

ARMED FORCES ACT 2006

EXPLANATORY NOTES

THIRD GROUP OF PARTS – GENERAL

Part 19 – Supplementary

Chapter 4 – Final Provisions

Section 378: Minor and consequential amendments and repeals

755. This section introduces Schedules 16 and 17. Schedule 16 sets out the minor and consequential amendments to other Acts that are required as a consequence of the provisions of this Act; whilst Schedule 17 sets out the repeals and revocations in other Acts and subordinate legislation that are required as a consequence of this Act. Legislation about the armed forces is referred to in very many other Acts and pieces of subordinate legislation and these now require up-dating so that, for example, they refer to the “Armed Forces Act 2006” rather than the individual SDAs.

Section 379: Power to make further amendments and repeals

756. This section gives the Secretary of State the power to make orders (by statutory instrument) to amend or repeal any primary legislation passed before or in the same session as this Act or to amend or revoke any secondary legislation made before this Act is passed, for the purposes of giving full effect to the Act or to make provision consequential to it. The references to primary and secondary legislation include Acts of the Scottish Parliament or Northern Ireland legislation and subordinate legislation passed under such Acts or legislation.

757. In respect of the devolved administrations this power will only be used in connection with devolved matters specifically for the reserved purpose of defence, and any such amendments or repeals or revocations will be subject to consultation with those legislatures. An order under this section may not be made unless approved in draft by both Houses of Parliament (section 373(3)).

Section 380: Power to make transitional and transitory provision

758. Under this section the Secretary of State may make orders for transitional and transitory provisions in connection with bringing the Act into effect. The provisions may include ones saving provisions of repealed enactments, so that they are able to have a continuing effect in certain circumstances. A simple example of the sort of provision that may be needed would be to allow proceedings which have begun in accordance with procedures laid down in one of the current SDAs to continue on that basis after new procedures under the Act have been brought into force. The main provisions of this section are noted below.

759. Subsection (2) specifies some broad matters which may be provided for in orders under this section. These include provision for the continuation of proceedings that have begun before the commencement of the Act. Another provision specifically mentioned is for the punishments available for offences committed before commencement. Under

the Act, for example, a Royal Navy CO will lose his power of summary dismissal. Under this section the Secretary of State will be able to provide by order about whether such a CO will retain that power in summary proceedings begun before the repeal of that power takes effect under the Act.

760. Orders under this section will also be able to give powers, functions and jurisdiction (subsection (3)). For example, the new SCC might be given jurisdiction over cases which immediately before commencement were within the jurisdiction of a Standing Civilian Court. Subsections (4) and (5) enable provisions of the Act and other enactments affected by it to apply on a transitional basis with specified modifications.
761. Subsection (6) deals with a particular transitional problem which arises from the fact that section 61 of the Criminal Justice and Court Services Act 2000 has been passed but has not yet been brought into force. That section, when brought into force, will reduce from 21 to 18 the minimum age at which an offender may be sentenced to imprisonment. The SDAs by contrast include provision for orders relating to imprisonment between the ages of 18 and 21. Section 208 of the Act reflects the minimum age of 18 and so does not deal with imprisonment between 18 and 21. If section 61 is still not in force on commencement of the relevant provisions of the Act, subsection (6) enables the power under subsection (4) to be used to provide for an alternative form of custodial sentence (e.g. by applying the SDA provisions with modifications).
762. Subsection (7) makes a safeguard as to the use of the powers in this section. It provides that an order under this section may not allow a more severe to be available for an offence than was available at the time the offence was committed.
763. [Section 382](#) provides for the expiry of the SDAs not later than the end of 2011. Subsection (9) of this section provides for savings under this section to be unaffected by that expiry date.

Section 381: Alignment of SDAs etc with this Act

764. This section provides the Secretary of State with a power to amend or repeal provisions of the various Acts listed in subsection (3) in order to bring the operation of the current law closer to the effect that will be achieved under this Act. Because orders made under this section will amend primary legislation the orders will be subject to the affirmative resolution procedure and so will receive full parliamentary scrutiny. The purpose of this power is to reduce the differences as far as practicable between current procedures and those that will be in place under this Act. This will help to make the transition from the current systems to the single new system smoother and more manageable for the Services.

Section 382: Duration of SDAs and this Act

765. The section maintains for this Act the same requirements for renewal which currently apply to the SDAs. The Act is subject to renewal each year by Order in Council. The order must be approved by Parliament in draft. But it may be renewed in this way for a maximum of five years. Renewal beyond that time will require an Act of Parliament.
766. This section also deals with the need to continue in force the SDAs until the Act is brought into force. To do this, it provides for the SDAs to be renewable annually by Order in Council. Again the approval of Parliament to the draft Orders is required, and renewal in this way is only permitted for a maximum of five years. As mentioned in the note on section 373, subsection (9) of that section allows provisions of the SDAs which have been saved under that section to continue in force despite the expiry provisions of this section.

Section 383: Commencement

767. This section provides for certain sections to come into effect on Royal Assent (when, that is, the Act becomes an Act). The sections are:
- Section 359, which creates a pardon for persons executed for particular offences committed between the 4th August 1914 and the 11th November 1918;
 - section 373, which provides how orders, regulations and rules under the Act are to be made;
 - section 382, which provides for the renewal and expiry of the SDAs and the Act (the repeal of section 1 of the Armed Forces Act 2001, which currently governs the renewal and repeal of the Service Discipline Acts, is accordingly repealed at the same time);
 - section 384, which provides for the Act to extend to the Channel Islands, the Isle of Man and the British overseas territories; and
 - section 386, which gives the Act its short title – the Armed Forces Act 2006.
768. The section also provides for the Secretary of State to bring into force the other provisions of the Act on days appointed by order. These commencement orders are statutory instruments but are not subject to parliamentary procedure.

Section 384: Extent to Channel Islands, Isle of Man and British overseas territories

769. The Act extends to (i.e. forms part of the law of) every part of the UK. This section provides for its extent outside the UK.
770. Subsection (1) enables the Act to be extended to the Channel Islands by Order in Council. If such an Order is made, it can modify the Act (so that the law of the Channel Islands is not the same as that of the UK).
771. Under subsection (2) the Act extends directly (i.e. without the need for an Order in Council) to the Isle of Man and the British overseas territories; but an Order in Council can be made in order to modify it in its application to any of those territories.
772. An Order in Council under this section is not subject to parliamentary approval: see section 373(4).

Section 385: Extent of applied enactments

773. Subsection (1) ensures that, where another enactment is applied by the Act or by subordinate legislation made under it, for this purpose the applied enactment extends to (i.e. forms part of the law of) every part of the UK, even if the original enactment extends only to part of the UK.
774. Subsection (2) similarly applies the rules in section 384 (which deals with the extent of the Act outside the UK) to any enactment applied by or under the Act.