

## SCHEDULE

Article 35

### TRANSITIONAL PROVISIONS

#### **Powers of arrest**

1. In section 51(1) of the 1957 Act (jurisdiction to try persons no longer subject to the Act), as amended by this Order, the reference to an arrest under section 45 of that Act includes an arrest carried out before commencement by virtue of section 51(1) of that Act.

#### **Referral of charge to commanding officer**

2. In relation to a charge referred under section 83BB(1) of either of the 1955 Acts or section 52II(1) of the 1957 Act (referral of charge to commanding officer) before the repeal of those subsections by this Order—

- (a) section 83BB(3) of the Army Act 1955 or the Air Force Act 1955 or section 52II(3) of the 1957 Act (as the case may be) shall apply without the substitution made by this Order; and
- (b) section 85A(3) of the Army Act 1955 or the Air Force Act 1955 or section 62ZA(4) of the 1957 Act (as the case may be) shall apply as if it had not been repealed by this Order.

3. For the purposes of section 120(7A) of each of the 1955 Acts (exception to power to activate suspended sentence where offender elected court-martial trial), and section 91(5)(b) of the 1957 Act as substituted by this Order (restriction on power to activate suspended sentence where offender elected court-martial trial), a person is not tried by court-martial for an offence in pursuance of an election for court-martial trial if—

- (a) a charge of that offence (whether or not in the same terms as those of the charge on which he is tried) was referred by the prosecuting authority to the person's commanding officer under section 83BB(1) of either of the 1955 Acts or section 52II(1) of the 1957 Act (before the repeal of those subsections by this Order) after the person had elected court-martial trial in relation to a charge of another offence; and
- (b) the person did not elect court-martial trial in relation to the charge so referred.

#### **Suspended sentences of military and air-force courts-martial**

4.—(1) In relation to a sentence which is suspended at commencement—

- (a) section 120(5) of each of the 1955 Acts (power to activate suspended sentence), as substituted by this Order, applies only if the court-martial passes a sentence of imprisonment or detention on the person; and
- (b) section 120(5B) of each of those Acts (power to make activated sentence consecutive to another sentence) has effect as if paragraph (a) were omitted.

5.—(1) Section 120(5E) of each of the 1955 Acts (review, and suspension by reviewing authority, of activated suspended sentence) applies in relation to an order made under paragraph (a) of the old section 120(5) as it applies in relation to an order made under section 120(5) of that Act as substituted by this Order.

(2) In this paragraph “the old section 120(5)” means section 120(5) of the Army Act 1955 or the Air Force Act 1955 (as the case may be) as it stood before the substitution made by this Order.

6.—(1) Section 120ZA of each of the 1955 Acts (activation of suspended sentence: appeals) is modified as follows.

(2) Where a court-martial made an order under the old section 120(5)—

- (a) subsections (2) to (4) apply, subject to the modifications made by paragraphs (b) to (d) below, as if the order had been made under section 120(5) as substituted by this Order;
  - (b) in subsection (2)(b)—
    - (i) the reference to an appeal against the sentence passed in respect of the new offence includes an appeal brought before commencement; and
    - (ii) the reference to an application for leave to appeal against that sentence includes an application made before commencement;
  - (c) in subsection (2)(c)—
    - (i) the reference to an appeal against the order includes an appeal brought before commencement; and
    - (ii) the reference to an application for leave to appeal against the order includes an application made before commencement; and
  - (d) in subsections (3)(b) and (4), the references to a direction under section 120(5B) include a direction given under the old section 120(5) that the two sentences there mentioned were to run consecutively.
- (3) Where a court-martial passing sentence on a person before commencement could have determined the suspension of an earlier sentence under the old section 120(5) but did not do so, subsections (6) and (7) have effect as if—
- (a) the reference in subsection (6)(a) to the suspended sentence were to the earlier sentence; and
  - (b) in subsection (6)(b), for “a direction under section 120(5B) of this Act in relation to the order” there were substituted “a direction that the earlier sentence shall begin to run from the end of another term of imprisonment or detention passed on the person by the court-martial or the Appeal Court”.
- (4) Where a court-martial determined the suspension of an earlier sentence under the old section 120(5) and directed that the two sentences there mentioned were to run concurrently, subsections (6) and (7) have effect as if for paragraphs (a) and (b) of subsection (6) there were substituted “power to give a direction that the earlier sentence shall begin to run from the end of another term of imprisonment or detention passed on the person by the court-martial or the Appeal Court.”.
- (5) In this paragraph “the old section 120(5)” has the same meaning as in paragraph 5.
7. In relation to section 120ZA(6) of each of the 1955 Acts as modified by paragraph 6, section 120(5C) and (5D) of that Act apply as they apply in relation to section 120(5B) of that Act.

### **Suspended sentences of Standing Civilian Courts**

8.—(1) In paragraph 21 of Schedule 3 to the Armed Forces Act 1976 (activation of suspended sentence of a Standing Civilian Court: appeals), as inserted by this Order, the references to an order under paragraph 20(6) of that Schedule include an order made before commencement.

(2) Paragraph 21(6) of that Schedule applies where a court-martial passing sentence on a person before commencement had power to make an order under paragraph 20(6) of that Schedule in respect of another sentence but did not do so.

### **Suspended sentences and committal orders under the 1957 Act**

9. In section 81(3)(ca) of the 1957 Act (power of summary appeal court to issue committal order) the reference to an appeal to the summary appeal court includes an appeal brought before commencement.

**10.**—(1) In sections 91(1) and 91B(1) of the 1957 Act (activation of suspended sentence by court-martial and by commanding officer respectively), as substituted by this Order, the references to a sentence which is suspended under section 90 of that Act include a sentence which was suspended before commencement and is still suspended.

(2) In section 91(1) of that Act, as so substituted, the reference to a conviction by court-martial includes a conviction which occurred before commencement.

(3) In section 91B(1)(a) of that Act, the reference to a finding of guilt includes a finding recorded before commencement.

(4) In section 91B(1)(b) of that Act, the reference to a conviction of an offence in the British Islands includes a conviction which occurred before commencement.

**11.**—(1) Where—

- (a) a sentence of detention is suspended under section 90 of the 1957 Act (suspension of sentences),
- (b) before commencement, the offender was convicted by court-martial of an offence committed since the sentence was suspended,
- (c) the court-martial was dissolved before commencement, and
- (d) the offender appears before the officer in command of the ship or naval establishment to which he belongs,

the officer may make an order determining the suspension of the sentence.

(2) An order under this paragraph has effect as if it were an order under section 91B(1) of the 1957 Act (activation of suspended sentence by commanding officer) made by virtue of paragraph (b) of that subsection (conviction of an offence in the British Islands).

**12.** Where a committal order has been issued under section 91 of the 1957 Act as it stood before the substitution made by this Order, section 92(1) of that Act applies without the amendment made by this Order.

### **Postponement of sentence**

**13.**—(1) This paragraph applies where—

- (a) an order has been made under section 120A of either of the 1955 Acts or section 89A of the 1957 Act (postponement of sentence) in relation to a sentence; and
- (b) the sentence has not had or (in the case of an order under subsection (2)(b) of the relevant section) resumed effect.

(2) Subject to sub-paragraph (3), the sentence shall have or resume effect (as the case may be) at the end of the period specified in the order.

(3) If the period specified in the order has been extended for a further period under subsection (4) of the relevant section, the sentence shall have or resume effect (as the case may be) at the end of that further period.

(4) In this paragraph “the relevant section” means the section under which the order was made.

(5) This paragraph is without prejudice to section 118(1) of each of the 1955 Acts and section 85(1) of the 1957 Act (commencement of sentence of imprisonment or detention).