

Courts-Martial (Appeals) Act 1968

CHAPTER 20

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ELIZABETH II



1968 CHAPTER 20

An Act to consolidate the Courts-Martial (Appeals) Act 1951 and the enactments amending it, including so much of the Administration of Justice Act 1960 as provides an appeal from the Courts-Martial Appeal Court to the House of Lords. [8th May, 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

THE COURTS-MARTIAL APPEAL COURT

1.—(1) The Courts-Martial Appeal Court established by the Courts-Martial (Appeals) Act 1951 for the purpose of hearing appeals from naval, army and air force courts-martial, shall continue in existence and is in this Act referred to either as “the Appeal Court” or as “the Court”.

The Court and its jurisdiction. 1951 c. 46.

(2) The Appeal Court shall be a superior court of record and shall, for the purposes of this Act and subject to its provisions, have full power to determine, in accordance with this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court.

(3) The powers of the Appeal Court shall be exercisable by them so far as they think it necessary or expedient in the interests of justice that they should be exercised, and the Court may issue any warrants necessary for enforcing their orders or sentences.

(4) Except as provided by Part III of this Act, no appeal shall lie from any decision of the Appeal Court.

PART I
Judges.

2.—(1) The following shall be judges of the Appeal Court:—

- (a) the ex officio and ordinary judges of the Court of Appeal and such of the judges of the Queen's Bench Division of the High Court as the Lord Chief Justice may, after consultation with the Master of the Rolls, from time to time nominate for the purpose ;
- (b) such of the Lords Commissioners of Justiciary as the Lord Justice General may from time to time nominate for the purpose ; and
- (c) such of the judges of Her Majesty's Supreme Court of Judicature of Northern Ireland as the Lord Chief Justice of Northern Ireland may from time to time nominate for the purpose.

(2) The Lord Chancellor may appoint other persons, being persons of legal experience, to be judges of the Appeal Court and—

- (a) the appointment of a person under this subsection shall be for such term as may be determined by the Lord Chancellor, with the approval of the Treasury, before his appointment and shall be subject to such conditions as may be so determined ; and
- (b) a person so appointed who ceases to hold office as a judge of the Appeal Court shall be eligible for reappointment.

(3) There may be paid out of moneys provided by Parliament to the persons appointed under subsection (2) of this section to be judges of the Appeal Court such remuneration, and to all the judges of the Court such travelling and subsistence allowances, as the Lord Chancellor may, with the approval of the Treasury, determine.

3. Any power under this Act which is exercisable by a judge of the Appeal Court may also be exercised—

- (a) by any judge of the Queen's Bench Division of the High Court ;
- (b) by any Lord Commissioner of Justiciary ;
- (c) by any judge of Her Majesty's Supreme Court of Judicature of Northern Ireland,

notwithstanding that he is not for the time being a judge of the Appeal Court ; and references in this Act to a judge of the Court shall be construed accordingly.

Sittings.

4.—(1) For the purpose of hearing and determining appeals under this Act, or any matter preliminary or incidental to an appeal, the Appeal Court shall be summoned in accordance with directions given by the Lord Chief Justice with the consent of the Lord Chancellor.

Other senior judges who may exercise powers of Appeal Court.

(2) If the Lord Chief Justice so directs, the Appeal Court may sit in two or more divisions.

(3) The Appeal Court shall sit at such place as the Lord Chief Justice shall direct, whether within or outside the United Kingdom.

5.—(1) Subject to the provisions of this section, the Appeal Court shall be duly constituted if it consists of an uneven number of judges, not being less than three. Constitution of Court for particular sittings.

(2) At least one of the judges of which the Appeal Court consists at any sitting must be a judge of the Court by virtue of section 2(1) of this Act, except that where the Court is directed to sit at a place outside the United Kingdom the Lord Chancellor may, if he thinks it expedient to do so, direct that this provision shall not apply to the Court while sitting at that place.

(3) The determination of any question before the Appeal Court shall be according to the opinion of the majority of the judges of the Court hearing the case.

6. The Master of the Rolls may exercise the powers conferred on the Lord Chief Justice by sections 2 and 4 above if at any time the Lord Chief Justice is unable to exercise them himself or there is a vacancy in the office of Lord Chief Justice. Power of Master of the Rolls to act for Lord Chief Justice.

7.—(1) There shall be a registrar of the Appeal Court (in this Act referred to as “the registrar”) to be appointed by the Lord Chancellor, and the Lord Chancellor may appoint such other officers and servants of the Court as he may, with the approval of the Treasury as to numbers, determine. Court staff, salaries and pensions.

(2) The remuneration of the officers and servants of the Appeal Court shall be such as the Lord Chancellor may, with the approval of the Treasury, determine, and the Superannuation Acts 1965 and 1967 shall have effect as if service as an officer or servant of the Appeal Court were service in an established capacity in the permanent civil service of the State in an appointment held directly from the Crown.

(3) The remuneration of the officers and servants of the Appeal Court and such other expenses of the Court as the Treasury may sanction shall be defrayed out of moneys provided by Parliament.

PART II

APPEALS FROM COURTS-MARTIAL

Right of appeal and initiating procedure

8.—(1) Subject to the provisions of this Act, a person convicted by court-martial may, with the leave of the Appeal Court, appeal to the Court against his conviction.

(2) Subject as aforesaid, the person's right of appeal shall not be exercisable—

(a) unless, within such period as may be prescribed, he presents to the Defence Council a petition praying that his conviction be quashed ; and

(b) until either the prescribed period (beginning with the day on which the petition is presented) expires or he is notified by the Defence Council that the petition has not been granted, whichever event first occurs.

(3) If a person presents a petition for the purposes of subsection (2)(a) above, but fails to do so within the period prescribed for those purposes and subsequently applies for leave to appeal, the Appeal Court may direct that he be treated as not having thereby lost his right of appeal if they think that there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated.

(4) Rules of court may provide that, in such circumstances as may be specified in the rules, a petition for the purposes of subsection (1) above which is presented to such person as may be specified in the rules shall be treated, for the purposes of that subsection, as having been presented to the Defence Council.

9.—(1) Leave to appeal to the Appeal Court shall not be given except on an application in that behalf made by or on behalf of the appellant and lodged, within the prescribed period, with the registrar.

(2) The application must be in the prescribed form and specify the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(3) The Appeal Court may extend the period within which an application for leave to appeal must be lodged, whether the period has expired or not.

(4) Rules of court may provide that, in such circumstances as may be specified in the rules, an application which is lodged with a person (other than the registrar) specified in the rules shall be treated for purposes of subsection (1) above as having been lodged with the registrar ; and it shall be the duty of the specified

Right of
appeal.

Application
for leave
to appeal.

person, if an application is lodged with him in accordance with the rules, to act as follows :—

PART II

- (a) he shall forward the application to the registrar with as much expedition as practicable ; and
- (b) if it appears to him practicable to do so, and in all the circumstances expedient, he shall forthwith furnish the registrar (before the receipt by the latter of the application) with such particulars of the application as will enable the registrar to prepare a copy of it.

10.—(1) The following provisions apply where a person who has been convicted by a court-martial held outside the United Kingdom duly petitions the Defence Council in accordance with section 8 of this Act.

Alternative procedure for appeal from court-martial abroad.

(2) If, before the expiration of the time for appealing, the Defence Council receive from the person convicted an application for leave to appeal to the Appeal Court accompanied by a request that the Council will forward the application to the registrar in the event of its being decided not to grant the petition, it shall be the duty of the Council to comply with that request.

(3) The convicted person's right of appeal under section 8 of this Act becomes exercisable (if it has not already done so) on the happening of the event referred to in subsection (2) above, that is to say its being decided not to grant the petition.

(4) In this section "the time for appealing" means the period prescribed for the purpose of section 9(1) of this Act as the period within which an application for leave to appeal must be lodged.

11.—(1) In considering whether or not to give leave to appeal the Appeal Court shall have regard to any expression of opinion made by the Judge Advocate of Her Majesty's Fleet or the Judge Advocate General that the case is a fit one for appeal, and if any such expression is so made they may, without more, give leave to appeal.

Consideration of application by Appeal Court.

(2) Where the Appeal Court dismiss an application for leave to appeal they may, if they consider the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Appeal Court dismiss the application.

PART II

Disposal of appeal

Power to quash conviction as wrong in law, etc.

12.—(1) The Appeal Court shall allow an appeal against conviction by court-martial if they think—

- (a) that the finding of the court-martial under all the circumstances of the case is unsafe or unsatisfactory ; or
- (b) that the finding involves a wrong decision of a question of law ; or
- (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal :

Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) If the Appeal Court allow an appeal against conviction, they shall quash the conviction.

Adjustment of sentence in case of conviction on two or more charges.

13. Where—

- (a) it appears to the Appeal Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred ; and
- (b) the sentence passed by the court-martial on the appellant was not warranted by the relevant Service Act for the offence of which he was convicted on the other charge,

the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence so warranted as they think proper.

Substitution of conviction on different charge.

14.—(1) This section applies where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Appeal Court that the court-martial must have been satisfied of facts which proved him guilty of that other offence.

(2) The Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence, and may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Service Act for that other offence, but not a sentence of greater severity.

15.—(1) Where an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Appeal Court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment.

PART II
Variation of conviction so as to attract different sentence.

(2) Where an appellant has been convicted of an offence and it appears to the Appeal Court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence subject to exceptions or variations.

(3) Where the Appeal Court exercise the power conferred by subsection (1) or subsection (2) above, they may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Service Act for the offence specified or involved in the substituted finding, but not a sentence of greater severity.

16.—(1) This section applies in a case where, on an appeal, the Appeal Court are of opinion—

Substitution of finding of insanity or unfitness to plead.

- (a) that the proper finding would have been a finding of not guilty by reason of insanity ; or
- (b) that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial.

(2) The Appeal Court shall order the appellant to be kept in custody under the relevant Service enactment in like manner as on a finding of not guilty by reason of insanity or a finding of unfitness to stand trial by the court-martial by which the appellant was convicted.

(3) In subsection (2) above, the “ relevant Service enactment ” means—

- section 63 of the Naval Discipline Act ;
- section 116 of the Army Act ; or
- section 116 of the Air Force Act,

(being enactments which provide for a person to be kept in custody until the pleasure of Her Majesty is made known), according to whether the appellant was convicted by a naval, army or air force court-martial.

PART II
Term of
sentence
passed under
s. 13, 14 or 15.

17.—(1) The term of any sentence passed by the Appeal Court under section 13, 14 or 15 of this Act shall, unless the Court otherwise direct, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal was brought.

(2) A sentence passed by the Appeal Court under any of those sections shall—

(a) if passed on an appeal against conviction by a naval court-martial, be deemed, for purposes of the Naval Discipline Act, to be a sentence passed by such a court-martial; and

(b) if passed on an appeal against conviction by an army or air force court-martial, be deemed for purposes of the Army Act or the Air Force Act, as the case may be, to be a sentence passed by an army, or as the case may be, an air force court-martial, being a sentence that has been confirmed.

Retrial

Retrial
generally
excluded.

18. Except as provided by this Act, where the conviction of a person by court-martial for an offence has been quashed under this Act, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Power to
authorise
retrial in
certain cases.

19.—(1) The Appeal Court shall have the power, on quashing a conviction, to make an order authorising the appellant to be retried by court-martial, but shall only exercise this power when the appeal against conviction is allowed by reason only of evidence received or available to be received by the Court under sections 28 to 30 of this Act and it appears to the Court that the interests of justice require that an order under this section should be made.

(2) This section has effect notwithstanding the restrictions on retrial imposed by section 134 of the Army Act and section 134 of the Air Force Act.

(3) An appellant shall not be retried under this section for an offence other than—

(a) the offence of which he was convicted by the original court-martial and in respect of which his appeal is allowed as mentioned in subsection (1) above;

(b) any offence of which he could have been convicted at the original court-martial on a charge of the first-mentioned offence; or

(c) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence.

(4) A person who is to be retried under this section for an offence shall, if the Appeal Court so directs, be retried on a fresh charge or charges specified in the direction; but whether he is so tried or is retried on one or more of the original charges, no fresh investigation or other steps shall be taken under sections 76 to 79 of the Army Act or sections 76 to 79 of the Air Force Act (investigation and summary disposal of charge by commanding officer) in relation to the charge or charges on which he is to be retried.

20.—(1) The limitations imposed by—

- section 52 of the Naval Discipline Act;
- section 132 of the Army Act; and
- section 132 of the Air Force Act,

Implementa-
tion of
authority for
retrial, and
supplementary
orders of
Appeal Court.

with respect to the time within which a trial under those Acts respectively may be begun, shall not apply in the case of a retrial authorised by an order of the Appeal Court under section 19 of this Act; but a person to whom such an order applies shall not be retried unless the order convening the court-martial is issued within the period of three months beginning with the date of the order under section 19.

(2) The Appeal Court may, where they authorise a retrial, make such orders as appear to them to be necessary or expedient for the retention until the relevant time of property or money which has been restored, delivered or paid in pursuance of an order made on or in consequence of the original conviction or has been placed in safe custody while the operation of any such order is suspended.

(3) Where retrial is authorised in the case of a person who immediately before the date of the authorisation was liable to be detained in pursuance of a direction under United Kingdom mental health legislation, that direction shall continue in force until the relevant time as if his conviction had not been quashed.

(4) The legislation referred to in subsection (3) above is Part V 1959 c. 72. of the Mental Health Act 1959, Part V of the Mental Health 1960 c. 61. (Scotland) Act 1960 and Part III of the Mental Health Act 1961 c. 15 (Northern Ireland) 1961. (N.I.).

(5) In subsections (2) and (3) above the references to “the relevant time” are references to the expiration of the period of three months mentioned in subsection (1) of this section or, if during that period a court-martial has been convened for the retrial of an appellant, the time when his case is finally disposed of:

Provided that for the purposes of subsection (2) above the relevant time, in a case where the appellant is found guilty on

PART II

his retrial, is the expiration of the period of twenty-eight days beginning with the date of the finding.

(6) Schedule 1 to this Act contains additional provisions applicable to a retrial authorised by order of the Appeal Court under section 19 of this Act; and of the four Parts of the Schedule, Part I applies to retrial under the Naval Discipline Act; Part II applies to retrial under the Army Act; Part III applies to retrial under the Air Force Act; and Part IV applies to all three cases.

Insanity

Appeal
against
finding of
not guilty
by reason
of insanity.

21.—(1) A person who has been tried by 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; and in relation to any such appeal this Part of this Act, except sections 13 to 16, shall apply, subject to this section and section 22 below, as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to conviction).

(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 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.

Consequences
where appeal
under s. 21
allowed.

22.—(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 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 court-martial could have found him guilty), the Court shall substitute for the finding of the 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 court-martial which tried him

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 section 13, 14 or 15 of this Act.

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(4) In any case where subsection (2) above does not apply, the Appeal Court shall substitute for the finding appealed against a finding of not guilty.

23.—(1) The following provisions shall have effect in the case of an appeal by a person who, in pursuance of a finding of not guilty by reason of insanity, is detained under—

(a) section 71 of the Mental Health Act 1959; or
 (b) section 64 of the Mental Health (Scotland) Act 1960; or
 (c) section 57 of the Mental Health Act (Northern Ireland) 1961,

Power to order detention under mental health legislation.
 1959 c. 72.
 1960 c. 61.
 1961 c. 15 (N.I.).

(which sections relate to orders for a person to be kept in custody during Her Majesty's pleasure), where the Appeal Court under section 22 of this Act substitute a finding of not guilty.

(2) If the Appeal Court are of opinion—

- (a) that the person is suffering from mental disorder (within the meaning of the Mental Health Act 1959) of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

they shall make an order for his continued detention under the said Act.

(3) An order under subsection (2) above shall be sufficient authority for the person to be detained, and the said Act shall apply as if on the date of the order he had been admitted to hospital in pursuance of an application duly made under that Act (being in England and Wales an application for admission for observation).

Unfitness to stand trial

24.—(1) A person found by a court-martial to be unfit to stand his trial may, with the leave of the Appeal Court, appeal to the Court against the finding.

Appeal against finding of unfitness.

(2) In relation to an appeal under this section, this Part of this Act, except sections 13 to 16, shall apply (subject to section 25 below) as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to conviction).

PART II

Disposal of
appeal under
s. 24.

25.—(1) The following provisions of this section apply with respect to an appeal under section 24 of this Act.

(2) Where the question whether the accused was unfit to stand his trial was determined by the court-martial at a time later than on arraignment or, in the case of a naval court-martial, later than on the commencement of the trial, the appeal may be allowed (notwithstanding that the finding was properly come to) if the Appeal Court are of opinion that the case is one in which the court-martial should before that time have come to a finding of not guilty.

(3) If the Appeal Court are of the said opinion, they shall substitute a finding of not guilty (but not a finding of not guilty by reason of insanity) and the appellant shall then not be liable to be tried by a court-martial or by any other court for the offence with which he was charged.

(4) Where the appeal is allowed and the Appeal Court do not substitute a finding of not guilty, the appellant may be tried accordingly for the said offence; and if he is for the time being detained under the Mental Health Act 1959, the Mental Health (Scotland) Act 1960 or the Mental Health Act (Northern Ireland) 1961, the Court may make such order as appears to them necessary or expedient pending any such trial for his continued detention under that Act.

1959 c. 72.
1960 c. 61.
1961 c. 15
(N.I.).

General procedural provisions

Presentation,
of appellant's
case.

26. An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Presence of
appellant at
hearing.

27. An appellant shall not be entitled to be present at the hearing of an appeal to the Appeal Court or at any proceedings preliminary or incidental to such an appeal, except where the Court give him leave to be so; and accordingly any power of the Court to pass a sentence may be exercised notwithstanding the absence of the appellant.

Evidence.

28.—(1) The Appeal Court may—

- (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend for examination and be examined before the Court, whether or not he was called at the trial; and
- (c) receive the evidence, if tendered, of any witness.

(2) Without prejudice to the generality of subsection (1) above, where evidence is tendered to the Appeal Court under that subsection the Court shall, unless they are satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise their power under that subsection of receiving it if—

(a) it appears to them that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(b) they are satisfied that it was not adduced at the trial, but that there is a reasonable explanation of the failure to adduce it.

(3) Subsection (1)(c) above applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given at the trial except on such an application.

(4) The Appeal Court may order the examination of any witness whose attendance may be required under subsection (1)(b) of this section to be conducted in the prescribed manner before any judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court.

29.—(1) The Appeal Court may order the taking of such steps as are requisite to obtain from any member of the court-martial by which the appellant was tried, or the person who officiated as judge advocate at the trial, a report giving his opinion on the case or on any point arising in it, or containing a statement as to any facts of which the ascertainment appears to the Court to be material for the purpose of determining the case.

Power to call for report by member of trial court.

(2) The Court shall not make an order under this section for the purpose of obtaining a report from a member of a court-martial other than the president of it unless they also make such order for the purpose of obtaining a report from the president or are satisfied that the obtaining of a report from him is impracticable or would involve undue delay.

30.—(1) Where any question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Appeal Court conveniently be conducted before them, the Court may order the reference of the question in the prescribed manner for inquiry and report to a special commissioner

Other powers for facilitating disposal of appeal.

PART II appointed by them, and act upon the report of the commissioner so far as they think fit to adopt it.

(2) The Appeal Court may appoint a person with special expert knowledge to act as assessor to the Court in any case where it appears to them that such knowledge is required for the proper determination of the case.

(3) There may be paid out of moneys provided by Parliament to a special commissioner to whom a question is referred under this section for inquiry and report, and to a person appointed as assessor to the Appeal Court, such remuneration and such travelling and subsistence allowances as may be prescribed by regulations made by the Lord Chancellor.

(4) The power of the Lord Chancellor under subsection (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.

Costs

Costs of
successful
appeal.

31.—(1) Where the Appeal Court allow an appeal they may if they think fit, direct the payment by the Secretary of State of costs to the appellant.

(2) The costs which may under this section be directed to be paid are such sums as appear to the Appeal Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the case that is to say—

- (a) in the prosecution of his appeal (including any proceedings preliminary or incidental thereto); or
- (b) in carrying on his defence before the court-martial from which the appeal lies, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the first-mentioned court-martial.

Costs against
appellant.

32.—(1) Where the Appeal Court dismiss an appeal or an application for leave to appeal they may, if they think fit, order the appellant or applicant (as the case may be) to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the Appeal Court.

(2) An order under this section may be enforced—

- (a) in the same manner as an order for the payment of costs made by the High Court in civil proceedings; or

(b) by making deductions from pay due to the appellant or applicant, as the case may be, or partly in the one way and partly in the other.

(3) Any sums which by virtue of subsection (2)(a) above are recovered from a person by the Secretary of State shall be paid into the Exchequer.

33.—(1) The Appeal Court may, whether or not they exercise their powers under either of the two foregoing sections, order the payment out of moneys provided by Parliament of such sums as appear to the Court reasonably sufficient to compensate any person properly attending to give evidence on an appeal under this Part of this Act or any proceedings preliminary or incidental thereto (whether or not he gives evidence) for the expense, trouble or loss of time properly incurred in or incidental to his attendance. Witnesses' expenses.

(2) The amount of any costs ordered to be paid under this section shall be ascertained as soon as practicable by the registrar.

Special references to Appeal Court

34.—(1) If, in the case of the conviction of a person by court-martial,— Reference of cases by Service authorities.

(a) it appears to the Judge Advocate of Her Majesty's Fleet or the Judge Advocate General that the finding of the court-martial involves a point of law of exceptional importance which in his opinion should be determined by the Appeal Court; or

(b) it appears to the Secretary of State, upon consideration of matters appearing to him not to have been brought to the notice of the court-martial at the trial, to be expedient that the finding of the court-martial should be considered or reconsidered by the Appeal Court,

the Judge Advocate of Her Majesty's Fleet, the Judge Advocate General or the Secretary of State, as the case may be, may refer the finding to the Court.

(2) A reference to the Appeal Court under this section shall, for all purposes other than those of sections 31 and 32 of this Act, be treated as an appeal by the person convicted against his conviction.

(3) The foregoing provisions of this section shall apply in the case of a finding by a court-martial of not guilty by reason of insanity as they apply in the case of the conviction of a person by court-martial.

PART II

Order for costs of defence on reference under s. 34.

35.—(1) Where on a reference under section 34 of this Act the person who was tried by court-martial appears before the Appeal Court, the Court shall direct the payment by the Secretary of State of such sums as appear to them reasonably sufficient to compensate that person for any expenses properly incurred by him for the purposes of his appearance.

(2) In any such case the Appeal Court may, if they think fit, also direct the payment by the Secretary of State of such sums as appear to them reasonably sufficient to compensate the person who was tried by court-martial for any expenses properly incurred by him in carrying on his defence before the court-martial or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was tried.

Supplementary

Powers under Part II which are exercisable by single judge.

36.—(1) The following powers of the Appeal Court under this Part of this Act, that is to say the power—

- (a) to give a direction under section 8(3) that a person be treated as not having lost his right of appeal ;
- (b) to give leave to appeal ;
- (c) to extend the period within which an application for leave to appeal must be lodged ;
- (d) to make orders under section 20(2) and discharge or revoke such orders ;
- (e) to allow an appellant to be present at any proceedings ;
- (f) to order witnesses to attend for examination ; and
- (g) to make an order under section 32 for the payment of costs,

may be exercised by any judge of the Appeal Court in the same manner as they may be exercised by the Court, and subject to the same provisions.

(2) If the judge refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in subsection (1) above (other than the power to make an order for the payment of costs), the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined by the Appeal Court as duly constituted for the hearing and determination of appeals.

Documents relating to trial to be furnished for appeal.

37.—(1) In the case of every appeal or application for leave to appeal to the Appeal Court from a naval court-martial it shall be the duty of the Defence Council to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial and any petition presented by the person tried thereby.

PART II

(2) In the case of every appeal or application for leave to appeal from an army or air force court-martial, it shall be the duty of the Judge Advocate General to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the finding of the court-martial in pursuance of section 109 of the Army Act or section 109 of the Air Force Act, as the case may be), the proceedings with respect to the confirmation of the finding and sentence of the court-martial and any petition presented by the person tried thereby.

38. It shall be the duty of the Defence Council to undertake Defence of the defence of any appeal to the Appeal Court under this Part appeals. of this Act.

PART III

APPEAL FROM COURTS-MARTIAL APPEAL COURT TO
HOUSE OF LORDS

39.—(1) An appeal lies to the House of Lords, at the instance of the accused or the Defence Council, from any decision of the Appeal Court on an appeal to them under Part II of this Act, whether given by them when sitting within or outside the United Kingdom. Right of appeal.

(2) The appeal lies only with the leave of the Appeal Court or the House of Lords; and such leave shall not be granted unless it is certified by the Appeal Court that a point of law of general public importance is involved in the decision and it appears to the Court or the House of Lords, as the case may be, that the point is one which ought to be considered by that House.

40.—(1) An application to the Appeal Court for leave to appeal to the House of Lords shall be made within the period of fourteen days beginning with the date of the decision of the Court; and an application to the House of Lords for leave shall be made within the period of fourteen days beginning with the date on which the application is refused by the Appeal Court. Application for leave to appeal.

(2) The House of Lords or the Appeal Court may, upon application made at any time by the accused, extend the time within which an application may be made by him to that House or the Court under subsection (1) above.

(3) An appeal shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for purposes

PART III

of this Part of this Act an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

Hearing
and disposal
of appeal.

1876 c. 59.

41.—(1) An appeal under this Part of this Act shall not be heard and determined by the House of Lords unless there are present not less than three of the persons designated Lords of Appeal by section 5 of the Appellate Jurisdiction Act 1876.

(2) Any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of the said Act of 1876 may direct that the decision of that committee shall be taken on behalf of the House.

(3) For the purpose of disposing of an appeal under this Part of this Act, the House of Lords may exercise any powers of the Appeal Court or may remit the case to the Court.

Bail.

42.—(1) When a person to whom this section applies appeals, or applies for leave to appeal, to the House of Lords from a decision of the Appeal Court, the Court shall have power to grant him bail pending the appeal.

(2) This section applies to any person who—

(a) not being subject to the Naval Discipline Act, nor to military law nor to air force law, is liable by virtue of that Act, or the Army Act or the Air Force Act, to be tried as if he were so subject; or

(b) is subject to the Naval Discipline Act by virtue only of section 119(1) of it (sentenced offenders).

Detention of
accused.

43.—(1) Where the accused would, but for the decision of the Appeal Court, be liable to be detained, and immediately after that decision the Defence Council are granted, or give notice that they intend to apply for, leave to appeal, the Appeal Court may make an order providing for the detention of the accused or directing that he shall not be released except on bail (which may, in the case of a person to whom section 42 of this Act applies, be granted as under that section) so long as any appeal to the House of Lords is pending.

(2) An order under this section shall (unless the appeal has been previously disposed of) cease to have effect at the expiration of the period for which the accused would have been liable to be detained but for the decision of the Appeal Court.

(3) An order made under this section for the detention of a person who, but for the decision of the Appeal Court, would be liable to be detained in pursuance of an order or direction

under United Kingdom mental health legislation shall be an order authorising his continued detention in pursuance of that order or direction; and the relevant provisions of that legislation with respect to persons liable to be detained thereunder (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

PART III

(4) The legislation referred to in subsection (3) above is Part 1959 c. 72. V of the Mental Health Act 1959, the Mental Health (Scotland) 1960 c. 61. Act 1960 and the Mental Health Act (Northern Ireland) 1961. 1961 c. 15 (N.I.)

(5) Where the Appeal Court has power to make an order under this section, and either no such order is made or the accused is released or discharged by virtue of subsection (2) or (3) above before the appeal is disposed of, the accused shall not be liable to be again detained as a result of the decision of the House of Lords on the appeal.

44. Where the accused is detained pending an appeal from the Appeal Court to the House of Lords, he shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto unless an order of the House of Lords authorises him to be present, or that House or the Appeal Court give him leave to be present. Presence of accused at hearing.

45.—(1) Subject to this section, any sentence passed on an appeal from the Appeal Court to the House of Lords in substitution for another sentence shall, unless the House of Lords or the Appeal Court otherwise direct, begin to run from the time when that other sentence would have begun to run. Effect of appeal on sentence.

(2) Where under this Part of this Act a person subject to a sentence is admitted to bail pending an appeal, the time during which he is at large after being so admitted shall be disregarded in computing the term of his sentence.

46.—(1) Where the operation of an order for the restitution of property, being an order made under— Restitution of property.

section 76 of the Naval Discipline Act;

section 138 of the Army Act; or

section 138 of the Air Force Act,

(which sections apply when persons are convicted by court-martial of theft or other offences against property), is suspended until the determination of an appeal to the Appeal Court, the following subsections apply.

PART III

(2) If the conviction is not quashed on appeal, the operation of the order shall continue to be suspended—

(a) in any case, until the expiration of the time within which an application for leave to appeal to the House of Lords may be made (disregarding any extension of time which may be granted under section 40 of this Act); and

(b) if such an application is made within that time, so long as the appeal to the House of Lords is pending.

(3) Where the operation of an order is suspended under this section,—

(a) the order shall not take effect if the conviction is quashed on appeal to the House of Lords;

(b) such steps shall be taken for the safe custody of the property in question during the period during which the operation of the order is suspended as may be prescribed.

(4) Where by reason of the quashing by the Appeal Court of a person's conviction an order to which subsection (1) of this section applies does not take effect and on appeal to the House of Lords the conviction is restored by the House, the House may make any order for the restitution of property which could be made on his conviction by the court-martial which convicted him or, in the case of an appeal relating to a conviction under the Naval Discipline Act, by the Defence Council.

Costs.

47.—(1) Where the Appeal Court or the House of Lords dismiss an application for leave to appeal to that House and the application was made by the Secretary of State, the Court or the House may direct the payment by the Secretary of State of such sums as appear to the Court or the House to be reasonably sufficient to compensate the accused for any expenses properly incurred by him in resisting the application.

(2) Where the Appeal Court or the House of Lords dismiss an application for leave to appeal to that House and the application was made by the accused, the Court or the House may make the like order as may be made by the Court under section 32(1) of this Act where they dismiss an application for leave to appeal to the Court; and any order made under this subsection may be enforced in the manner described in section 32(2) of this Act.

(3) Where an appeal from the Appeal Court to the House of Lords is determined in favour of the accused, the House of Lords may, if they think fit, direct the payment by the Secretary of State of such sums as appear to the House to be reasonably

sufficient to compensate the accused for any expenses properly incurred by him in the case up to and including the appeal, that is to say—

PART III

- (a) in the appeal to the House of Lords ;
- (b) in the prosecution of his appeal to the Appeal Court (including any proceedings preliminary or incidental thereto) ; and
- (c) in carrying on his defence before the court-martial by which he was convicted or found not guilty by reason of insanity or unfit to stand his trial, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted or so found, as the case may be.

(4) Except as provided by the foregoing provisions of this section, no costs shall be allowed on the hearing or determination of an appeal from the Appeal Court to the House of Lords, or of any proceedings preliminary or incidental to such an appeal.

48. The following powers of the Appeal Court under this Part of this Act, that is to say the power—

Powers under Part III which are exercisable by single judge.

- (a) to extend the time for making an application for leave to appeal ;
- (b) to make an order for or in relation to bail ; and
- (c) to give leave to be present at the hearing of any proceedings preliminary or incidental to an appeal,

may be exercised by any judge of the Court ; but where the judge refuses an application to exercise any of the said powers, the applicant shall be entitled to have the application determined by the Appeal Court.

PART IV

MISCELLANEOUS AND GENERAL

49.—(1) Rules of court made by the Lord Chief Justice with the approval of the Lord Chancellor may provide for regulating the procedure and practice to be followed in the Appeal Court and for any other matters which by this Act are expressed to be subjects for rules of court.

Rules of court.

(2) Rules of court made for the purposes of any provision of this Act may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to the Lord Chief Justice

PART IV

to be necessary or expedient for the purposes of that provision to provide.

1946 c. 36.

(3) The power under this section to make rules of court shall be exercisable by statutory instrument, and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing rules of court made under this section in like manner as if the rules had been made by a Minister of the Crown.

(4) A statutory instrument containing rules of court made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Duties of registrar with respect to appeals etc.

50.—(1) The registrar shall take all necessary steps for obtaining the determination of an appeal or application under this Act, and shall obtain and lay before the Appeal Court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial by which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) The registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Act to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit.

(3) Every person in charge of such a place as is referred to in subsection (2) above shall cause the said forms and instructions to be placed at the disposal of persons confined in that place who wish to apply for leave to appeal to the Appeal Court, or from that Court to the House of Lords.

Legal aid.

51.—(1) The Appeal Court may at any time assign to an appellant under Part II of this Act a solicitor and counsel, or counsel only, in any appeal under that Part or proceedings preliminary or incidental thereto in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid and has not sufficient means to enable him to obtain that aid.

(2) In the case of an appeal to the House of Lords under Part III of this Act, subsection (1) of this section shall apply to the defendant in the proceedings from which the appeal lies (whether he is appellant or respondent in the appeal) as it applies to the appellant in an appeal under Part II of this Act.

(3) The power of the Appeal Court to grant legal aid under this section may be exercised by any judge of the Court in the same manner as it may be exercised by the Court, and subject to the same provisions; but if the judge refuses an application on the part of a person to exercise the said power

in his favour, the person shall, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, be entitled to have the application determined by the Appeal Court as duly constituted for the hearing and determination of appeals.

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(4) If, on a question of granting a person legal aid under this section, there is a doubt whether it is desirable in the interests of justice that he should have legal aid or whether he has sufficient means to enable him to obtain it, the doubt shall be resolved in favour of granting him legal aid.

(5) Before a person is granted legal aid under this section he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required to do so or not) knowingly makes any false statement or false representation he shall be liable on summary conviction to a fine not exceeding £100 or to imprisonment for a term of not more than four months or to both.

(6) The registrar shall report to the Appeal Court or to a judge thereof any case in which it appears to him that, although no application has been made for the purpose, legal aid ought to be granted to a person under this section.

(7) A solicitor or counsel assigned to a person under this section shall be entitled to be paid by the Secretary of State such sums in respect of fees and disbursements as may be prescribed by regulations made by the Lord Chancellor.

The power of the Lord Chancellor under this subsection 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.

(8) This section is hereby repealed as from the day appointed under section 106(5) of the Criminal Justice Act 1967 for the coming into force of Part IV of that Act (new provisions as to legal aid in criminal cases, including court-martial proceedings); and section 38(2) of the Interpretation Act 1889 shall apply to this repeal as if this section had been repealed by another Act.

1967 c. 80.

1889 c. 63.

52. Rules or regulations made under—

Removal of prisoners.

(a) section 79 or 82 of the Naval Discipline Act ;

(b) section 121 or 122 of the Army Act ;

(c) section 121 or 122 of the Air Force Act ;

(d) section 47 of the Prison Act 1952 ;

1952 c. 52.

(e) section 35 of the Prisons (Scotland) Act 1952 ; or

1952 c. 61.

(f) section 13 of the Prison Act (Northern Ireland) 1953,

1953 c. 18 (N.I.).

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may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for purposes of Part II or Part III of this Act or any place to which the Appeal Court or a judge of it may order him to be taken for the purpose of any proceedings of the Court.

Exclusion of appeals etc. in case of certain Commonwealth naval courts-martial.

53.—(1) Part II of this Act confers no right of appeal against the conviction by a naval court-martial of a person who, at the time of the conviction, was borne on the books of a ship of the Royal Australian Navy or the Royal New Zealand Navy, not being a ship which at that time was placed at the disposal of the Defence Council.

(2) Section 34 of this Act does not apply in the case of such a conviction as is mentioned in subsection (1) of this section.

Saving for prerogative.

54.—(1) Nothing in this Act is to be taken as affecting any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to quash a conviction by court-martial, so far as regards the exercise thereof at a time before whichever of the following two events first occurs—

(a) the receipt by the registrar of an application for leave to appeal under Part II of this Act against the conviction; or

(b) the receipt by him of particulars of such an application furnished in pursuance of section 9 of this Act.

(2) Nothing in this Act is to be taken as affecting Her Majesty's Royal prerogative of mercy.

Modification of provisions in Parts II and III for capital cases.

55. Schedule 2 to this Act has effect so as to modify certain provisions of this Act in relation to cases involving sentence of death; and any provision of this Act which is referred to in that Schedule and modified or restricted thereby shall have effect subject to the Schedule.

Modification for protected prisoners of war.
1957 c. 52.

56. Schedule 3 to this Act has effect so as to modify certain provisions of this Act in relation to protected prisoners of war within the meaning of the Geneva Conventions Act 1957; and any provision of this Act which is referred to in that Schedule and modified or restricted thereby shall have effect subject to the Schedule.

Interpretation.
1955 c. 19.

57.—(1) In this Act, unless the context otherwise requires,—
“the Air Force Act” means the Air Force Act 1955;
“air force court-martial” means a court-martial under the Air Force Act;

- “appellant” includes a person who has been tried by court-martial and wishes to appeal under Part II of this Act to the Appeal Court; PART IV
- “the Army Act” means the Army Act 1955; 1955 c. 18.
- “army court-martial” means a court-martial under the Army Act;
- “court-martial” means a naval, army or air force court-martial;
- “enactment” includes an enactment of the Parliament of Northern Ireland;
- “the Judge Advocate General” means the Advocate General or Judge Martial of all Her Majesty’s regular, auxiliary and reserve land and air forces;
- “the Lord Chief Justice” means the Lord Chief Justice of England;
- “the Naval Discipline Act” means the Naval Discipline Act 1957; 1957 c. 53.
- “naval court-martial” means a court-martial under the Naval Discipline Act, and includes a disciplinary court;
- “prescribed” means prescribed by rules of court; and
- “the registrar” means the registrar of the Appeal Court.

(2) Where in connection with any proceedings or powers of the Appeal Court on appeal a provision of this Act refers to “the relevant Service Act”, it is to be taken as referring to the Act under which the appellant was tried by court-martial, that is to say the Naval Discipline Act, the Army Act or the Air Force Act, as the case may be.

(3) In Part III of this Act “the accused” means, in relation to an appeal from the Appeal Court to the House of Lords, the person who was the accused in the court-martial proceedings from which the appeal lay to the Appeal Court.

(4) Any reference in this Act to another enactment is a reference thereto as amended by or under any other enactment, including this Act.

(5) Any reference in this Act to an enactment of the Parliament of Northern Ireland includes a reference to an enactment corresponding thereto and for the time being in force in Northern Ireland.

58. The enactments specified in Schedule 4 to this Act shall be amended as shown in that Schedule. Consequential amendment of enactments.

59. The transitional provisions set out in Schedule 5 to this Act shall have effect. Transitional provisions.

60. The enactments specified in the second column of Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule. Repeals.

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Short title and
commence-
ment.
1967 c. 80.

61.—(1) This Act may be cited as the Courts-Martial (Appeals) Act 1968.

(2) This Act shall come into force on the day appointed under section 106(5) of the Criminal Justice Act 1967 for the coming into force of section 98 of that Act.

SCHEDULES

SCHEDULE 1

Section 20.

PROVISIONS AS TO RETRIAL

PART I

NAVY

1. On the retrial of any person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—

- (a) by agreement between the prosecution and the defence ; or
- (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,

and may be so read without further proof if it is produced from the custody of the Defence Council.

2. Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the Naval Discipline Act, not being a sentence of greater severity than that passed on the original conviction.

PART II

ARMY

3. On the retrial of a person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—

- (a) by agreement between the prosecution and the defence ;
or
- (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,

and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 200 of the Army Act.

4. Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the Army Act, not being a sentence of greater severity than that passed on the original conviction.

SCH. 1

PART III

AIR FORCE

5. On the retrial of a person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—

- (a) by agreement between the prosecution and the defence; or
- (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,

and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 200 of the Air Force Act.

6. Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the Air Force Act, not being a sentence of greater severity than that passed on the original conviction.

PART IV

PROVISION APPLYING TO ALL THREE SERVICES

7. Where a person authorised under section 19 of this Act to be retried is convicted on retrial and sentenced to imprisonment or detention, there shall be taken into account in calculating the period for which he is liable to imprisonment or to be detained in pursuance of that sentence—

- (a) any time before the original conviction was quashed which would have been taken into account in calculating the period for which he would have been liable to be imprisoned or detained in pursuance of a sentence of imprisonment or detention imposed at the original trial; and
- (b) any time after the quashing of his original conviction which he has spent under close arrest awaiting retrial.

Section 55.

SCHEDULE 2

PROCEDURAL AND OTHER MODIFICATIONS FOR CAPITAL CASES

Modifications of Part II

1.—(1) In the case of a conviction involving sentence of death, the right of appeal conferred by section 8(1) of this Act on the person convicted shall be exercisable without his being required to present a petition to the Defence Council; and accordingly in such a case subsection (2) of that section shall not apply.

(2) In the case of such a conviction, the power of the Appeal Court under section 9(3) of this Act to extend the period within which an application for leave to appeal must be lodged shall not be exercisable.

2.—(1) The following shall apply where a conviction by court-martial involves sentence of death.

SCH. 2

(2) The sentence shall not in any case be executed until the expiration of the period for appealing under Part II of this Act (that is to say the period prescribed under section 9 as the period within which an application for leave to appeal must be lodged).

(3) Subject to the following paragraph, if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused, or it is withdrawn, or the appeal is determined or abandoned.

3.—(1) Where sentence of death passed on a person on active service by an army or air force court-martial is confirmed, and the authority confirming the sentence certifies that it is essential in the interests of discipline and for the purpose of securing the safety of the force with which that person is present that the sentence should be carried out forthwith, paragraph 2 above shall not apply to the sentence.

(2) In sub-paragraph (1) above the expression “on active service”—

(a) in relation to a person subject to military law, has the meaning assigned to it by section 224 of the Army Act ; and

(b) in relation to a person subject to the Air Force Act, has the meaning assigned to it by section 222 of that Act ;

and a person who is deemed for the purposes of either of those Acts to be on active service shall be deemed also for the purposes of this paragraph to be on active service.

4. Any appeal to the Appeal Court against a conviction involving sentence of death and any application for leave to appeal to the Court against any such conviction shall be heard and determined with as much expedition as practicable.

5. The Appeal Court shall not have power, by virtue of section 22 of this Act, to impose sentence of death ; and where apart from this paragraph a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

Modifications of Part III

6. In a case involving sentence of death the power of the House of Lords or the Court under section 40 of this Act to extend the time within which an application by the accused for leave to appeal may be made under that section shall not be exercisable.

7.—(1) Where, in a case involving sentence of death, an appeal to the Appeal Court is dismissed, the sentence shall not in any case be executed until after the expiration of the time within which an application for leave to appeal to the House of Lords may be made ; and, if such an application is duly made, the sentence shall not be executed while that application, and any appeal for which leave is granted thereon, is pending.

SCH. 2 (2) In such a case, any application for leave to appeal to the House of Lords and any appeal for which leave is granted on such an application, shall be heard and determined with as much expedition as is practicable.

Section 56.

SCHEDULE 3

MODIFICATIONS IN RELATION TO PRISONERS OF WAR

1957 c. 52.

1. In this Schedule "protected prisoner of war" means a person protected by the convention set out in Schedule 3 to the Geneva Conventions Act 1957; and "Royal Warrant" means a Royal Warrant governing the maintenance of discipline among prisoners of war.

2. In relation to a protected prisoner of war, this Act shall have effect as if the expression "army court-martial" included a prisoner of war court-martial constituted under a Royal Warrant.

3. In relation to a protected prisoner of war this Act shall have effect as if a reference to a Royal Warrant were substituted—

- (a) for any reference in sections 13, 14 or 15 to the relevant Service Act;
- (b) for the reference in section 16(2) to the relevant Service enactment;
- (c) for the reference in section 17(2)(b) to the Army Act; and
- (d) for the reference in section 37(2) to the enactment relating to the revision of the finding or sentence of an army court-martial.

4. Paragraph 3(1) of Schedule 2 to this Act shall not have effect in relation to a protected prisoner of war.

Section 58.

SCHEDULE 4

CONSEQUENTIAL AMENDMENT OF ENACTMENTS

THE ARMY ACT 1955 (c. 18)

Section 113.

In subsection (3), for the words "paragraph (b) of subsection (3) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 9(4)(b) of the Courts-Martial (Appeals) Act 1968".

After section 113 there shall be inserted the following section:—

"Power of reviewing authority to authorise retrial. 113A.—(1) The following provisions of the Courts-Martial (Appeals) Act 1968, that is to say,—
 section 19,
 section 20, and
 Parts II and IV of Schedule 1,

(power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by Her Majesty or the Defence Council under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the Courts-Martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents."

Section 118

In subsection (1), for the words "subsection (7) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 11(2) of the Courts-Martial (Appeals) Act 1968".

Section 138

In subsection (9), for the words (in paragraph (a)) "Part I of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "Part II of the Courts-Martial (Appeals) Act 1968"; and for the words (in paragraph (e)) "the said Act of 1951" there shall be substituted the words "Part II of the said Act of 1968".

THE AIR FORCE ACT 1955 (c. 19)

Section 113

In subsection (3), for the words "paragraph (b) of subsection (3) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 9(4)(b) of the Courts-Martial (Appeals) Act 1968".

After section 113 there shall be inserted the following section :—

" Power of reviewing authority to authorise retrial. 113A.—(1) The following provisions of the Courts-Martial (Appeals) Act 1968, that is to say,—
section 19,
section 20, and
Parts III and IV of Schedule 1,

(power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by Her Majesty or the Defence Council under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the Courts-Martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents."

SCH. 4 *Section 118*

In subsection (1), for the words "subsection (7) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 11(2) of the Courts-Martial (Appeals) Act 1968".

Section 138

In subsection (9), for the words (in paragraph (a)) "Part I of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "Part II of the Courts-Martial (Appeals) Act 1968"; and for the words (in paragraph (e)) "the said Act of 1951" there shall be substituted the words "Part II of the said Act of 1968".

THE NAVAL DISCIPLINE ACT 1957 (c. 53)

Section 70

In subsection (3), for the words "paragraph (b) of subsection (3) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 9(4)(b) of the Courts-Martial (Appeals) Act 1968".

Section 71

At the end of the section there shall be inserted the following section—

"Power to authorise retrial. 71A.—(1) The following provisions of the Courts-Martial (Appeals) Act 1968, that is to say,—

section 19,
section 20, and
Parts I and IV of Schedule 1,

(power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by the Defence Council under section 70 of this Act of the findings of a court-martial as they apply in relation to an appeal to the Courts-Martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents."

Section 77

In subsection (1), for the words (in paragraph (a)) "Part I of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "Part II of the Courts-Martial (Appeals) Act 1968".

In subsection (3), for the words "the said Act of 1951" there shall be substituted the words "Part II of the said Act of 1968".

Section 85

In subsection (1), for the words "subsection (7) of section 4 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 11(2) of the Courts-Martial (Appeals) Act 1968".

THE MENTAL HEALTH ACT 1959 (c. 72)

SCH. 4

Section 71

In subsection (3), for the words "subsection (4) of section 6 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 16 of the Courts-Martial (Appeals) Act 1968".

THE MENTAL HEALTH (SCOTLAND) ACT 1960 (c. 61)

Section 64

In subsection (2), for the words "subsection (4) of section 6 of the Courts-Martial (Appeals) Act 1951" there shall be substituted the words "section 16 of the Courts-Martial (Appeals) Act 1968".

THE MENTAL HEALTH ACT (NORTHERN IRELAND) 1961 (c. 15)

Section 57

In subsection (1), for paragraph (a) there shall be substituted the following paragraph—

"(a) section 16 of the Courts-Martial (Appeals) Act 1968".

SCHEDULE 5

Section 59.

TRANSITIONAL PROVISIONS

1.—(1) Any right of appeal subsisting immediately before the commencement of this Act by virtue of an enactment repealed thereby shall after that commencement be treated as subsisting by virtue of the corresponding enactment in this Act.

(2) Any appeal or application pending before the said commencement under an enactment so repealed may be presented and disposed of in accordance with the provisions of this Act corresponding to those in force immediately before the said commencement and applicable to the appeal or application.

2.—(1) In so far as any order, appointment, rule or regulation made, petition presented, direction given or other thing done under an enactment repealed by this Act could have been made, presented, given or done under a corresponding provision of this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made, presented, given or done under that corresponding provision.

(2) Any document referring to an enactment repealed by this Act shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.

3. The mention of particular matters in this Schedule shall not be taken to affect the general application of section 38 of the Interpretation Act 1889 with regard to the effect of repeals. 1880 c. 63.

Section 60.

SCHEDULE 6

REPEALS

Chapter	Short Title	Extent of Repeal
14 & 15 Geo. 6. c. 46.	The Courts-Martial (Appeals) Act 1951.	Part I (that is to say, sections 1 to 27).
3 & 4 Eliz. 2. c. 20.	The Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955.	In Schedule 2, paragraph 15(2) to (5).
5 & 6 Eliz. 2. c. 52.	The Geneva Conventions Act 1957.	Section 4(3).
5 & 6 Eliz. 2. c. 53.	The Naval Discipline Act 1957.	In Schedule 5, the entry relating to the Courts-Martial (Appeals) Act 1951.
8 & 9 Eliz. 2. c. 65.	The Administration of Justice Act 1960.	Section 10; in section 20(2) the words from the beginning to "such appeals"; Schedule 1 and so much of Schedule 3 as amends the Courts-Martial (Appeals) Act 1951.
9 & 10 Eliz. 2. c. 52.	The Army and Air Force Act 1961.	In Schedule 2, the entry relating to the Courts-Martial (Appeals) Act 1951.
1964 c. 43.	The Criminal Appeal Act 1964.	Section 4; section 6(3) and, in section 6(5) the words "except so far as it relates to appeals from and retrials by courts-martial"; Schedule 1; and so much of Schedule 2 as amends the Courts-Martial (Appeals) Act 1951.
1964 c. 84.	The Criminal Procedure (Insanity) Act 1964.	In section 7, the references to the Courts-Martial (Appeals) Act 1951 and Part III of Schedule 2 to the Act; and Part III of that Schedule.
1966 c. 31.	The Criminal Appeal Act 1966.	Section 9(1); in section 12(2) the definition of "the 1951 Act"; section 12(4); in section 12(7) the words "appeals from, and"; and Part I of Schedule 1.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 4, paragraphs 16 to 19, 31, 32 and 40.

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