

# **ARMED FORCES ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *First Group of Parts – Discipline*

#### **Part 6 – Summary Hearing and Appeals and Review**

#### *Chapter 1 – Summary Hearing*

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

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

277. This section requires a CO hearing a charge summarily to give the accused the opportunity to be tried by the Court Martial. If the accused chooses to be tried by the Court Martial, the CO must refer the charge to the DSP for Court Martial trial. Where two or more charges against the same accused are to be heard summarily together and the accused chooses to be tried by Court Martial in respect of one of those charges, all charges are to be referred to the DSP for trial by the Court Martial.
278. If a summary hearing has started and any charge is amended, substituted or added after the start of the proceedings, the accused must be given the opportunity to elect trial by the Court Martial in respect of that charge.

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

279. This section prevents the DSP from taking certain actions where an accused has elected Court Martial trial, without the written consent of the accused. The section prevents an accused finding himself facing a charge of a type which the CO could not have heard (which will often be a more serious charge) as a result of his decision to be tried by the Court Martial.
280. The section also prevents an accused electing to be tried by the Court Martial in respect of a charge which he previously consented to the DSP referring back to the CO for a summary hearing following a previous election.

#### **Summary hearing**

#### *Section 131: Summary hearing*

281. This section gives the CO certain powers in respect of summary hearings. It allows him to dismiss the charge at any time and requires him to do so if he determines that it has not been proved. Where he determines that charge has been proved he must record that finding and award one or more of the authorised punishments. In the case of findings that more than one charge has been proved, a single award of punishment is to be made in respect of all those charges. With the exception of “minor punishments” (which may be listed in regulations) and service compensation orders only one punishment of each kind may be awarded in respect of a hearing.

## **Punishments available to commanding officer**

### ***Section 132: Punishments available to commanding officer***

282. This section lists the punishments which are available to a CO who has found a charge proved. It also places restrictions in relation to the rank or rate of a person who may receive certain punishments from the CO.
283. Under regulations, a CO may decide the details of a minor punishment, and this provision allows for the different circumstances COs find themselves in. A CO is also permitted to delegate functions under minor punishment regulations.

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

284. This section places limits on the amount of detention a CO may award and the circumstances in which he may do so. A CO may award up to 28 days without extended powers and 90 days with extended powers to servicemen of the lowest non-commissioned rank. However, he must have extended powers before awarding a punishment of detention of any period to a leading rate, lance corporal, lance bombardier or corporal in the RAF (or other air force). A CO has extended powers where he has applied for them and had them granted by higher authority. COs of 2\* rank have inherent extended powers.

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

285. This section requires a CO to have extended powers before awarding forfeiture of seniority. A CO has extended powers where he has applied for them and had them granted by higher authority. COs of 2\* rank have inherent extended powers.

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

286. This section deals with COs' powers to disrate naval ratings and reduce army and RAF non-commissioned servicemen in rank. A CO requires extended powers to reduce in rank, save where he proposes to reduce a lance corporal or lance bombardier (who have no equivalent ranks in the Royal Navy or RAF and are lower than the first non-commissioned rank in those forces). A CO may remove the acting rank of a non-commissioned service person that holds such a rank or one substantive rank from any other non-commissioned serviceman. A CO has extended powers for these purposes where he has applied for them and had them granted by higher authority; COs of 2\* rank or above have inherent higher authority.
287. The section makes particular provision in respect of airmen. The term "airman" covers four ranks: aircraftman, leading aircraftman, senior aircraftman and junior technician. Whilst these four ranks do form a hierarchy, for some branches of the RAF a junior technician might be the lowest trained rank for his specialisation. A CO is not able to reduce a person in rank within the category of airman, so, for example, a junior technician may not be reduced to a senior aircraftman. For an RAF corporal any reduction in rank would be to the next highest rank applicable to his trade, and for which he is qualified, but still within the "catch all" category of airman.
288. The Defence Council may make regulations restricting the power to reduce in rank or disrate certain persons whose branch or trade requires them to hold a minimum rank or rate.

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

289. This section deals with a CO's powers to fine. A CO may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay (the section explains how a day's pay is to be calculated). With extended powers he can fine an officer or warrant officer up to 28 days' pay. A CO has extended powers where he

has applied for them and had them granted by higher authority. COs of 2\* rank have inherent extended powers.

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

290. This section sets out the maximum amount for a service compensation order (or a combination of them) that may be awarded by a CO. The maximum is currently set at £1,000. The section also provides that the Secretary of State may substitute for the sum specified another appropriate sum. However, the Secretary of State may only alter the specified sum in order to stay in line with changes to the value of money.

***Section 138: Prohibited combinations of punishments***

291. This section prohibits the award of certain punishments in combination with each other. It also provides that regulations may make provision about minor punishments.

***Section 139: Savings for maximum penalties for offences***

292. This section places restrictions on the punishments which can be awarded by a CO when he is hearing a criminal conduct charge either alone or in combination with a non-criminal conduct offence. Where a CO is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence.
293. Where the CO makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under section 42.