



Armed Forces Act 1971

1971 CHAPTER 33

PART III

REVISION OF PROCEDURAL PROVISIONS, AND OTHER MATTERS RELATING TO SERVICE OFFENCES AND PUNISHMENTS

44 Arrest by civil authorities

- (1) Section 103 of the Naval Discipline Act 1957 (arrest under warrants of naval authorities) shall be amended by adding the following subsection at the end:—

“(4) A certificate under subsection (3) above shall be in such form as may be prescribed by regulations made by a Secretary of State by statutory instrument and shall for the purpose of this Act be evidence of the matters stated therein.”

- (2) The following provisions (being provisions corresponding to section 103 of the Naval Discipline Act 1957 (as amended by subsection (1) above) and section 104 of that Act) shall be inserted in the Army Act 1955 after section 190, and also (but modified for that purpose by the substitution of " air-force custody " for " military custody " and " air forces " for " military forces " throughout subsection (3) of the provision numbered 190A) in the Air Force Act 1955 after section 190:—

“Further powers of arrest of civil authorities

190A Arrest under warrants of commanding officers

- (1) A warrant for the arrest of a person suspected of any offence under Part II of this Act may be issued by his commanding officer (determined for the purposes of this subsection as if that person had been charged with the offence).
- (2) A warrant issued under this section shall be addressed to an officer or officers of police, and shall specify the name of the person for whose arrest it is issued and the offences which he is alleged to have committed; and any such warrant

may be issued in respect of two or more persons alleged to have committed the same offence, or offences of the same class.

- (3) A person arrested under a warrant issued under this section shall as soon as practicable be delivered into military custody; and there shall be handed over with him a certificate signed by the officer of police who causes him to be delivered into military custody stating the fact, date, time and place of arrest, and whether or not the person arrested was at the time of arrest wearing the uniform of any of Her Majesty's military forces.
- (4) A certificate under subsection (3) above shall be in such form as may be prescribed by regulations made by a Secretary of State by statutory instrument and shall for the purposes of this Act be evidence of the matters stated therein.

190B Arrest of persons unlawfully at large.

- (1) A constable may arrest without warrant any person who, having been sentenced under Part II of this Act to imprisonment or detention, is unlawfully at large during the currency of the sentence, and may take him to any place in which he may be required in accordance with law to be detained.
- (2) The provisions of subsections (5) to (7) of section 119 of this Act shall have effect for the purposes of subsection (1) above as they have effect for the purposes of the said section 119.”

45 Exclusion of enactments requiring fiat of Attorney General etc. in connection with proceedings

- (1) The following provision shall be inserted in the Army Act 1955, and also in the Air Force Act 1955, in each case after section 204:—

“204A Exclusion of enactments requiring fiat of Attorney General etc in connection with proceedings.

With the exception of subsections (1) and (3) of section 132 of this Act, no enactment requiring the fiat or consent of the Attorney General or the Director of Public Prosecutions in connection with any proceedings shall have effect in relation to proceedings under this Act.”

- (2) The following provision shall be inserted in the Naval Discipline Act 1957 after section 129:—

“129A Exclusion of enactments requiring fiat of Attorney General etc. in connection with proceedings.

With the exception of section 52(3)(b) of this Act, no enactment requiring the fiat or consent of the Attorney General or the Director of Public Prosecutions in connection with any proceedings shall have effect in relation to proceedings under this Act.”

46 Extension of powers of " higher authority " with respect to army and air-force charges

The following provision shall be substituted for section 80 of the Army Act 1955 (which empowers a higher authority to direct the dismissal of any charge against a non-commissioned officer or soldier which has been referred to the authority with a view to its being tried by court martial, and any charge against an officer or warrant officer which has been submitted to the authority for determination how it is to be proceeded with, but which contains no power for the authority to stay proceedings), and also for section 80 of the Air Force Act 1955 (which is to the like effect):—

“80 Directions by higher authority for dismissal of charges or stay of proceedings.

- (1) Notwithstanding anything in section 78 or 79 of this Act, where a charge has been referred to higher authority with a view to its being tried by court-martial, or has been submitted to higher authority for determination how it is to be proceeded with, that authority may refer the charge back to the commanding officer of the accused with a direction to dismiss the charge or a direction to stay all further proceedings thereon; and the commanding officer shall deal with the charge accordingly.
- (2) The reference back of a charge under subsection (1) above shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.”

47 Amendments as to summary trial for naval offences

Section 49 of the Naval Discipline Act 1957 (summary trial) shall be amended as follows—

- (a) at the end of subsection (2) (which authorises summary trial by commanding officers for any offence triable by court-martial other than an offence punishable by sentence of death) there shall be added the words " or an offence of murder ", and
- (b) in the proviso to subsection (5) (under which an officer to whom the power of summary trial is delegated may not award any punishment other than the minor punishments referred to in section 43(1)(m) of that Act) after the words " other than " there shall be inserted the words " a fine or ".

48 Amendments as to convening or ordering of courts-martial

- (1) Section 86(1) of the Army Act 1955 (under which a general court-martial may be convened by any qualified officer (meaning one not below field rank and exercising command) who is authorised in that behalf by royal warrant, or by any qualified officer under the command of a qualified officer so authorised to whom the latter has delegated his power in accordance with the warrant) shall be amended by substituting, for the words from " or by any qualified officer "to the end, the words " or by any officer to whom a qualified officer so authorised has delegated his power under the warrant, being an officer under the command of the qualified officer and not below the rank of colonel."

- (2) Section 86(1) of the Air Force Act 1955 (which is to the like effect) shall have effect subject to the like amendment, but with the substitution at the end of " group captain " for " colonel ".
- (3) In section 53 of the Naval Discipline Act 1957 (under subsections (1) and (2) of which a court-martial may be ordered by the Defence Council, by any officer of the Royal Navy authorised in that behalf by commission of the Defence Council, or by any officer on whom the command of an officer so authorised has devolved) the following subsection shall be substituted for subsection (3) (which gives limited powers of delegation to authorised officers):—

“(3) Any officer authorised to order courts-martial by commission of the Defence Council, and any officer having the like power by virtue of his being in command of a fleet or squadron formerly under the command of such an officer, may from time to time by commission authorise any officer of the Royal Navy under his command to order courts-martial; and any commission granted by virtue of this subsection shall continue in force until revoked by the officer by whom it was granted, by the officer for the time being having command of the fleet or squadron formerly commanded by that officer, or by the Defence Council.”;

and subsection (4) of the said section 53 (as between two officers empowered to order a court-martial, power of officer of superior rank to prevail) shall cease to have effect.

49 Amendments as to procedure of courts-martial, and evidence in naval disciplinary courts

- (1) The provisions of the Army Act 1955 and the Air Force Act 1955 with respect to Rules of Procedure shall be amended as follows:—
- (a) in section 103(2) of each Act (specific matters for which Rules may make provision), the following paragraph shall be inserted after paragraph (k):—
- “(kk) directing that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a court-martial (whether within or without the United Kingdom) by the authority by whom the court-martial is convened, as well as by the court or a judge within the meaning of that Act;”;
- (b) in section 104(2)(b) of each Act (under which Rules as to the functions of a judge advocate may provide for him to determine questions of law in the absence of the members of a court-martial), after the words " questions of law " there shall be inserted the words " or of law and fact mixed ".
- (2) Section 58 of the Naval Discipline Act 1957 (General Orders as to procedure of courts-martial) shall be amended as follows:—
- (a) in subsection (2) (specific matters for which General Orders may provide), the following paragraph shall be inserted after paragraph (a):—
- “(aa) for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him;”;

- (b) the following subsection shall be substituted for subsection (4) (under which General Orders are to have effect only if approved by Her Majesty in Council in pursuance of a report of the Judicial Committee of the Privy Council, and every Order in Council made for the purposes of that subsection is to be laid before Parliament):—

“(4) The power to make General Orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- (3) Section 6(1) of the Criminal Evidence Act 1898 (which applies that Act to all criminal proceedings, including proceedings in courts-martial) shall be amended by inserting after (the words " courts-martial " the words " under the Army Act 1955 and the Air Force Act 1955, and proceedings in courts-martial and disciplinary courts under the Naval Discipline Act 1957 ".

50 Army and air-force courts-martial: amendments as to revision and confirmation of findings

- (1) Section 109 of the Army Act 1955 and section 109 of the Air Force Act 1955 shall each be amended by inserting the following subsection after subsection (5) (under which a court-martial directed by a confirming officer to revise a finding of guilty may substitute a different sentence, not being one of greater severity than the original sentence, if the court either adheres to the finding or substitutes therefor a different finding of guilty):—

“(5A) The power conferred by subsection (5) above (as limited by the proviso to that subsection) shall also be exercisable by a court-martial notwithstanding that it substitutes a finding of not guilty for the finding, or each of the findings, to which a direction under this section relates if the original findings of the court included one or more findings of guilty to which the direction does not relate.”

- (2) Section 110 of the Army Act 1955 and section 110 of the Air Force Act 1955 shall each be amended by inserting the following subsection after subsection (2) (under which, where a confirming officer does not propose to confirm a finding of guilty and the court-martial could on the charge in question have validly made some other such finding, the confirming officer may, instead of withholding confirmation of the finding, substitute that other finding for it):—

“(2A) Where a court-martial has recorded no finding on one or more charges alternative to a charge on which the court has made a finding of guilty, a confirming officer, if he is of opinion that the court must have been satisfied of the facts necessary to justify a finding of guilty on the alternative charge or, as the case may be, one of the alternative charges, may, instead of withholding confirmation of the finding—

- (a) substitute for the finding a finding of guilty on the alternative charge, and
- (b) substitute for the sentence of the court such sentence as he thinks proper, being in his opinion one which is not of greater severity than that for which it is substituted.”

51 Naval findings and sentences: amendments as to reviewing authorities

Section 1(5) of the Defence (Transfer of Functions) Act 1964 (general provision for discharge of functions of Defence Council by Admiralty Board, Army Board and Air Force Board) shall cease to have effect so far as it relates to the functions of the Defence Council under sections 70 to 72 of the Naval Discipline Act 1957 (review of findings and sentences), and the following subsection shall be added instead at the end of the said section 70:—

“(4) The functions of the Defence Council under this section and sections 71, 71A and 72 below may be discharged by the Admiralty Board or by any officer empowered in that behalf by that Board ; and for the purposes of any enactment (including the provisions of this Act hereinbefore referred to) anything done, and any document purporting to be an order or direction made or given, by the Admiralty Board or by any such officer in or in connection with the discharge of any such functions shall be of the same effect as if done, or as if a document purporting to be an order or direction made or given, by the Defence Council.”

52 Countries for serving of naval sentences of imprisonment and detention

(1) The following provision (being one corresponding to section 127 of the Army Act 1955 and section 127 of the Air Force Act 1955) shall be inserted in the Naval Discipline Act 1957 after section 82:—

“82A Country for service of sentence.

- (1) A person serving in the United Kingdom a sentence of imprisonment or detention awarded under this Act may (in so far as may be specified by or under Naval Detention Quarters Rules) be removed out of the United Kingdom to, but only to—
 - (a) any colony in which he was entered for service in the Royal Navy, or
 - (b) any place outside the United Kingdom where the ship or naval establishment to which he for the time being belongs is situated.
- (2) Subject to the following provisions of this section, a person sentenced by a court-martial held outside the United Kingdom to imprisonment or detention for a term exceeding twelve months shall as soon as practicable be removed to the United Kingdom.
- (3) Subsection (2) above shall not apply in relation to any person belonging to a class of persons specified by or under Naval Detention Quarters Rules as persons whose removal to the United Kingdom would, for reasons of climate, place of birth or place of entry in the Royal Navy, or for any other reason, not be beneficial.
- (4) Where a person has been sentenced by a court-martial held outside the United Kingdom. to imprisonment or detention for a term exceeding twelve months, the Defence Council may, notwithstanding anything in subsection (2) above, direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding two years, as may be specified in the direction ; and in determining whether or not to exercise the power conferred by this subsection, the Defence Council shall have regard to any recommendation in that behalf made by the court-martial.

- (5) Any direction under subsection (4) above may at any time be revoked by the Defence Council or superseded by a subsequent direction thereunder.
- (6) In ascertaining at any time for the purposes of this section the nature or length of any sentence, regard shall be had to any commutation or remission of the sentence previously directed.”
- (2) Section 125(2) of the Naval Discipline Act 1957 (under which, except in the provisions there specified, references in that Act to the United Kingdom include references to the Channel Islands and the Isle of Man) shall be amended by substituting for the words "section eighty" the words "sections 80 and 82A", and by adding at the end the words "and in the said section 82A, the reference to a colony shall be construed as including a reference to the Channel Islands and the Isle of Man".

53 Commencement of naval sentences of imprisonment and detention

Section 85(3) of the Naval Discipline Act 1957 (under which a committal order in respect of a sentence of imprisonment or detention may, if no place in which the sentence may be served is available where the offender is tried, direct that the term of the sentence shall run not from the date of the sentence but from the date on which the offender reaches the place specified in the order) shall cease to have effect.

54 Remission of sentences of imprisonment and detention

- (1) Section 114 of the Army Act 1955 and section 114 of the Air Force Act 1955 shall each be amended as follows—
- (a) in subsection (1) (reconsideration of sentences of imprisonment and detention by officers authorised by Defence Council: power to remit, but only for good conduct), for all the words after "Defence Council" there shall be substituted the words " ; and an officer reconsidering any sentence by virtue of this subsection may by order remit the sentence in whole or in part. ", and
- (b) subsection (2) (duty to reconsider periodically) shall be omitted.
- (2) Section 120 of the Army Act 1955 and section 120 of the Air Force Act 1955 (suspension of sentences of imprisonment and detention) shall each be amended by adding at the end of subsection (7) (person whose sentence suspended to be released from custody) the words " and a sentence which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect " ; and the following subsection shall be added to section 92 of the Naval Discipline Act 1957 after subsection (2) (under which suspended sentences are to be reconsidered periodically, and may on reconsideration be remitted for good conduct):—
- “(3) Without prejudice to subsection (2) above, a sentence of imprisonment or detention which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect.”

55 Amendment of Naval Discipline Act 1957 as respects effect of taking offences into consideration

Section 129 of the Naval Discipline Act 1957 (jurisdiction of civil courts) shall be amended as follows—

- (a) in subsection (1) (under which, where a person is acquitted or convicted of an offence by a court-martial or disciplinary court or on summary trial, a civil court is debarred from trying him for the same, or substantially the same, offence), immediately before the words " a civil court" there shall be inserted the words " or has had an offence committed by him taken into consideration by a court-martial or disciplinary court in sentencing him ", and
- (b) in subsection (2) (under which, where a person is acquitted or convicted of an offence by a civil court, wherever situated, he cannot be tried under the Act for the same, or substantially the same, offence, and a person so convicted is not to lose any seniority, privilege etc. by reason of the conviction or the offence), after the words " wherever situated " there shall be inserted the words " or has had an offence committed by him taken into consideration when being sentenced by a civil court in the United Kingdom ", and for the words " so convicted " there shall be substituted the words " who has been so convicted or has had an offence committed by him so taken into consideration ".

56 Amendments as to deserters and absentees without leave

- (1) Section 186 of the Army Act 1955 and section 186 of the Air Force Act 1955 (which confer special powers of arrest in respect of persons suspected of desertion or absence without leave, and, by subsection (4), require any person arrested under those powers to be brought before a court of summary jurisdiction) shall each be amended by inserting the following subsection after the said subsection (4):—

“(4A) A person shall also be brought before a court of summary jurisdiction if, having been brought before such a court by virtue of subsection (4) above and discharged by that court by virtue of section 187(3) below—

- (a) he is subsequently arrested as an alleged or suspected deserter or absentee without leave under section 74 of this Act, or under a warrant issued under section 190A thereof, and
- (b) the question whether he is in fact in desertion or absent without leave raises any issue which was investigated by the court discharging him, and
- (c) he does not admit that he is in desertion or absent without leave to the person arresting him under the said section 74 or, as the case may be, to the person into whose custody he is delivered pursuant to the said section 190A.

and the like subsection shall also be inserted in section 105 of the Naval Discipline Act 1957 after subsection (4), but modified for that purpose by the substitution of " 109(3)(b) "; for "187(3)", of "45" for "74" (twice), and of "103" for " 190A " (twice).”

- (2) The following subsection shall be inserted after subsection (4) of section 187 of the Army Act 1955 (proceedings where person brought before court of summary jurisdiction as illegally absent), and also (but modified for that purpose by the substitution of " regular air force " for " regular forces ") after subsection (4) of section 187 of the Air Force Act 1955:—

“(4A) For the purposes of any proceedings under this section, a certificate which states that a person is a member of, and illegally absent from, the regular forces, and purports to be signed by an officer who, if that person were charged with an offence, would be either his commanding officer or authorised to act as his appropriate superior authority, shall be evidence of the matters so stated.”

- (3) Section 189(3) of the Army Act 1955 and section 189(3) of the Air Force Act 1955 (certain certificates of arrest or surrender of deserters and absentees to be evidence of matters therein stated in proceedings for offences under sections 37 and 38) shall each be amended by inserting the following paragraph after paragraph (a):—

“(aa) where the proceedings are against a person who has surrendered himself to a consular officer, a certificate purporting to be signed by that officer and stating the fact, date, time and place of surrender shall be evidence of the matters stated in the certificate ;”.

57 Addition to Naval Discipline Act 1957 of provisions as to proof of proceedings

- (1) The following provisions (being provisions corresponding to sections 199 and 200 of the Army Act 1955 and the Air Force Act 1955) shall be inserted in the Naval Discipline Act 1957 after the provision inserted therein as section 129A by section 45(2) of this Act:—

“129B Proof of outcome of civil trial.

- (1) Where a person subject to this Act has been tried before a civil court (whether at the time of the trial he was subject to this Act or not), a certificate signed by the clerk of the court stating all or any of the following matters—
- (a) that the said person has been tried before the court for the offences specified in that certificate,
 - (b) the result of the trial,
 - (c) what judgment or order was given or made by the court,
 - (d) that other offences specified in the certificate were taken into consideration at the trial,
- shall for the purposes of this Act be evidence of the matters stated in the certificate.
- (2) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this section, and shall be paid such fee as may be prescribed by regulations made by a Secretary of State.
- (3) A document purporting to be a certificate under this section and to be signed by the clerk of the court shall, unless the contrary is shown, be deemed such a certificate.
- (4) References in this section to the clerk of the court include references to his deputy, and to any other person having the custody of the records of the court.

129C Evidence of proceedings of court-martial.

- (1) The original proceedings of a court-martial purporting to be signed by the judge advocate appointed for the purposes of the court and being in the custody of a Secretary of State or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.
- (2) A document purporting to be a copy of the original proceedings of a court-martial or any part thereof and to be certified by a Secretary of State or any person authorised by him, or by any other person having the lawful custody

of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal and whether in the United Kingdom or in any colony.”

(2) Paragraph 1 of Schedule 1 to the Courts-Martial (Appeals) Act 1968 (under which, where the record of any evidence given before a naval court-martial may be read as evidence on a retrial, it may be so read without further proof if it is produced from the custody of the Defence Council) shall be amended by substituting for the words " if it is produced from the custody of the Defence Council " the words " 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 129C of the Naval Discipline Act ".

58 Fees for copies of proceedings of army and air-force courts-martial

Section 141(2) of the Army Act 1955 and section 141(2) of the Air Force Act 1955 (under which a person tried by court-martial may obtain a copy of the record of the proceedings of the court on payment therefor at such rate as may be prescribed, meaning prescribed by Rules of Procedure) shall each be amended by substituting for the words " as may be prescribed " the words " as the Judge Advocate General may determine " ; and in section 141(3) of each Act (right of personal representatives etc. to obtain copies), for the words " the prescribed rate " there shall be substituted the words " the rate determined under subsection (2) above ".