

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 8 – Sentencing Powers and Mandatory Etc Sentences

Chapter 1 – Definition etc of Certain Sentences

353. This chapter defines, and makes further provision in relation to, some of the sentences that are available to the Court Martial for adult offenders (all of which are set out in the Table in section 164). Some of the sentences dealt with in this Chapter are also available to a CO (see section 132), the SCC (see section 282) or both. One of them (the service supervision and punishment order) is unique to service law and may be imposed only on an able rate, marine, soldier or airman. The rest are modelled on equivalent sentences available to civilian courts in England and Wales.

Service supervision and punishment orders

Section 173: Service supervision and punishment orders

354. This section defines the service supervision and punishment order. This order is based on the minor punishment of reduction to the second class for conduct, currently available only under the Naval Discipline Act 1957. However, it is more flexible in that it may be imposed for a period of 90, 60 or 30 days, whereas the current punishment can only be imposed for 90 days. As at present, the offender's CO is required to review the punishment at intervals and has power to terminate it before the expiry of the period for which it was made.
355. While the order is in force, it has two elements. First, the offender is subject to requirements prescribed in regulations made by the Defence Council. These requirements can include (for example) extra work and drill, or a restriction on the taking of leave. The regulations may give the CO, or another officer to whom he has delegated his functions in this respect, a discretion to determine the details of the activities that the offender must perform. Secondly, the offender forfeits 1/6th of his gross pay.

Section 174: Review of service supervision and punishment orders

356. This section requires a CO to review a service supervision and punishment order made in respect of a person under his command. The times at which such a review must be carried out are to be specified in Defence Council regulations. On a review, the CO must consider whether the order should remain in force. If he decides that it should not, he must order that it shall immediately cease to have effect.
357. Subsection (3) enables the Defence Council to make regulations about the criteria that a CO must apply when reviewing an order.

358. Subsection (4) ensures that, even if the CO terminates the order, the offender will still forfeit 1/6th of his gross pay for the period when the order was in force.

Service compensation orders

Section 175: Service compensation orders

359. One of the punishments available under the SDAs is “stoppages”. This is an order to pay compensation for personal injury, loss or damage resulting from the offence, and is enforced by deductions from the offender’s pay. A court-martial or Standing Civilian Court can also make a compensation order against a civilian offender. The Act replaces stoppages and the compensation order with the service compensation order, which is available for both service and civilian offenders and closely resembles the compensation order available to civilian courts in England and Wales. The order is enforceable in the same way as a fine, which in the case of serving personnel may include deductions from pay under regulations made by virtue of section 342.
360. This section defines the service compensation order and provides for the circumstances in which it can be made. The section is modelled on section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (“the Sentencing Act”).

Section 176: Service compensation orders: appeals etc

361. This section corresponds to section 132 of the Sentencing Act. Subsection (1) ensures that compensation awarded in favour of a person need not be paid to him until the expiry of the period allowed for an appeal.
362. Subsection (2) enables the Supreme Court to make a service compensation order if a conviction is quashed by the CMAC and restored by the Supreme Court.
363. Subsection (3) ensures that, where a service compensation order is made in respect of an offence taken into consideration when sentencing a person for an offence of which he has been convicted, and the conviction is quashed on appeal, the order ceases to have effect. It also enables the offender to appeal against such an order.

Section 177: Review of service compensation orders

364. This section corresponds to section 133 of the Sentencing Act. It enables a service compensation order to be reviewed, on application by the person against whom it is made, by the Court Martial or (in the case of an order made at a summary hearing) by the person’s CO. The court or CO can discharge the order or reduce the amount payable, but only on the grounds specified in subsection (3).

Service community orders (civilians and dismissed servicemen only)

Section 178: Service community orders

365. This section defines the service community order. This punishment is available only for offenders aged 18 or over on conviction who are civilians, or will be civilians when the punishment takes effect because they are also being sentenced to dismissal, and are expected to live in the UK. It is broadly equivalent to a community order made under section 177 of the Criminal Justice Act 2003 (“the 2003 Act”), and most of the provisions that apply to such orders are extended to service community orders.
366. A court making a service community order must impose requirements of the kind that can be included in a community order under the 2003 Act, and must specify the local justice area (in England and Wales), locality (in Scotland) or petty sessions district (in Northern Ireland) where the offender lives or will live.

367. Subsection (2) makes the power to include requirements in a service community order subject to broadly the same restrictions as the power to include them in a community order under the 2003 Act.
368. Subsections (3) to (6) apply further provisions of the 2003 Act on community orders to service community orders.

Section 179: Periodic review etc of service community orders

369. Section 210 of the 2003 Act enables, and in some cases requires, a community order imposing a drug rehabilitation requirement to provide for that requirement to be periodically reviewed by a court. This is one of the provisions extended to service community orders by section 178, but subsection (1) of this section modifies it so that the court required to review the requirement is the Crown Court.
370. Section 211 of the 2003 Act provides for the powers of a court reviewing a drug rehabilitation requirement under a community order. After considering the responsible officer's report, the court can amend the requirement. It can do so only if the offender agrees to the amendment, but if he does not agree to it the court can re-sentence him for the original offence. This section is extended to service community orders by section 178, but subsection (2) of this section modifies it so that the Crown Court can exercise its ordinary sentencing powers rather than those of the service court that made the order.
371. Subsection (3) ensures that an offender re-sentenced by the Crown Court under these provisions can appeal against the sentence.

Section 180: Transfer of service community order to Scotland or Northern Ireland

372. Parts 1 and 2 of Schedule 9 to the 2003 Act enable a civilian court in England and Wales to make a community order where the offender lives or will live in Scotland or Northern Ireland. This section extends those provisions so that in these circumstances a service court can make a service community order.
373. Part 3 of Schedule 9 to the 2003 Act provides for the operation of a community order which requires compliance in Scotland or Northern Ireland. In some circumstances a court in Scotland or Northern Ireland can send the offender back to be dealt with by a court in England and Wales, which might be either the Crown Court or a magistrates' court. In the case of a service community order, however, the effect of subsection (3) is that the court dealing with the matter in England and Wales will always be the Crown Court.

Section 181: Breach, revocation or amendment of service community order

374. Schedule 8 to the 2003 Act sets out the procedures relating to the enforcement, revocation and amendment of community orders. This section gives effect to Part 1 of Schedule 5 to the Act, which extends Schedule 8 to the 2003 Act so that, with some modifications, the procedures for a service community order are the same as those for a community order under the 2003 Act.

Overseas community orders (civilians only)

Section 182: Overseas community orders

375. This section defines the overseas community order, which is available only for civilian offenders living overseas. Like the service community order, it is broadly equivalent to a community order made under section 177 of the 2003 Act; but, whereas the service community order is enforceable through the civilian courts in the UK, the overseas community order is enforceable only through service courts.

376. An overseas community order made in respect of an offender aged 18 or over on conviction can include any of the requirements that can be included in a community order under the 2003 Act (except an electronic monitoring requirement, which is excluded by section 183). In the case of an offender aged under 18 on conviction, the requirements available are modified by Schedule 6 to the Act.

Section 183: Overseas community orders: modifications of 2003 Act

377. Chapter 4 of Part 12 of the 2003 Act contains general provisions applicable to (among other sentences) community orders. This section modifies that Chapter in its application to overseas community orders.
378. Subsection (1) prevents certain provisions of the 2003 Act from applying to an overseas community order. These provisions include one which prevents a court from imposing a mental health requirement where the offender's mental condition would warrant the making of a hospital order or guardianship order (which are not available on conviction by a service court), those relating to periodic review of a drug rehabilitation requirement, and the power to impose an electronic monitoring requirement.
379. Subsection (2) modifies certain provisions of the 2003 Act under which the offender can be required to attend at premises approved by the local probation board for the area in which the premises are situated, so that, in the case of a requirement under an overseas community order, the approval of any local probation board will suffice.
380. Subsection (3) requires a court making an overseas community order to provide a copy of the order to specified persons, in addition to those specified in section 219 of the 2003 Act.
381. Subsection (4) provides a definition of the "responsible officer", for the purposes of an overseas community order, which is broadly similar to that in section 197 of the 2003 Act, but omits the reference to the officer being appointed for or assigned to a local justice area. Subsection (5) enables the Secretary of State to amend this definition in the same way as he can amend the definition in the 2003 Act.

Section 184: Breach, revocation or amendment of overseas community order

382. Schedule 8 to the 2003 Act sets out the procedures relating to the enforcement, revocation and amendment of community orders. This section gives effect to Part 2 of Schedule 5, which extends Schedule 8 to the 2003 Act so that, with some modifications, it applies to overseas community orders.

Conditional or absolute discharge (civilians only)

Section 185: Conditional or absolute discharge

383. This section defines a conditional discharge and an absolute discharge. Conditional discharge is available only for civilian offenders (see Schedule 3, paragraph 1(1) for the sentencing powers of the Court Martial in relation to civilians, and section 282 for those of the SCC). Absolute discharge is available for civilians and also for persons previously subject to service law (under Schedule 3, paragraph 3(1)).
384. Subsection (1) defines a conditional discharge as an order discharging the offender on condition that he commits no further service offence during a specified period. Under subsection (2) the maximum period that can be specified is the same as that for which a civilian court in England and Wales can impose a conditional discharge (currently three years).
385. An absolute discharge is defined in subsection (3) as an order that discharges the offender absolutely (i.e. without conditions).

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

386. Subsection (4) prohibits a conditional or absolute discharge from being combined with any other punishment, except a service compensation order.

Section 186: Commission of further offence by person conditionally discharged

387. Where an offender has been conditionally discharged, and is then convicted by the Court Martial or the SCC of another offence committed during the period of discharge, this section enables the court to re-sentence him for the original offence. It corresponds to section 13 of the Sentencing Act.
388. Where the original conviction was by the SCC and the second conviction is by the Court Martial, under subsection (2) the sentence passed by the Court Martial for the original offence must be one that the SCC could pass. Where the second conviction is by the SCC, under subsection (3) the sentence passed by the SCC must be one that it could have passed if it had just convicted the offender of the original offence (even if it was in fact the Court Martial that convicted him of that offence).
389. Subsection (5) ensures that the offender can appeal against a sentence passed under this section by the Court Martial where the original conviction was by the SCC, or vice versa.

Section 187: Effect of discharge

390. This section corresponds to section 14 of the Sentencing Act. Under subsection (1), an offender who is conditionally or absolutely discharged is deemed not to have been convicted of an offence, except for the purposes of the proceedings in which the order was made and any re-sentencing of the offender under section 186. Under subsection (2) this rule ceases to apply if the offender is later re-sentenced under section 186 (provided that he was aged 18 or over when he was convicted of the original offence).
391. Under subsection (3), where a conditional or absolute discharge is imposed the conviction is also to be disregarded for the purposes of legislation imposing a disqualification or disability.
392. Subsection (5) ensures that the section does not affect the offender's rights of appeal, his right not to be tried again for the same offence, or an order to restore property.