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STATUTORY INSTRUMENTS

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**2012 No. 669 (C. 15)**

**DEFENCE**

**The Armed Forces Act 2011 (Commencement No. 1,  
Transitional and Transitory Provisions) Order 2012**

*Made* - - - - *1st March 2012*

The Secretary of State makes the following Order in exercise of the powers conferred on him by section 32(3) to (5) of the Armed Forces Act 2011<sup>(1)</sup>:

**PART 1: GENERAL**

**Citation**

1. This Order may be cited as the Armed Forces Act 2011 (Commencement No. 1, Transitional and Transitory Provisions) Order 2012.

**Interpretation**

2. In this Order—
- “the 2006 Act” means the Armed Forces Act 2006<sup>(2)</sup>;
  - “the 2011 Act” means the Armed Forces Act 2011.

**PART 2: COMMENCEMENT**

**Provisions coming into force on 8th March 2012**

3. The following provisions of the 2011 Act shall come into force on 8th March 2012—
- (a) sections 6, 8, 16(2), 23(1) and 24;
  - (b) section 10, for the purpose only of conferring power to make regulations under section 20A of the 2006 Act;
  - (c) section 11(1), for the purpose only of conferring powers—

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(1) 2011 c. 18.  
(2) 2006 c. 52.

- (i) to make regulations under sections 93A(5) and 93F(4) of the 2006 Act; and
- (ii) to issue a code of practice under section 93C(3) of that Act;
- (d) section 17(1), for the purpose only of conferring power to make rules under section 232F of the 2006 Act;
- (e) section 29 so far as is necessary to bring into force paragraph 23 of Schedule 3;
- (f) section 30(1) so far as is necessary to bring into force paragraphs 14 and 15 of Schedule 4;
- (g) section 30(2) so far as is necessary to bring into force the entry in Schedule 5 relating to the Military Lands Act 1900(3).

#### **Provisions coming into force on 2nd April 2012**

4. The following provisions of the 2011 Act shall come into force on 2nd April 2012—
- (a) sections 2, 3, 5, 12, 13, 15, 18, 19, 20 and 27;
  - (b) section 14 and Schedule 1;
  - (c) section 26 and Schedule 2;
  - (d) section 29 and the remainder of Schedule 3;
  - (e) section 30(1) so far as is necessary to bring into force paragraphs 1, 2, and 9 of Schedule 4;
  - (f) section 30(2) so far as is necessary to bring into force—
    - (i) the entries in Schedule 5 relating to—
      - the Naval Medical Compassionate Fund Act 1915(4);
      - the Defence (Transfer of Functions) (No. 1) Order 1964(5);
      - the Juries Act 1974(6);
      - the Reserve Forces Act 1996(7);
      - the Courts Act 2003(8);
      - the Civil Partnership Act 2004(9);
      - sections 125, 164(3), 194(6), 293, 375(5) and 380(9) of the 2006 Act;
      - the Criminal Justice and Immigration Act 2008(10);
      - the Naval Medical Compassionate Fund Order 2008(11);
      - the Coroners and Justice Act 2009(12);
      - the Armed Forces (Court Martial) Rules 2009(13);
    - (ii) paragraph (b) of the entry in that Schedule relating to section 305 of the 2006 Act.

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(3) 1900 c. 56.  
 (4) 1915 c. 28.  
 (5) S.I. 1964/488.  
 (6) 1974 c. 23.  
 (7) 1996 c. 14.  
 (8) 2003 c. 39.  
 (9) 2004 c. 33.  
 (10) 2008 c. 4.  
 (11) S.I. 2008/3129.  
 (12) 2009 c. 25.  
 (13) S.I. 2009/2041.

## PART 3: TRANSITIONAL

### **Interpretation**

5. In this Part, “commencement” means the beginning of 2nd April 2012.

### **Reduction in rank and disrating**

6.—(1) In relation to—

- (a) any sentence passed before commencement, and
- (b) an award of detention by an officer to an offender who was given the opportunity of electing Court Martial trial before commencement,

section 293 of the 2006 Act continues to have effect notwithstanding its repeal by section 13(2) of the 2011 Act.

(2) In relation to an award of punishment before commencement, section 147(3) of the 2006 Act (powers of the Summary Appeal Court) has effect as if section 13(1) of the 2011 Act had been in force at the time of the award.

(3) In relation to an offender who elected Court Martial trial under section 129 of the 2006 Act before commencement, Schedule 3A to that Act (inserted by Schedule 1 to the 2011 Act) has effect as if section 13(1) of the 2011 Act had been in force at the time of the election.

### **Maximum fine at summary hearing**

7. In relation to a fine awarded to an offender who was given the opportunity of electing Court Martial trial before commencement, section 136 of the 2006 Act has effect without the amendment made by paragraph 12 of Schedule 3 to the 2011 Act.

### **Increase in maximum term of detention for certain offences**

8. The amendments made by section 15(1) and (2)(a) of the 2011 Act apply only in relation to offences committed after commencement.

### **DSP’s powers to substitute or add charges after election for Court Martial trial**

9.—(1) This article applies where—

- (a) section 130A of the 2006 Act (inserted by paragraph 9 of Schedule 3 to the 2011 Act) applies; and
- (b) the election for Court Martial trial by virtue of which that section applies was made before commencement.

(2) Subsection (2) of that section has effect as if, in paragraph (b), for “the relevant charge was in respect of such an offence” there were substituted “the defendant’s commanding officer could have heard such a charge summarily (without obtaining permission) by virtue of being of or above the rank of rear admiral, major-general or air vice-marshal”.

### **Court Martial sentencing powers where election for trial by that court**

10.—(1) For the purposes of Schedule 3A to the 2006 Act (inserted by Schedule 1 to the 2011 Act), an offence of which a person is convicted falls within case B if the following conditions are satisfied.

(2) The first condition is that the charge in respect of the offence was—

- (a) substituted under section 125(2)(b) of the 2006 Act for a charge as regards which the person had elected Court Martial trial under section 129 of that Act; or
- (b) brought under section 125(2)(c) of that Act in addition to such a charge.
- (3) The second condition is that the charge in respect of the offence was substituted or brought—
  - (a) before commencement; or
  - (b) after commencement (and, in the case of a substituted charge, in such circumstances that the accused’s written consent was required by section 130A(2) of the 2006 Act), but by virtue only of consent given before commencement.

**11.**—(1) For the purposes of that Schedule, an offence of which a person is convicted falls within case D if the following conditions are satisfied.

- (2) The first condition is that the charge in respect of the offence was—
  - (a) substituted under section 125(2)(b) of the 2006 Act for a charge in respect of an offence which, if the person were convicted of it, would fall within case C; or
  - (b) brought under section 125(2)(c) of that Act in addition to such a charge.
- (3) The second condition is that the charge in respect of the offence was substituted or brought—
  - (a) before commencement; or
  - (b) after commencement (and, in the case of a substituted charge, in such circumstances that the accused’s written consent was required by section 130A(2) of the 2006 Act), but by virtue only of consent given before commencement.

**12.** Paragraph 17 of that Schedule (interpretation of references to a charge substituted for another charge) applies for the purposes of articles 10 and 11.

## PART 4: TRANSITORY

### **Exception to restriction on community punishments**

**13.** Until the coming into force of paragraph 8 of Schedule 17 to the Coroners and Justice Act 2009(14), section 270A of the 2006 Act (inserted by paragraph 20(2) of Schedule 3 to the 2011 Act) has effect as if the following were omitted—

- (a) in subsection (3)(a), the words “, or member State service offence,”;
- (b) subsection (3)(c);
- (c) subsection (8)(a).

1st March 2012

*Andrew Robathan*  
Parliamentary Under Secretary of State  
Ministry of Defence

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(14) 2009 c. 25.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Armed Forces Act [2011 \(c. 18\)](#). The provisions listed in article 3 are brought into force on 8th March 2012 (though in some cases for limited purposes only), and those listed in article 4 on 2nd April 2012. Articles 6 to 12 make transitional provision in relation to some of the provisions listed in article 4. Article 13 is a transitory provision.