

Chapter 13

Summary hearing sentencing and punishments

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Chapter 13

Summary hearing sentencing and punishments

Introduction

1. This chapter deals with sentencing principles and procedures applicable to Summary Hearings. It is aimed at all officers with summary powers of punishment and also those persons who are required to advise them. It sets out the principles that all officers who are hearing a charge must apply when sentencing and the procedures to be adopted when determining sentence¹. These principles and procedures are on a statutory basis under the Armed Forces Act 2006 (the Act); therefore, where it is stated that a factor must be considered a CO² is under a legal obligation to consider such a factor.

2. This chapter also explains the detail of the different types of punishment which are available at a summary hearing. COs should acquaint themselves with the guidance on each punishment before sentencing.

3. Powers of punishment and extended powers for COs and subordinate commanders can be found at [Annex A](#). The procedure for applying for extended powers is contained within [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

Purposes of sentencing

4. Sentencing means the making of any order when dealing with an offender in respect of his offence or offences. The CO must have regard to the purposes of sentencing when dealing with an offender for a Service offence³. Those purposes are⁴:

- a. The punishment of offenders.
- b. The maintenance of discipline.
- c. The reduction of Service offences and other crime (including reduction by deterrence).
- d. The reform and rehabilitation of offenders.
- e. The protection of the public⁵.
- f. The making of reparation by offenders to persons affected by their offences.
- g. If the offender is under 18, regard to his welfare.

Sentencing process

5. The CO is to assess the seriousness of the offence and award an appropriate sentence. In doing so, the CO must always take into account all relevant aggravating and

¹ These principles and procedures largely reflect those followed in the civilian courts in England and Wales.

² This includes subordinate commanders unless expressed to the contrary.

³ Non criminal (discipline) and criminal conduct offences.

⁴ Section 237 of the Act.

⁵ The 'public' includes both the Service and civilian communities.

mitigating factors. He must go on to decide which punishment is commensurate with the seriousness of that offence. In considering the seriousness of the offence, the CO must:

- a. Consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused;
- b. Consider treating previous convictions as an aggravating factor, see paragraph 8; and
- c. Treat the fact that the current offence was committed while the offender was charged with another Service offence and released from Service custody, or on bail, as an aggravating factor.

6. The CO should also consider:

- a. The nature of the offence and the consequences;
- b. The effect on discipline on the unit;
- c. The effect on operational effectiveness;
- d. The status of the offender: rank or rate, appointment, level of responsibility and trust.

Factors indicating higher culpability and/or harm

7. The following are some of the more common aggravating features which may lead a CO to conclude that the offence is more serious:

- a. Common offence in unit.
- b. Vulnerability of the victim.
- c. Breach of trust.
- d. Premeditation.
- e. Operational environment.
- f. Experienced Service person/offender in position of responsibility.
- g. Involvement of alcohol. Even though a charge of drunkenness could have been brought, another charge may have been chosen and the evidence may reveal that alcohol was a feature of that other offence. The officer hearing the offence may therefore treat alcohol as an aggravating feature of an offence as opposed to a stand-alone offence of drunkenness in its own right.
- h. Group offence.
- i. Gratuitous offending (especially violence).
- j. Adverse effect on Service discipline.
- k. In the public eye.

- I. Offending whilst awaiting disciplinary action on another matter.

8. **Previous convictions.** If the offender has one or more previous convictions, each previous conviction, which the CO considers can reasonably be treated as an aggravating factor, must⁶ be treated as such. In considering whether a previous conviction can reasonably be treated as an aggravating factor the CO must have regard (in particular) to: the nature of the offence to which the conviction relates and its relevance to the current offence; and the time that has elapsed since the conviction⁷. Previous convictions fall into two categories:

- a. A previous conviction for a Service offence (this is any conviction for an offence heard at a summary hearing, Summary Appeal Court (SAC) or by a Court Martial (CM); or
- b. A previous conviction by a court in the British Islands for an offence other than a Service offence.

It is not mandatory for a CO to take into account a previous conviction by a court outside the British Islands; however, he may do so if he considers it appropriate.

9. When considering previous convictions:

- a. The CO should take into account any failure to respond to previous sentences where the facts of the previous conviction are relevant to the facts of the offence for which the sentence is to be imposed. Relevance is a matter for the CO. As a guide, if previous convictions and accompanying sentences are different in kind and/or remote in time to the matters in the charge sheet in hand, they are likely to have limited relevance.
- b. Cautions and warnings may be considered as part of the overall determination of what sentence might be appropriate. For example, evidence of a caution for a like offence may be indicative of a failure to reform, it may provide evidence of the effectiveness of a particular method of disposal adopted previously or it may provide an insight into the offender's disciplinary record.
- c. JPA may indicate that a previous conviction is spent. At summary hearing, spent convictions are not automatically excluded from being considered as previous convictions and the same factors should be applied in determining whether a spent conviction is relevant.

10. **Racial or religious aggravation.** An offence is racially or religiously aggravated⁸ for the purposes of sentencing if⁹ at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group; or the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group. For the purposes of this factor 'membership' in relation to a racial group, includes association with members of that group; presumed means presumed by the offender; racial group means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins and 'religious group' means a group of persons defined by reference to religious belief or lack of religious belief.

⁶ Section 238(1)(b) of the Act.

⁷ Section 238(2) of the Act.

⁸ Section 240 of the Act.

⁹ Crime and Disorder Act 1998 section 28.

11. **Aggravation related to disability or sexual orientation.** If the offender has demonstrated hostility based on a victim's sexual orientation (or presumed sexual orientation) or disability (or presumed disability), or where the offence was motivated by hostility towards persons of a particular sexual orientation or persons with a disability this would constitute aggravation. For the purposes of this factor, disability means any physical or mental impairment; 'presumed' means presumed by the offender.

12. For the purposes of deciding whether racial or religious aggravation is a feature of an offence (paragraph 10) or whether there is aggravation related to disability or sexual orientation (paragraph 11), it is immaterial whether or not the offender's hostility is also based on any factor other than religion or race, or disability or sexual orientation. If an accused admits the offence but denies that there has been any racial, religious, sexual orientation or disability aggravation a disputed facts procedure (hearing to determine factual basis on which to award a sentence) will have taken place see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

13. If any of the above aggravating factors exist, the CO must tell the offender in ordinary language so that the offender will understand at the time the sentence is awarded they must be recorded on the record of summary hearing (RSH).

14. **Mitigating factors.** Some factors may indicate that an offender's culpability is unusually low, or that the harm caused by an offence is less than usually serious. Such factors might include:

- a. A greater degree of provocation than normally expected;
- b. Youth or age, where it reflects responsibility;
- c. The fact that the offender played only a minor role in the offence; and
- d. If the length of time since the commission of the offence has been significant and that time / delay has been through no fault of the offender.

Other factors including personal mitigation

15. **Personal mitigation.** The offender may wish to provide mitigation prior to the determination of sentence. He may do this himself or through his accused's assisting officer (AAO). Some factors that may be relevant include:

- a. The offender's age, rank/rate and Service experience.
- b. Evidence of his professional performance.
- c. Detail of his character.
- d. Background information as to why the offence was committed e.g. provocation, financial problems, etc.
- e. Any remorse shown/articulated.
- f. Domestic circumstances relevant to the offence or offender.
- g. Financial circumstances, which may include information on dependents. Inquiring into the offender's financial circumstances is a mandatory legal requirement

if the CO is considering imposing detention, a fine or a Service compensation order (SCO) see paragraphs 42,108 and 157 respectively.

h. Voluntary reparations made.

16. **Reduction in sentence for early admission of charge.** In every case where an offender admits the charge, the CO must take into account the stage in the proceedings at which he indicated his intention to admit the offence at summary hearing. The level of reduction should be a proportion of the total sentence imposed. A reduction of one third would be appropriate when the indication was given at the 'first reasonable opportunity'. At the other end of the scale, a reduction of only 10% might be appropriate for a guilty plea entered at the last moment. The key principle is that the purpose of giving a reduction is to recognise the benefits that come from a guilty plea not only to witnesses and victims, but also in enabling the CO and other authorities to deal more quickly with other outstanding cases. Although 'the first reasonable opportunity' may be the summary hearing itself, in many cases the CO will consider that it would have been reasonable to have expected an indication of willingness earlier, for example during the first police interview. An admission at the last moment before the trial starts, when the witnesses are waiting outside ready to give their evidence, would attract the smaller discount (10%). An admission after the trial starts would attract very little discount. The offender must be told of any credit he has been given for his admission of the offence at the summary hearing when the CO reads out the sentence. The CO should therefore bear in mind that a maximum sentence, whether with extended powers or not and in particular a summary sentence of 90 days detention, should generally be reserved for a conviction after a contested hearing, though this is not an inflexible rule. If there is any doubt staff legal advice should be sought.

17. **Time spent in custody without charge.** There is no legal requirement to count time spent in custody before charge i.e. during the investigation, against any period of detention subsequently awarded. However, a CO may take such periods of custody into consideration. Custody after charge is dealt with differently and guidance can be found at paragraph 51 below.

18. **Career consequences.** The CO may, where appropriate, consider whether any career consequences of the punishment for that individual would be disproportionate to the offending behaviour in all the circumstances.

19. **Sentencing local acting ranks or rates (RN), local ranks (Army and RAF) and acting ranks or rates.** Local acting and acting ranks or rates hold and are paid in the acting rank. When sentencing an offender who holds a local acting or acting rate or rank he must be treated as holding the substantive rate or rank as that which he holds at the time of the summary hearing. Local ranks simply hold the next higher rank but are not paid at that rank. Therefore for the purposes of sentencing they will be treated as holding their substantive rank and punished accordingly.

20. **Sentencing men and women.** There is no difference in the sentencing policy between male and female offenders.

21. **Single sentence for two or more offences.** Where a CO records findings that two or more charges against a person have been proved, the award he must make is a single 'global' sentence (consisting of one or more of those punishments available to him) in respect of all the charges taken together¹⁰.

¹⁰ Section 131 of the Act. This is also the case for the SAC, see section 147 of the Act.

22. **Co-accused from different units or sub units.** Where a charge involves co-accused from different units/sub units or the same charge is brought against two Service personnel in different units and it arises out of the same incident, COs should normally liaise and consult with each other in order that discipline is fairly and evenly administered and context is understood and taken into account.

Duty to give reasons and explain sentence

23. The CO passing sentence must explain in ordinary language the general terms of and the reasons for the sentence. For example, if the CO imposes a custodial sentence, he must explain why the offence is sufficiently serious to warrant such a sentence¹¹.

24. He must include in his reasons, the following:

- a. Any reduction given for admitting the offence.
- b. Any aggravating or mitigating factors the CO regarded as being of particular importance.
- c. The effect of the sentence, i.e. how the sentence works in practice. For example:

“I award you seven days restriction of privileges and seven days stoppage of leave. This means that for the next seven days you will not be allowed to leave the ship and you will follow the restriction of privilege routine as laid down in standing orders. That regime is...”

- d. Where the offender is required to comply with any order¹² forming part of the sentence, the effects of any failure to comply with that order.
- e. Where the sentence consists of or includes a fine, the CO must explain the effects of failing to pay the fine (although fines will almost always be deducted direct from pay).
- f. Any power to vary or review any order forming part of the sentence on application¹³.
- g. What credit, if any, has been given for any time spent in custody¹⁴.

Sentencing of officers

25. The general principles contained in this guide apply equally to the summary punishment of officers. The starting point for punishments is detailed in the guidance in [Chapter 14](#) (The summary hearing sentencing guide).

Punishments available at summary hearing

26. The punishments that may be awarded at summary hearing are¹⁵:

¹¹ Section 252 of the Act.

¹² E.g. a Service compensation order, order imposing a fine by deductions/instalments, SSPO order, suspended sentence order etc.

¹³ Section 252 of the Act.

¹⁴ See paragraphs 51 and 52.

¹⁵ Section 132(1) of the Act.

- a. Detention (only if offender is of or below rate or rank of leading rate, lance corporal (including RAF Regiment) or lance bombardier or corporal in the RAF (excluding RAF Regiment), see paragraphs 34 - 67.
- b. Service supervision and punishment order (able rates, marines, soldiers or airmen only), see paragraphs 68 - 84.
- c. Forfeiture of seniority (officers only), see paragraphs 88 – 93.
- d. Reduction in rank or disrating (warrant officers or non-commissioned officers only), see paragraphs 94 – 104.
- e. Fine, see paragraphs 105 – 122.
- f. Severe reprimand or a reprimand (officers, warrant officers and NCOs only), see paragraphs 123 – 126.
- g. Service compensation order, see paragraphs 153 – 180.

Additionally the following minor punishments may be awarded¹⁶:

- h. Stoppage of leave (those below the rank or rate of warrant officer only), see paragraphs 127 – 135.
- i. Restriction of privileges (able rates, marines, soldiers, airmen and army officer cadets only), see paragraphs 137 – 149.
- j. Admonition, see paragraphs 150 – 152.

Powers of punishment

27. Except for a CO of or above the rank of rear admiral, major general or air vice-marshal, COs have the same powers of punishment, irrespective of their rank. However a subordinate commander has his powers of punishment capped according to his rank. He is also prohibited from awarding certain punishments (e.g. detention). The powers of punishment¹⁷ available to both a CO and subordinate commanders are detailed at [Annex A](#).

28. **Extended powers.** If a CO is of or above the rank of rear admiral, major general or air vice-marshal he may award any punishment up to the summary maximum, without the need to apply for extended powers. However, other COs must apply to the higher authority (HA) for extended powers of punishment to award punishments beyond a certain limit. Detail of which punishments require extended powers¹⁸ can be found at [Annex A](#).

29. **Punishments available in respect of officers, warrant officers, ratings/other ranks.** Certain punishments are only available if the person being punished is of a certain rank or rate. Full details of which punishments are available in respect of each rank or rate¹⁹ can be found at [Annex B](#). Detail on the permitted combinations²⁰ of punishments can be found at paragraph 32 below.

¹⁶ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009.

¹⁷ Section 132 to 136 of the Act.

¹⁸ Section 132 to 136 of the Act.

¹⁹ Section 132 to 136 of the Act.

²⁰ Section 138 of the Act and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, regulation 5.

30. **Appeal from summary hearing – effect on punishments.** Any offender punished summarily has the right to bring an appeal within 14 days, beginning with the date on which the punishment was awarded²¹. This is known as the Initial Period. If an application is made to the SAC within the Initial Period to extend the time, the appeal may be brought within a longer period²², which the court allows or the court may at any later time give leave for an appeal to be brought within such period as it may allow²³.

31. All punishments other than a sentence of detention and an SCO take effect from the date on which they are awarded, regardless of whether an appeal is brought. A sentence of detention will not commence until the end of the appeal period unless the offender elects to commence the sentence of detention immediately see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention). If an offender submits an appeal the sentence of detention will commence on the day such an appeal is abandoned or determined. The sentence of detention may also not commence immediately if the CO makes a direction that the sentence is to run consecutively to another sentence of detention passed on the offender on a previous occasion; staff legal advice should be sought on this matter. There is no entitlement to payment under an SCO until there is no further possibility of an appeal in which the order could be varied or cease to have an effect²⁴, see paragraph 164.

32. **Permitted combinations of punishment.** The following combinations of punishments are permitted:

Punishments awarded	Permitted accompanying punishment/s
Detention	SCO ; reduction in rank or disrating
Suspended sentence of detention	Disrating/reduction in rank; SCO.
Forfeiture of seniority	Severe reprimand or reprimand; SCO.
Disrating/reduction in rank	Detention SCO.
Fine	Severe reprimand or reprimand; Stoppage of leave; Restriction of privileges; SCO.
Severe reprimand or reprimand	Forfeiture of seniority; Fine; Stoppage of leave; SCO.
SSPO	SCO only.
Stoppage of leave	Fine; Severe reprimand or reprimand; Restriction of privileges; SCO.
Restriction of privileges	Fine; Stoppage of leave; SCO.
Admonition	Service compensation order only.

All other combinations are prohibited²⁵.

²¹ Section 141(2)(a) of the Act.

²² Section 141(2)(b) of the Act and [Chapter 28](#) (Summary Appeal Court).

²³ Section 141(3) of the Act.

²⁴ Section 176(1) of the Act.

²⁵ Section 138 of the Act and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, regulation 5.

33. In the appropriate circumstances (see paragraph 153 below) an SCO may be awarded with any other punishment.

Detention

34. **General.** Detention is the only custodial sentence available for offences heard summarily. If the seriousness of an offence indicates that if proved the maximum summary sentence of detention will be insufficient, or that imprisonment may be appropriate, consideration should be given at the outset to referring the charge to the DSP.

35. **CO's powers of punishment (detention).** A term of detention is specified as a number of days. Except where the CO is of or above the rank of rear admiral, major general or air vice marshal the maximum period of detention that a CO may award to an able rate, marine, soldier or airman is 28 days²⁶. If he has been granted extended powers²⁷ he may award a maximum term of 90 days' detention²⁸.

36. A CO may not award detention of any length to a leading rate, lance corporal (including RAF Regiment) or lance bombardier or corporal in the RAF (excluding RAF Regiment), unless the CO has been granted extended powers, in which case he may award a maximum term of 90 days' detention²⁹.

37. The table below summarise the CO's powers of punishment in relation to detention. Guidance on how the length of detention should be determined is outlined in [Chapter 14](#) (The summary hearing sentencing guide).

Able rate, marine, soldier or airman only	Basic CO's Powers	1 – 28 days
Able rate, marine, soldier or airman only	Extended Powers (section 133(1) of the Act)	1 – 90 days
Leading rate, lance corporal (including RAF Regiment) or lance bombardier or RAF corporal (excluding the RAF Regiment)	Basic CO's Powers	Nil
Leading rate, lance corporal (including RAF Regiment) or lance bombardier or RAF corporal (excluding RAF Regiment)	Extended Powers (section 133(2) of the Act)	1 – 90 days

38. **Subordinate commander's powers.** Subordinate commanders may not award detention³⁰.

39. **Effect of detention on rank/rate.** In cases where a CO awards a sentence of detention to a NCO, the CO must make it clear whether the NCO is also to be reduced in rank. Members of the RAF may not be reduced to a rank which is lower than the highest rank held as an airman³¹. Where a person above the rank/rate of able rate, marine, soldier or airman is sentenced to detention and reduction at a summary hearing, he is reduced to

²⁶ Section 133(1)(b) of the Act.

²⁷ Section 133(3) of the Act.

²⁸ Section 133(1)(a) of the Act.

²⁹ Section 133(2) of the Act.

³⁰ See Annex A to this Chapter.

³¹ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, Regulation 8

that rank/rate with effect from the day on which the sentence takes effect. Reduction in rank for NCOs awarded detention would normally be appropriate. Where the CO decides to suspend the sentence of detention, then he may (but need not) award the accompanying punishment of disrating/reduction in rank³². Re-advancement following automatic reduction is governed by single service regulations³³, but in any event during the time that an offender is in custody at MCTC he is for all purposes to be treated as being of the rank or rate of able rate, marine, soldier or of the highest rank he has held as an airman³⁴.

40. **Military Corrective Training Centre (MCTC) Colchester.** MCTC is established and equipped to carry out corrective training. For further details, see [Annex C](#) and JSP 837 (Service code of practice for the management of personnel in Service custody and committal to Service custody premises and civil prisons).

41. **Consequences of detention.** A sentence of detention carries with it loss of reckonable service for the period of the sentence, in relation to overall days served in detention, less any remission.

42. Offenders serving sentences of detention will forfeit their pay³⁵ for the duration of the time served³⁶. However, a family maintenance grant may be available for those eligible at the discretion of the CO³⁷. For general guidance on forfeiture of pay see [Chapter 20](#) (Forfeitures and deductions) and JSP 754 (The tri-Service regulations for pay and charges).

43. **Detention and other punishments.** Reduction in rank or SCO may accompany an award of detention. If the sentence of detention is suspended then the punishment may also be accompanied by reduction in rank/disrating.

44. **Remission.** There is no remission for a sentence of detention up to and including 24 days. Therefore, for sentences up to 24 days the sentence awarded is the sentence the person will serve. Sentences of 25 days or more attract remission of up to one third, subject to a minimum period of detention of 24 days. This means that, for sentences of 24 days to 36 days, the minimum sentence that will be served is 24 days. Nevertheless, remission is not a factor to be taken into account by the CO when deciding sentence.

Sentencing considerations

45. **Is detention appropriate?** Before imposing a sentence of detention, the CO must be of the opinion that the offences or offences were serious enough to warrant such a sentence³⁸. When deciding this, the CO must take into account all available information about the circumstances of the offence or offences³⁹. This will include any aggravating or mitigating factors. If the offence is considered serious enough to warrant a sentence of detention the CO must then decide whether, in the circumstances it is appropriate. Additional remission can be earned on sentences of over 90 days at the discretion of the Commandant MCTC, up to a maximum remission of one-sixth of the portion in excess of 90 days. Where consecutive sentences are being served, it is the total period that counts for the purposes of earning additional remission⁴⁰.

³² Section 138(3) of the Act

³³ RN BR 1066 Chapters 7 and 29, Army AGAI 62 Annex Q, RAF QR 1199A

³⁴ Section 294 of the Act

³⁵ Section 342(1)(a) of the Act and Regulation 3(1)(b) of the Armed Forces(Forfeiture and Deductions) Regulations 2009.

³⁶ JSP 754 (The tri-Service regulations for pay and charges) Chapter 3, section 13 – Suspension/Cessation/Forfeiture of Pay.

³⁷ JSP 754 (The tri-Service regulations for pay and charges) Chapter 8, section 1 – Statutory Payments and Grants – overview.

³⁸ Section 242(4) of the Act.

³⁹ Section 242(5) of the Act.

⁴⁰ The Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096 rule 70.

46. **Length of sentence of detention.** Where the CO decides to pass a sentence of detention he must then decide on the total length of sentence, ensuring that the sentence properly reflects the overall seriousness of the behaviour revealed by the offence or offences for which the offender is being sentenced. The sentence should be for the shortest term commensurate with the seriousness of the offence or offences⁴¹ for which the sentence is being awarded. If the offender is being sentenced in respect of two or more offences, the seriousness of them should be taken together when considering sentencing.

47. **Decision to suspend the sentence of detention.** Once the length of detention has been decided upon the decision whether to suspend the sentence of detention should be made. If a sentence of detention is suspended, then the sentence will not be activated unless the offender commits another offence during the period of suspension (the operational period) and the CO or court dealing with that offence orders activation. In deciding whether to suspend a sentence of detention the following factors should be taken into account, where appropriate:

- a. In all cases, is the offender likely to reform without actually undergoing a period of corrective training? This may be the case where there has been very significant delay between the offence and summary hearing during which period the offender appears to have begun reforming, not re-offended, performed his duties above the standard expected and effectively rehabilitated himself.
- b. Does the offender show genuine remorse for his offence, including, where appropriate, making reparation for his offending?
- c. The age of the offender. Due regard must be given to the welfare of personnel under the age of 18 and therefore detention should only be awarded when there is no other appropriate punishment or when other methods of reform have been tried and proved ineffective. For under 18s an SSPO should be considered, see paragraph 68 below for more detail on SSPO.
- d. The previous character and convictions/disciplinary record of the offender. If the offence is clearly 'out of character', or it is the first offence, suspension may be suitable.
- e. Any special domestic circumstances of the offender.
- f. The gravity and type of offence.
- g. The operational requirements/movements of the unit or personnel. If the offender is likely to rehabilitate sufficiently because the unit is deployed then suspension may be appropriate. The convenience of the Service should not be a consideration. However, when it is considered that a sentence of detention is the correct punishment, deployed units should not recommend suspension solely on the grounds of cost of air transport, difficulty of arranging it to the UK or problems of providing escort.

48. **Perceptions of leniency.** COs should not be deterred from suspending a sentence of detention because of any concern that it may give the impression that the offender has been treated leniently. A suspended sentence, if successful, has the long-term corrective effect of keeping an offender out of trouble for up to one year. Furthermore, suspension does not alter the fact that an offender has been sentenced to a major punishment. When explaining the sentence to the offender, when the reasons for sentence are announced, the

⁴¹ Section 243(3) of the Act.

offender should be left in no doubt as to the meaning and implications of a suspended sentence and the offender should be given advice as to future conduct.

49. **Effect of suspending a sentence of detention.** It is inappropriate to increase the appropriate period of detention on the basis that the sentence is to be suspended. Such an approach would be unfair to the offender in the event the sentence is later activated, and may result in a reduction in the sentence should the matter be considered by the SAC.

50. **Determining the length of the operational period.** The operational period must be a specified period of between 3 and 12 months. The determination of the operational period is a matter of discretion for the CO. He should bear in mind the factors at paragraph 47a - g above. He should also consider what might be a reasonable length of time for the offender to prove that he will not re-offend, can perform his duties to the standard expected and can be rehabilitated through the imposition and impact of the punishment awarded and the supervision he will be subject to.

Crediting of time spent in Service custody

51. **Custody after charge.** It is mandatory⁴², except in limited circumstances⁴³, that where a term of detention is imposed on an offender who has been kept in any form of custody for any period since he was charged in connection with the offence in question or any related offence, that the period of time spent in custody is treated as if it was time already served. Where the offender has been kept in custody after charge, the proper approach is to determine the appropriate length of detention and award that sentence. The CO can then consider the issue of time already spent in custody after charge. In such cases, the CO must state the number of days that the offender has spent in custody, and then go on to state the number of those days which he directs are to be counted as time served. (For these purposes, any part of a day spent in custody is counted as a whole day.) For example, where the CO awards a sentence of 60 days detention and the offender has already served 15 days post charge custody, the CO is to state the following:

“You are awarded 60 days detention; however, you have served 15 days in custody after charge. Therefore, I direct that these 15 days are to count as time served.”

If the CO decides that not all days spent in custody are to count as time served, then he must state why he has so decided.

52. **Custody for other charges.** The calculation for crediting time spent in custody (as detailed at paragraph 51) applies not only where the offender has been kept in Service custody when charged with the offence for which he is being sentenced, but also where he has been kept in Service custody in connection with a related offence based on the same facts or evidence. It is immaterial whether the offender has also been kept in Service custody in connection with other offences, or has also been detained in connection with other matters⁴⁴.

53. **Suspended sentences of detention.** Crediting of time spent in Service custody will not apply when a suspended sentence of detention is passed, but it does apply if the sentence is subsequently activated⁴⁵. When a suspended sentence of detention is imposed the CO should inform the offender at the time the sentence is awarded of the length of time he would expect to serve should the sentence be activated. For example, the CO has

⁴² Section 246(2) of the Act.

⁴³ See section 246(3)(b) of the Act. If it is considered just in all the circumstances not to credit time spent in custody legal advice should be sought. See also Exemptions at paragraph 54.

⁴⁴ Section 247(2) of the Act.

⁴⁵ Section 247(3) of the Act.

decided to award 60 days detention and has decided to suspend that. With automatic remission, the offender would ordinarily serve 40 days. The offender has spent 4 days in custody after charge. The CO may use the following form of words to announce the sentence:

“I sentence you to 60 days Service detention. I further order that the sentence is to be suspended for the period of 9 months. If the sentence is activated, unless the period of detention you are ordered to serve is reduced, the balance of the sentence will be 40 days detention. However, you have already served 4 days in Service custody and this will count as time served. You may therefore serve up to 36 days if you are later committed to detention.”

54. **Exceptions.** Staff legal advice should be sought if the CO does not consider it just to credit time spent in Service custody and if that is the case he must state why at the summary hearing and in the presence of the offender⁴⁶. He must include this in his reasons for sentence on the RSH.

Activation of suspended sentences of detention

55. A suspended sentence of detention awarded summarily or by the SAC may be activated by a CO in either of the following two circumstances:

- a. If another offence committed during the operational period of the sentence is proved against the offender at summary hearing⁴⁷.
- b. If the offender commits an offence during the operational period of the sentence in the British Islands for which he is subsequently convicted and he subsequently appears before his CO.

56. A conviction for an offence in the British Islands means being convicted of a civil offence before a magistrate's court or the Crown Court or the Scottish or Northern Irish equivalents. Where a person appears before the CM for a subsequent offence, the CM will deal with the issue of the suspended sentence.

57. A CO has no power to activate a suspended sentence of detention that has been imposed by the CM or a civil court. Only the appropriate court may do this. A subordinate commander may not activate a suspended sentence of detention and should not hear a charge in relation to an offender who is under a suspended sentence, see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

58. Activation of a suspended sentence by CO⁴⁸ will therefore arise in two distinct ways: during a summary hearing, following a finding of a charge proved in accordance with 55a above; at a separate activation hearing, following conviction before a court in accordance with 55b above.

59. **Crediting time spent in Service custody.** If a consecutive or concurrent sentence is imposed and the offender has spent time in post charge custody, legal advice must be sought to determine how the crediting of time is to be calculated. This is because in certain circumstances consecutive and concurrent sentences are to be treated as a single sentence for the purposes of crediting time spent in Service custody.

⁴⁶ Section 246(5)(b) of the Act.

⁴⁷ Section 193(2) of the Act.

⁴⁸ The Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, regulation 23.

60. **Activation during a summary hearing.** When the CO is preparing to sentence an offender who is under a suspended sentence of detention awarded summarily or by the SAC, he must follow a two stage process:

- a. First, determine what sentence he considers is appropriate for the offence that is being heard at the summary hearing in accordance with the principles set out above.
- b. Second, decide whether the suspended sentence should be activated in the circumstances and if so, the length of the sentence to be served (see paragraph 62 for relevant considerations as to activation and paragraph 64 for concurrent/consecutive sentences).

61. The general principle to apply is that where an offender commits a subsequent offence during the operational period, the suspended sentence (or part of it) should be activated unless it would be unjust to do so in all the circumstances. There is therefore discretion as to whether to activate a suspended sentence, but the CO should always have regard to the purpose of suspension which is to encourage rehabilitation. Commission of another offence is indicative of incomplete rehabilitation or recidivism. The suspended sentence need not be activated in all cases where a subsequent offence has occurred and the activation need not be for the full period of the sentence originally awarded.

62. When determining whether the suspended sentence should be activated and for what term (i.e. how many days detention) the CO must take the following into account⁴⁹:

- a. The details of the offence(s) for which the suspended sentence of detention was imposed, including its seriousness.
- b. Such details as are known to the CO of all proven offences committed by the accused during the operational period of the suspended sentence.
- c. The reasons given for any decision or decisions, taken on earlier occasion (s), not to activate the suspended sentence.
- d. The offender's disciplinary record.
- e. Any submission made by the offender about the appropriateness of making an order and the appropriate terms of such an order if one were made.
- f. Any character evidence adduced by the offender.
- g. Any other matters that appear to the CO to be relevant. These might include the following:
 - (1) Any similarity with the subsequent offence, which may indicate a lack of rehabilitation (commission of a dissimilar offence may indicate that a reduced period of activation should be imposed rather than not activating at all).
 - (2) The details of the sentence awarded for the original offence (indicative of seriousness of offence).

⁴⁹ The CO should also consult [Chapter 14](#) (The summary hearing sentencing guide).

- (3) Any reasons given for sentencing by the CO or the SAC when awarding the earlier sentence.
- (4) The details of the subsequent offence(s), including its seriousness.
- (5) The degree of compliance with the suspended sentence, i.e. how far into the operational period the subsequent offence was committed. The later into the operational period the subsequent offence is committed, the less appropriate it may be to activate.

63. The term of a suspended sentence activated by a CO must not exceed 28 days unless he has extended powers. In addition, COs are limited to a maximum total period of detention of 28 days when awarding a period of detention for the subsequent offence and activating a period of suspended detention on the same occasion. This period may be increased to a total of 90 days with extended powers. Therefore, the CO must have regard to the totality of the sentence when deciding on the appropriate period of activation that is appropriate, given all the circumstances. If the CO considers that in all the circumstances a sentence in excess of 90 days (with extended powers) is required, the subsequent charge should not be dealt with summarily, but both the charge and the activation of the suspended sentence should be referred to the DSP.

64. **Consecutive or concurrent sentences of detention.** Once the CO has decided on the duration of the sentence that must be activated he must decide whether the suspended sentence should run consecutively to or concurrent with any sentence of detention he awards at the summary hearing for the subsequent offence(s) (i.e. for the offence(s) which trigger activation), or any sentence of detention awarded on a previous occasion and make an order accordingly⁵⁰. Where appropriate this decision may be taken in conjunction with the decision as to the length of the period of detention to be activated. However, care must be taken in this regard to avoid awarding a shorter period of activation than is justifiable in all the circumstances, simply to avoid having to pass the matter on to the DSP for CM trial.

65. Activation of a suspended sentence of detention usually means that an offender has failed to take advantage of the opportunity to reform. Whether the sentence is ordered to run consecutively to or concurrently with any new sentence of detention is a matter of discretion for the CO and each case must be decided on its merits. Factors which should be considered are as follows:

- a. **Gravity of the offence.** If a comparatively heavier punishment is necessary for the subsequent offence (the trigger offence) then the case for concurrent sentences is strengthened. Conversely, consecutive sentences are more appropriate if the initial offence is of greater or equal gravity, or of the same type as the subsequent offence.
- b. **Period between the offences.** The shorter the period between the offences, the more appropriate it may be to make the sentences consecutive.
- c. **Total length of sentence.** The total length of sentence should be that judged necessary to achieve a reformatory effect noting the restrictions on the maximum aggregate sentence of detention that can be awarded.

66. **Announcement of sentence and making the activation order.** The CO must look at the totality of all the above factors in relation to the subsequent offence and the original offence to determine whether to activate the sentence and if so how long the activation

⁵⁰ Section 193(4) of the Act.

period should be. If he decides to activate he should then go on to award a punishment for the subsequent offence(s) and then make the activation order, including where appropriate an order as to whether the activated sentence should run consecutively to or concurrently with a period of detention awarded in relation to the subsequent offence(s).

Alternatives to sentences of detention

67. If it is considered that an offence is not serious enough to warrant a sentence of detention an alternative sentence may be a combination of a fine, stoppage of leave and/or restriction of privileges or if the offender is of the appropriate rank or rate, an SSPO.

Service supervision and punishment order

68. **Introduction.** An SSPO is designed to punish and reform offenders without the need to award detention. It can be awarded at summary hearing to an able rate, marine, soldier or airman only⁵¹. An SSPO is an appropriate punishment for those of the lowest rank or rate whose continual misconduct does not improve despite the award of lesser punishments. It may also be awarded for any offence punishable by detention when it is likely to have a more corrective effect on the offender or is in the interests of operational effectiveness. An SSPO may particularly be considered as an alternative to detention for offenders under the age of 18 years.

69. The punishment imposes various requirements on the offender (see paragraph 71 below) and provides that during the period of the order the offender is to forfeit 1/6th gross pay. The period of the order is split into an initial period and a secondary period. On or before the conclusion of the initial period the CO must conduct a review of the offender's performance to see whether he should be released from the punishment early or whether it should continue in force. The SSPO is subsequently reviewed no later than every 14 days thereafter until either the offender is released from the punishment or the imposed SSPO period expires.

70. **Operation of SSPO.** An SSPO is imposed for either 30, 60 or 90 days duration⁵² with the punishment being divided into 2 periods; the initial period and the secondary period (during which the extra duty requirement is subject to modification). These periods are defined as follows:

a. **Initial period.** The initial period for each duration of the SSPO is as follows:

- (1) For 30 day SSPO – 14 days.
- (2) For 60 day SSPO – 18 days.
- (3) For 90 day SSPO – 21 days.

b. **Secondary period.** The remainder of the duration of an SSPO after the initial period.

71. **Requirements**⁵³. There are both mandatory and discretionary requirements for both periods of the order and upon imposition of this punishment a CO is to include all those discretionary requirements deemed appropriate. It would only be usual to exclude a requirement if operational circumstances or the needs of the Service dictate. The

⁵¹ Section 132(1) Row 6 and section 164(1) Row 10 of the Act.

⁵² Section 173(2) of the Act.

⁵³ Section 173 of the Act and the Armed Forces (Service Supervision and Punishment Orders) Regulations 2009, regulation 3.

requirements that must be included (mandatory) in the order and those which may be included (discretionary)⁵⁴ are to be annotated on the record of summary hearing form, see Annex C to [Chapter 9](#) (Summary hearing and activation of suspended sentence of Service detention). The requirements are listed as follows:

a. **Mandatory:**

- (1) Forfeiture of 1/6th gross pay⁵⁵ for that period.
- (2) Not to use any entitlement to leave without the permission of the CO.

b. **Discretionary.** The CO should consider whether to impose one or more of these requirements:

- (1) Perform such extra duties as directed, subject to a maximum of 5½ hours in each 24 hour period⁵⁶ during the initial period and subject to a maximum of 1 hour in each 24 hour period⁵⁷ during the secondary period (see paragraphs 73 - 76 for further guidance).
- (2) For the duration of the punishment, subject to such conditions as may be specified; be prevented from entering specified areas on a ship, unit or establishment, without the permission of his CO.
- (3) For the duration of the punishment; be prevented from leaving a specified ship, unit or establishment without the permission of the CO (see paragraph 78 for further guidance).

72. **Delegations.** On imposition of the punishment at summary hearing the CO will impose whichever of the discretionary requirements he considers necessary from the list at paragraph 71b above. When such requirements are imposed the CO may delegate the responsibility to permit the offender to either leave the ship, unit, or establishment or enter specified areas of the ship unit or establishment to another officer not below the rank of Lt RN, marine or military captain or flight lieutenant. Should the requirement to undertake extra duties be imposed, the CO or the person authorised by him will detail what extra duties the offender must perform, for how long and when. This function may be delegated to any Service person who is of or above the rank or rate of chief petty officer, marine colour sergeant, military staff sergeant or flight sergeant. If this function is delegated, the person authorised by the CO will be responsible for keeping him informed of the offender's progress on review of the punishment. An offender should be supervised on a day-to-day basis by a person not below the rank or rate of leading hand, corporal, lance corporal or lance bombardier.

73. **Performing extra duties.** Extra duties may include, but are not limited to, mustering or parading, extra work, drill or training. On imposition of the punishment those managing the punishment are advised to produce a day-to-day regime programme for the offender that resembles as closely as possible the regime published in unit orders (see paragraph 71b(1) above).

74. When possible extra work is to be done in the department to which the offender belongs. Care should be taken that such work is in addition to the normal duties of the offender and that it is properly supervised.

⁵⁴ Section 173 of the Act and the Armed Forces (Service Supervision and Punishment Orders) Regulations 2009, regulation 3.

⁵⁵ Section 173(1)(b) of the Act.

⁵⁶ The Armed Forces (Service Supervision and Punishment Orders) Regulations 2009, regulation 3(a).

⁵⁷ The Armed Forces (Service Supervision and Punishment Orders) Regulations 2009, regulation 3(a).

75. Where the offender is required to muster or parade he should do so no more than 6 times in any 24 hour period. Any time spent mustering or parading should be included as part of the maximum 5½ hour (initial period) or 1 hour (secondary period) extra duties requirement. The offender may undertake extra duties, work or training during meal break periods; however, he should not be denied the opportunity to have a meal.

76. Where the offender is required to perform extra duties as part of the SSPO he should only perform these duties during a continuous 16 hour period of the working day. This period should normally begin 2 hours before the start of the offender's working day and conclude 6 hours after completion of the offender's normal working day. However, the period may be reduced by the CO, in particular if the offender's usual working day is more than 8 hours long. The maximum number of working hours (16 in any 24 hour period) should not be exceeded. If an offender has to keep a night duty he should not be paraded, mustered or turned out before the start of his normal working day.

77. **Being prevented from entering specified places on a ship, unit or establishment.** Where the offender is prevented from entering specified places on a ship, unit or establishment under the SSPO this may be waived with the permission of the CO. When the punishment is awarded the CO should state that the offender may enter certain areas in certain circumstances which will usually be relevant for the purposes of the offender carrying out his duties. For example, an offender who has duties in a Service mess may be permitted to enter the all ranks and rates bar if it is in the course of his duty to do so even if he is prevented from entering the bar under an SSPO.

78. **Being prevented from leaving a ship, unit or establishment.** Where an offender is prevented from leaving a ship, unit or establishment or station he will not be allowed to leave the specified ship, unit or establishment without the permission of his CO. The CO should consider with care whether to permit the offender to leave the ship, unit or establishment at any time. There may be compassionate or operational factors which are relevant to that consideration. There may be circumstances, particularly during the secondary period, where the CO considers it more appropriate to allow the offender to leave the ship, unit or establishment on non-working days which will usually be weekend days or weekend routine days⁵⁸ (however, this is always a matter for the CO's discretion).

79. **Subordinate commander's powers.** Only the CO may impose or review an SSPO. It is not a punishment available to a subordinate commander.

80. **Reviews.**

a. **Conduct and criteria for review.** SSPOs imposed at both CM and summary hearing must be reviewed by the CO and the offender should appear in person, if possible accompanied by his AAO. On review, the CO must consider whether an SSPO should continue in force. For the CO to determine whether the SSPO should continue in force he should assess the offender's behaviour and his compliance with the regime since the award. He should also assess the offender's willingness to reform. If he determines that the offender should no longer be subject to the SSPO, he may conclude the punishment. A CO may also determine that the SSPO should no longer continue in force if there are overriding compassionate or medical grounds, the exigencies of the Service dictate or the offender performs an act of gallantry or other exceptionally meritorious act.

⁵⁸ RN only – this means Saturday or Sunday daily harbour routine days.

b. **Opportunity for CO to review the requirement.** At the same time as the review, the CO may wish to review the requirements that have been imposed so that what is required of the offender reflects his progress. He may determine that a requirement should remain, but he may modify the requirement; for example, he may decide to give permission for the offender to leave his ship, unit or establishment on certain days of the week (see paragraph 78 above). The CO may revoke any such modification either on review or at any other time.

c. **Interval.** A review of the SSPO is to occur on or before the last day of the initial period of the punishment and at intervals thereafter of not more than 14 days beginning on the day after the last review. The first review should take place as close to the end of the initial period as possible and preferably on the last day of that period. However, in circumstances where the CO is unable to conduct the review due to other commitments, he may review on the closest day that is convenient prior to the conclusion of the initial period. Should the CO determine that there are suitable compassionate reasons (welfare or illness) for terminating an SSPO he may review the punishment at any time. Similarly, he may also review at any time if the exigencies of the Service dictate, i.e. the unit's operational tasking changes and it is no longer possible to run the SSPO.

d. **Evidence and representations.** The CO may wish to receive evidence in person or in writing from the person who has responsibility for the management of the offender to assist him in making an informed judgement. Should the CO wish to hear representations from the offender he may do so. If the CO exercises that discretion, a representative who will usually be the AAO, but who must be a person chosen by the offender, may make representations on the offender's behalf. The CO should record the result of a review of an SSPO in writing and inform the offender of the reasons for that decision in writing. A record of the review is to be kept in accordance with the form at [Annex D](#).

81. **Offender moving to new unit.** In the event of an offender who is subject to a SSPO moving unit, the CO of the new unit must be informed of the regime the offender was subject to at the old unit and the SSPO will continue in force on arrival at that new unit. At the new unit, the SSPO must be reviewed on or before the last day of the initial period or no more than 14 days since the last review was conducted by the CO of the previous unit.

82. Because the award of an SSPO involves forfeiture of pay, the CO should inquire into the offender's financial circumstances, see paragraph 15g before making such an order.

83. **SSPO and other punishments.** The only punishment that can be awarded with a SSPO is a Service compensation order⁵⁹. If a SSPO is already being served and a sentence of imprisonment or detention is subsequently imposed the SSPO is to cease on the day that the custodial sentence takes effect.

84. **After action.** Unit staff must take the appropriate JPA action to deduct 1/6 gross daily pay for the duration of the SSPO. In this context gross annual basic pay can be calculated by taking the individuals annual salary (excluding specialist pay and allowances) divided by 365.25 divided by 6 (figure X). This pay will be deducted retrospectively so that at the first review figure X is times by the number of days the individual has been under a SSPO. This will happen again at the second review (to take into account the period between the first and second review). This process will continue until the CO orders the punishment

⁵⁹ Section 138 of the Act.

to cease. The last day that pay will be deducted from the individual will be the day before the CO ceases the punishment⁶⁰.

a. For impact on the individual's food and accommodation charges see JSP 754 (Tri-service Regulations for Pay and Charges).

b. For impact on the individual's LSA, GYH and HTD entitlement see JSP 752 (Tri-Service Regulations for allowances).

Forfeiture of seniority

85. **General.** This punishment may only be awarded to officers.

86. **Sentencing considerations.** The CO may not award a sentence of forfeiture of seniority unless he is of the opinion that the offence (or offences) was serious enough to warrant forfeiture. In so deciding, the CO must take into account all available information about the circumstances of the offence(s) including any aggravating or mitigating factors⁶¹.

87. The CO should also determine the financial effects of imposing such a punishment on a Service person of equivalent rank to the offender. He should then inquire into the offender's financial circumstances to determine what effect such a punishment will have on the offender. Nevertheless, the overriding premise for imposing forfeiture of seniority is the offender's fitness or otherwise to hold the seniority level.

88. **Extended powers.** Unless the CO is of or above the rank of rear admiral, major general or air vice-marshal, the CO must obtain extended powers from HA to award this punishment⁶². In any event, advice should be sought before this punishment is awarded.

89. **Subordinate commander's powers.** Forfeiture of seniority is not a punishment that is available to a subordinate commander

90. **Extent of punishment.** Forfeiture may be for a specified term of seniority or of all seniority, the determination of which is at the discretion of the CO⁶³.

91. **Effect of forfeiture.** The effect of the forfeiture will be to reduce pay to the increment level (IL) appropriate to the new seniority with immediate effect. This will result in a reduction to the individual's current IL and if an individual is already on the lowest IL, their pay is to stand still on that level for the period of the loss⁶⁴. See JSP 754 (The tri-Service regulations for pay and charges). There will also be future career implications of the forfeiture of seniority which will follow single-Service instructions⁶⁵. The CO should check the full effects of the forfeiture on the offender with pay staff and career management authorities before he sentences the offender.

92. **After action.** If forfeiture of seniority is awarded, the appropriate JPA action must be taken to record this. Notification must also be given to the single-Service career management authorities⁶⁶.

⁶⁰ Section 174(4)(b) of the Act.

⁶¹ Section 248(5) of the Act.

⁶² Section 134(2) of the Act.

⁶³ Section 132(1) Row 2 of the Act.

⁶⁴ For example, if an OF3 (Incremental Base Date (IBD) 20 March 1999) currently on Pay Level 7 loses 2 years seniority on 8 June 2005 (this effectively makes a new IBD of 20 March 2001), they will be moved to Pay Level 5 on that date, and will then move to Pay Level 6 on 20 March 2006 (anniversary of IBD). If the IBD had been 20 March 2005, then the OF3 would be placed on a SSRP and not move on to Pay Level 2 until 20 March 2006.

⁶⁵ RN PLAGO, Army AGAI 62, RAF Manning Staff Instructions.

⁶⁶ RN - Director Naval Career Management, Fleet HQ; Army - Army Personnel Centre (APC), Upavon; RAF - ACOS Manning, HQ Air Command.

93. **Forfeiture of seniority and other punishments.** The only punishment that can be awarded with forfeiture of seniority is a severe reprimand or reprimand and/or an SCO.

Disrating/reduction in rank

94. This punishment may be awarded to warrant officers or non-commissioned officers. That is, those of or above the rank or rate of leading hand, lance corporal or lance bombardier or corporal in the RAF (in relation to the Royal Air Force Regiment reference to a corporal is to be read as reference to a lance corporal).⁶⁷

95. **Extended powers.** A CO does not need extended powers to reduce in rank a lance corporal or lance bombardier in the Army, RM or RAF Regiment⁶⁸. These ranks have no equivalent in the RN or RAF (not including the RAF Regiment) and are lower than the first non-commissioned rank or rate in these Services.

96. Unless the CO is of or above the rank of rear admiral, major general or air vice-marshal a CO must obtain extended powers from the HA to reduce in rank or disrate the following⁶⁹:

- a. A warrant officer.
- b. A non-commissioned officer of or above the rank or rate of leading hand in the RN or corporal in the RAF.
- c. A non-commissioned officer above the rank of lance corporal or lance bombardier in the Army, RM or RAF Regiment.

97. **Subordinate commander's powers.** A subordinate commander may not award reduction in rank/disrating.

98. **Limits to reduction in rank/disrating.** With extended powers, a CO may remove one⁷⁰ acting rank⁷¹ or rate from a warrant officer or non-commissioned officer that holds such a rank or rate, or, if no acting rank or rate is held, one substantive rank or rate. This punishment does not affect local rank, which is governed by single-Service instructions.

99. Where the person being punished is a corporal in the RAF (lance corporal in the RAF Regiment), the reduction in rank authorised is reduction to the highest rank he has held in that force as an airman⁷². There are four airmen ranks, namely aircraftman, leading aircraftman, senior aircraftman and junior technician. For some branches of the RAF, a junior technician might be the lowest trained rank for a particular specialisation. For example, for a RAF corporal any reduction in rank would be to the next lower rank applicable to his trade and for which he is qualified. Note that 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.

⁶⁷ Section 132(1) Row 3 of the Act.

⁶⁸ Section 135(1) of the Act.

⁶⁹ Section 135(2) of the Act.

⁷⁰ Only a CM can award multi step reduction in rank or disrating.

⁷¹ This includes local acting rate (RN only) see [Chapter 14](#) (The summary hearing sentencing guide).

⁷² Section 135(3) of the Act.

100. COs should be mindful of the potential career and future employability consequences of disrating/reduction in rank⁷³, for example the impact of disrating a leading Regulator to able rate (effectively requiring him to be returned to his source branch).

⁷³ See single-Service guidance.

101. **Re-advancement.** For guidance on how a Service person may have his rank or rate restored single-Service policy⁷⁴ applies.

102. **Consequences of reduction in rank/disrating.** When an offender is reduced in rank or disrated he will receive the appropriate rate of pay for the new paid rank or rate. However, in all cases an individual's pay is to be reduced by at least the amount awarded on promotion for that group (so that where a minimum 2% increase applies on promotion, a minimum 2% decrease in pay must apply on reduction in rank or rate). Such decreases, if not equal to an Increment Level (IL) on a pay range, are to be rounded down to the next IL. Full details are contained in JSP 754⁷⁵ (The tri-Service regulations for pay and charges).

103. **Reduction in rank/disrating and other punishments.** Reduction in rank or disrating may only be awarded in combination with detention and/or a Service compensation order.

104. **After action.** If reduction in rank or disrating is awarded the appropriate JPA action must be taken to record this. Notification must also be given to the single-Service career management authorities⁷⁶.

Fines

105. **General.** The maximum fine that a CO can award to a person of any rank is 28 days' pay.

106. **Subordinate commander's powers.** A subordinate commander's power to award a fine is limited according to his rank, which is set out at [Annex A](#).

107. **Determination of amount of fine.** If the CO determines that a fine is an appropriate sentence or an appropriate element of a sentence, before fixing the amount of that fine, he must inquire⁷⁷ into the offender's financial circumstances in order to ascertain his ability to pay a fine. He must, as far as possible, determine what those circumstances are, take account of those circumstances (whether that means increasing or reducing the fine) and the circumstances of the case. The CO must also ensure that the amount of the fine reflects the seriousness of the offence⁷⁸.

108. Calculations for the purposes of a fine are related to the level of pay (for local, local acting⁷⁹ and acting ranks and rates see paragraph 19).

109. **Awarding a fine.** The fine should be expressed as a specified sum of money (usually in whole pounds) and not in terms of days' pay. It may be recovered by the following means:

- a. The offender may pay the fine in full immediately.
- b. Payment may be made by instalments⁸⁰.

⁷⁴ RN see BR 1066, Army see QR 9.182 and RAF see QR 1199A.

⁷⁵ JSP 754 (The tri-Service regulations for pay and charges), article 03.0903.

⁷⁶ RN - Director Naval Personnel, Fleet HQ; Army - Army Personnel Centre (APC), Glasgow; RAF - ACOS Manning, HQ Air Command.

⁷⁷ Section 249 of the Act.

⁷⁸ Section 249 of the Act.

⁷⁹ RN only.

⁸⁰ Section 251(2) of the Act.

c. Deductions may be made from the offender's pay⁸¹ to satisfy the fine in full on one occasion or to satisfy the fine in instalments.

110. The means of recovery is to be recorded on the RSH under orders made. An offender can apply to his CO for the variation of such an order⁸² for example where his circumstances have changed such that he is no longer able to satisfy the fine in full; a subordinate commander may also vary any such order, see Part 6 of [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention). In making or varying an order, care must be taken not to extend the period of repayment so that the punitive effect of the fine is lost. At the same time, regard should be had to the potential effects of the punishment on the offender's dependents.

111. If authorised by order of the Defence Council, or an authorised officer, a deduction may be made from the pay of a person subject to Service law and be appropriated in or towards satisfaction of a payment that he is required to make in respect of a fine. Such an order may only authorise a deduction to be made on or after the date on which the payment is required to be made. This means that if an offender is given time to pay a fine or is allowed to pay a fine by instalments, deductions may only be made and be appropriated in or towards satisfaction of a payment (whether that be the fine in full or an instalment) that is actually required to be paid and on or after the date on which it is required to be made.

112. Joint Service pay policy guidance sets out the maximum rate at which deductions, including fines, may be recovered from pay⁸³. COs should take account of these regulations when making an order to recover a fine from an offender.

113. **Calculating a day's pay for the purposes of awarding a fine as a punishment – regular personnel.** A day's pay in this context will be the gross annual basic pay payable to the individual (excludes specialist pay and allowances) divided by 365.25.

114. **Calculating a day's pay for the purposes of awarding a fine as a punishment – reserve forces personnel.** Members of the Full Time Reserve Service (FTRS) receive an annual salary like their regular counterparts. A day's pay for FTRS personnel in this context will therefore be calculated as stated in paragraph 114. For reservists who are paid on an attendance basis, e.g. volunteer reservists undertaking obligatory training and those carrying out additional duties commitments, their basic pay is already calculated as a daily rate of one 365.25th of their notional gross annual basic pay (excludes specialist pay and allowances). The daily rate of pay in issue to such personnel will therefore be the rate used in calculating a fine. Where an offender is a member of a reserve force, he should be called back to duty to be awarded the punishment.

115. If the offender is a special member of a reserve force then a day's pay will be the gross pay which would have been issueable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate⁸⁴. If the offender is a member of a reserve force he should be called back to duty to be awarded the punishment.

116. **Two or more charges.** Where two or more charges against a person have been proved and a fine is deemed the appropriate punishment, a single global award is to be made.

⁸¹ Section 342(1)(d) of the Act.

⁸² Section 251 of the Act.

⁸³ JSP 754 (The tri-Service regulations for pay and charges) Chapter 2, Section 4 – Minimum Drawing Rate and Section 6 – Recovery of Items from Pay (except Advances).

⁸⁴ Section 136(4)(b) of the Act

117. **Alternatives to a fine.** It is at the discretion of the CO to award a combination of minor punishments in place of a fine where he deems it appropriate. As a guide the following stoppage of leave and restriction of privilege to fine calculator may be useful:

SoL + RoP (Days)	Fine (Days Pay)
3	2
5	3
7	4
10	5
12	6
14	7

118. **Fines and other punishments.** A fine may only be awarded in combination with any of the following punishments: severe reprimand or reprimand; restriction of privileges; Stoppage of Leave and/or an SCO⁸⁵.

119. **Losses to the Crown.** A fine is not to be used to reimburse public funds for a loss. Provision can be made to meet such losses by the award of the punishment of an SCO. For details see paragraph 153 below.

120. **Offenders who leave the Service.** Where a fine has been awarded and the person ceases to be subject to Service law before the recovery of the amount due, there is a power to enforce recovery of the fine under a financial penalty enforcement order, see [Chapter 16](#) (Financial penalty enforcement orders).

121. **After action.** If a fine is awarded the appropriate JPA action must be taken to recover the specified amount. The correct method of recovery, which will be directed by the CO, should be actioned (see paragraph 113 above).

Severe reprimand/reprimand

122. **General.** A CO may award a severe reprimand or a reprimand⁸⁶ to officers, warrant officer or non-commissioned officers.

123. A subordinate commander may only award a reprimand to non-commissioned officers.

124. There may be many circumstances where either a severe reprimand or a reprimand will be appropriate, but generally speaking any reprimand will be most applicable in the following circumstances:

- a. In cases of professional negligence where fitness to hold the rank or rate is not an issue.
- b. In cases where neither detention nor disrating/reduction in rank is considered necessary.

125. **Effects of a severe reprimand or reprimand.** Any reprimand will have effects on a Service person's career and these are laid down in single-Service guidance⁸⁷.

⁸⁵ Section 138 of the Act

⁸⁶ Section 132(1) Row 5 of the Act

⁸⁷ RN – PLAGOs/BR 3; Army – AGAI 62 and RAF – Manning staff Instructions.

Stoppage of leave order

126. A stoppage of leave order (stoppage of leave) can be awarded by a CO at a summary hearing, or by the Court Martial, to offenders below the rank or rate of warrant officer. The effect of stoppage of leave is that the offender may not, on a specified number of days, leave a relevant place without his CO's permission. 'Relevant place' is defined as a naval ship or establishment, a military establishment or an air force station⁸⁸.

127. The effect of stoppage of leave for any period will inevitably vary depending on the ship's movements or the operational commitments within an establishment or air force station or a unit within it, and upon the individual offender's circumstances, including his duty commitments. Stoppage of leave should not impinge on an offender's freedom of association within his unit, or contact with family etc via telephone, e-mail or other means. The CO, however, may wish to impose an accompanying administrative restriction on the offender entering the ship, establishment or air force station bar in appropriate cases where it is reasonable and proportionate to do so. The CO may also wish to require the offender to report a number of times throughout the day to ensure that he is still in the ship, establishment or air station. The award of a long period of stoppage of leave, particularly when units are not deployed, requires careful consideration in view of the effect on family and personal harmony time. A suitable degree of punishment and deterrence may often be achieved by other punishments in lieu of, or in combination with, stoppage of leave without resorting to the maximum period available, for example the award of a restriction of privilege order (ROPs), see paragraph 137 below. Even a short period of stoppage of leave that prevents an offender taking a rare opportunity for leave whilst a ship is deployed for a long period of time can have a significant impact, so a sense of proportion must be kept in sentencing.

128. **Duration of punishment.** The number of days is specified in the order itself and may not exceed 14 days⁸⁹. The punishment should commence immediately it is awarded and run consecutively. However, if for operational reasons the offender would have been obliged not to leave his ship, establishment or air station in any event the effect of the punishment may be lost. In addition, there may be compassionate factors which make it undesirable for the punishment to commence immediately. Therefore, when awarding the punishment the CO, or the CM where the punishment is awarded by CM, may direct that it shall be treated as if it were awarded not later than 28 days after it was awarded.

129. Once the punishment has been awarded the CO must decide, within 48 hours of that date, on which days the offender will have his leave stopped⁹⁰. The days on which the punishment takes effect should be specified by the person who awards the stoppage of leave⁹¹. (A commanding officer cannot hear the charge himself and delegate the decision about when the days fall to someone else.) Where the CM awards stoppage of leave the commanding officer must take this action himself. The CO must inform the offender of his decision as soon as practicable after he makes it. This can be specified by either calendar days or days on which certain events or circumstances occur⁹². The days on which leave will be stopped should be continuous; however, if there are good operational reasons to do so, the period can be broken down into smaller periods to suit the operational requirements of the ship etc. For example, a CO may require an offender's leave to be stopped whilst his ship is alongside in a particular foreign port, or in between training exercises to ensure the effect of the punishment is not lost. The date of this visit/exercise may be subject to change due to operational/programmed

⁸⁸ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 3(8).

⁸⁹ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 3(1).

⁹⁰ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 3(5)(a).

⁹¹ Where the sentence is awarded by the CM or SAC, the CO decides the days on which leave is to be stopped. He may not delegate this function in these circumstances.

⁹² The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 3(4).

requirements; therefore, the CO may state that stoppage of leave is to occur during the visit to a specified foreign port, or on conclusion of a training exercise, i.e. specify by event. The final day of the stoppage of leave must be no later than 28 days after the punishment was awarded.

Stoppage of leave example

The CO awards 14 days stoppage of leave on 1 Nov. His ship is at sea on 1 Nov 09. Two port visits are programmed for 19 Nov – 23 Nov 09 and 28 Nov – 1 Dec. The CO wants the offender to miss both port visits instead of one. The CO therefore directs that the punishment shall be treated as if it were awarded on 17 Nov 09. The CO must then decide, no later than 48 hours commencing 17 Nov 09, on which days the leave will be stopped, and inform the offender of that decision as soon as practicable. Unless there is some uncertainty about the visit 28 Nov – 1 Dec, in this scenario the CO should direct that the days will fall in a continuous period from 18 Nov 09 – 2 Dec 09. In any event, the punishment must be complete by 15 Dec 09.

130. If the CO imposes such a punishment, the offender should also be told if and when he will be required to report to confirm that he is still in the ship, establishment or air station. The maximum number of times an offender should be required to report should be no more than 6 times in any 24 hour period.

131. **Permission to leave the relevant place.** The granting of permission to leave the ship, establishment or air station may be delegated by the CO to any other officer who is of or above the rank of lieutenant, military or marine captain or flight lieutenant. Permission to leave the ship, establishment or air force station is entirely at the discretion of the CO or the person authorised by him; appropriate occasions for granting permission may be where it is necessary in the course of the offender's duty or where there are compelling compassionate reasons.

132. **Stoppage of leave and other punishments.** Stoppage of leave may be awarded in combination⁹³ with the following punishments; ROPs, severe reprimand or reprimand, a fine and/or an SCO.

133. **Restrictions.** Stoppage of leave is not to be awarded with a sentence of detention, a suspended sentence of detention, reduction in rank, an SSPO or an admonition.

134. **Annual and other leave.** Stoppage of leave does not prevent the person from taking his annual and other leave entitlement at another time. An effect of the punishment may therefore be deferral of leave.

135. **After action.** For impact on the individual's food and accommodation charges see JSP 754 (Tri-service Regulations for Pay and Charges). For impact on the individual's LSA, GYH and HTD entitlement see JSP 752 (Tri-Service Regulations for allowances).

Restriction of privileges order

136. A restriction of privileges order (ROPs) is a useful punishment that can assist with both the reformation and rehabilitation of an offender. It may only be awarded to an able rate, marine, soldier, airman or military officer cadet. The punishment requires the offender to follow a regime which requires him to perform such extra duties as his CO decides. These duties may include work, training or any other Service duty. The maximum amount of time

⁹³ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 5(2).

the offender can be required to undertake extra duties under ROPs is 5½ hours on each day of the punishment.

137. **Duration of punishment.** ROPs may be awarded up to a total of 14 days⁹⁴ by the CO. A subordinate commander may award a smaller number of days (see [Annex A](#)). The punishment should commence immediately it is awarded and run consecutively. If for operational or training reasons the punishment cannot be administered effectively it may be undesirable for the punishment to commence immediately, for example where a Service person has been committed to an exercise. In addition, there may be compassionate factors which make it undesirable for the punishment to commence immediately. Therefore, when awarding the punishment the CO may direct that it shall be treated as if it were awarded not later than 28 days after it was awarded.

138. Once the punishment has been awarded the CO must decide, within 48 hours of that date, on which days the offender will be subject to ROPs⁹⁵. The days on which the punishment takes effect should be specified by the person who awards the ROPs. (A commanding officer cannot hear the charge himself and delegate the decision about when the days fall to someone else.) Where the CM awards ROPs the commanding officer must take this action himself. The CO must inform the offender of his decision as soon as practicable after he makes it. This can be specified by either calendar days or days on which certain events or circumstances occur⁹⁶. The days on which ROPs are conducted should be continuous; however, if there are good operational reasons to do so, the period can be broken down into smaller periods to suit the operational requirements of the ship etc. For example, a CO may require an offender to undertake ROPs whilst his ship is alongside in a particular foreign port, or in between training exercises to ensure the effect of the punishment is not lost. The date of this visit/exercise may be subject to change due to operational/programmed requirements; therefore, the CO may state that ROPs is to occur during the visit to a specified foreign port, or on conclusion of a training exercise, i.e. specify by event. The final day of the ROPs must be no later than 28 days after the punishment was awarded.

139. If the CO imposes such a punishment the offender should also be told if and when he will be required to muster or parade to confirm that he is still in the ship, establishment or air station. The maximum number of times an offender should be required to muster or parade should be no more than 6 times in any 24 hour period. The offender must also be told what will be expected of him whilst he is subject to this punishment. The routine must be communicated to the offender at the outset.

140. **Delegation.** A CO may delegate his functions of deciding which extra duties the offender must do to any Service person who is of or above the rank or rate of Chief Petty Officer, marine Colour Sergeant, military Staff Sergeant or Flight Sergeant.

141. **Policy guidance on routine to be followed.** As far as possible units should strive to achieve consistency in the restriction of privileges routine within the unit. However, adjustments may have to be made, depending on the unit's programme and the availability of unit staff to manage the routine.

142. The unit routine should consist of undertaking extra duties, work or training during non-working hours as directed, subject to a maximum of 5½ hours in each 24 hour period. The offender may undertake extra duties, work or training during meal break periods; however, he should not be denied the opportunity to have any meal. An offender may be required to muster/parade at a particular place on the ship, establishment or air station, or as one of his extra duties, but he should not be required to do so more than 6 times in any 24 hour period.

⁹⁴ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 4(3).

⁹⁵ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 4(4).

⁹⁶ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 4(5).

143. The requirements above should only take place from 2 hours before the start of the offender's working day to 6 hours after completion of the offender's working day. However, the period may be reduced by the CO, in particular if the offender's usual working day is more than 8 hours long. The maximum number of working hours (16 in any 24 hour period) is not to be exceeded.

144. When possible, extra work is to be done in the department to which the offender belongs. Care should be taken that such work is in addition to the normal duties of the offender and that it is closely and carefully supervised.

145. If an offender has to keep a night duty he is not to be paraded, mustered or turned out before the start of his normal working day.

146. Following the imposition of the punishment and before the offender commences the punishment, the offender should be told the following in relation to his extra duties:

- a. Where he is expected to muster/parade.
- b. If appropriate, once he has attended a muster/parade he must proceed to his departmental work or another pre-arranged place of duty.
- c. He should muster/parade in correct attire, which is to be clean and in good repair.
- d. He must produce at a muster/parade, in advance of any foreseeable absence from the extra duty, an authorised document excusing his attendance for that duty.

147. **Restriction of privileges and other punishments.** ROPs may be awarded in combination with the following punishments; fine, stoppage of leave order and/or an SCO.

148. **Punishment imposed by CM/SAC.** Where ROPs are imposed by a Service court (e.g. the CM or where the punishment has been imposed/substituted by the SAC), the CO must decide, within 48 hours of that date, on which days the offender will perform extra duties. The CO must inform the offender of his decision as soon as practicable after he makes it⁹⁷ (see paragraph 139 above). The CO may not delegate this function.

Admonition⁹⁸

149. An admonition may be awarded by a CO or subordinate commander. It can be awarded to any rank or rate. The only punishment with which it can be combined with is an SCO.

150. An admonition is recorded on the formal discipline record and may therefore be taken into consideration in relation to any further offences.

151. When an offence is found proved which of itself or in view of mitigating circumstances is not considered to deserve any more serious punishment, the offender should be admonished. It might be appropriate, for example, where the CO hears a charge having been given some information, but during the course of the summary hearing the facts presented appear less serious than was originally indicated by the witness statements, or where the offender has presented exceptional mitigating circumstances.

⁹⁷ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 4(6)(b).

⁹⁸ The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 regulation 2.

Service compensation orders (SCO)

152. An SCO is an order requiring the offender to pay a specified sum by way of compensation. It may be awarded in the case of an offence which has caused any personal injury, loss or damage⁹⁹. An SCO is not, however, to be awarded to produce compensation relating to loss of, or damage to, Service property resulting from traffic accidents involving Service personnel driving non-Service vehicles covered by valid insurance policies on Service property¹⁰⁰. Nor is it to be made to cover the expenses for arresting or conveying an offender.

153. Before an SCO can be awarded the CO must have satisfied himself that the personal injury, loss or damage was occasioned by the offence and evidence provided of the value of the loss or cost of repair.

154. Where property has been unlawfully obtained and the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated as having resulted from the offence, however and by whomever the damage was caused¹⁰¹.

155. Where an SCO is awarded, special consideration must be given of the financial effects of the punishment¹⁰²; therefore, the CO must always enquire as to the offender's financial circumstances in order to ascertain his ability to pay an SCO.

156. **CO's powers.** An SCO is awarded at the discretion of the CO. The maximum amount of a single SCO that can be awarded at Summary Hearing is £1000¹⁰³. Where 2 or more SCOs are awarded the combined total must still not exceed £1000¹⁰⁴. Only a CO may award¹⁰⁵ an SCO for personal injury as this cannot be delegated (see paragraph 171 below).

157. **Subordinate commander's powers.** A subordinate commander's power to award an SCO is limited according to his rank. A subordinate commander is also not permitted to award an SCO in respect to personal injury. This is set out at [Annex A](#).

158. **Awarding an SCO.** The SCO should be expressed as a specified sum of money (usually in whole pounds) and not in terms of a number of days' pay. It may be recovered by the following means:

- a. The offender may pay the SCO in full immediately.
- b. Payment may be made by instalments¹⁰⁶.
- c. Deductions may be made from the offender's pay¹⁰⁷ to satisfy the SCO in full on one occasion or to satisfy the instalments.

159. The means of recovery is to be recorded on the RSH under orders made. An offender can apply to his CO for the variation of such an order¹⁰⁸ for example where his circumstances have changed such that he is no longer able to satisfy the SCO in full; a

⁹⁹ Section 175(1) of the Act.

¹⁰⁰ JSP 341 (Joint Service Road Transport Regulations).

¹⁰¹ Section 175(3) of the Act.

¹⁰² Section 250(1) of the Act.

¹⁰³ Section 137(1) of the Act.

¹⁰⁴ Section 137(2) of the Act.

¹⁰⁵ Schedule 1 to the Armed Forces (Summary Hearing and Activation of Suspended Sentence of Service Detention) Rules 2009.

¹⁰⁶ Section 251(2) of the Act.

¹⁰⁷ Section 342(1)(d) of the Act.

¹⁰⁸ Section 251 of the Act.

subordinate commander may also vary any such order, see Part 6 of [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention) and paragraph 168 below for the review of an SCOs.

160. Joint Service policy guidance sets out the maximum rate at which an SCOs may be recovered from pay¹⁰⁹. However, with the application of a minimum drawing rate under JPA and the potential overpayment of (in particular separation) allowances, it may be necessary to extend this period in order to ensure fairness and that the regulations are not breached. If the offender wishes to pay the SCO in full immediately¹¹⁰ he may do so or he may make an application to his CO for an order to enable him to pay by instalments rather than by deductions from pay.

161. If authorised by order of the Defence Council, or an authorised officer, a deduction may be made from the pay of a person subject to Service law and be appropriated in or towards satisfaction of a payment that he is required to make in respect of a Service compensation order. Such an order may only authorise a deduction to be made on or after the date on which the payment is required to be made. This means that if an offender is given time to pay a Service compensation order or is allowed to pay a Service compensation order by instalments, deductions may only be made and be appropriated in or towards satisfaction of a payment (whether that be the Service compensation order in full or an instalment) that is actually required to be paid and on or after the date on which it is required to be made.

162. If an SCO is imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article should be stated separately in the award.

163. An SCO may only be actioned once the CO is satisfied that, disregarding any power of the court to grant leave to appeal out of time, there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect¹¹¹. The appeal period is 14 days from the date the punishment was awarded at summary hearing or within such longer period as the SAC allows or the SAC may at any later time give leave for an appeal to be brought within such period as it may allow, see [Chapter 15](#) (Summary hearing review and appeal) for more detail on appeal periods.

164. The specified sum is to be paid to the person who has suffered the personal injury, loss or damage resulting from the offence, whether this be the Crown, a Service person or a private individual. If an SCO is awarded and money is to be paid to either a Service person or a civilian, the unit administration office must raise a manual iSupport on JPA and request that the JPAC take action. The iSupport to SPVA should include all relevant details, particularly where there is more than one victim. Payment to a civilian will be effected by SPVA. The iSupport to SPVA should include all relevant details, particularly where there is more than one victim. The Crown will not carry the debt of a SCO so compensation will not be paid until it has been recovered and, if the SCO is to be recovered by instalments, the compensation will also be paid out by instalments.

165. An SCO may not be made¹¹² in respect of:

- a. Bereavement.
- b. Funeral Expenses.

¹⁰⁹ JSP 754 (The tri-Service regulations for pay and charges) Chapter 2, Section 6 – Recovery of Items from Pay.

¹¹⁰ Section 251(2) of the Act.

¹¹¹ Section 176(1) of the Act.

¹¹² Section 175(4) of the Act.

- c. Loss of any other kind suffered by the dependants of a person in consequence of his death.

166. Where an SCO has been awarded and the offender ceases to be subject to Service law before the recovery of the amount due, there is a power to apply to the civil courts for recovery action under a financial penalty enforcement order¹¹³, see [Chapter 16](#) (Financial penalty enforcement orders).

167. **Review**¹¹⁴. When an SCO is imposed the CO should inform the offender of his right to apply for a review. The CO may carry out this review if he is satisfied that, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal¹¹⁵ which could result in the order being varied or ceasing to have effect¹¹⁶.

168. The CO may discharge the SCO or he may reduce the amount payable if it appears to him that¹¹⁷:

- a. The injury, loss or damage in respect of which the SCO was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order.
- b. In the case of an SCO in respect of the loss of any property, that the property has been recovered by the victim.
- c. The offender has suffered a substantial reduction in his means which was unexpected at the time when the SCO was made and that his means seem unlikely to increase for a considerable period.

169. The request to vary/review SCO form can be found at Annex P to [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

170. **Personal injury.** Where personal injury has been occasioned by an offence, COs should always consider the award of an SCO. This punishment not only compensates the victim but will also emphasise to the offender the full personal consequences of their actions. In addition, an award of an SCO may relieve the victim of the expense and inconvenience of resorting to civil litigation to recoup damages, particularly in cases where the injury is outside the scope of the Criminal Injuries Compensation Scheme, see JSP 839 (Codes of practice on services to be provided by the armed forces to victims of crime). A subordinate commander may not award an SCO where any part of the order would be related to personal injury.

171. A CO should use his judgment to fix an appropriate amount, based on information provided by the evidence put before him at the summary hearing. In determining an appropriate amount, COs should take into account the nature of the injury itself, any pain and suffering caused and any loss of amenity which results (e.g. loss of enjoyment of life - a broken leg is likely to have a more significant affect upon a Service sports representative). In addition the conduct of the victim will be a relevant factor; any responsibility on his part, either because of provocation or otherwise, may influence the decision as to whether to award compensation at all, or the size of the amount ordered. Further, there will be many injuries which are so trivial that an award of an SCO would be inappropriate.

¹¹³ Section 322 of the Act.

¹¹⁴ Section 177 of the Act.

¹¹⁵ The appeal period is 14 days from the date the punishment was awarded at summary hearing or within such longer period as the court may allow, see [Chapter 15](#) (Summary hearing review and appeal) for more detail on appeal periods.

¹¹⁶ Section 177(2) of the Act.

¹¹⁷ Section 177(3) of the Act.

172. The guidelines in the table below¹¹⁸ relate to those injuries which most frequently arise in cases which are heard summarily. Other injuries should be assessed by comparison with the examples below (these guidelines are not intended to indicate that summary disposal is acceptable whenever particular levels of injury result; guidance on mode of trial following an offence of violence is at [Chapter 6](#) (Investigation, charging and mode of trial). Staff legal advice should be sought in any case where a CO is uncertain as to the amount which might be appropriate or as to the relevance of a particular factor or factors in the assessment.

INJURY	REMARK	GUIDELINE
Graze	Some pain for a few days and depending upon size	£50-75
Bruise	Likely to be painful for a fortnight and depending on size	£50-75
Black Eye		£100
Cut (without scarring)	Depending on size and whether stitched	£75-500
Minor Multiple Injuries	At least 3 types of injury and at least 1 of them having significant residual effects 6 weeks after incident. Injuries must have necessitated at least 2 visits to or by GP in that 6-week period. (note a)	£1000
Head or Facial Burns	Resulting in minor disfigurement	£2000 (CO's powers £1000)
Facial Scarring	Minor visible disfigurement (note b)	£1500 (CO's powers £1000)
Sprained Wrist / Ankle	If disabled 6-13 weeks	£1000
Fracture	Simple, small, uncomplicated & depending on which limb	£ 1000-3000 (CO's powers £1000)
Loss of Tooth (not front)	Depending on position of tooth and age of victim	£1250 (CO's powers £1000)
Loss of Tooth (front)		£1750 (CO's powers £1000)
Nasal	Undisplaced fracture of the nasal bone (see note c)	£1000
Nasal	Displaced fracture of the bone requiring manipulation under general anaesthetic (see note c)	£1500 (CO's powers £1000)

NOTES:

a. Minor multiple injuries: (a) grazing, cuts, laceration (no permanent scarring); (b) severe and widespread bruising; (c) severe soft tissue injury (no permanent disability); (d) black eye(s); (e) bloody nose; (f) hair pulled from scalp; (g) loss of fingernail.

b. This is a topic of unusual difficulty in view of the infinite variety of forms a scar may take. COs will usually see the relevant scar soon after its infliction, at a time when it is hard to foresee how it will develop and whether and how far it will fade. Some assistance will be gained in such circumstances from the nature of the treatment of the wound. A cut which needs stitches (sutures) will almost certainly

¹¹⁸ The Criminal Injuries Compensation Scheme 2001 (extant at May 2008).

leave a scar and the more sutures the more probable it is. Treatment by steristrip or 'butterflies' may or may not leave a permanent scar.

c. Assuming that after the appropriate treatment there is no visible deformity and no breathing problem.

173. **Loss or damage.** COs should use their judgment to fix an appropriate amount, based on information provided by the evidence put before him at the summary hearing. If it is alleged that damage has been caused, evidence must be given regarding the cost of repair or if that is not accurately known, the estimated cost must be given. If loss has occurred, there must have been evidence regarding the value of the lost items.

174. Administrative deductions from pay for loss or damage may only be made as an alternative to disciplinary action. If an SCO is awarded in respect of any loss or damage caused by an offence, an authorised officer may not make an administrative order for deduction from pay in respect of the same loss or damage. If no SCO is made during disciplinary proceedings then it is not open to the authorised officer to make a deduction for the same loss or damage. The issue of compensation should be dealt with as part of the sentencing procedure. See [Chapter 20](#) (Forfeitures and deductions).

175. Loss or damage to the property of persons not subject to the Act can be charged under section 42 and the Criminal Damage Act 1971; and, a Service compensation order may be awarded following a proven charge under these provisions. While it is generally undesirable that the Service should assume the function of awarding damages which may be claimed in an independent civil action, where the facts and the sum of money involved are straightforward an SCO may be used. Examples of where an SCO might be awarded are: to compensate a local authority for damage to municipal property; or to compensate a foreign national overseas for damage to property when the owner might otherwise have difficulty obtaining compensation and the good name of the Service is diplomatically at risk. Particular care should be taken following incidents in NATO countries where a separate claims procedure exists.

176. **Sentencing considerations.** When deciding whether to make an SCO and if so, for what amount, the CO is required to have regard to the offender's financial circumstances so far as they appear or are known to the CO¹¹⁹. The CO should therefore satisfy himself that he is as far as possible aware of the offender's financial circumstances. If the offender cannot afford to pay both a fine and compensation, compensation must be given priority¹²⁰. This does not mean a fine cannot be awarded as well, but if a choice has to be made the CO should impose an SCO and may wish to consider an alternative accompanying punishment in place of the fine.

177. The CO must give reasons on passing sentence if he does not make an SCO in a case where he has the power to do so¹²¹.

178. **After action.** If an SCO is awarded, the appropriate JPA action must be taken to recover the specified amount. The correct method of recovery, which will be directed by the CO, should be actioned. The Crown will not carry the debt of a SCO so compensation will not be paid until it has been recovered and, if the SCO is to be recovered by instalments, the compensation will also be paid out by instalments.

179. **Awarding fines and SCO.** In deciding whether to impose a fine in addition to an SCO, consideration is to be given as to whether any sum ordered to be paid is likely to be recovered

¹¹⁹ Section 250(1) of the Act.

¹²⁰ Section 250(2) of the Act.

¹²¹ Section 175(8) of the Act.

by deduction from the offender's pay and if so, how long the total period under a reduced rate of pay is likely to be.

Criminal injuries compensation

180. Civilian courts in England and Wales have similar powers to those under the Act to order compensation to be paid by those convicted of crimes of violence to their victims. For more information see JSP 839 (Codes of practice on services to be provided by the armed forces to the victims of crime).

SUMMARY POWERS OF PUNISHMENT AND EXTENDED POWERS

	SUMMARY PUNISHMENT	Commanding officer (of any rank)	Extended Powers* needed?	Subordinate Commander OF 4 and above	Subordinate Commander OF 3	Subordinate Commander OF 2	Punishments that may be combined
1	Detention	OR1 and OR2 - up to 28 days OR4 (RN and RAF) – nil OR3 (Army/RM/RAF Regt only) – nil	Yes – for 29 to 90 days Yes - for up to 90 days Yes - for up to 90 days	No powers	No powers	No powers	3, 8
1A	Suspended detention	As above for detention	As above for detention	No powers	No powers	No powers	3, 8
2	Forfeiture of seniority	Officers only	Yes	Not Applicable	Not Applicable	Not Applicable	5, 5A, 8
3	Reduction in rank/disrating	Only available for OR3 to 9	Yes unless the offender being reduced in rank is an OR 3 in the Army/RM	No powers	No powers	No powers	1, 1A, 8
4	Fine	OR1 – OR7 - 28 days OR8 - OF4 – up to 14 days OR8 - OF4 – up to 15 to 28 days	No No No	OR1- OR7 - 14 days' pay	OR1- OR7 - 10 days' pay	OR1 - OR4 - 7days' pay	5, 5A, 7A, 7B, 8

5	Severe reprimand	Officers and NCOs only OR3-9 and OF1-4	No	No powers	No powers	No powers	2, 4, 6, 7A, 8
5A	Reprimand	Officers and NCOs only OR3-9 and OF1-4	No	OR3 to OR7	OR3 to OR7	OR3 & 4	2, 4, 6, 7A, 8
6	SSPO	OR1 & 2 only - 30, 60 or 90 days	No	No powers	No powers	No powers	8
7A	Stoppage of leave	OR7 and below Up to 14 days	No	OR7 and below up to 14 days	OR7 and below up to 10 days	OR7 and below up to 7 days	4,5,5A,7B, 8
7B	Restriction of privileges	OR1 and OR2 – 14 days	No	OR1 and OR2 – 14 days	OR1 and OR2 – 10 days	OR1 and OR2 - 7 days	4, 7A, 8
7C	Admonition	Available for all ranks and rates	No	OR 7 and below	OR 7 and below	OR 7 and below	8
8	Service compensation order	Available for all ranks and rates Up to £1000.00	No	Up to £1000.00 ¹²²	Up to £750.00 ¹²³	Up to £500.00 ¹²⁴	1,1A,2,3,4,5,5A,6,7A, 7B, 7C

* Extended powers must be applied for unless the CO is of 2 star rank

¹²² Not to be awarded for personal injury.

¹²³ Not to be awarded for personal injury.

¹²⁴ Not to be awarded for personal injury.

PUNISHMENTS WHICH MAY BE AWARDED TO EACH RANK OR RATE

May be awarded to:	Forfeiture of seniority	Fine	Severe reprimand	Reprimand	Admonition	Service compensation order	Reduction in rank/disrating	Stoppage of leave	Detention	SSPO	Restrictions of privileges
Officers	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No
Warrant officers	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Senior non-commissioned officers/senior rates	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Military corporal/military bombardier	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Leading rate/lance corporal/lance bombardier/RAF corporal (lance corporal in RAF Regiment)	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes*	No	No
Able rates/marines/soldiers and airmen	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes

* Subject to the Commanding Officer being awarded extended powers (AFA06, s133(2))

THE MILITARY CORRECTIVE TRAINING CENTRE - REHABILITATIVE TRAINING

1. The primary purpose of MCTC is as an establishment for Service personnel undergoing corrective training during sentences of military detention; it is not a prison. The MCTC also holds those Service personnel, or civilians subject to Service law, who are undergoing investigation or who, post sentence, are awaiting onward movement to civil prison. The punishment implicit in military sentences is the associated loss of liberty and pay. The aims of MCTC are to train and encourage Service personnel who are to return to their units on completion of sentence in such a way as to promote their efficiency, fortify their morale and establish in them the will to become better Service personnel. The purpose of D Company is to instruct and guide those personnel who are to be discharged from the Services on completion of their sentence, so that they develop their potential for self-sufficiency and responsible citizenship, by providing appropriate rehabilitation training.

2. MCTC has extensive military training facilities including a 25 metre outdoor range, a small arms trainer, a gymnasium, sports fields and an assault course. The Education Wing provides a range of courses which are central to the rehabilitative function of the Centre. The full details of the facilities and organisation at MCTC can be found in JSP 837 (Service code of practice for the management of personnel in Service custody and committal to Service custody premises and civil prisons).

Organisation

3. Personnel to be retained in the Services are held in A Company and undergo military training. Personnel to be dismissed from the Services are held in D Company and undergo rehabilitative and resettlement training. Women are housed separately within both Company's but train with their male counterparts. Detainees are required to wear Soldier 95 clothing for training.

Staging system

4. Central to the MCTC rehabilitative regime is the staging system through which all detainees are expected to progress. The three-stage system is based on weekly reports on training regarding the progress and performance of each detainee in his Company. Promotion from each stage to the next depends upon effort and attitude. On promotion to a higher stage, they gain increased privileges and are subject to fewer restrictions. Average time between stages is six weeks.

Training

5. The task of the training team is to ensure that all A Company detainees return to their units well-trained in basic military skills, very fit and keen to continue service.

The A Company training package consists of:

- a. **Garsia platoon.** A four-week programme consisting mainly of fitness training and weapon handling; detainees remain on this programme until they are released. Offenders sentenced to 42 days' detention or less will undertake only this stage

during their sentence at MCTC due to the amount of automatic remission they will receive.

b. **1 Platoon.** A twenty-week modular programme covering subjects such as personal weapons, NBC, field craft, aircraft recognition, map reading, health and hygiene and education.

c. **Special programmes.** A programme for those completing advanced training.

All A Company detainees attend a module designed to cover all Individual Training Directives (ITDs), including substance and alcohol abuse and equality and diversity.

Education

6. **Aims.** The aims of the MCTC Educational Wing are to:

a. Enhance detainees understanding of the roles of the armed forces at home and overseas.

b. Improve detainees' command of written and spoken communication in order to make them more receptive to training.

c. Provide programmes that will allow detainees to identify and consider ways of coping with some of the more common problems, pressures and demands of Service and everyday life.

d. Attend courses that include; trade training courses, including project work, which facilitates the attainment of nationally recognised qualifications. D Company detainees also carry out resettlement, education, vocational training, and fitness for life. Community projects and individual work attachments in the community, literacy and numeracy instruction as required. DUS in D Company do not undertake military training but are kept fit through PT and games.

7. **Programmes.** Attendance on the A Company education programme depends on the length of sentence, an individual's needs and the training programme on which they are placed. During evening association periods, basic skills are taught by locally employed college and Company instructors; these Basic Skills courses can have real time training benefits and help instil confidence in the detainees in themselves and their chain of command. Longer term detainees (up to one year) will normally only be placed on specific education detail once they have moved through the most part of an entire 25 week training cycle and therefore this will not be open to most 'soldier on' detainees. However, amongst a wide range of learning experiences and challenges, set mainly in a military context, each detainee is required to research, script and prepare visual aids for and present a lecture of at least fifteen minutes' duration. The aims of the longer term education courses are to improve individuals' command of written and spoken communication in order to make them more receptive to Service training.

Welfare

8. A retired officer and his assistant, usually a senior rate/SNCO, have specific responsibility for the welfare of all detainees, the safekeeping of their valuables and the co-ordination of visits to them by relatives and friends. The welfare officer interviews each detainee on arrival to assess his or her needs and will, where appropriate, liaise with Government agencies (e.g. the Department of Social Security), solicitors and banks, to

resolve problems. All members of staff are trained in sentence planning and those staff that work directly with detainees also assist with detainees' day-to-day welfare needs.

Conclusion

9. Detainees at MCTC can range from those accused of serious offences, to immature people who have had difficulty coping with Service life. Many need to learn self-discipline or require help to establish their self-confidence and to develop a positive approach to life. All are kept active and busy throughout their time at MCTC.

10. The detainees of A Company undergo a well-devised and continually reviewed programme of military training. The regime is based on reward for effort and privileges are only granted to those detainees who prove themselves worthy of them. Most detainees respond to corrective training in a positive manner and reports from COs of personnel returning from A Company suggest that the regime causes most detainees to become better Service personnel.

11. Detainees in D Company have access to the Education Centre which provides a variety of training courses in its practical skills workshops, which lead towards the attainment of nationally recognised qualifications. These include fork lift truck, plumbing, brickwork, welding and a number of City and Guilds qualifications in the garage skills workshop as well as a whole range of IT qualifications in the Army Learning Centre. The Centre also holds a number of 'core qualifications' weeks each year that provide certification in first aid, health and safety, food hygiene and manual handling.

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**Annex D to
Vol 1 Ch 13
JSP 830 MSL**

**SERVICE SUPERVISION AND PUNISHMENT ORDER (SSPO) REVIEW
FORM**

1. Name & Initials of Offender:
2. Rank /Rate:
3. Service Number:
4. Date of SSPO:
5. Date of Review:
6. Review Stage i.e. 1st, 2nd, 3rd etc:
7. Review Decision: SSPO to continue in force / SSPO to cease*
8. Reasons for Decision:

Signed:

Name:

Rank:

Date:

Appointment:

* delete as appropriate

TRANSITIONAL GUIDANCE

Sentencing where charge found proved before commencement

1. If a charge has been found proved at a summary dealing or trial before commencement, but punishment has not been awarded before commencement, punishment must be awarded under AA55, AFA55 or NDA57 (as the case may be), as if that Act and the summary discipline regulations made under it were still in force.¹²⁵ The punishments available are the SDA punishments, not their AFA06 counterparts, and the maxima are those applicable under the SDAs. If the charge was found proved at a summary dealing under AA55 or AFA55, the maximum period of detention that may be awarded is therefore 28 days if permission to award extended detention was not obtained, or 60 days if it was.
2. The case may be referred to a senior officer for punishment if this would have been permissible before commencement (i.e. not in the case of a finding under AA55).¹²⁶ If the case was referred for punishment before commencement, the officer to whom it was referred may award punishment. In either case, the punishments available are again the SDA punishments, and the maxima are those applicable under the SDAs.

Summary trial under NDA57

3. In the case of a finding at a summary trial under NDA57, warrant punishments must be approved in accordance with NSDR.¹²⁷
4. A naval CO may award dismissal from HM Service, or disrating by more than one rate (or reduction by more than one rank), as under NDA57. A sentence of dismissal from HM Service or of detention carries automatic disrating or reduction to the ranks where appropriate, as under NDA57 section 43(4) and (5).¹²⁸
5. Where detention is awarded under NDA57 after commencement, the CO may suspend the sentence at the time when he awards it.¹²⁹ If he proposes to exercise this power, he must notify higher authority of that intention when he submits the punishment warrant. Alternatively, higher authority may require the sentence to be suspended under NSDR regulation 49. The sentence may not be suspended under NDA57 section 90 after it is awarded. The CO may not issue a committal order under NDA57 section 81(3), even if he does not suspend the sentence.¹³⁰
6. If the finding was recorded at a summary trial under NDA57 and the offender is subject to a suspended sentence of detention, the CO may activate the suspended sentence under NDA57 section 91B (having obtained approval under NSDR regulations 45A and 49A) at the same time as awarding sentence for the new offence.

Effect of SDA sentences

¹²⁵ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 55(3).

¹²⁶ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 55(9).

¹²⁷ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 57.

¹²⁸ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 56.

¹²⁹ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 55(5).

¹³⁰ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 55(6).

7. A sentence awarded at a summary dealing or trial (including one awarded after commencement, under the rules above) has effect as if the relevant SDA were still in force.¹³¹

Detention

8. The AFA06 provisions on the commencement of a sentence of detention awarded at a summary hearing (sections 290 and 291) apply equally to a sentence of detention awarded under the SDAs (including one awarded after commencement, under the rule explained at paragraph 1 above). An election by the offender under AA/AFA55 section 118ZA(2) or NDA57 section 85A(2) counts as an election under AFA06 section 290(2); the bringing of an appeal to the summary appeal court counts as the bringing of an appeal to the Summary Appeal Court; and so on.¹³²

9. Similarly, the AFA06 provisions on the commencement of a suspended sentence of detention activated by the offender's CO (section 292) apply equally to a suspended sentence passed under NDA57 and activated by the offender's CO (before or after commencement).¹³³

10. A committal order may not be issued under NDA57 section 81(3) after commencement, even if the sentence was passed before commencement.¹³⁴ Subject to the rules mentioned in paragraphs 8 and 9 above, a sentence passed under NDA57 takes effect without the need for a committal order (as under AA/AFA55 and AFA06).

2nd class for conduct

11. An award of 2nd class for conduct under NDA57 (including one awarded after commencement, under the rule explained at paragraph 1 above) is not converted into a service supervision and punishment order under AFA06: it remains an award of 2nd class for conduct, and NSDR regulation 55 continues to apply to it. However, regulation 55 is amended so as to align the daily routine with that prescribed by the SSPO regulations. In relation to any part of an award of 2nd class for conduct that is served after commencement, regulation 55 reads as: every rating who is reduced to the second class for conduct, shall:

- a. Forfeit one sixth of his gross pay for the period of reduction to the second class for conduct;
- b. Be deprived of leave for the first fourteen days, thereafter being allowed, when possible, up to one day's leave a week at the discretion of the Commanding Officer;
- c. Perform extra duties (that is, work, training or any other duty performed by the rating at times when he would not otherwise be required to perform any duty):
 - (1) During the first 14 days of the punishment, for a period not exceeding 5½ hours each day;
 - (2) During the remainder of the punishment, for a period not exceeding 1 hour each day;

¹³¹ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 135. But see paragraph 0 below, in relation to awards of 2nd class for conduct.

¹³² Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), articles 138 to 140 and 142.

¹³³ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), articles 141, 143 and 144.

¹³⁴ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 137.

e. Be deprived of any good conduct badges he may hold, and of the Long Service and Good Conduct Medal, if held;

f. Be debarred from advancement to leading rate or above.”¹³⁵

12. As in the case of an SSPO, the offender’s CO must decide in respect of each day of the punishment

a. What extra duties the rating must perform,

b. The period (not exceeding the permitted maximum) for which extra duties are to be performed, and

c. The time or times for performing the extra duties,

The CO must inform the rating accordingly¹³⁶ and may delegate any of these functions to a person of or above the rate of chief petty officer.¹³⁷

Sentencing under AFA06

13. Where punishment is awarded at a summary hearing under AFA06 (because the charge is not found proved until after commencement), the punishments available are those under AFA06 even if the offence was committed before commencement. If extended powers are obtained,¹³⁸ up to 90 days’ detention may be awarded, even if the CO could not have awarded more than 60 days at the time of the offence. The only restriction (in addition to those imposed by Part 6 of AFA06) is that no punishment may be awarded which is more severe than the maximum available *to a court-martial* at the time of the offence.¹³⁹

14. The principles and procedure for awarding sentence under AFA06 are the same in the case of an SDA offence as in the case of an AFA06 offence for example where if the accused admits the offence, he will be given credit when sentenced see paragraph 16 above. Part 14 of the section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009) includes technical provisions to ensure that Part 9 of AFA06 works in these circumstances. For example:

a. Whenever Part 9 refers to a “service offence”, this includes an SDA offence;¹⁴⁰

b. Section 244, which ensures that an offender may not be made subject to sentences of detention for a total of more than two years, applies equally to an offender who is subject to one or more SDA sentences and is given a further sentence under AFA06;¹⁴¹

c. Section 246, which requires a CO who awards detention to direct that time spent in service custody after charge is to count towards the sentence, applies equally to time spent in military, air-force or naval custody after the accused was informed that a charge was to be reported to his CO.¹⁴²

¹³⁵ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 159(3).

¹³⁶ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 159(4).

¹³⁷ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 159(5).

¹³⁸ Extended powers may be applied for before commencement: see [Chapter 9](#) (Summary hearing and activation of suspended sentence of Service detention)

¹³⁹ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 7.

¹⁴⁰ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 102(a).

¹⁴¹ Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), articles 104 and 105.

¹⁴² Section 380 order (The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009), article 106(1).

15. A sentence of detention awarded under AFA06 may be made consecutive to a sentence awarded under the SDAs (including one awarded after commencement).¹⁴³

¹⁴³ Armed Forces Act section 189; section 380 order, article 85(3).