



# Armed Forces Act 2006

## 2006 CHAPTER 52

First Group of Parts Discipline

### PART 6

SUMMARY HEARING AND APPEALS AND REVIEW

#### CHAPTER 1

SUMMARY HEARING

*Right to elect Court Martial trial*

#### **129 Right to elect Court Martial trial**

- (1) Before hearing a charge summarily the commanding officer must, in the way specified by rules under section 153, give the accused the opportunity of electing Court Martial trial of the charge.
- (2) If the accused elects Court Martial trial of the charge—
  - (a) the commanding officer must refer the charge to the Director of Service Prosecutions; and
  - (b) the charge is to be regarded for the purposes of Part 5 as allocated for Court Martial trial.
- (3) Where two or more charges against the accused are to be heard summarily together, an election for Court Martial trial in respect of any of the charges takes effect as an election in respect of all of them.
- (4) 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),

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this section applies in relation to the amended, substituted or additional charge as if the reference in subsection (1) to hearing a charge summarily were a reference to proceeding with the hearing.

### **130 Further consequences of election for Court Martial trial**

- (1) This section applies where the accused has elected Court Martial trial of a charge.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused refer to a commanding officer, under section 125(2)(e)—
  - (a) that charge (whether or not amended by the Director), or
  - (b) any charge substituted under section 125(2)(b) or additionally brought under section 125(2)(c).
- (3) Where a charge mentioned in subsection (2) is referred under section 125(2)(e), the accused may not elect Court Martial trial of the charge (and accordingly section 129(1) does not apply in respect of the charge); but this does not apply if the charge is amended after referral.

#### *Summary hearing*

### **131 Summary hearing**

- (1) This section applies where a commanding officer hears a charge summarily.
- (2) The commanding officer may dismiss the charge at any stage of the hearing; but this is subject to subsection (4) and to any provision of rules under section 153.
- (3) If the commanding officer determines that the charge has not been proved, he must dismiss the charge.
- (4) If the commanding officer determines that the charge has been proved, he must—
  - (a) record a finding that the charge has been proved; and
  - (b) award one or more of the punishments authorised by section 132.
- (5) Where the commanding officer records findings that two or more charges against a person have been proved, the award he must make under subsection (4) is a single award (consisting of one or more of those punishments) in respect of the charges taken together.
- (6) Nothing in this section authorises a commanding officer to include in an award two or more punishments within the same row of the Table in section 132, except where those punishments are—
  - (a) different minor punishments which regulations made under row 7 of the Table permit to be awarded together; or
  - (b) service compensation orders.

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*Punishments available to commanding officer*

**132 Punishments available to commanding officer**

- (1) The second column of the following Table lists the punishments that may be awarded by a commanding officer who has heard a charge summarily, subject in the case of each punishment to any limitation shown in the third column opposite it.

*TABLE*

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
1	detention for a term not exceeding the maximum allowed by section 133	only if the person being punished is of or below the rank of— (a) leading rate; (b) lance corporal or lance bombardier; (c) corporal in any of Her Majesty's air forces
2	forfeiture of a specified term of seniority or of all seniority	only if the person being punished is an officer, and only in accordance with section 134
3	reduction in rank, or disrating	only if the person being punished is a warrant officer or non-commissioned officer, only in accordance with section 135, and not to an extent prohibited by regulations under section 135(4)
4	a fine not exceeding the maximum amount allowed by section 136	
5	a severe reprimand or a reprimand	only if the person being punished is an officer, warrant officer or non-commissioned officer
6	a service supervision and punishment order (defined by section 173)	only if the person being punished is an able rate, marine, soldier or airman
7	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
8	a service compensation order (defined by section 175) of an amount not exceeding	

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<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
	the maximum allowed by section 137	

- (2) Subsection (1) is subject to (in particular)—
- (a) section 138 (prohibited combinations of punishments) and any regulations made under that section;
  - (b) Chapter 1 of Part 9 (general provisions about sentencing).
- (3) Where regulations under row 7 of the Table authorise a minor punishment, they may—
- (a) confer on the offender’s commanding officer a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;
  - (b) confer on the offender’s commanding officer the function of deciding the details of the punishment;
  - (c) provide for the delegation by the commanding officer of any of his functions under the regulations.

### **133 Detention: limits on powers**

- (1) The maximum term of detention that a commanding officer may award under row 1 of the Table in section 132 to an able rate, marine, soldier or airman is—
- (a) 90 days if the commanding officer has extended powers for the purposes of this subsection;
  - (b) otherwise, 28 days.
- (2) A commanding officer may not award detention under row 1 of the Table in section 132 to a person of any of the following ranks—
- (a) leading rate,
  - (b) lance corporal or lance bombardier,
  - (c) corporal in any of Her Majesty’s air forces,
- unless the commanding officer has extended powers for the purposes of this subsection; and the maximum term of detention that a commanding officer may (if he has those powers) award such a person is 90 days.
- (3) A commanding officer has extended powers for the purposes of subsection (1) or (2) if he has, before the summary hearing of the charge or charges—
- (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (4) A commanding officer also has extended powers for the purposes of subsection (1) or (2) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **134 Forfeiture of seniority: requirement for approval**

- (1) A commanding officer may not award forfeiture of seniority under row 2 of the Table in section 132 unless he has extended powers for the purposes of this section.
- (2) A commanding officer has extended powers for the purposes of this section if he has, before the summary hearing of the charge or charges—

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- (a) applied to higher authority for extended powers for the purposes of this section; and
  - (b) been notified by higher authority that his application has been granted.
- (3) A commanding officer also has extended powers for the purposes of this section if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **135 Reduction in rank: limits on powers**

- (1) A commanding officer may not award reduction in rank, or disrating, under row 3 of the Table in section 132 unless—
- (a) he has extended powers for the purposes of this subsection; or
  - (b) the person being punished is a lance corporal or lance bombardier.
- (2) The reduction in rank or disrating that a commanding officer may award is reduction or disrating—
- (a) by one acting rank or rate; or
  - (b) if the person being punished has no acting rank or rate, by one substantive rank or rate.
- (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) (if he is an acting corporal) or (2)(b) (if he is not) is reduction to the highest rank he has held in that force as an airman.
- (4) The Defence Council may by regulations provide that persons of a trade or branch specified in the regulations may not be reduced or disrated under section 132 below a rank or rate so specified.
- (5) A commanding officer has extended powers for the purposes of subsection (1) if he has, before the summary hearing of the charge or charges—
- (a) applied to higher authority for extended powers for the purposes of that subsection; and
  - (b) been notified by higher authority that his application has been granted.
- (6) A commanding officer also has extended powers for the purposes of subsection (1) if he is of or above the rank of rear admiral, major-general or air vice-marshal.

### **136 Fine: maximum amount**

- (1) The maximum amount of a fine that a commanding officer may award is—
- (a) 28 days' pay unless paragraph (b) applies;
  - (b) if the person being punished is an officer or warrant officer and the commanding officer does not have extended powers for the purposes of this paragraph, 14 days' pay.
- (2) A commanding officer has extended powers for the purposes of paragraph (b) of subsection (1) if he has, before the summary hearing of the charge or charges—
- (a) applied to higher authority for extended powers for the purposes of that paragraph; and
  - (b) been notified by higher authority that his application has been granted.
- (3) A commanding officer also has extended powers for the purposes of that paragraph if he is of or above the rank of rear admiral, major-general or air vice-marshal.

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- (4) For the purposes of this section a day’s pay is—
- (a) subject to paragraph (b), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded;
  - (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate.
- (5) If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of subsection (4) he is to be taken to have been on duty then.
- (6) In subsection (4) “special member” and “ordinary member” have the same meanings as in the Reserve Forces Act 1996 (c. 14).

### **137 Service compensation orders: maximum amount**

- (1) Where an award by a commanding officer consists of or includes one service compensation order, the compensation to be paid under the order must not exceed £1,000.
- (2) Where an award by a commanding officer consists of or includes two or more service compensation orders, the total compensation to be paid under the orders must not exceed £1,000.
- (3) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in subsections (1) and (2) such other sum as appears to him justified by the change.
- (4) In subsection (3) “the relevant date” means—
  - (a) the date of the coming into force of this section; or
  - (b) where the sum for the time being specified in subsections (1) and (2) was substituted for a sum previously so specified, the date of the substitution.

### **138 Prohibited combinations of punishments**

- (1) Subsections (2) to (6) apply where a commanding officer awards punishment in respect of an offender.
- (2) If he awards detention, other than a suspended sentence of service detention, the only additional punishment he may award is a service compensation order.
- (3) If he awards a suspended sentence of service detention, the only additional punishments he may award are—
  - (a) reduction in rank or disrating (subject to subsection (8));
  - (b) a service compensation order.
- (4) If he awards forfeiture of seniority, the only additional punishments he may award are—
  - (a) a severe reprimand or a reprimand;
  - (b) a service compensation order.

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- (5) If he awards reduction in rank or disrating, the only additional punishments he may award are—
  - (a) a suspended sentence of service detention (subject to subsection (8));
  - (b) a service compensation order.
- (6) If he awards a fine, he may not also award a service supervision and punishment order.
- (7) Regulations under row 7 of the Table in section 132 may make provision, as respects any punishment authorised by those regulations, prohibiting that punishment from being awarded with any other punishment (whether or not so authorised) specified by the regulations.
- (8) Nothing in this section authorises a commanding officer to award a particular punishment where the award of that punishment is prohibited otherwise than by this section.
- (9) References in this section to a service compensation order include references to two or more such orders.

### **139 Savings for maximum penalties for offences**

- (1) Where a commanding officer awards punishment in respect of a single offence, nothing in sections 131 to 138 authorises him—
  - (a) to award a punishment of a kind which the Court Martial could not award for that offence;
  - (b) if the offence is under section 42 (criminal conduct), to award a fine exceeding the maximum allowed by section 42(4).
- (2) Where a commanding officer awards punishment in respect of two or more offences—
  - (a) nothing in sections 131 to 138 authorises him to award a punishment of a particular kind unless it is one which the Court Martial could award for at least one of the offences; and
  - (b) if all the offences are under section 42 and the maximum fine allowed by section 136 exceeds the permitted maximum, nothing in sections 131 to 138 authorises him to award a fine exceeding the permitted maximum.
- (3) The permitted maximum is the total of the fines that under section 42(4) the commanding officer could award in respect of the offences if he had power to make separate awards in respect of them.