

## Chapter 33

### Contempt of Service courts

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# Chapter 33

## Contempt of Service courts

### Introduction

1. This section sets out the jurisdiction and powers of Service courts to deal with misbehaviour in Service courts, often referred to as contempt of court<sup>1</sup>. It includes guidance on the power of Service courts to detain a person before dealing with offences of misbehaviour in court and to certify, for disposal by an appropriate civil court, any act<sup>2</sup> that would constitute contempt of court if the proceedings were before a court having power to commit<sup>3</sup> for contempt.

### Jurisdiction

2. The contempt provisions apply in respect of the qualifying Service courts set out below<sup>4</sup>:

- a. Court Martial (CM).
- b. Summary Appeal Court (SAC).
- c. Service Civilian Court (SCC).

For the remainder of this section these qualifying courts are referred to as 'the court'.

3. The following categories of person are subject to the court's powers in relation to offences of contempt<sup>5</sup>:

- a. Any person in the United Kingdom, whether subject to Service law or not.
- b. A person outside the United Kingdom who is subject to Service law (a Service person).
- c. A person outside the United Kingdom who is a civilian subject to Service discipline (a relevant civilian).

4. In relation to offences of contempt, the decisions of the court will be taken by the judge advocate alone<sup>6</sup>.

### Offences

5. The following is deemed to be misbehaviour in court that is capable of constituting an offence of contempt of court<sup>7</sup>:

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<sup>1</sup> Sections 309 to 312 of the Act.

<sup>2</sup> Contempt of court is not confined to the offences specified section 309 of the Act.

<sup>3</sup> Only certain courts, such as the High Court in England and Wales, have the power to commit (send to prison) a person for contempt of court unless express provision is made in a statute (see sections 309 to 312 of the Act )

<sup>4</sup> Section 309(5) of the Act.

<sup>5</sup> Section 309(6) of the Act.

<sup>6</sup> Section 312(2) of the Act.

<sup>7</sup> Section 309(1) of the Act.

- a. Refusal by a person to take an oath or make an affirmation when duly required by the court to do so;
- b. Refusal of a witness to answer any question which the court has lawfully required him to answer;
- c. Refusal by a person attending the court, or who is brought before the court, to produce any document or other thing which is in his custody or under his control and which the court lawfully requires him to produce;
- d. Intentional interruption of the proceedings of the court or other misbehaviour in court by a person; or
- e. Intentional insults or intimidation by a person of:
  - (1) Any member of the court while that member is acting as such, or is going to or returning from the court; or
  - (2) Any witness or other person whose duty it is to attend the court, while that person is attending the court or going to or returning from the court.

## Power to punish

6. The court's powers to deal with the above forms of misbehaviour depend on the status of the person who is in contempt of court.

- a. If the person is a Service person or a relevant civilian, the court may<sup>8</sup>:
  - (1) Commit the offender to Service custody for a specified period not exceeding 28 days; and/or
  - (2) Impose on the offender a fine not exceeding level 4 on the standard scale<sup>9</sup>.
- b. If the person is not subject to Service law or a civilian subject to Service discipline, the court may impose a fine not exceeding level 4 on the standard scale<sup>10</sup>.

7. A court may order that the committal to Service custody for contempt takes place after the end of any sentence of Service detention that a Service court has ordered on a previous occasion or, in the case of the CM, that the court orders on the same occasion<sup>11</sup>. The court may at any time revoke an order of committal for contempt and, if the person in contempt is in Service custody, order his release<sup>12</sup>. Therefore if, for example, the offender made an appropriate apology to the court or gave an undertaking as to his future behaviour, the judge advocate might order the offender's release from custody. The rules regarding custody of persons can be found in the Service Custody and Service of Relevant Sentences Rules 2009/1096 and JSP 837 (Service code of practice for the management of personnel in Service custody and committal to Service custody premises and civil prisons).

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<sup>8</sup> Section 309(2) of the Act.

<sup>9</sup> Section 309(3) of the Act.

<sup>10</sup> See Archbold 5-403 for standard scale fines section.

<sup>11</sup> Sections 312(3) and (4) of the Act.

<sup>12</sup> Section 309(4) of the Act.

8. The court may allow any fine imposed for contempt to be paid in instalments<sup>13</sup>. The court can also allow such time for payment of the fine as it specifies. Additionally, the court has the power, if the person fined makes an application to the court, to vary any order that it makes in relation to that fine.

## Power to detain

9. Where a court does not immediately deal with an offence of contempt it may order the offender to be detained in Service custody until the court rises. The offender can therefore be detained until such time as the court decides to adjourn the proceedings which are currently before it. This could be to adjourn for a break over the lunch period or at the end of the day's proceedings. So, for example, when a person interrupts proceedings or otherwise misbehaves in court, the court may order the offender to be detained in Service custody until those proceedings are adjourned.

10. When the court rises, it is to decide whether a further hearing is required and, if not, it will deal immediately with the offence of contempt in accordance with its powers at paragraphs 6 - 12<sup>14</sup>. If a further hearing is deemed necessary, the court may either release the offender or order that he be held in Service custody for a further period. This period must end not more than 48 hours from the time at which the offender was first detained for an offence specified in section 309 (see paragraph 5 above)<sup>15</sup>. The court may only authorise a period of further custody if one of the following conditions applies<sup>16</sup>:

a. The court is satisfied that there are substantial grounds for believing that the offender, if released from Service custody, would:

- (1) Fail to attend any hearing in the proceedings against him; or
- (2) Commit an offence while released; or
- (3) Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

b. The court is satisfied that the offender should be kept in Service custody for his own protection or, if he is aged under 17, for his own welfare or in his own interests; or

c. The court is satisfied that it has not been practicable to obtain sufficient information for the purpose of deciding whether the conditions in sub-paragraphs (a) or (b) above apply.

11. Where a court with power to deal with a person under section 309 of the Act decides not to exercise that power immediately, it may order the following categories of person to detain an offender in custody<sup>17</sup>:

- a. A Service policeman.
- b. An officer of a UK police force.
- c. A member of the court staff.

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<sup>13</sup> Sections 312(5) and 251 of the Act.

<sup>14</sup> Section 310(2) of the Act.

<sup>15</sup> Section 310(3) of the Act.

<sup>16</sup> Section 310(4) of the Act.

<sup>17</sup> Section 310(1) of the Act.

Those categories of person listed above may use reasonable force, if necessary, when ordered by the court to detain an offender in Service custody for an offence of contempt.

## **Certification to civil courts**

12. If a person commits an offence listed in paragraph 5 above, for which a civil court has the power to commit for contempt and the Service court has not exercised the powers set out at paragraphs 6 to 8 above, it may certify the offence of contempt<sup>18</sup>:

- a. If it took place in the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt; or
- b. If it took place outside the United Kingdom, to the High Court of England and Wales.

13. The civil court to which the offence is certified may inquire into the matter. After hearing any witnesses produced against or on behalf of the person and any statement that may be offered in defence, the civil court may deal with the offender in the same manner as if the offence had occurred during proceedings before that court<sup>19</sup>. Where the Service court certifies an offence to a civil court, it is not permitted to exercise any powers in respect of that contempt.

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<sup>18</sup> Sections 311(1) and (2) of the Act.

<sup>19</sup> Section 311(3) of the Act.