

## SCHEDULES

### SCHEDULE 3

Section 29

#### MINOR AMENDMENTS OF SERVICE LEGISLATION

##### *Definition of “service policeman” in Armed Forces Act 1991*

- 1 In section 22A of the Armed Forces Act 1991 (removal and accommodation of children by service police in emergency), in subsection (8) for the definition of “service policeman” substitute—
- ““service policeman” has the meaning given by section 375(1) of the Armed Forces Act 2006.”

##### *Powers of arrest of an officer acting on behalf of provost officer*

- 2 In section 67(2) of AFA 2006 (persons who may arrest an officer), for paragraph (c) substitute—
- “(c) by a person who is lawfully exercising authority on behalf of a provost officer, and who—
- (i) is an officer; or
  - (ii) is acting on the order of an officer.”

##### *Entry for purposes of arrest by service policeman*

- 3 In section 90(6) of AFA 2006 (powers of arrest to which section applies), for “or 111,” substitute “, 111 or 303,”.

##### *Definition of “service living accommodation”*

- 4 (1) Section 96 of AFA 2006 (definition of “service living accommodation” etc for purposes of Part 3) is amended as follows.
- (2) In subsection (1), in each of paragraphs (a), (b) and (c) for “subject to service law” substitute “within subsection (1A)”.
- (3) After subsection (1) insert—
- “(1A) The following are persons within this subsection—
- (a) a person subject to service law;
  - (b) a civilian subject to service discipline.”

##### *Consultation of DSP before decision by service police on referral of case*

- 5 (1) In section 116 of AFA 2006 (referral of case following investigation by service or civilian police), for subsection (4) substitute—
- “(4) Subsection (4A) applies if—

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- (a) the allegation or circumstances would indicate to a reasonable person that a Schedule 2 offence has or might have been committed, or
  - (b) any circumstances investigated are circumstances of a description prescribed by regulations under section 128 for the purposes of section 114,
- and a service policeman proposes not to refer the case to the Director under subsection (2).
- (4A) If this subsection applies, the service policeman must consult the Director as soon as is reasonably practicable (and before any referral of the case under subsection (3)).”
- (2) In section 117(3)(b) (referral of multiple offences), for “116(3) or (4)” substitute “116(3) to (4A)”.

*Powers of DSP in respect of charge allocated for Court Martial trial*

- 6 (1) Section 125 of AFA 2006 (powers of Director of Service Prosecutions in respect of charge allocated for Court Martial trial) is amended as follows.
- (2) In subsection (3)—
- (a) insert “or” after paragraph (a); and
  - (b) omit paragraph (c) and the “or” preceding it.
- (3) Omit subsection (4).

*Right to elect Court Martial trial*

- 7 In section 129 of AFA 2006 (right to elect Court Martial trial), for subsection (4) substitute—
- “(4) Subsection (5) applies if an opportunity to elect Court Martial trial of a charge (“the original charge”) has been given under subsection (1) and subsequently—
- (a) the charge is amended;
  - (b) another charge is substituted for it; or
  - (c) an additional charge is brought.
- (5) Subsection (1) applies in relation to the amended, substituted or additional charge; and if the amendment, substitution or addition takes place after the start of the summary hearing, that subsection has effect in relation to the charge as if the reference to hearing a charge summarily were to proceeding with the hearing.
- (6) In subsection (4)—
- (a) “amended” means amended under section 123(2)(a) or, in the case of a charge referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, amended under section 125(2)(a) and referred to the commanding officer under section 125(2)(e);
  - (b) “substituted” means substituted under section 123(2)(b) or, where the original charge was referred to the Director of Service

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Prosecutions otherwise than on election for Court Martial trial, substituted under section 125(2)(b) and referred to the commanding officer under section 125(2)(e);

- (c) “brought”, in relation to an additional charge, means brought under section 123(2)(c) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, brought under section 125(2)(c) and referred to the commanding officer under section 125(2)(e).

(7) Subsection (8) applies where—

- (a) an opportunity to elect Court Martial trial of a charge has been given under this section;
- (b) the accused has not elected Court Martial trial; and
- (c) at a time after the giving of the opportunity to elect, the commanding officer obtains extended powers for the purposes of any provision of section 133, 134, 135 or 194.

(8) The provisions of this section requiring the giving of an opportunity to elect Court Martial trial of the charge shall apply again.”

8 In section 130(3) of AFA 2006 (consequences of election for Court Martial trial), for “if the charge is amended after referral.” substitute “—

- (a) where the charge is amended after referral;
- (b) to any charge substituted for or added to the charge after referral; or
- (c) where extended powers for the purposes of any provision of section 133, 134, 135 or 194 are obtained after referral.”

9 After section 130 of AFA 2006 insert—

**“130A Restrictions on DSP’s powers to substitute or add charges after election**

(1) This section applies where—

- (a) a charge is for the time being regarded for the purposes of Part 5 as allocated for Court Martial trial; and
- (b) the charge is in respect of an offence which would be a relevant offence for the purposes of Schedule 3A (sentencing powers of Court Martial where election for trial by that court) if the accused were convicted of it.

(2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused substitute under section 125(2)(b)—

- (a) a charge in respect of an offence which is not one that may be dealt with at a summary hearing (see section 53); or
- (b) a charge in respect of an offence within section 54(2) (offences that may be dealt with summarily only with permission or by senior officer), except where the relevant charge was in respect of such an offence.

(3) In subsection (2)(b) “relevant charge” means—

- (a) in relation to a case A offence or a case B offence (within the meaning of Schedule 3A), the charge in respect of which the accused elected Court Martial trial; and

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- (b) in relation to a case C offence or a case D offence (within the meaning of Schedule 3A), the charge referred as mentioned in paragraph 4(c) of that Schedule.
- (4) The Director may not without the written consent of the accused bring under section 125(2)(c) a charge in addition to the charge.
- (5) In construing Part 1 of Schedule 3A (relevant offences) for the purposes of this section, paragraphs 3(b) and 5(c) of that Schedule are to be disregarded.”

### *Summary hearing*

- 10 In each of sections 133(3), 134(2) and 135(5) of AFA 2006 (obtaining extended powers of punishment), for “before the summary hearing of the charge or charges” substitute “within the relevant time (defined by section 135A)”.
- 11 After section 135 of AFA 2006 insert—

#### **“135A Extended powers: time for obtaining**

- (1) In each of sections 133(3), 134(2) and 135(5), “within the relevant time” means before the start of the summary hearing; but this is subject to subsections (2) and (3).
- (2) Subsection (3) applies 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).
- (3) Any application for or grant of extended powers which is made in the period between—
  - (a) the making of the amendment, substitution or addition, and
  - (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,
 is to be treated for the purposes of sections 133(3), 134(2) and 135(5) as made within the relevant time.”
- 12 In section 136 of AFA 2006 (maximum amount of fine), for subsections (1) to (3) substitute—
  - “(1) The maximum amount of a fine that a commanding officer may award is 28 days’ pay.”
- 13 In section 153(2) of AFA 2006 (powers to make rules relating to summary hearings etc), in each of paragraphs (d) and (e) after “applications for” insert “, and grants of,”.

### *Activation of suspended sentence of service detention*

- 14 In each of sections 190(1)(a), 191(2)(b) and 193(2)(b) of AFA 2006 (circumstances where suspended sentence may be activated), for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.
- 15 (1) Section 194 of AFA 2006 (limits on commanding officer’s powers to activate suspended sentence) is amended as follows.

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(2) In subsection (4) for “before the relevant time” substitute “within the relevant time (defined by section 194A)”.

(3) Omit subsection (6).

16 After section 194 of AFA 2006 insert—

**“194A Extended powers of activation: time for obtaining**

(1) In section 194(4) “within the relevant time” means—

- (a) where section 193(2)(a) applies, before the start of the summary hearing of the charge mentioned there (but this is subject to subsections (2) and (3));
- (b) where section 193(2)(b) applies, before the start of the hearing as to whether an order under section 193 should be made.

(2) Subsection (3) applies where the summary hearing of the charge mentioned in section 193(2)(a) is one where, after the start of the 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).

(3) Any application for or grant of extended powers which is made in the period between—

- (a) the making of the amendment, substitution or addition, and
- (b) the time when the summary hearing is proceeded with after the amendment, substitution or addition,

is to be treated for the purposes of section 194(4) as made within the relevant time.”

*Suspended sentences of imprisonment*

17 In section 200(5) of AFA 2006 (suspended sentences of imprisonment), in paragraph (b) of the words treated as substituted, for “in the British Islands” substitute “under the law of any part of the British Islands”.

*Detention and training orders*

18 In section 213 of AFA 2006 (application to service detention and training orders of provisions relating to civilian orders)—

- (a) in the second paragraph of subsection (1), after “105,” insert “106(4) to (6),”;
- (b) in subsection (2), after “(13)” insert “, 106(6)”.

19 In section 214(2)(b) of AFA 2006 (offences during currency of detention and training order), for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.

*Restrictions on community punishments*

20 (1) In section 270 of AFA 2006 (general restrictions on community punishments), for subsections (7) and (8) substitute—

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“(7) Subsections (1) and (2)(b) are subject to section 270A.”

(2) After that section insert—

**“270A Exception to restrictions on community punishments**

(1) If the conditions in subsection (2) are met, the power to award a community punishment in respect of an offence (“the current offence”) may be exercised even though the court would not otherwise regard—

- (a) the current offence, or
- (b) the combination of the current offence and one or more offences associated with it,

as serious enough to warrant a community punishment (despite the effect of section 238(1)(b)).

(2) The conditions referred to in subsection (1) are—

- (a) that the offender was aged 16 or over when convicted of the current offence;
- (b) that on three or more previous occasions the offender has been awarded a relevant financial penalty; and
- (c) that the court, having regard to all the circumstances, considers that it would be in the interests of justice to award a community punishment.

(3) In subsection (2)(b) a “relevant financial penalty” means a sentence consisting only of a fine—

- (a) passed on the offender in respect of a service offence, or member State service offence, committed by the offender when aged 16 or over;
- (b) passed on the offender on conviction by a civilian court in the British Islands of an offence so committed; or
- (c) passed on the offender on conviction by a civilian court in another member State of a relevant offence so committed.

(4) For the purposes of subsection (2)(b) it is immaterial whether the offender has on other previous occasions been awarded a sentence other than a relevant financial penalty.

(5) The circumstances which must be had regard to under subsection (2)(c) include—

- (a) the nature of the offences for which the relevant financial penalties were awarded;
- (b) the relevance of those offences to the current offence; and
- (c) the time that has elapsed since those penalties were awarded.

(6) For the purposes of subsection (3), none of the following forms part of an offender’s sentence—

- (a) a service compensation order;
- (b) a compensation order under—
  - (i) section 130 of the Sentencing Act;

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- (ii) section 249 of the Criminal Procedure (Scotland) Act 1995;  
or
  - (iii) Article 14 of the Criminal Justice (Northern Ireland) Order 1994;
  - (c) a surcharge under section 161A of the 2003 Act.
- (7) This section does not limit the extent to which a court may, in accordance with section 238, treat previous convictions of the offender as increasing the seriousness of an offence.
- (8) In this section—
- (a) “member State service offence” means an offence which—
    - (i) was the subject of proceedings under the law governing all or any of the naval, military or air forces of a member State other than the United Kingdom; and
    - (ii) would constitute a service offence or an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom, by a person subject to service law, at the time of the conviction of the current offence;
  - (b) “relevant offence” means an offence which would constitute an offence under the law of any part of the United Kingdom if it were committed in any part of the United Kingdom at the time of the conviction of the current offence.”
- (3) In consequence of the amendments made by this paragraph, paragraphs 26(3) and (4) and 27 of Schedule 25 to the Criminal Justice and Immigration Act 2008 (which amend AFA 2006 but have not been commenced) are omitted.

*Definition of “period when unlawfully at large”*

- 21 In section 301(5) of AFA 2006 (duration of sentences: persons unlawfully at large), for the definition of “period when the person is unlawfully at large” substitute—
- “period when the person is unlawfully at large” means (subject to any rules made by virtue of section 300(2)(g))—
- (a) the period beginning with the day when the person becomes unlawfully at large and ending with the day when the person is taken back into custody (service or otherwise) or returns to the place where the sentence was being served; or
  - (b) in relation to a person who is absent when sentenced, the period beginning with the day when the sentence is passed and ending with the day when the person is taken into custody (service or otherwise);”.

*Persons treated as members of service police force*

- 22 Omit section 375(5) of AFA 2006 (Provost Marshal and other officers to be taken to be members of appropriate service police force).

*Power to make transitional provision under AFA 2006*

- 23 In section 380 of AFA 2006 (power to make transitional provision in connection with the coming into force of that Act), after subsection (8) insert—

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“(8A) The power under subsection (1) to make transitional provision in connection with the coming into force of any provision made by or under this Act includes power, where this Act or any provision made under it is amended, to amend any earlier order under this section.”

*Activation of suspended sentence of imprisonment*

- 24 (1) Schedule 7 to AFA 2006 (suspended prison sentence: further conviction etc) is amended as follows.
- (2) Paragraph 6 becomes sub-paragraph (1) of that paragraph.
- (3) In paragraph (a) of that sub-paragraph, for “an offence in the British Islands” substitute “an offence under the law of any part of the British Islands”.
- (4) After that sub-paragraph insert—
- “(2) Anything that under section 376(1) and (2) of this Act is to be treated as a conviction for the purposes of this Act is also to be treated as a conviction for the purposes of paragraph 8(1)(b) of that Schedule as modified by this paragraph.”