a laboratory test of a specimen taken from the person under this section is guilty of an offence.
- (8) 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 two years.

*General provisions relating to testing*

**93H Patients in medical establishments**

- (1) This section applies in relation to a person who is at a medical establishment as a patient.
- (2) The person shall not be required to co-operate with a preliminary test or to provide a specimen under section 93E unless the responsible medical professional has been notified of the proposal to impose the requirement.
- (3) If the responsible medical professional objects on medical grounds the requirement must not be imposed.
- (4) If the responsible medical professional does not object on medical grounds and the requirement is imposed, the requirement must be for co-operation with a preliminary test administered, or for the provision of a specimen, at the medical establishment.
- (5) No specimen of blood may be taken from the person under section 93G, and the person may not be required to give permission for a laboratory test of a specimen taken under that section, unless the responsible medical professional—
  - (a) has been notified of the proposal that the specimen be taken or of the proposal to make the requirement; and
  - (b) has not objected on medical grounds.

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- (6) In this section “the responsible medical professional” means—
- (a) the registered medical practitioner in immediate charge of the person’s case; or
  - (b) if there is no such registered medical practitioner, the registered nurse in immediate charge of the person’s case.
- (7) In this section “medical grounds” means—
- (a) in relation to a requirement to co-operate with a preliminary test or to provide a specimen under section 93E, the ground that the requirement, or compliance with it by the patient, or any warning required by section 93E(9), would be prejudicial to the proper care and treatment of the patient;
  - (b) in relation to the taking of a specimen under section 93G or a requirement to give permission for a laboratory test of a specimen taken under that section, the ground that the taking of the specimen, the requirement, or any warning required by section 93G(5), would be so prejudicial.

### **93I Definitions for purposes of Chapter 3A**

- (1) In this Chapter—
- “approved”, in relation to a device, means approved by the Secretary of State;
  - “drug” includes any intoxicant other than alcohol;
  - “medical establishment” means any facility at which medical or surgical treatment for in- or out-patients is provided;
  - “preliminary test” means—
    - (a) a preliminary breath test within the meaning of section 93B;
    - (b) a preliminary impairment test within the meaning of section 93C; or
    - (c) a preliminary drug test within the meaning of section 93D;
  - “safety-critical duty” means a duty which the commanding officer of the person mentioned in section 93A(1) or 93E(1) reasonably believes is such that performing the duty with ability impaired by alcohol or drugs would result in a risk of—
    - (a) death;
    - (b) serious injury to any person;
    - (c) serious damage to property; or
    - (d) serious environmental harm;
  - “service police establishment” means any building or part of a building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties.
- (2) In this Chapter any reference to a service policeman includes a Royal Navy coxswain.”
- (2) In consequence of the provision made by subsection (1), sections 306 and 307 of AFA 2006 (testing for alcohol and drugs after serious incident) are repealed.

*Punishments and other court orders*

**12 Amendments relating to new rank of lance corporal in RAF Regiment**

- (1) In section 132 of AFA 2006 (punishments available to commanding officer)—
- (a) in row 1 of the Table, in paragraph (c) of the entry in the third column, after “air forces” insert “(but see subsection (1A))”;
  - (b) after subsection (1) insert—
 

“(1A) In this section and section 133 references to a corporal in any of Her Majesty’s air forces do not include a corporal in the Royal Air Force Regiment.”
- (2) In section 135 of AFA 2006 (reduction in rank: limits on powers), for subsection (3) substitute—
- “(3) Where the person being punished is a corporal in any of Her Majesty’s air forces, the reduction in rank authorised by subsection (2)(a) or (b) (as the case may be) is reduction to the highest rank the person has held in that force as an airman; but this is subject to subsection (3A).
- (3A) In relation to the Royal Air Force Regiment, the reference in subsection (3) to a corporal is to be read as a reference to a lance corporal.”

**13 Reduction in rank or rate**

- (1) In section 138 of AFA 2006 (prohibited combinations of punishments), for subsections (2) and (3) substitute—
- “(2) If he awards detention, the only additional punishments he may award are—
- (a) reduction in rank or disrating (subject to subsection (8));
  - (b) a service compensation order.”
- (2) Omit section 293 of AFA 2006 (automatic reduction of rank or rate of warrant officer or non-commissioned officer given custodial sentence or sentence of service detention).
- (3) The repeal of section 293 of AFA 2006 by subsection (2) does not affect any reduction in rank or disrating that occurred by virtue of that section before the commencement of that repeal.

**14 Court Martial sentencing powers**

- (1) For section 165 of AFA 2006 substitute—
- “165 Sentencing powers of Court Martial where election for trial by that court instead of CO**
- Schedule 3A (sentencing powers of Court Martial where election for trial by that court instead of CO) has effect.”
- (2) After Schedule 3 to AFA 2006 insert the Schedule set out in Schedule 1.



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*Status: This is the original version (as it was originally enacted).*

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## **15 Increase in maximum term of detention for certain offences**

- (1) In section 305(5) of AFA 2006 (limit on term of imprisonment or detention for an offence under that section), omit the words “or service detention”.
- (2) In section 95 of the Reserve Forces Act 1996 (offences against orders and regulations under section 4)—
  - (a) in subsection (2)(a)(ii) omit the words “or service detention”;
  - (b) after subsection (2A) insert—
    - “(3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, subsection (2)(a)(ii) has effect as if the reference to 51 weeks were to 6 months.”

## **16 Enforcement of financial penalties**

- (1) After section 269 of AFA 2006 insert—

### **“269A Fines: fixing of term of imprisonment for default**

- (1) Where the Court Martial imposes a fine on a person aged 18 or over, the court must make an order fixing a term of imprisonment which the person is to undergo if—
  - (a) any sum which the person is liable to pay is not duly paid or recovered; and
  - (b) an enforcement order is made.
- (2) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be fixed under this section for fines of the amounts set out in that Table.
- (3) Where the person mentioned in subsection (1) is sentenced by the court to, or is serving or otherwise liable to serve, a term of—
  - (a) imprisonment,
  - (b) detention in a young offender institution, or
  - (c) detention under section 108 of the Sentencing Act (detention of persons aged 18 to 21 for default or contempt),the court may order that any term of imprisonment fixed under subsection (1) shall not begin to run until after the end of that other term.
- (4) For the purposes of references in subsection (3) to a term of imprisonment or detention which a person has been sentenced to or is serving or liable to serve, consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term.
- (5) References in subsection (3) to a term which a person is serving or liable to serve are to a term imposed—
  - (a) by a relevant service court; or
  - (b) by a civilian court in any part of the United Kingdom.
- (6) In this section—

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“enforcement order” means an order under regulations made under section 322 (orders for enforcement by prescribed courts of fines etc);

“relevant service court” means the Court Martial, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court.

### **269B Service compensation orders: power to set maximum term of imprisonment for default**

- (1) This section applies where—
  - (a) the Court Martial makes a service compensation order and the person by whom the compensation is payable is aged 18 or over; and
  - (b) the court thinks that the usual default term is insufficient.
- (2) In subsection (1) “the usual default term” means the period for which the person would be liable to be committed to prison for default if—
  - (a) an enforcement order were made; and
  - (b) by virtue of that order, the amount payable under the service compensation order were treated as if it had been a fine imposed on a conviction by a magistrates’ court in England and Wales.
- (3) Where this section applies, the court may specify a longer period as the maximum term to which the person is liable to be committed to prison for default if an enforcement order is made.
- (4) The Table in section 139(4) of the Sentencing Act (maximum periods of imprisonment for default), as for the time being in force, applies for the purpose of determining the maximum periods of imprisonment that may be specified under this section for service compensation orders of the amounts set out in that Table.
- (5) In this section “enforcement order” has the same meaning as in section 269A.

### **269C Orders under section 269A or 269B against service parents or service guardians: appeals**

- (1) This section applies where—
  - (a) the Court Martial makes an order under section 268 in respect of a fine or service compensation order (fine or compensation to be paid by service parent or service guardian); and
  - (b) the court also makes an order under section 269A or 269B (“a default term order”) in respect of the parent or guardian (“P”).
- (2) For the purposes of the Court Martial Appeals Act 1968—
  - (a) the default term order is to be treated as a sentence passed on P for the offence in respect of which the fine or service compensation order was imposed; and
  - (b) P is to be treated, for the purpose of enabling P to appeal against the default term order, as if P had been convicted of the offence by the Court Martial.

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- (3) For the purposes of any appeal against the default term order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.
  - (4) On an appeal against the default term order, the Court Martial Appeal Court may (as an alternative to exercising its powers under section 16A(2) of that Act) quash the order; but this is subject to subsection (5).
  - (5) If the default term order was made under section 269A, the power under subsection (4) may only be exercised if the court also quashes the order under section 268.”
- (2) In section 322(3) of AFA 2006 (financial penalty enforcement orders), after paragraph (a) insert—
- “(aa) about the effect, where a sum is certified in such an order, of an order made by the Court Martial under—
    - (i) section 269A (fines: fixing of term of imprisonment for default); or
    - (ii) section 269B (service compensation order: maximum term of imprisonment for default);”.

## **17 Service sexual offences prevention orders**

- (1) After section 232 of AFA 2006 insert—

*“Service sexual offences prevention orders etc*

### **232A Service sexual offences prevention orders**

- (1) The Court Martial or the Service Civilian Court may make an order under this section where—
- (a) it deals with a person within subsection (2) (“the defendant”) in respect of—
    - (i) a qualifying section 42 offence of which the defendant has been convicted; or
    - (ii) a relevant finding in relation to a qualifying section 42 offence; and
  - (b) it is satisfied that it is necessary to make an order under this section for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
  - (b) a member of the reserve forces (whether or not for the time being subject to service law);
  - (c) a civilian subject to service discipline;
  - (d) a person who the court is satisfied is intending to become, or likely to become, a civilian subject to service discipline.
- (3) An order under this section—

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- (a) prohibits the defendant from doing anything described in the order; and
  - (b) has effect for a fixed period, of at least five years, specified in the order or until further order.
- (4) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the defendant.
- (5) Where—
- (a) a court makes an order under this section, and
  - (b) the defendant is already subject to such an order (whether made by that court or another),
- the earlier order ceases to have effect.
- (6) In this section and sections 232B to 232E—
- (a) “protecting the service community outside the United Kingdom from serious sexual harm” from a person means protecting the service community outside the United Kingdom, or particular members of that community, from serious physical or psychological harm, caused by the person committing one or more offences under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 to SOA 2003;
  - (b) “qualifying section 42 offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence listed in Schedule 3 or 5 to SOA 2003;
  - (c) “relevant finding”, in relation to an offence, means—
    - (i) a finding that a person is not guilty of the offence by reason of insanity; or
    - (ii) a finding that a person is unfit to stand trial and has done the act charged;
  - (d) “service community” means persons subject to service law and civilians subject to service discipline;
  - (e) “SOA 2003” means the Sexual Offences Act 2003.
- (7) In construing subsection (6)(a) or (b), any condition subject to which an offence is listed in Schedule 3 to SOA 2003 that relates—
- (a) to the way in which a person is dealt with in respect of the offence or a relevant finding, or
  - (b) to the age of any person,
- is to be disregarded.

### **232B Service SOPOs: appeals**

- (1) This section applies where the Court Martial makes an order under section 232A in respect of a relevant finding in relation to a qualifying section 42 offence.
- (2) For the purposes of the Court Martial Appeals Act 1968—
- (a) the order is to be treated as a sentence passed on the defendant in respect of the offence; and

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- (b) the defendant is to be treated for the purpose of enabling the defendant to appeal against the order as if the defendant 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.

### **232C Service SOPOs etc: variation and revocation**

- (1) The Court Martial may vary or revoke an order under section 232A on an application made by—
- (a) a Provost Marshal; or
  - (b) the person subject to the order.
- (2) If subsection (3) applies, the Court Martial may vary or revoke an order under section 104 of SOA 2003 (sexual offences prevention order) on an application made by—
- (a) a Provost Marshal; or
  - (b) the person subject to the order.
- (3) This subsection applies if the person subject to the order under section 104 of SOA 2003 (“the SOA order”) is also subject to an associated order under section 232A and either—
- (a) the person is subject to service law or a civilian subject to service discipline; or
  - (b) the application is made together with an application for the variation or revocation of the associated order under section 232A.
- (4) An order may be varied under this section so as to extend the period for which it has effect, or so as to impose additional prohibitions, only if—
- (a) in the case of an order under section 232A, the court is satisfied that the variation is necessary for the purpose of protecting the service community outside the United Kingdom from serious sexual harm from the person subject to the order (in which case section 232A(4) applies accordingly);
  - (b) in the case of an order under section 104 of SOA 2003, the requirements of section 108(5) of that Act are met (protection of public in United Kingdom from serious sexual harm).
- (5) The Court Martial must not before the end of the relevant period revoke an order under section 232A, or an order under section 104 of SOA 2003, without the consent of—
- (a) the person subject to the order; and
  - (b) a Provost Marshal.
- (6) In subsection (5) “the relevant period” means the period of five years beginning with the day on which the order was made.
- (7) For the purposes of this section an order under section 104 of SOA 2003 and an order under section 232A are “associated” if they were made by the Court Martial or the Service Civilian Court in dealing with the same offence or relevant finding.

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- (8) This section is without prejudice to section 108 of SOA 2003 (application to civilian court for variation etc of a sexual offences prevention order).

### **232D Variation or revocation: appeals**

- (1) A person may appeal to the Court Martial Appeal Court against—
- (a) the variation under section 232C of an order to which the person is subject; or
  - (b) a decision by the Court Martial not to vary or revoke such an order on an application under that section.
- (2) On an appeal under subsection (1), the Court Martial Appeal Court may make—
- (a) such orders as may be necessary to give effect to its determination of the appeal; and
  - (b) such incidental or consequential orders as appear to it to be just.

### **232E Extended prohibitions orders**

- (1) On an application made by a Provost Marshal, the Court Martial must make an order under this section in respect of a person within subsection (2) if the relevant requirements are met.
- (2) The following are persons within this subsection—
- (a) a member of the regular forces;
  - (b) a member of the reserve forces (whether or not for the time being subject to service law);
  - (c) a civilian subject to service discipline.
- (3) The relevant requirements are met if the Court Martial is satisfied—
- (a) that the person is subject to an order under section 104 or 105 of SOA 2003 (“the principal order”); and
  - (b) that there are members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal order.
- (4) For the purposes of subsection (3)(b) a person (“P”) is “protected” by the principal order if one or more of the prohibitions included in the order are for the purposes of the protection of P, or of persons of a description within which P falls.
- (5) An order under this section—
- (a) prohibits the person subject to the order from doing anything described in the order; and
  - (b) has effect—
    - (i) until the expiry of the principal order; or
    - (ii) if earlier, until the principal order is varied, renewed or discharged under section 108 of SOA 2003.
- (6) Only corresponding prohibitions may be included in an order under this section.

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- (7) For the purposes of subsection (6) a “corresponding prohibition” is a prohibition in substantially the same terms as a prohibition in the principal order (“the principal prohibition”), subject to such modifications as are necessary to secure that the prohibition is for the purposes of the protection of members of the service community outside the United Kingdom who would, if in the United Kingdom, be protected by the principal prohibition.
- (8) In subsection (7) “protected” is to be construed in accordance with subsection (4).

### **232F Extended prohibitions orders: appeals**

- (1) A person may appeal to the Judge Advocate General against the making of an order under section 232E in respect of the person.
- (2) The Secretary of State may by rules make provision about appeals under this section, and the rules may in particular make provision—
- specifying the grounds on which an appeal may be brought;
  - with respect to the procedure which is to apply in connection with an appeal;
  - with respect to the powers of the Judge Advocate General in relation to an appeal.

### **232G Offence: breach of order under section 232A or 232E**

- (1) A person within subsection (2) (“P”) commits an offence if, without reasonable excuse, P does anything which P is prohibited from doing by an order under section 232A or 232E.
- (2) The following are persons within this subsection—
- a person subject to service law;
  - a civilian subject to service discipline.
- (3) 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.
- (4) Where a person is convicted of an offence under this section, the court that convicts him may vary or revoke the order to which the offence relates.”
- (2) In section 108 of the Sexual Offences Act 2003 (variation, renewal or discharge of sexual offences prevention order), after subsection (8) insert—
- “(9) Subsection (1) does not apply where section 232C(3)(a) of the Armed Forces Act 2006 (case where sexual offences prevention order in respect of person subject to service law, or civilian subject to service discipline, may be varied etc by Court Martial) applies.”

### *Miscellaneous amendments of Armed Forces Act 2006*

## **18 Place of sitting of Service Civilian Court**

In section 277 of AFA 2006 (Service Civilian Court), for subsection (2) substitute—

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“(2) The Service Civilian Court may sit in any place, whether within or outside the United Kingdom.”

## 19 Administrative reduction in rank or rate

(1) In section 332 of AFA 2006 (restriction on administrative reduction in rank or rate), for subsections (1) to (4) substitute—

“(1) The rank or rate of a warrant officer or non-commissioned officer may be reduced only by an order made by that person’s commanding officer.

(2) An order of a commanding officer reducing the rank or rate of a warrant officer or non-commissioned officer (“an order reducing rank or rate”)—

(a) may not be made without the permission of higher authority (but this is subject to subsection (3));

(b) may not reduce the rank of a person in any of Her Majesty’s air forces below the highest rank that person has held in that force as an airman.

(3) The permission of higher authority is not required for an order reducing rank or rate if—

(a) the person whose rank is to be reduced is a lance corporal or lance bombardier; or

(b) the commanding officer making the order is of or above the rank of rear admiral, major-general or air vice-marshal.”

(2) For the heading to that section, substitute “Administrative reduction in rank or rate”.

## 20 Service complaint panels

(1) In section 335 of AFA 2006 (service complaints: role of Defence Council and service complaint panels)—

(a) in subsection (1), after “may,” insert “in the case of a service complaint and”;

(b) in subsection (2), for “The delegation under subsection (1) of a function” substitute “A decision by the Defence Council to delegate under subsection (1)”;

(c) for subsection (3) substitute—

“(3) The Defence Council—

(a) must determine the size of a service complaint panel (subject to section 336(2) and any provision made by virtue of section 336(6) relating to the size of a panel); and

(b) must appoint the members of a service complaint panel, other than any members appointed by the Secretary of State by virtue of section 336 or 336A.”; and

(d) in subsection (4)(b), for “function of appointing members of service complaint panels” substitute “functions”.

(2) Section 336 of AFA 2006 (composition and procedure of service complaint panels) is amended as follows.



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- (3) In subsection (1), for the words from “regulations” to the end substitute “determination under this section, or regulations under this section or section 336A, relating to independent members.”
- (4) Omit subsection (3).
- (5) After subsection (4) insert—
- “(4A) The Defence Council may determine—
- (a) that a service complaint panel is to include a specified number of independent members;
  - (b) that specified functions are to be exercised by independent members of a service complaint panel.
- (4B) A determination under subsection (4A) may relate to—
- (a) a particular service complaint; or
  - (b) any service complaint of a description determined by the Defence Council.
- (4C) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a person employed in the civil service of the State or an officer their function under subsection (4A) of determining—
- (a) whether a service complaint panel is to include independent members (and, if so, how many);
  - (b) whether particular functions are to be exercised by independent members of a service complaint panel.
- (4D) A delegation under subsection (4C) may relate to—
- (a) a particular service complaint;
  - (b) any service complaint of a description determined by the Defence Council; or
  - (c) all service complaints.
- (4E) The Defence Council may not—
- (a) make a determination under subsection (4A)(a) where a requirement mentioned in subsection (6)(a)(i) or (ii) or section 336A(2)(a) applies;
  - (b) make a determination under subsection (4A)(b) where a requirement mentioned in subsection (6)(a)(iii) or section 336A(2)(b) applies.”
- (6) In subsection (6)—
- (a) for “The regulations” substitute “Regulations under subsection (5)(a)”; and
  - (b) for paragraph (a) substitute—
    - “(a) impose, in the case of any service complaint of a prescribed description, one or more of the following requirements—
      - (i) a requirement for a service complaint panel to include a prescribed number of independent members;
      - (ii) a requirement for all or a prescribed majority of the members of a service complaint panel to be independent members;

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- (iii) a requirement for prescribed functions to be exercised by independent members of a service complaint panel;”.

(7) After section 336 of AFA 2006 insert—

**“336A Requirement to delegate to service complaint panel**

- (1) Regulations made by the Secretary of State may, in relation to any service complaint of a prescribed description, make provision—
  - (a) requiring the Defence Council to exercise their power under section 335(1) to delegate to a service complaint panel all or any of the functions conferred on them by or under section 334; and
  - (b) imposing one or more of the requirements mentioned in subsection (2).
- (2) Those requirements are—
  - (a) a requirement for all or a prescribed majority of the members of the service complaint panel to be independent members;
  - (b) a requirement for prescribed functions to be exercised by independent members of the service complaint panel.
- (3) In this section—
  - “independent member” has the same meaning as in section 336;
  - “prescribed” means prescribed by regulations under this section;
  - “service complaint” has the same meaning as in section 334;
  - “service complaint panel” has the same meaning as in section 335.”

**21 Persons eligible to be prosecuting officers**

In section 365 of AFA 2006 (prosecuting officers)—

- (a) in subsection (1), for “officers” (where it first occurs) substitute “persons”;
- (b) in subsection (2) for “An officer” substitute “A person”.

**22 Civilians subject to service discipline**

- (1) Schedule 15 to AFA 2006 (civilians subject to service discipline) is amended as follows.
- (2) In paragraph 4(1), for paragraph (c) substitute—
  - “(c) either—
    - (i) he is in a designated area, and his normal place of work in that role is in that designated area; or
    - (ii) sub-paragraph (i) does not apply, but he is in a designated area and he came there wholly or partly for the purposes of his work in that role.”
- (3) In paragraph 5(1), for paragraph (c) substitute—
  - “(c) either—
    - (i) he is in a country outside the British Islands, and his normal place of work under that employment is in that country; or

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- (ii) sub-paragraph (i) does not apply, but he is in a country outside the British Islands and he came there wholly or partly for the purposes of his work under that employment.”
- (4) In paragraph 6(1), for paragraph (b) substitute—
  - “(b) either—
    - (i) he is in a designated area, and his normal place of work for that organisation is in that designated area; or
    - (ii) sub-paragraph (i) does not apply, but he is in a designated area and he came there wholly or partly for the purposes of work for that organisation.”
- (5) In paragraph 10—
  - (a) in sub-paragraph (1)—
    - (i) in paragraph (a), for “a relevant person outside the British Islands” substitute “a qualifying person in a relevant country”;
    - (ii) in paragraph (b), for “outside the British Islands” substitute “in that country”;
  - (b) in sub-paragraph (2)—
    - (i) for ““relevant person”” substitute ““qualifying person””;
    - (ii) in paragraph (b), for “being in the British Islands” substitute “not being in a relevant country”;
  - (c) after sub-paragraph (2) insert—
    - “(3) For the purposes of this paragraph, a country is “relevant” in relation to a person employed as mentioned in paragraph 5 if it is outside the British Islands and—
      - (a) is where that person’s normal place of work under that employment is situated; or
      - (b) is a country to which that person came wholly or partly for the purposes of his work under that employment.”
- (6) After paragraph 13 insert—

“14 For the purposes of paragraphs 5(1)(c), 10 and 11, a territory that is not within a country is to be treated as a country.”

## **23 Protected prisoners of war**

- (1) After section 371 of AFA 2006 insert—

*“Protected prisoners of war*

### **371A Power to make provision in relation to protected prisoners of war**

- (1) Her Majesty may by warrant make provision with respect to protected prisoners of war.
- (2) A Royal Warrant made under this section may in particular make provision in relation to protected prisoners of war which—
  - (a) applies any relevant provision, or
  - (b) is equivalent to that made by any relevant provision,

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subject to such modifications as may be contained in the Royal Warrant.

- (3) In subsection (2) “relevant provision” means any provision of or made under this Act (including any provision creating a service offence), other than any provision of or made under Part 14, 15 or 16.
- (4) The Secretary of State must publish a Royal Warrant made under this section in such a way as appears to the Secretary of State to be appropriate.
- (5) Section 373(5) (power to make supplementary provision etc) applies in relation to Royal Warrants under this section.
- (6) In this section “protected prisoner of war” means a person—
  - (a) who is a protected prisoner of war within the meaning given by section 7 of the Geneva Conventions Act 1957; and
  - (b) as respects whom the United Kingdom is the detaining power for the purposes of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (set out in the Third Schedule to that Act).”
- (2) In consequence of the provision made by subsection (1), section 56 of the Court Martial Appeals Act 1968 (modifications of that Act for protected prisoners of war) is repealed.

#### *Other amendments and repeals*

### **24 Byelaws for service purposes**

- (1) In section 2 of the Military Lands Act 1900 (sea byelaws)—
  - (a) in subsection (2), omit paragraph (b) of the proviso;
  - (b) after subsection (2) insert—
 

“(2A) Before making any such byelaws the Secretary of State must—

    - (a) take all reasonable steps to ascertain whether the byelaws would injuriously affect any public rights; and
    - (b) be satisfied, in relation to every public right that the Secretary of State considers would be injuriously affected by the byelaws—
      - (i) that a restriction of the right is required for the safety of the public or for the requirements of the military purpose for which the area to which the byelaws apply is used; and
      - (ii) that the restriction of the right imposed by the byelaws is only to such extent as is reasonable in all the circumstances of the case.”;
  - (c) omit subsection (3).
- (2) In section 17(1) of the Military Lands Act 1892 (notice of byelaws), for the words from “necessary” to the end substitute “appropriate”.

### **25 Claims against visiting forces: transfer of liability**

After section 9 of the Visiting Forces Act 1952 insert—

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### **“9A Claims against visiting forces: transfer of liability**

- (1) This section applies where a claim is brought in a court in the United Kingdom against a country to which this section applies (“the country concerned”) and the claim is within subsection (2).
- (2) A claim is within this subsection if—
  - (a) it is a claim in tort;
  - (b) it arises—
    - (i) out of an act done by a member of a visiting force of the country concerned, or of a civilian component of such a force, in the performance of official duties; or
    - (ii) out of any other act or occurrence for which a visiting force of the country concerned, or a civilian component of such a force, is legally responsible;
  - (c) it is brought by a third party; and
  - (d) it is not an excluded claim.
- (3) Where this section applies the Secretary of State may, if requested to do so by the country concerned, make a declaration under this section.
- (4) A declaration under this section is a written declaration, signed by the Secretary of State, which—
  - (a) specifies the claim concerned and the matter to which it relates; and
  - (b) states that, with effect from a time specified in the declaration, any liability in tort of the country concerned in respect of that matter is transferred to the Ministry of Defence.
- (5) A declaration under this section has the effect that the liability mentioned in the declaration is transferred to the Ministry of Defence at the time specified in the declaration.
- (6) The Secretary of State must notify the country concerned and the claimant where a declaration under this section has been made.
- (7) Section 9 does not apply to a claim in respect of which liability has been transferred under this section.
- (8) In this section—

“act” includes an omission;

“the Agreement” means the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, done in London on 19th June 1951;

“excluded claim” means a claim to which, by virtue of paragraph 5(h) of Article VIII of the Agreement (certain claims arising from ships and cargo), paragraph 5(a) of that Article does not apply;

“third party” means a person other than a member of a visiting force of the country concerned or of a civilian component of such a force;

“tort” includes delict.
- (9) It is immaterial for the purposes of this section whether the country concerned is the only defendant in relation to the claim mentioned in subsection (1).”

**26 Judge advocates sitting in civilian courts**

Schedule 2 (which makes provision enabling judge advocates to sit in the Crown Court and magistrates' courts) has effect.

**27 Repeal of Naval Medical Compassionate Fund Act 1915**

The Naval Medical Compassionate Fund Act 1915 ceases to have effect.

**28 Call out of reserve forces**

In section 56 of the Reserve Forces Act 1996 (call out for certain operations), after subsection (1) insert—

“(1A) Where—

- (a) work is approved in accordance with instructions issued by the Defence Council under the Defence (Armed Forces) Regulations 1939 as being urgent work of national importance, and
  - (b) the Defence Council have by order under those Regulations authorised members of any forces to be temporarily employed in such work,
- the Secretary of State may make an order authorising the calling out of members of a reserve force for the purposes of carrying out such work.”

**29 Minor amendments of service legislation**

Schedule 3 (minor amendments of service legislation) has effect.

**30 Consequential amendments and repeals**

- (1) Schedule 4 (consequential amendments) has effect.
- (2) Schedule 5 (repeals and revocations) has effect.

*Supplementary*

**31 Meaning of “AFA 2006”**

In this Act “AFA 2006” means the Armed Forces Act 2006.

**32 Commencement**

- (1) This section and sections 1, 31, 33 and 34 come into force on the day on which this Act is passed.
- (2) Section 28 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint (and different days may be appointed for different purposes).
- (4) An order under this section may contain transitional, transitory and saving provision.

- (5) In particular, an order under this section may make provision, in connection with the coming into force of any provision of this Act (“the provision in question”), about the operation of Schedule 3A to AFA 2006 where an election for Court Martial trial was made before the commencement of the provision in question.

### **33 Extent to Channel Islands, Isle of Man and British overseas territories**

- (1) Her Majesty may by Order in Council provide for any of the provisions of this Act, except section 25, to extend to a territory mentioned in subsection (2) with or without modifications.
- (2) Those territories are—
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (3) The provisions that may be extended under subsection (1) of section 15 of the Visiting Forces Act 1952 to a territory specified in subsection (3) of that section include—
- (a) section 9A of that Act (inserted by section 25 of this Act); and
  - (b) any Order in Council which—
    - (i) is made under section 1(2) of that Act in relation to section 9A of that Act; and
    - (ii) is in force at the coming into operation of any Order in Council made under section 15(1) of that Act which extends section 9A.

### **34 Short title**

This Act may be cited as the Armed Forces Act 2011.

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## SCHEDULES

### SCHEDULE 1

Section 14

#### COURT MARTIAL SENTENCING POWERS

### “SCHEDULE 3A

Section 165

#### COURT MARTIAL SENTENCING POWERS WHERE ELECTION FOR TRIAL BY THAT COURT INSTEAD OF CO

### PART 1

#### RELEVANT OFFENCES

- 1 For the purposes of this Schedule an offence is “relevant” if it falls within any of cases A to D (see paragraphs 2 to 5); and references in this Schedule to a particular case of offence are to be read accordingly.
- 2 An offence of which a person is convicted falls within case A if the charge in respect of the offence is one in respect of which the person elected Court Martial trial under section 129 (whether or not the charge was amended after election).
- 3 An offence of which a person (“the accused”) is convicted falls within case B if—
  - (a) the charge in respect of the offence was substituted under section 125(2)
  - (b) for a charge in respect of which the accused elected Court Martial trial under section 129; and
  - (b) the substitution was not one for which the accused’s written consent was required by section 130A(2).
- 4 Where—
  - (a) a person (“the accused”) elects Court Martial trial under section 129 in respect of a charge,
  - (b) at the time of the election, another charge brought against the accused (“the relevant charge”) is regarded for the purposes of Part 5 as allocated for summary hearing,
  - (c) the relevant charge is referred to the Director of Service Prosecutions under section 123(2)(e) without the accused having been given the opportunity to elect Court Martial trial of the charge, and
  - (d) the Court Martial convicts the accused of an offence alleged in the relevant charge,
 that offence falls within case C.
- 5 Where—
  - (a) a person (“the accused”) is charged with an offence which, if the accused were convicted of it, would fall within case C,
  - (b) another charge (“the new charge”) is substituted under section 125(2)(b) for the charge,



- (c) the substitution is not one for which the accused's written consent is required by section 130A(2), and
- (d) the Court Martial convicts the accused of an offence alleged in the new charge,  
that offence falls within case D.

## PART 2

### SENTENCING POWERS ETC

#### Sentencing powers: single relevant offence

- 6 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case A offence or a case B offence; and
  - (b) paragraph 8 (multiple relevant offences) does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge in respect of which the offender elected Court Martial trial; and
  - (b) had recorded a finding that the charge had been proved.
- 7 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case C offence or a case D offence; and
  - (b) paragraph 8 does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender's commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge referred as mentioned in paragraph 4(c); and
  - (b) had recorded a finding that the charge had been proved.

#### Multiple relevant offences

- 8 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of two or more relevant offences; and
  - (b) condition 1 or 2 is met in relation to any two or more of the offences.
- (2) Condition 1, in relation to any two or more offences, is that—
- (a) each of the offences is a case A offence or a case B offence; and
  - (b) the relevant charges would have been heard summarily together if the offender had not elected Court Martial trial.
- (3) In sub-paragraph (2) “relevant charge” means—
- (a) in relation to a case A offence, the charge in respect of that offence; and

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- (b) in relation to a case B offence, the charge in respect of which the offender elected Court Martial trial and for which the charge in respect of the case B offence was substituted.
- (4) Condition 2, in relation to any two or more offences, is that—
- (a) each of the offences is a case C offence or a case D offence; and
  - (b) the referred charges would have been heard summarily together if they had not been referred as mentioned in paragraph 4(c).
- (5) In sub-paragraph (4) “referred charge” means—
- (a) in relation to a case C offence, the charge in respect of that offence; and
  - (b) in relation to a case D offence, the charge referred as mentioned in paragraph 4(c) for which the charge in respect of the case D offence was substituted.

### **Sentencing powers: multiple relevant offences**

- 9 (1) This paragraph applies where paragraph 8 applies by virtue of a condition in that paragraph being met in relation to any two or more relevant offences.
- (2) The offences in relation to which the condition is met (“the joined offences”) are to be treated for the purposes of section 255 (individual sentence for each offence) as a single offence; and references in this paragraph to “the sentence” are to the sentence passed by the Court Martial in respect of the joined offences.
- (3) Where condition 1 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard the relevant charges (as defined by paragraph 8(3)) summarily together; and
  - (b) had recorded findings that the charges had been proved.
- (4) Where condition 2 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard the referred charges (as defined by paragraph 8(5)) summarily together; and
  - (b) had recorded findings that the charges had been proved.

### **Further provision about sentencing**

- 10 Where paragraph 9 applies, the following provisions apply in relation to the sentence as if it were a sentence being passed by an officer at a summary hearing—
- section 242 (service detention: general restriction);
  - section 243 (length of term of service detention);
  - section 248 (forfeiture of seniority, reduction in rank or disrating).
- 11 Where the Court Martial is dealing with an offender for an offence with which a relevant offence is associated, the offences are to be treated for the purposes of Part 9 (sentencing: principles and procedures) as not being associated.

## Activation of suspended sentence of detention

- 12 (1) This paragraph applies where—
- (a) the Court Martial, on convicting a person (“the offender”) of a relevant offence, makes an order under section 191(3) in relation to a suspended sentence of service detention passed on the offender; and
  - (b) the suspended sentence was passed by an officer or the Summary Appeal Court.
- (2) The term of the suspended sentence as it takes effect by virtue of the order must not exceed 28 days unless the offender’s commanding officer would have had extended powers for the purposes of section 194 if—
- (a) where the offence is a case A offence or a case B offence, the offender had not elected Court Martial trial; or
  - (b) where the offence is a case C offence or a case D offence, the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (3) If—
- (a) the Court Martial awards a term of service detention (“the new sentence”) in respect of the offence (or, where paragraph 9 applies, in respect of the offence and one or more other relevant offences), and
  - (b) the order under section 191(3) 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, where the extended powers condition is met, 90 days.
- (4) The extended powers condition is—
- (a) where the offence is a case A offence or a case B offence, that the offender’s commanding officer would have had extended powers for the purposes of section 194 if the offender had not elected Court Martial trial;
  - (b) where the offence is a case C offence or a case D offence, that the offender’s commanding officer would have had extended powers for the purposes of section 194 if the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (5) In determining for the purposes of sub-paragraph (2) or (4) whether the offender’s commanding officer would have had extended powers for the purposes of section 194 if, as the case may be—
- (a) the offender had not elected Court Martial trial, or
  - (b) the charge referred as mentioned in paragraph 4(c) had not been so referred,
- no account is to be taken of any of the matters mentioned in sub-paragraph (6).
- (6) Those matters are—
- (a) any change in the commanding officer’s rank after the election or referral;
  - (b) in the case of sub-paragraph (2)(a) or (4)(a), any possibility that, if the offender had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of section 194; and
  - (c) in the case of sub-paragraph (2)(b) or (4)(b), any possibility that, if the charge referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for those purposes after the time when the charge was in fact referred.

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### **Court orders other than sentences**

- 13 (1) The Court Martial may not make an order under section 229 (service restraining order) by virtue of—
- (a) convicting a person of a relevant offence; or
  - (b) acquitting a person of an offence which would be a relevant offence if the person were convicted of it.
- (2) The Court Martial may not make an order under section 232A (service sexual offences prevention order) by virtue of dealing with a person in respect of—
- (a) a relevant offence of which the person has been convicted; or
  - (b) a relevant finding in relation to an offence which, if the person were convicted of it, would be a relevant offence.
- (3) In sub-paragraph (2) “relevant finding” has the same meaning as in section 232A.

### **Review of unduly lenient sentences**

- 14 In section 273 (review of unduly lenient sentence by Court Martial Appeal Court), the reference in subsection (1)(a) to an offence under section 42 does not include a relevant offence.

### **Appeals: application of Court Martial Appeals Act 1968 to multiple relevant offences**

- 15 (1) This paragraph applies where, by virtue of paragraph 9(2), the Court Martial passed a single sentence in respect of two or more relevant offences (“the joined offences”); and references in this paragraph to “the 1968 Act” are to the Court Martial Appeals Act 1968.
- (2) Where—
- (a) section 13 of the 1968 Act (power to re-sentence when some but not all convictions successfully appealed) applies in relation to the sentence, but
  - (b) the appellant remains convicted of two or more of the joined offences,
- those offences are to be treated for the purposes of section 13(2) of the 1968 Act as a single offence.
- (3) Sub-paragraph (4) applies where section 14 of the 1968 Act (substitution of conviction on different charge after plea of not guilty) applies in relation to a conviction of any of the joined offences.
- (4) The reference in section 14(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of all the applicable offences.
- (5) For the purposes of sub-paragraph (4) an offence is an “applicable offence” if it is—
- (a) a joined offence of which the appellant remains convicted;
  - (b) an offence a finding of guilty of which has been substituted under section 14 of the 1968 Act for a finding of guilty of a joined offence; or
  - (c) an offence a plea of guilty of which has been substituted under section 14A of that Act for a plea of guilty of a joined offence.
- (6) Sub-paragraph (7) applies where—

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- (a) section 14A of the 1968 Act (substitution of conviction on different charge after guilty plea) applies in relation to a conviction of any of the joined offences; and
  - (b) section 14 of that Act does not so apply.
- (7) The reference in section 14A(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14A(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of—
- (a) all the joined offences of which the appellant remains convicted; and
  - (b) the offence a plea of guilty of which has been substituted under section 14A for a plea of guilty of a joined offence.
- (8) Where sub-paragraph (4) or (7) applies and the case also falls within section 13(1) of the 1968 Act, section 13 of that Act shall not apply.
- (9) In section 16A of the 1968 Act (appeals against sentence), the reference in subsection (2)(b) to the offence is to be read as a reference to the joined offences.

### PART 3

#### INTERPRETATION

##### “Commanding officer”

- 16 (1) References in this Schedule to a person’s commanding officer are to the person’s commanding officer at the time the person elected Court Martial trial.
- (2) In determining for the purposes of paragraph 6(2), 7(2) or 9(3) or (4) the punishments that a person’s commanding officer could have awarded in respect of a charge or charges, no account is to be taken of—
- (a) any change in the commanding officer’s rank after the person elected Court Martial trial or (as the case may be) after the charge or charges referred as mentioned in paragraph 4(c) were so referred;
  - (b) in the case of paragraph 6(2) or 9(3), any possibility that, if the person had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6; or
  - (c) in the case of paragraph 7(2) or 9(4), any possibility that, if the charge or charges referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6 after the time when the referral in fact took place.

##### Substituted charges

- 17 References in this Schedule to a charge substituted under section 125(2)(b) for another charge (“the original charge”) include—
- (a) a charge substituted for a charge that was itself substituted for the original charge,
  - (b) a charge substituted for a charge within paragraph (a),

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and so on.”

## SCHEDULE 2

Section 26

### JUDGE ADVOCATES SITTING IN CIVILIAN COURTS

#### PART 1

##### AMENDMENTS CONFERRING JURISDICTION ON JUDGE ADVOCATES

##### *Senior Courts Act 1981 (c. 54)*

- 1 (1) Section 8 of the Senior Courts Act 1981 (persons who may exercise the jurisdiction of the Crown Court) is amended as follows.
  - (2) In subsection (1)(b), for “, Recorder or District Judge (Magistrates’ Courts)” substitute “, Recorder, qualifying judge advocate or District Judge (Magistrates’ Courts)”.
  - (3) In subsection (1)(c), for “or Recorder” substitute “, Recorder or qualifying judge advocate”.
  - (4) After subsection (1) insert—
 

“(1A) The jurisdiction of the Crown Court exercisable by a qualifying judge advocate by virtue of subsection (1) is the jurisdiction of the Court in relation to any criminal cause or matter other than an appeal from a youth court.”
  - (5) In subsection (3), for “, Circuit judge, Recorder or District Judge (Magistrates’ Courts)” substitute “, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates’ Courts)”.
  - (6) After subsection (3) insert—
 

“(4) Subsection (1A) does not affect the jurisdiction of the Crown Court exercisable by a person who holds an office mentioned in subsection (1)(a) or (b) where that person is also a qualifying judge advocate.”
- 2 In section 73(2) and (3) of that Act (general provisions relating to Crown Court proceedings), for “or Recorder” (wherever it occurs) substitute “, Recorder or qualifying judge advocate”.
- 3 In section 74 of that Act (Crown Court proceedings on appeals)—
  - (a) in subsection (1), after “Recorder” insert “or a qualifying judge advocate”; and
  - (b) in subsection (3), for “or Recorder,” substitute “, Recorder or qualifying judge advocate,”.
- 4 In section 75(1) of that Act (allocation of cases and distribution of cases in Crown Court), for “, Circuit judge, Recorder or District Judge (Magistrates’ Courts)” substitute “, Circuit judge, Recorder, qualifying judge advocate or District Judge (Magistrates’ Courts)”.
- 5 In section 151(1) of that Act (interpretation), at the appropriate place insert—

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- ““qualifying judge advocate” means—
- (a) the Judge Advocate General; or
  - (b) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General);”.

*Courts Act 2003 (c. 39)*

- 6 In section 66 of the Courts Act 2003 (judges having powers of District Judges (Magistrates’ Courts))—
- (a) after subsection (2) insert—
    - “(2A) A qualifying judge advocate has the powers of a justice of the peace who is a District Judge (Magistrates’ Courts) in relation to criminal causes and matters.”; and
  - (b) after subsection (4) insert—
    - “(5) In this section “qualifying judge advocate” means—
      - (a) the Judge Advocate General; or
      - (b) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General).
    - (6) Subsection (2A) is without prejudice to the powers conferred by this section on a person within subsection (2) where that person is also a qualifying judge advocate.”

**PART 2**

RELATED AMENDMENTS

*Criminal Justice Act 1967 (c. 80)*

- 7 In section 9(5) of the Criminal Justice Act 1967 (application for court attendance of person who has provided a written statement), after paragraph (d) insert—
- “(e) subject to subsection (5A), a qualifying judge advocate (within the meaning of the Senior Courts Act 1981).
- (5A) Subsection (5)(e) applies only where the application in question is to the Crown Court.”;
- but this paragraph is subject to paragraph 8.
- 8 (1) This paragraph applies if the amendment made to section 9(5) of the Criminal Justice Act 1967 by paragraph 1 of Schedule 4 to the Courts Act 2003 has not come into force before the commencement of paragraph 1 of this Schedule.
- (2) Until the coming into force of that amendment—
    - (a) paragraph 7 above does not apply; and
    - (b) section 9(5) of the Criminal Justice Act 1967 is amended as follows.
  - (3) The words from “by a puisne judge” to the end become paragraph (a).
  - (4) After paragraph (a) insert “; or



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(b) subject to subsection (5A), by a qualifying judge advocate (within the meaning of the Senior Courts Act 1981) sitting alone.

(5A) Subsection (5)(b) applies only where the application in question is to the Crown Court.”

*Juries Act 1974 (c. 23)*

9 In section 9B(3) of the Juries Act 1974 (judges who may determine whether juror to be discharged on account of disability)—

(a) omit the “or” at the end of paragraph (c); and

(b) after paragraph (d) insert “, or

(e) subject to subsection (4), a qualifying judge advocate (within the meaning of the Senior Courts Act 1981).

(4) Subsection (3)(e) applies only where the case relates to a summons to attend for jury service in the Crown Court.”;

but this is subject to paragraph 10.

10 (1) This paragraph applies if the amendment made to section 9B(3) of the Juries Act 1974 by paragraph 3 of Schedule 4 to the Courts Act 2003 has not come into force before the commencement of paragraph 1 of this Schedule.

(2) Until the coming into force of that amendment—

(a) paragraph 9 above does not apply; and

(b) section 9B(3) of the Juries Act 1974 is amended as follows.

(3) The words from “any judge” to the end become paragraph (a).

(4) After paragraph (a) insert “, or

(b) subject to subsection (4), any qualifying judge advocate (within the meaning of the Senior Courts Act 1981).

(4) Subsection (3)(b) applies only where the case relates to a summons to attend for jury service in the Crown Court.”

*Police and Criminal Evidence Act 1984 (c. 60)*

11 (1) Schedule 1 to the Police and Criminal Evidence Act 1984 (access to excluded or special procedure material) is amended as follows.

(2) In paragraph 17 (as amended by section 114(1) and (9) of the Serious Organised Crime and Police Act 2005), after “a Recorder” insert “, a qualifying judge advocate (within the meaning of the Senior Courts Act 1981)”.



## SCHEDULE 3

Section 29

### MINOR AMENDMENTS OF SERVICE LEGISLATION

#### *Definition of “service policeman” in Armed Forces Act 1991*

- 1 In section 22A of the Armed Forces Act 1991 (removal and accommodation of children by service police in emergency), in subsection (8) for the definition of “service policeman” substitute—
- ““service policeman” has the meaning given by section 375(1) of the Armed Forces Act 2006.”

#### *Powers of arrest of an officer acting on behalf of provost officer*

- 2 In section 67(2) of AFA 2006 (persons who may arrest an officer), for paragraph (c) substitute—
- “(c) by a person who is lawfully exercising authority on behalf of a provost officer, and who—
- (i) is an officer; or
  - (ii) is acting on the order of an officer.”

#### *Entry for purposes of arrest by service policeman*

- 3 In section 90(6) of AFA 2006 (powers of arrest to which section applies), for “or 111,” substitute “, 111 or 303,”.

#### *Definition of “service living accommodation”*

- 4 (1) Section 96 of AFA 2006 (definition of “service living accommodation” etc for purposes of Part 3) is amended as follows.
- (2) In subsection (1), in each of paragraphs (a), (b) and (c) for “subject to service law” substitute “within subsection (1A)”.
- (3) After subsection (1) insert—
- “(1A) The following are persons within this subsection—
- (a) a person subject to service law;
  - (b) a civilian subject to service discipline.”

#### *Consultation of DSP before decision by service police on referral of case*

- 5 (1) In section 116 of AFA 2006 (referral of case following investigation by service or civilian police), for subsection (4) substitute—
- “(4) Subsection (4A) applies if—
- (a) the allegation or circumstances would indicate to a reasonable person that a Schedule 2 offence has or might have been committed, or
  - (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,

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and a service policeman proposes not to refer the case to the Director under subsection (2).

(4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).”

(2) In section 117(3)(b) (referral of multiple offences), for “116(3) or (4)” substitute “116(3) to (4A)”.

*Powers of DSP in respect of charge allocated for Court Martial trial*

6 (1) Section 125 of AFA 2006 (powers of Director of Service Prosecutions in respect of charge allocated for Court Martial trial) is amended as follows.

(2) In subsection (3)—

- (a) insert “or” after paragraph (a); and
- (b) omit paragraph (c) and the “or” preceding it.

(3) Omit subsection (4).

*Right to elect Court Martial trial*

7 In section 129 of AFA 2006 (right to elect Court Martial trial), for subsection (4) substitute—

“(4) Subsection (5) applies if an opportunity to elect Court Martial trial of a charge (“the original charge”) has been given under subsection (1) and subsequently—

- (a) the charge is amended;
- (b) another charge is substituted for it; or
- (c) an additional charge is brought.

(5) Subsection (1) applies in relation to the amended, substituted or additional charge; and if the amendment, substitution or addition takes place after the start of the summary hearing, that subsection has effect in relation to the charge as if the reference to hearing a charge summarily were to proceeding with the hearing.

(6) In subsection (4)—

- (a) “amended” means amended under section 123(2)(a) or, in the case of a charge referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, amended under section 125(2)(a) and referred to the commanding officer under section 125(2)(e);
- (b) “substituted” means substituted under section 123(2)(b) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, substituted under section 125(2)(b) and referred to the commanding officer under section 125(2)(e);
- (c) “brought”, in relation to an additional charge, means brought under section 123(2)(c) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for

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Court Martial trial, brought under section 125(2)(c) and referred to the commanding officer under section 125(2)(e).

- (7) Subsection (8) applies where—
- (a) an opportunity to elect Court Martial trial of a charge has been given under this section;
  - (b) the accused has not elected Court Martial trial; and
  - (c) at a time after the giving of the opportunity to elect, the commanding officer obtains extended powers for the purposes of any provision of section 133, 134, 135 or 194.
- (8) The provisions of this section requiring the giving of an opportunity to elect Court Martial trial of the charge shall apply again.”

- 8 In section 130(3) of AFA 2006 (consequences of election for Court Martial trial), for “if the charge is amended after referral.” substitute “—
- (a) where the charge is amended after referral;
  - (b) to any charge substituted for or added to the charge after referral; or
  - (c) where extended powers for the purposes of any provision of section 133, 134, 135 or 194 are obtained after referral.”

- 9 After section 130 of AFA 2006 insert—

**“130A Restrictions on DSP’s powers to substitute or add charges after election**

- (1) This section applies where—
- (a) a charge is for the time being regarded for the purposes of Part 5 as allocated for Court Martial trial; and
  - (b) the charge is in respect of an offence which would be a relevant offence for the purposes of Schedule 3A (sentencing powers of Court Martial where election for trial by that court) if the accused were convicted of it.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused substitute under section 125(2)(b)—
- (a) a charge in respect of an offence which is not one that may be dealt with at a summary hearing (see section 53); or
  - (b) a charge in respect of an offence within section 54(2) (offences that may be dealt with summarily only with permission or by senior officer), except where the relevant charge was in respect of such an offence.
- (3) In subsection (2)(b) “relevant charge” means—
- (a) in relation to a case A offence or a case B offence (within the meaning of Schedule 3A), the charge in respect of which the accused elected Court Martial trial; and
  - (b) in relation to a case C offence or a case D offence (within the meaning of Schedule 3A), the charge referred as mentioned in paragraph 4(c) of that Schedule.
- (4) The Director may not without the written consent of the accused bring under section 125(2)(c) a charge in addition to the charge.

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- (5) In construing Part 1 of Schedule 3A (relevant offences) for the purposes of this section, paragraphs 3(b) and 5(c) of that Schedule are to be disregarded.”

*Summary hearing*

10 In each of sections 133(3), 134(2) and 135(5) of AFA 2006 (obtaining extended powers of punishment), for “before the summary hearing of the charge or charges” substitute “within the relevant time (defined by section 135A)”.

11 After section 135 of AFA 2006 insert—

**“135A Extended powers: time for obtaining**

(1) In each of sections 133(3), 134(2) and 135(5), “within the relevant time” means before the start of the summary hearing; but this is subject to subsections (2) and (3).

(2) Subsection (3) applies where after the start of a summary hearing—

- (a) a charge is amended under section 123(2)(a);
- (b) a charge is substituted for another charge under section 123(2)(b); or
- (c) an additional charge is brought under section 123(2)(c).

(3) Any application for or grant of extended powers which is made in the period between—

- (a) the making of the amendment, substitution or addition, and
- (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,

is to be treated for the purposes of sections 133(3), 134(2) and 135(5) as made within the relevant time.”

12 In section 136 of AFA 2006 (maximum amount of fine), for subsections (1) to (3) substitute—

“(1) The maximum amount of a fine that a commanding officer may award is 28 days’ pay.”

13 In section 153(2) of AFA 2006 (powers to make rules relating to summary hearings etc), in each of paragraphs (d) and (e) after “applications for” insert “, and grants of”.

*Activation of suspended sentence of service detention*

14 In each of sections 190(1)(a), 191(2)(b) and 193(2)(b) of AFA 2006 (circumstances where suspended sentence may be activated), for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.

15 (1) Section 194 of AFA 2006 (limits on commanding officer’s powers to activate suspended sentence) is amended as follows.

(2) In subsection (4) for “before the relevant time” substitute “within the relevant time (defined by section 194A)”.

(3) Omit subsection (6).

16 After section 194 of AFA 2006 insert—

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**“194A Extended powers of activation: time for obtaining**

- (1) In section 194(4) “within the relevant time” means—
- (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
  - (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.
- (2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the hearing—
- (a) a charge is amended under section 123(2)(a);
  - (b) a charge is substituted for another charge under section 123(2)(b); or
  - (c) an additional charge is brought under section 123(2)(c).
- (3) Any application for or grant of extended powers which is made in the period between—
- (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
- is to be treated for the purposes of section 194(4) as made within the relevant time.”

*Suspended sentences of imprisonment*

- 17 In section 200(5) of AFA 2006 (suspended sentences of imprisonment), in paragraph (b) of the words treated as substituted, for “in the British Islands” substitute “under the law of any part of the British Islands”.

*Detention and training orders*

- 18 In section 213 of AFA 2006 (application to service detention and training orders of provisions relating to civilian orders)—
- (a) in the second paragraph of subsection (1), after “105,” insert “106(4) to (6).”;
  - (b) in subsection (2), after “(13)” insert “, 106(6)”.
- 19 In section 214(2)(b) of AFA 2006 (offences during currency of detention and training order), for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.

*Restrictions on community punishments*

- 20 (1) In section 270 of AFA 2006 (general restrictions on community punishments), for subsections (7) and (8) substitute—
- “(7) Subsections (1) and (2)(b) are subject to section 270A.”
- (2) After that section insert—

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### **“270A Exception to restrictions on community punishments**

- (1) If the conditions in subsection (2) are met, the power to award a community punishment in respect of an offence (“the current offence”) may be exercised even though the court would not otherwise regard—
- (a) the current offence, or
  - (b) the combination of the current offence and one or more offences associated with it,
- as serious enough to warrant a community punishment (despite the effect of section 238(1)(b)).
- (2) The conditions referred to in subsection (1) are—
- (a) that the offender was aged 16 or over when convicted of the current offence;
  - (b) that on three or more previous occasions the offender has been awarded a relevant financial penalty; and
  - (c) that the court, having regard to all the circumstances, considers that it would be in the interests of justice to award a community punishment.
- (3) In subsection (2)(b) a “relevant financial penalty” means a sentence consisting only of a fine—
- (a) passed on the offender in respect of a service offence, or member State service offence, committed by the offender when aged 16 or over;
  - (b) passed on the offender on conviction by a civilian court in the British Islands of an offence so committed; or
  - (c) passed on the offender on conviction by a civilian court in another member State of a relevant offence so committed.
- (4) For the purposes of subsection (2)(b) it is immaterial whether the offender has on other previous occasions been awarded a sentence other than a relevant financial penalty.
- (5) The circumstances which must be had regard to under subsection (2)(c) include—
- (a) the nature of the offences for which the relevant financial penalties were awarded;
  - (b) the relevance of those offences to the current offence; and
  - (c) the time that has elapsed since those penalties were awarded.
- (6) For the purposes of subsection (3), none of the following forms part of an offender’s sentence—
- (a) a service compensation order;
  - (b) a compensation order under—
    - (i) section 130 of the Sentencing Act;
    - (ii) section 249 of the Criminal Procedure (Scotland) Act 1995;
    - or
    - (iii) Article 14 of the Criminal Justice (Northern Ireland) Order 1994;

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- (c) a surcharge under section 161A of the 2003 Act.
- (7) This section does not limit the extent to which a court may, in accordance with section 238, treat previous convictions of the offender as increasing the seriousness of an offence.
- (8) In this section—
  - (a) “member State service offence” means an offence which—
    - (i) was the subject of proceedings under the law governing all or any of the naval, military or air forces of a member State other than the United Kingdom; and
    - (ii) would constitute a service offence or an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom, by a person subject to service law, at the time of the conviction of the current offence;
  - (b) “relevant offence” means an offence which would constitute an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom at the time of the conviction of the current offence.”
- (3) In consequence of the amendments made by this paragraph, paragraphs 26(3) and (4) and 27 of Schedule 25 to the Criminal Justice and Immigration Act 2008 (which amend AFA 2006 but have not been commenced) are omitted.

*Definition of “period when unlawfully at large”*

- 21 In section 301(5) of AFA 2006 (duration of sentences: persons unlawfully at large), for the definition of “period when the person is unlawfully at large” substitute—
- “period when the person is unlawfully at large” means (subject to any rules made by virtue of section 300(2)(g))—
- (a) the period beginning with the day when the person becomes unlawfully at large and ending with the day when the person is taken back into custody (service or otherwise) or returns to the place where the sentence was being served; or
  - (b) in relation to a person who is absent when sentenced, the period beginning with the day when the sentence is passed and ending with the day when the person is taken into custody (service or otherwise);”.

*Persons treated as members of service police force*

- 22 Omit section 375(5) of AFA 2006 (Provost Marshal and other officers to be taken to be members of appropriate service police force).

*Power to make transitional provision under AFA 2006*

- 23 In section 380 of AFA 2006 (power to make transitional provision in connection with the coming into force of that Act), after subsection (8) insert—
- “(8A) The power under subsection (1) to make transitional provision in connection with the coming into force of any provision made by or under this Act includes power, where this Act or any provision made under it is amended, to amend any earlier order under this section.”

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*Activation of suspended sentence of imprisonment*

- 24 (1) Schedule 7 to AFA 2006 (suspended prison sentence: further conviction etc) is amended as follows.
- (2) Paragraph 6 becomes sub-paragraph (1) of that paragraph.
- (3) In paragraph (a) of that sub-paragraph, for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.
- (4) After that sub-paragraph insert—
- “(2) Anything that under section 376(1) and (2) of this Act is to be treated as a conviction for the purposes of this Act is also to be treated as a conviction for the purposes of paragraph 8(1)(b) of that Schedule as modified by this paragraph.”

SCHEDULE 4

Section 30

CONSEQUENTIAL AMENDMENTS

*Road Traffic Act 1988 (c. 52)*

- 1 In section 184(3) of the Road Traffic Act 1988 (definitions relating to persons subject to service discipline), for paragraph (a) of the definition of “member of the provost staff” substitute—
- “(a) a service policeman (within the meaning given by section 375(1) of the Armed Forces Act 2006); or”.

*Extradition Act 2003 (c. 41)*

- 2 In section 216(13) of the Extradition Act 2003 (definition of “service policeman”), for the words from “means” to the end substitute “has the meaning given by section 375(1) of the Armed Forces Act 2006”.

*Armed Forces Act 2006 (c. 52)*

- 3 (1) Section 50(2) of AFA 2006 (definition of “service offence”) is amended as follows.
- (2) After paragraph (a) insert—
- “(aa) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);”.
- (3) After paragraph (c) insert—
- “(ca) an offence under section 232G (breach of service sexual offences prevention order or extended prohibitions order);”.
- (4) For paragraph (e) substitute—
- “(e) an offence under section 305 (random drug testing);”.
- 4 (1) Section 53(1) of AFA 2006 (offences that may be dealt with at a summary hearing) is amended as follows.
- (2) After paragraph (g) insert—



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- “(ga) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion);”.
- (3) For paragraph (i) substitute—
- “(i) an offence under section 305 (random drug testing);”.
- 5 In section 58 of AFA 2006 (time limit for charging civilian formerly subject to service discipline)—
- (a) in subsection (5)(a), after sub-paragraph (i) insert—
- “(ia) leaving a country in which he fell within paragraph 5 of that Schedule;”;
- (b) in subsection (7), after paragraph (a) insert—
- “(aa) in relation to a person who falls within subsection (5)(a) by reason of leaving a country in which he fell within paragraph 5 of that Schedule, in that country or any other country in which he falls within that paragraph;”;
- (c) after subsection (7) insert—
- “(8) In subsections (5)(a)(ia) and (7)(aa) “country” is to be read in accordance with paragraph 14 of Schedule 15.”
- 6 In section 87(1) of AFA 2006 (power of CO to authorise entry and search by service policeman), for paragraphs (a) and (b) substitute—
- “(a) that a relevant offence within the meaning of section 84 has been committed;
- (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;
- (c) that the material would be likely to be admissible in evidence at a trial for the offence;
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);
- (e) that at least one of the conditions specified in section 83(4) applies; and
- (f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).”
- 7 In section 88(1) of AFA 2006 (power of CO to authorise entry and search by person other than service policeman), for paragraphs (a) and (b) substitute—
- “(a) that a relevant offence within the meaning of section 84 has been committed;
- (b) that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is on the premises;
- (c) that the material would be likely to be admissible in evidence at a trial for the offence;
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (within the meaning given by section 84);

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- (e) that at least one of the conditions specified in section 83(4) applies (the reference in section 83(4)(e) to a service policeman being read as a reference to a person authorised under this subsection); and
  - (f) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).”
- 8 (1) Section 97 of AFA 2006 (power to use reasonable force) becomes subsection (1) of that section.
- (2) After that subsection insert—
- “(2) Subsection (1) does not apply in relation to powers conferred by Chapter 3A of this Part.”
- 9 In section 164(3) of AFA 2006 (provisions to which section 164 is subject)—
- (a) omit the entry relating to section 165 of the Act;
  - (b) omit the “and” after the entry relating to Chapters 4 to 6 of Part 8; and
  - (c) after the entry relating to Part 9 insert “; and  
Schedule 3A (offender elected Court Martial trial).”
- 10 In Part 13 of AFA 2006, for the heading to Chapter 1 substitute—
- “RANDOM DRUG TESTING”*.
- 11 In section 305 of AFA 2006 (testing for drugs)—
- (a) for the heading substitute “Random drug testing”;
  - (b) in subsection (2)(b) omit the words from “or an investigation” to the end.
- 12 (1) Section 308 of AFA 2006 (provisions supplementary to sections 305 and 306) is amended as follows.
- (2) In the heading, for “Sections 305 and 306” substitute “Section 305”.
- (3) In subsection (1)—
- (a) for “sections 305(1) and 306(2)” substitute “section 305(1)”;
  - (b) omit paragraph (b);
  - (c) in paragraph (c), omit “or 306(2)”;
  - (d) in paragraph (d), omit “or 306(2)”.
- (4) Omit subsection (2).
- (5) In subsection (3), omit “or section 306(2)”.
- (6) In subsection (4), before paragraph (a) insert—
- “(za) Chapter 3A of Part 3.”
- 13 In section 325(1) of AFA 2006 (evidential burden as respects excuses)—
- (a) after “41,” insert “93A, 93E, 93G,”;
  - (b) for “266 and 306” substitute “232G and 266”.
- 14 (1) Section 373 of AFA 2006 (orders, regulations and rules) is amended as follows.
- (2) In subsection (2)—
- (a) after “sections” insert “20A,”;
  - (b) after “36,” insert “93F,”.

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- (3) In subsection (3)(d)—
- (a) after “section” insert “20A,”;
  - (b) after “336(5)(a)” insert “, 336A”.
- (4) In subsection (3)(g), after “section” insert “232F or”.
- 15 Omit section 380(9) of AFA 2006.

SCHEDULE 5

Section 30

REPEALS AND REVOCATIONS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
<a href="#">Military Lands Act 1900 (c. 56)</a>	In section 2— (a) in subsection (2), paragraph (b) of the proviso; (b) subsection (3).
<a href="#">Naval Medical Compassionate Fund Act 1915 (c. 28)</a>	The whole Act.
Defence (Transfer of Functions) (No 1) Order 1964 (S.I. 1964/488)	In Part I of the First Schedule, the entry relating to the Naval Medical Compassionate Fund Act 1915.
<a href="#">Court Martial Appeals Act 1968 (c. 20)</a>	Section 56.
<a href="#">Juries Act 1974 (c. 23)</a>	In section 9B(3), the “or” at the end of paragraph (c).
<a href="#">Reserve Forces Act 1996 (c. 14)</a>	In section 95(2)(a)(ii) the words “or service detention”.
<a href="#">Courts Act 2003 (c. 39)</a>	Section 65(1).  In Schedule 8, paragraphs 259(3) and 261.
<a href="#">Civil Partnership Act 2004 (c. 33)</a>	In Schedule 26, paragraph 8.
<a href="#">Armed Forces Act 2006 (c. 52)</a>	In section 125— (a) in subsection (3), paragraph (c) and the “or” preceding it; (b) subsection (4).  In section 164(3), the entry relating to section 165 and the “and” at the end of the entry relating to Chapters 4 to 6 of Part 8.  Section 194(6).  Section 293.  In section 305— (a) in subsection (2)(b), the words from “or an investigation” to the end; (b) in subsection (5), the words “or service detention”.  Sections 306 and 307.

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	<p>In section 308—</p> <p>(a) in subsection (1), paragraph (b), and in paragraphs (c) and (d) the words “or 306(2)”;</p> <p>(b) subsection (2);</p> <p>(c) in subsection (3), the words “or section 306(2)”.</p> <p>Section 336(3).</p> <p>Section 375(5).</p> <p>Section 380(9).</p> <p>In Schedule 8, paragraph 50.</p>
Criminal Justice and Immigration Act 2008 (c. 4)	In Schedule 25, paragraphs 26(3) and (4) and 27.
Naval Medical Compassionate Fund Order 2008 (S.I. 2008/3129)	The whole Order.
Coroners and Justice Act 2009 (c. 25)	In Schedule 17, paragraph 9.
	In Part 5 of Schedule 23, the entry relating to section 270B of the Armed Forces Act 2006.
The Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041)	Part 20.