



Courts-Martial (Appeals) Act 1968

1968 CHAPTER 20

PART II

[^{F1}APPEALS FROM THE COURT MARTIAL]

Insanity

21 Appeal against finding of not guilty by reason of insanity.

- (1) A person who has been tried by [^{F1}the Court Martial] for an offence and been found not guilty by reason of insanity may, with the leave of the Appeal Court, appeal to the Court against the finding^{F2}...

[^{F3}(1A) On an appeal under this section the Appeal Court—

- (a) shall (subject to subsection (2)) allow the appeal if they think the finding is unsafe; and
- (b) shall dismiss the appeal in any other case.

(1B) Sections 19 and 20 and paragraph 2 of Schedule 1 apply in relation to appeals under this section as they apply in relation to appeals against conviction (and references there to conviction, and to related expressions, are to be read accordingly).]

(2) Where apart from this subsection—

- (a) an appeal against a finding of not guilty by reason of insanity would fall to be allowed; and
- (b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Appeal Court may dismiss the appeal if they are of [^{F4}the] opinion that but for the insanity of the appellant the proper finding would have been that he was guilty of an offence other than the offence charged.

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Cross Heading: Insanity. (See end of Document for details)

Textual Amendments

- F1** Words in s. 21(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 22(a)(i)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F2** Words in s. 21(1) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 22(a)(ii)**, **Sch. 17**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F3** S. 21(1A)(1B) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 22(b)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F4** Word in s. 21(2) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 22(c)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Modifications etc. (not altering text)

- C1** S. 21 extended by 1995 c. 35, s. 12A(7) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 11 para. 2**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4)
- C2** S. 21(1) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), **120(1)**

22 Consequences where appeal under s. 21 allowed.

- (1) The following provisions shall have effect where an appeal against a finding of not guilty by reason of insanity is allowed by the Appeal Court.
 - (2) If the ground, or one of the grounds, for allowing the appeal is that the finding as to the appellant's insanity ought not to stand and the Appeal Court are of [^{F5}the] opinion that the proper finding would have been a finding of guilty of an offence (whether the offence charged or any other offence of which the [^{F6}Court Martial] could have found him guilty), the Court shall substitute for the finding of the [^{F6}Court Martial] a finding of guilty of that offence.
 - (3) On substituting a finding of guilty of an offence, the Appeal Court shall have the like powers of sentencing the appellant, and other powers, as the [^{F7}Court Martial] would have had on the like finding of guilty; and section 17 of this Act shall apply as in the case of a sentence passed by the Court under [^{F8}a provision mentioned in section 17(1)].
- [^{F9}(3A) If the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of the opinion mentioned in section 16(1)(b) (court below ought to have found defendant unfit to stand trial etc)—
- (a) the Court shall substitute for the finding of the Court Martial findings that the appellant was unfit to stand trial and that he did the act or made the omission charged against him; and
 - (b) section 16(2) to (5) apply as they apply for the purposes of section 16.
- (3B) Section 172 of the 2006 Act (meaning of “duly approved” etc) applies for the purposes of subsection (3A) (and references there to the defendant are to be read as references to the appellant).

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- (4) If the case is not within subsection (2) or (3A), the Appeal Court must quash the finding appealed against.
- (5) Where the Appeal Court quash a finding of not guilty by reason of insanity, the appellant is to be treated as if he had been acquitted by the Court Martial; but this does not apply if an order under section 19 authorising the appellant to be retried is made.]

Textual Amendments

- F5** Word in s. 22(2) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 23\(a\)\(i\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F6** Words in s. 22(2) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 23\(a\)\(ii\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F7** Words in s. 22(3) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 23\(b\)\(i\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F8** Words in s. 22(3) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 23\(b\)\(ii\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4
- F9** S. 22(3A)-(5) substituted for 22(4) (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 23\(c\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4

Modifications etc. (not altering text)

- C3** S. 22(2) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), [120\(2\)](#)
- C4** S. 22(3) excluded (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), [120\(3\)](#)
- C5** S. 22(3A) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), [120\(2\)](#)

^{F10} 23 Substitution of findings of unfitness to stand trial etc.

Textual Amendments

- F10** S. 23 repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 24](#), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); S.I. 2009/1167, art. 4

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PROSPECTIVE

F11 23A Substitution of finding of not guilty.

- (1) This section applies where, in accordance with section 22(4) of this Act, the Appeal Court substitute a finding of not guilty and the Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
 - (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
 - (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.
- (2) The Appeal Court shall—
 - (a) in the case of an appellant detained pursuant to an admission order made by a court-martial, make an order for his continued detention;
 - (b) in any other case, make an order that the appellant be admitted for assessment, in accordance with regulations made by the Secretary of State, to such hospital as may be specified by the Secretary of State.
- (3) An order under subsection (2) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (4) The power of the Secretary of State under subsections (2)(b) and (3) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “hospital” and “mental disorder” have the same meanings as in the appropriate mental health legislation.

Textual Amendments

F11 Ss. 23 and 23A substituted (*prosp.*) for s. 23 by 1996 c. 46, ss. 8, 36(2), **Sch. 2 para. 9**

Status:

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Changes to legislation:

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