

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 13 – Discipline: Miscellaneous and Supplementary

Chapter 5 – Supplementary

Financial penalty enforcement orders

Section 322: Financial penalty enforcement orders

633. This section permits the Secretary of State by way of secondary legislation to make provision to enable the Defence Council or authorised persons to make orders for the enforcement of financial penalties by prescribed courts in England and Wales, Scotland and Northern Ireland or the Isle of Man.
634. The regulations may in particular provide for the type of cases in which orders may be made; the form content and effect of such orders; and the functions of the Defence Council in relation to such orders and their power to delegate such functions (subsection (2)).
635. Where the regulations make provision with respect to the effect of such orders, the regulations may provide that an outstanding sum is to be treated as if it had been a fine imposed by a specified court and for prescribed enforcement procedures to be or cease to be available on prescribed events (subsection (3)).
636. A “financial penalty” is defined as a fine or compensation order imposed by virtue of this Act (including such penalties ordered to be paid by a service parent or guardian under section 268), and a sum adjudged to be paid under section 236(3).

Power to make provision in consequence of criminal justice enactments

Section 323: Power to make provision in consequence of criminal justice enactments

637. The broad purpose of this section is to enable statutory changes in the criminal justice system of England and Wales to be adapted and applied by subordinate legislation to the Services’ system of justice. The powers in this section are based on those in section 31 of the Armed Forces Act 2001.
638. Under this section the Secretary of State may by order make in relation to service policemen, service courts, persons subject to service law, civilians subject to service discipline and service law proceedings provision equivalent (subject to modifications) to:

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- any enactment (called in the section a “criminal justice enactment”) passed after 1st January 2001 which amends the law of England and Wales relating to any “criminal justice matter”,
 - any other enactment about a criminal justice matter which is itself amended by a criminal justice enactment, and
 - any subordinate legislation made under either of the above types of enactment.
639. The Secretary of State is, for example, able to make for the armed forces provision equivalent to new criminal justice legislation and other legislation about criminal justice which has been altered by such new legislation.
640. A “criminal justice matter” is itself defined in section 324 (2). It covers such matters as police powers of investigation and detention, powers of arrest, custody, bail, evidence, procedure and court powers (including sentence). The Secretary of State may by order extend it to other criminal justice matters, but in such a case the order must be approved in draft by both Houses of Parliament.
641. The power to make equivalent provision is wide enough to allow the Secretary of State to amend existing legislation, but again in such a case the order must be approved in draft by both Houses of Parliament.

Section 324: Section 323: definitions

642. This section contains a number of definitions for the purposes of section 323, including (as mentioned in the note on section 323) definitions of “criminal justice enactment” and “criminal justice matter”.

Other supplementary provisions

Section 325: Evidential burden as respects excuses

643. It is a general principle of English criminal law that it is for the prosecution to prove beyond all reasonable doubt that an accused person is guilty of an offence. However an accused is sometimes subject to a burden in relation to the evidence, for example if he raises insanity as a defence. Statutes may expressly or impliedly impose such a burden on the accused. This section imposes such a burden on an accused if he raises a defence of lawful excuse or reasonable excuse. “Lawful excuse” is a defence, for example, to an offence of assisting an enemy under section 1 of the Act, and “reasonable excuse” is a defence, for example, to the offence of misconduct on operations (under section 2).
644. Under the criminal law of England and Wales there two main kinds of burden that could apply. One is a burden to prove something (which, in the case of an accused, would be on a balance of probabilities). The other burden is lower. It is not strictly one of proof, but only of bringing sufficient evidence to satisfy the judge (the judge advocate in the Court Martial) that there is an issue which should be left to those responsible for deciding the facts (such a jury or, in the case of the Court Martial, the panel of Service members). Section 323 provides that this lower burden applies to an accused in relation to a defence of lawful excuse or reasonable excuse.

Section 326: Exclusion of enactments requiring consent of Attorney General or DPP

645. This section makes it clear that proceedings under the Act for a service offence do not require the consent of the Attorney General or the Director of Public Prosecutions, even if proceedings for a corresponding civilian offence would require such consent. This does not affect section 61(2), which requires the consent of the Attorney General to the bringing of a charge once a time limit under any of sections 55 to 58 has expired.

Section 327: Local probation boards

646. **Section 327** inserts a provision into the Criminal Justice and Court Services Act 2000 (“the 2000 Act”) in substitution for a similar provision inserted into that Act by Schedule 16. The reason for this, and the effect of the inserted provision, is as follows.
647. **Paragraph 178** of Schedule 16 inserts a new section – section 5A – into the 2000 Act. This provision empowers the Secretary of State to make arrangements for local probation boards to provide the full range of their professional services in respect of persons who appear before service courts. Examples of these services would include the preparation of pre-sentence reports, and the supervision of offenders subject to an overseas community order.
648. It is intended that paragraph 178 of Schedule 16 should come into force as soon as is practicable. As a consequence, the section it inserts into the 2000 Act is necessarily an interim measure, containing references to the SDAs (which are to be repealed by the Act) and to courts constituted under those Acts.
649. **Section 327** is intended to come into force on the Act’s main commencement date, and sets out a new section 5A that is consistent with the rest of the Act, and is substituted for that inserted by Schedule 16. The amendment to the 2000 Act set out in this section is to the same effect as that inserted by Schedule 16.