ARMY AND AIR FORCE

The Courts Martial (Abolition of Penal Servitude and Hard Labour) Order, 1949

1949 No. 615

Made - - - - 29*th March*, 1949
Coming into Operation 18*th April*, 1949

At the Court at Buckingham Palace, the 29th day of March, 1949

Present,

The King's Most Excellent Majesty in Council

Whereas by section one of the Criminal Justice Act, 1948(a), it is provided that no person shall be sentenced by a court to penal servitude or to imprisonment with hard labour: and that every enactment conferring power on a court to pass such a sentence shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term of penal servitude, or imprisonment with hard labour, as the case may be, for which a sentence could have been passed in that case before the commencement of the said Act:

And Whereas by section seventy-three of the said Act power is conferred on His Majesty by Order in Council to make provision for applying the said section one to courts-martial under the Army Act and the Air Force Act, and to make such adaptations and modifications of those Acts as His Majesty considers necessary or expedient in consequence of the passing of the said section one:

Now, therefore, His Majesty, in pursuance of the said section seventy-three and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

Short title and commencement.

1.—(1) This Order may be cited as the Courts Martial (Abolition of Penal Servitude and Hard Labour) Order, 1949.

(2) This Order shall come into operation in all places on the 18th day of April, 1949.

Application to courts-martial of 11 & 12 Geo. 6. c. 58 s. 1 and consequential adaptations of Army and Air Force Acts.

2. Section one of the Criminal Justice Act, 1948(a), shall apply in relation to courts-martial under the Army Act and the Air Force Act as it applies in relation to other courts; and accordingly the Army Act and the Air Force Act shall have effect subject to the adaptations and modifications set out in the Schedule to this Order.

Transitory provisions.

3. The provisions of the Eighth Schedule to the Criminal Justice Act, 1948(a) (which contains transitory provisions consequential on that Act) shall, so far as they relate to penal servitude and to hard labour, apply in relation to courts-martial wherever held as they apply in relation to the courts therein referred to.

E. C. E. Leadbitter.

(a) 11 & 12 Geo. 6. c. 58.

SCHEDULE

Adaptations and Modifications of Army and Air Force Acts

1. In sections five, six, eight to eleven, fourteen, fifteen, seventeen to nineteen and twenty-one to thirty-one, subsection (1) of section thirty-two, sections thirty-three to thirty-nine, subsections (2) and (3) of section thirty-nine A, section forty, and paragraphs (3) and (4) of section forty-one for the words "penal servitude", wherever they occur, there shall be substituted the word "imprisonment", and for the word "imprisonment", wherever it occurs, there shall be substituted the words "imprisonment for a term not exceeding two years".

2. In section twelve, in subsection (1), for the words from "shall, on conviction by court-martial" to the end of the subsection there shall be substituted the words "shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned:

Provided that a person shall not be liable for a first offence to suffer imprisonment for a term exceeding two years unless that offence was committed when on active service or under orders for active service.".

3. In section thirteen, in subsection (1) for paragraphs (i) and (ii) there shall be substituted the words "to suffer imprisonment or such less punishment as is in this Act mentioned:

Provided that in the case of a first offence a person shall not be liable to suffer imprisonment for a term exceeding two years.".

4. In section twenty, for the words from "if he has acted wilfully" to the end of the section there shall be substituted the words "to suffer imprisonment or such less punishment as is in this Act mentioned:

Provided that except where a person has acted wilfully he shall not be liable to suffer imprisonment for a term exceeding two years.".

5. In the proviso to section twenty-eight, in subsection (1) of section ninety-nine, section one hundred and twenty-one, subsection (3) of section one hundred and forty-two, section one hundred and fifty-two and subsection (1) of section one hundred and fifty-six the words "with or without hard labour" shall be omitted.

6. In section thirty-two at the end of subsection (2) there shall be added the words "or of imprisonment for a term exceeding two years".

7. In section thirty-nine A, in subsection (1), for the words from "if he has acted wilfully or with wilful neglect" to the end of the subsection there shall be substituted the words "to suffer imprisonment or such less punishment as is in this Act mentioned:

Provided that except where a person has acted wilfully or with wilful neglect he shall not be liable to suffer imprisonment for a term exceeding two years".

8.—(1) In section forty-four for paragraphs (*b*) and (*c*) there shall be substituted—

"(*b*) Imprisonment";

and for paragraphs (*j*) to (*kk*) there shall be substituted—

"(*j*) Imprisonment;

(*k*) Detention for a term not exceeding two years".

(2) For proviso (1B) to the said section forty-four there shall be substituted the following proviso:—

"(1B) An offender under this Act shall not be subject to imprisonment for more than two consecutive years under one or more sentences for offences under provisions of this Act which expressly specify a maximum term of imprisonment therefor, and in no event shall an offender under this Act be subject to detention for more than two consecutive years."

(3) In proviso (2) and in proviso (4) to the said section forty-four the words "penal servitude or" shall be omitted.

(4) In proviso (5) to the said section forty-four for the words " or of hard labour " there shall be substituted the words " or of any labour or employment to which the soldier could be subjected under a sentence of imprisonment ".

9. In section forty-eight, in paragraph (6), and in section fifty-four, in paragraph (*d*) of subsection (1), for the words " penal servitude " there shall be substituted the words " of imprisonment for a term exceeding two years ".

10. In section forty-nine, at the end of subsection (1) there shall be added the words " for a term of two years ".

11. In section fifty-four, in subsection (9), for the words " penal servitude " there shall be substiuted the words " imprisonment for a term exceeding two years ".

12. In subsections (1) and (2) of section fifty-seven, the words " penal servitude or " shall be omitted.

13. In subsection (5) of section fifty-seven, subsections (1), (3), (4) and (8) of section fifty-seven A, subsections (1) and (2) of section sixty-eight, paragraph (*g*) of subsection (1) of section seventy, subsection (2) of section one hundred and fifty-eight, paragraph (4) of section one hundred and eighty-three, and paragraph (2) of section one hundred and eighty-seven, the words " penal servitude " shall be omitted.

14. In section fifty-seven A for subsection (7) there shall be substituted the following subsection:—

" (7) Where a soldier whilst a sentence on him is so suspended is sentenced to imprisonment or detention for a fresh offence, a superior military authority may direct that the two sentences shall either run concurrently or consecutively: Provided that—

(*a*) where the sentence for the fresh offence is a sentence of imprisonment for a term exceeding two years, then, whether or not that sentence is suspended, any previous sentence which has been suspended, being a sentence of imprisonment for a term not exceeding two years or of detention shall be avoided;

(*b*) the aggregate term of imprisonment or detention to be served under two or more sentences of imprisonment for a term of two years or less or of detention shall not exceeed two consecutive years."

15. Sections fifty-eight to sixty-two shall be omitted.

16. In section sixty-four, in the proviso to subsection (4), in paragraph (*a*) after the words " twelve months " there shall be inserted the words " and does not exceed two years ", and after the said paragraph (*a*) there shall be inserted the following paragraph:—

(*aa*) if the term of his sentence exceeds two years, he shall be transferred as soon as practicable to a civil prison in the United Kingdom unless he belongs to such a class of persons as is mentioned in sub-paragraph (i) of the last foregoing paragraph, so however that where the sentence was passed for an offence committed on active service a competent military authority may order that any part of the sentence, not exceeding two years, shall be served in a military prison in the Dominion, colony or country where he was sentenced or in such other place as may be prescribed, and where the said authority so orders the obligation to transfer him to a civil prison in the United Kingdom shall have effect subject to the order; and "

17. In section sixty-seven, in subsection (1), the words " kept to hard labour " shall be omitted.

18. In section sixty-eight, in subsection (2), the definitions of the expressions " military convict " and " penal servitude prison " shall be omitted.

19. In section sixty-eight A the words " military convicts ", " military convict " and " convict " shall be omitted.

20. In section sixty-nine for the words " or to be kept in penal servitude " there shall be substituted the words " or to be imprisoned for a term exceeding two years ", and the word " expressly " shall be omitted.

21. In section one hundred and thirty-two, the paragraph at the end of subsection (2) beginning with the words " The Secretary of State " shall be omitted.

22. In section one hundred and thirty-eight, in paragraph (1), the words " penal servitude or " shall be omitted.

23. In section one hundred and seventy-two, in subsections (2) and (4) the words " military convict or " and " convict or " and in subsection (5) the words " a military convict or ", shall be omitted.

24. In section one hundred and eighty-three, in proviso (*a*), the words " penal servitude " and " penal servitude or " shall be omitted.

25. In section one hundred and eighty-five the words " military convicts or " shall be omitted.

26. In the application of this Schedule to the Air Force Act for the words " soldier " and " military " there shall be substituted respectively the words " airman " and " air-force ".

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order, made under Section 73 of the Criminal Justice Act, 1948, is consequent upon the decision to abolish penal servitude and hard labour.

Section I of the Criminal Justice Act, 1948, which by an Order in Council of 28th January, 1949, will come into force with effect from 18th April, 1949, provides that no person shall be sentenced by a civil court to penal servitude or imprisonment with hard labour and makes provision as to the interpretation of enactments conferring powers on civil courts to pass such sentences.

Under Section 73 of that Act, which by an Order in Council of 4th March was brought into force on 14th March, 1949, the provisions of Section I may be applied by Order in Council to courts-martial under the Army Act and the Air Force Act, and such an Order may adapt and modify the Army and Air Force Acts as deemed necessary or expedient.

This Order makes provision accordingly.