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*Changes to legislation: Armed Forces Act 1976 is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 3.

#### ROYAL MARINES

##### **Modifications etc. (not altering text)**

- C1** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### **PART I**

##### ROYAL MARINES—GENERAL

- 1 In paragraph 6 of Schedule 7 to the Army Act 1955 (exclusion of certain provisions of Parts I and II from application to marines) the words “sections fourteen and seventeen” shall cease to have effect.
- 2 For paragraph 19 of that Schedule (deductions from pay) there shall be substituted the following paragraph:—
- “19 Except to the extent that they are applied by paragraph 22 below, section 150 and 151 shall not apply to officers, warrant officers, non-commissioned officers and marines of the Royal Marines, the Royal Marine Forces Volunteer Reserve or the Royal Fleet Reserve.”

#### **PART II**

##### ROYAL MARINES WARRANT OFFICERS

- 3 The following sub-paragraphs shall be inserted after paragraph 5(2) of that Schedule (discharge of marines and transfer to the Royal Fleet Reserve):-
- (2A) Where a marine enlisted in the United Kingdom is, when entitled to be discharged, serving out of the United Kingdom, then—
- (a) if he requires to be discharged in the United Kingdom, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months from his arrival; but
- (b) if at his request he is discharged at the place where he is serving he shall have no claim to be sent to the United Kingdom or elsewhere.
- (2B) A marine who is discharged in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation

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paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.

- (2C) Where a marine, when falling to be transferred to the Royal Fleet Reserve, is serving out of the United Kingdom, he shall be sent to the United Kingdom free of cost with all convenient speed and shall be transferred to the Reserve on his arrival there, or if he consents to his transfer being delayed, within six months from his arrival:

Provided that if he so requests he may be transferred to the Reserve without being required to return to the United Kingdom.

- (2D) A marine who is transferred to the Reserve in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost:

Provided that he shall not be entitled to be conveyed to any place outside the United Kingdom.

- 4 In paragraph 11 of Schedule 6 to the <sup>M1</sup> Air Force Act 1955 (application of Act to members of Royal Marines attached to Royal Air Force) after the words “In relation to officers,” there shall be inserted the words “warrant officers,”.

**Marginal Citations**

**M1** 1955 c. 19.

SCHEDULE 2

Section 4.

QARNNS AND WRNS

**Modifications etc. (not altering text)**

- C2** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 1 For section 54(2) of the <sup>M2</sup> Naval Discipline Act 1957 (officers qualified for appointment as members of courts-martial) there shall be substituted the following subsection:—

“(2) No officer shall be appointed a member of a court-martial except an officer who for a period of not less than 3 years or periods amounting in the aggregate to not less than 3 years has held a commission in any of the armed forces of the Crown or been an officer in Queen Alexandra’s Royal Naval Nursing Service or the Women’s Royal Naval Service or in any reserve of either of those services.”

**Marginal Citations**

**M2** 1957 c. 53.

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- 2 The following subsections shall be substituted for section 111(1) and (2) of that Act (which list certain persons subject to it):—
- “(1) Every officer on the active list, and every rating, of the Royal Navy, Queen Alexandra’s Royal Naval Service is subject to this Act at all times.
- (2) Any officer on any retired or emergency list of officers of the Royal Navy or of Queen Alexandra’s Royal Naval Nursing Service or the Women’s Royal Naval Nursing Service is subject to this Act when ordered on any duty or service for which such an officer is liable, and is so subject from the time appointed to report or attend for that purpose until duly released or discharged.”
- 3 Section 113(3) of that Act (which prevents women members of Her Majesty’s military or air forces attached to Her Majesty’s naval forces being subject to the Act) shall cease to have effect.
- 4 In section 132(5) of that Act (which defines Her Majesty’s naval forces) after the words “Royal Navy” there shall be inserted the words “, Queen Alexandra’s Royal Naval Nursing Service, the Women’s Royal Naval Service,”.

## SCHEDULE 3

Section 6.

### STANDING CIVILIAN COURTS

#### *Interpretation*

- 1 (1) In this Schedule—
- “civilian” means a person who may be tried by a Standing Civilian Court;
- “the court” means a Standing Civilian Court;
- [<sup>F1</sup> “ court administration officer ” has the same meaning as in the <sup>M3</sup> Army Act 1955;
- “ the court administration officer ”, in relation to a civilian, means the court administration officer notified by the prosecuting authority that the civilian is to be tried by the court and includes his successor or any person for the time being exercising his or his successor’s functions;
- “ the higher authority ”, in relation to a civilian, means the higher authority who referred his case to the prosecuting authority; ]
- <sup>F2</sup> . . .
- “prescribed” means prescribed by an order under paragraph 12 below; and
- [<sup>F3</sup> “ the prosecuting authority ”—
- (a) in the case of a civilian to whom Part II of the Army Act 1955 applies, has the same meaning as in that Act;
- (b) in the case of a civilian to whom Part II of the <sup>M4</sup> Air Force Act 1955 applies, has the same meaning as in that Act;]
- “sentence” includes any order made by the court on finding a person guilty.
- (2) Any reference in this Schedule to a provision of the <sup>M5</sup> Army Act 1955 includes a reference to the corresponding provision of the <sup>M6</sup> Air Force Act 1955.

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#### Textual Amendments

- F1** Definitions in Sch. 3 para. 1 inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(2)(a)**; S.I. 1997/304, **art. 2** (with in **art. 3**)
- F2** Definition in Sch. 3 para. 1 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. IV para. 103(2)(b)**, Sch. 7 Pt. I; S.I. 1997/304, **art. 2** (with **art. 3**)
- F3** Definition in Sch. 3 para. 1 inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(2)(c)**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### Marginal Citations

- M3** 1955 c. 18.
- M4** 1955 c. 19.
- M5** 1955 c. 18.
- M6** 1955 c. 19.

#### *Sittings of the Court*

- 2 (1) Subject to sub-paragraphs (2) and (3) below, the court shall sit at such places in its area as the [<sup>F4</sup>court administration] officer may, after consultation with the Judge Advocate General or his deputy, direct.
- (2) The court [<sup>F5</sup>may] adjourn from one such place to another <sup>F6</sup>. . . if it appears to the court expedient in the interests of justice to sit at that other place.
- (3) If the [<sup>F4</sup>court administration] officer thinks it expedient in the interests of justice, he may, after consultation with the Judge Advocate General or his deputy, direct the court to sit at such place outside its area and outside the United Kingdom for such purpose and upon such terms, if any, as he thinks fit.

#### Textual Amendments

- F4** Words in Sch. 3 para. 2(1) and (3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(3)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F5** Word in Sch. 3 para. 2(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(3)(b)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F6** Words in Sch. 3 para. 2(2) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 103(3)(b), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### *Court to sit in public*

- 3 (1) Subject to the provisions of this paragraph, the court shall sit in open court and in the presence of the accused.
- (2) The court may exclude members of the public from the trial of a person under 17 years of age <sup>F7</sup>....
- (3) The court may sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power the court may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statements to be made in the course of the

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proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

- (4) The court may sit in closed court while deliberating on its finding or sentence or during any other deliberation among its members, but finding and sentence shall in all cases be announced in open court and in the presence of the accused.

#### Textual Amendments

- F7** Words in Sch. 3 para. 3(2) repealed (6.12.2006) by Youth Justice and Criminal Evidence Act 1999 (c. 23), s. 68(3)(4), Sch. 6 (with Sch. 7); S.I. 2006/2885, art. 2(b)

#### *Right to court-martial*

- 4 (1) An accused person has a right to elect, before the court commences his trial, that the charges on which he is to be tried shall be tried by court-martial instead of by the court.
- (2) Before the court commences a trial, it shall inform the accused in the prescribed manner of the right conferred by sub-paragraph (1) above, whether or not he has already been informed of it.
- (3) The court shall proceed with the case unless the accused or, if more than one person is jointly charged, any of the accused, exercises the right so conferred.
- (4) If the accused, or any of the accused, exercises that right, the court shall adjourn, and [<sup>F8</sup>shall refer the case to the prosecuting authority].
- <sup>F9</sup>(5) .....

#### Textual Amendments

- F8** Words in Sch. 3 para. 4(4) substituted (1.4.1997) by 1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103(4)(a); S.I. 1997/304, art. 2 (with art. 3)
- F9** Sch. 3 para. 4(5) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 103(4)(b), Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3)

#### *Assessors*

- 5 The function of assessors at a trial shall be to advise the magistrate on matters, other than questions of law, arising at any stage during it.

#### *[<sup>F10</sup> Unfitness to stand trial and insanity*

#### Textual Amendments

- F10** In Sch. 3, crossheading and para. 6 substituted (1.4.1997) by 1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103(5), S.I. 1997/304, art. 2 (with art. 3)

- <sup>F116</sup> (1) Where on a trial by the court the question arises (whether at the instance of the defence or otherwise)—

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- (a) whether the accused is fit to stand trial, or
- (b) where it appears to the court that the accused did the act or made the omission constituting the offence with which he is charged, whether he was insane at the time of the act or omission concerned,

the court shall adjourn the hearing and refer the case to the prosecuting authority.

- (2) For the purposes of this paragraph a person is unfit to stand trial if he is under a disability such that apart from the <sup>M7</sup>Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.]

**Textual Amendments**

**F11** Sch 3 para. 6 substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(5)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**Marginal Citations**

**M7** 1964 c. 84.

*Re-trial in interests of administration of justice*

<sup>F127</sup> .....

**Textual Amendments**

**F12** SCh. 3 para. 7 repealed (1.4.1997) by 1996 c. 46, **ss. 5, 35(2)**, SCh. 1 Pt. IV para. 103(6), Sch. 7 Pt. I; S.I. 1997/304, **art. 2** (with **art. 3**)

*Re-trial where court ceases to be properly constituted*

- 8 (1) [<sup>F13</sup>The court administration] officer may in the prescribed manner direct a re-trial if after the commencement of a trial before a magistrate sitting alone the magistrate dies or is otherwise unable to attend.
- (2) Where the court for a trial to which section 6(13) above applies has two members in addition to the magistrate, the [<sup>F14</sup>court administration] officer may in the prescribed manner direct a re-trial—
- (a) if after the commencement of the trial the magistrate dies or is otherwise unable to attend, or
  - (b) if after its commencement both the other members of the court die or are otherwise unable to attend.
- (3) Where the court for a trial to which section 6(13) above applies has one member in addition to the magistrate, the [<sup>F14</sup>court administration] officer may in the prescribed manner direct a re-trial if after the commencement of the trial either of them dies or is otherwise unable to attend.
- (4) An assessor's death or inability to attend after the commencement of a trial shall not preclude the trial continuing.

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#### Textual Amendments

- F13** Words in Sch. 3 para. 8(1) substituted (1.4.1997) by 1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103(7)(a); S.I. 1997/304, art. 2 (with art. 3)
- F14** Words in Sch. 3 para. 8(2) and (3) substituted (1.4.1997) by 1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103(7)(b)

#### *Decisions of the Court etc.*

- 9 (1) Subject to the provisions of this paragraph, every question to be determined by the court shall be determined—
- (a) by the magistrate, if he is sitting alone or with assessors, and
  - (b) where section 6(13) above applies, by a majority of the votes of the members of the court.
- (2) For a trial where section 6(13) above applies, the magistrate shall preside over the court and give rulings on any questions of law.
- (3) In case of an equality of votes on a finding, the court shall acquit the accused.
- (4) In case of an equality of votes on the sentence, or on any other question before the court, except a question of law or the finding, the magistrate shall have a second or casting vote.

#### *Privilege of witnesses and others*

- 10 A witness before the court or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before a magistrates' court in England or Wales.

#### *Rules of evidence*

- 11 <sup>F15</sup>(1) Subject to the provisions of any order made under paragraph 12 below<sup>F15</sup> to Schedules 6 and 7 to the Criminal Justice Act 2003<sup>F16</sup> and to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.), the rules as to the admissibility of evidence to be observed in proceedings before Standing Civilian Courts shall be the same as those observed in magistrates' courts in England and Wales, and no person shall be required in proceedings before a Standing Civilian Court to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a magistrates' court in England or Wales.
- (2) A Standing Civilian Court shall take judicial notice of all matters of notoriety and of all other matters of which judicial notice would be taken in a magistrates' court in England or Wales.

#### Textual Amendments

- F15** Words in Sch. 3 para. 11(1) inserted (1.1.2005 for specified purposes otherwise 4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 36 para. 84; S.I. 2004/3033, art. 4(1)(2)(c); S.I. 2005/950, art. 2(1), Sch. 1 para. 43(b)

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**F16** Words in Sch. 3 para. 11 inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(1), [Sch. 2 para. 4\(2\)](#); [S.I. 1991/2719, art.2](#)

*Procedure etc. of court*

- 12 (1) The Secretary of State may by order made by statutory instrument make provision with respect to all or any of the following matters, namely—
- [<sup>F17</sup>(aa) the prosecution of offences which may be tried by Standing Civilian Courts;]
- (a) the trial of offences by Standing Civilian Courts;
- (b) the awarding of sentences by such courts;
- (c) the review of findings and sentences of such courts; and
- (d) appeals from such courts,
- and to such other matters relating to Standing Civilian Courts as he considers necessary or expedient.
- (2) An order under this paragraph shall confer a right on a person charged to elect to be tried by court-martial instead of by a Standing Civilian Court.
- (3) Any such order may apply, with or without exceptions or modifications, any provision of the <sup>M8</sup>Army Act 1955 or the <sup>M9</sup>Air Force Act 1955, and any enactment not contained in either of those Acts but relating to courts-martial.
- [<sup>F18</sup>(3A) An order under this paragraph may, for the purposes of paragraph 2A of Schedule 5A to the Army Act 1955 and paragraph 2A of Schedule 5A to the Air Force Act 1955, specify the conditions to be satisfied, in relation to an offender, before a Standing Civilian Court that has deferred the award of sentence against the offender may award sentence during the period of deferment.]
- (4) Without prejudice to the generality of sub-paragraphs (1) and (3) above, an order under this paragraph may make provision with respect to all or any of the following matters, namely—
- (a) the procedure to be observed in the bringing of charges before a Standing Civilian Court (including the manner of election for trial by court-martial);
- (b) requiring any person appointed a magistrate under subsection (4) of section 6 above or a member of a panel under subsection (6) or (8) of that section to take an oath upon his appointment in a prescribed form and manner;
- [<sup>F19</sup>(ba) proceedings preliminary to trials by Standing Civilian Courts;
- (bb) the appointment of a magistrate for any preliminary proceedings;]
- (c) the exercise of their functions by assessors and their rights in relation to trials at which they sit;
- (d) the sittings of Standing Civilian Courts;
- (e) the procedure to be observed in trials before them;
- (f) the representation of the accused at such trials [<sup>F20</sup>and any preliminary proceedings];
- (g) procuring the attendance of witnesses;
- (h) empowering the court <sup>F21</sup>. . . in such cases and to such extent as may be prescribed to amend a charge which is being tried by the court;
- (j) empowering the court, where the particulars proved or admitted at a trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty

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subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;

(k) determining the cases in which and the extent to which the court, in sentencing any person for an offence, may take into consideration at his request other offences against the Army Act 1955 or the Air Force Act 1955 committed by him;

(l) applying section 99A of the Army Act 1955 (proof at courts-martial by written statement), [<sup>F22</sup>Article 5 of the Perjury (Northern Ireland) Order 1979] (false written statements at courts-martial) and sections 10 and 11 of the <sup>M10</sup>Criminal Justice Act 1967 (formal admission and notice of alibi) subject to any exceptions or modifications that appear to the Secretary of State to be necessary or proper for the purpose of the operation of those sections in relation to proceedings before Standing Civilian Courts;

<sup>F23</sup>(m) . . . . .

(n) the transfer of cases to courts-martial;

(o) the procedure to be observed in bringing appeals from Standing Civilian Courts;

(p) the forms of orders and other documents to be made for the purposes of any provision of this Schedule or of the order; and

(q) any matter which by this Schedule is required or authorised to be prescribed.

(5) The Secretary of State shall secure that any power to amend charges conferred by an order under this paragraph shall not be exercisable in circumstances substantially different from those in which charges which are being tried by court-martial may be amended.

(6) The power to make an order conferred by this paragraph includes power to make provision for specified cases or classes of cases, and to make different provision for different classes of cases, and for the purposes of any such order classes of cases may be defined by reference to any circumstances specified in the order.

(7) An order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F17** Sch. 3 para. 12(1)(aa) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(8)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F18** Sch. 3 para. 12(3A) inserted by **Armed Forces Act 1986** (c. 21, SIF 7:1), **s. 9(3)**

**F19** Sch. 3 para. 12(4)(ba) and (bb) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(8)(b)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F20** Words in Sch. 3 para. 12(4)(f) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 103(8)(c)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F21** Words in Sch. 3 para. 12(4)(h) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. IV para. 103(8)(d)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F22** Words substituted by S.I. 1979/1714, **Sch. 1 para. 27**

**F23** Sch. 3 para. 12(4)(m) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. IV para. 103(8)(e)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### Marginal Citations

**M8** 1955 c. 18.

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**M9** 1955 c. 19.

**M10** 1967 c. 80.

*Duration of sentences etc.*

- 13 Where any sentence of the court is limited by reference to a period of time, that period shall begin to run from the beginning of the day on which the sentence is passed, except in a case where it is suspended under paragraph 20(4) below.
- 14 Where the court passes any such sentence and the period of any previous sentence passed on the same person has not expired, the court may order that the new sentence shall begin to run from the expiry of the period.

*Supplementary*

- 15 (1) Section 57(1) of the <sup>M11</sup>Army Act 1955 (offences) shall have effect in relation to a Standing Civilian Court as it has effect in relation to a court-martial.
- (2) The magistrate sitting in such a court may direct the arrest of any person for an alleged offence under that section.
- (3) A person arrested by virtue of sub-paragraph (2) above may be released by the magistrate, if he thinks fit; and no further proceedings shall be taken in the matter in relation to a person so released.

**Marginal Citations**

**M11** 1955 c. 18.

- 16 Sections 133 and 134(1) and (2) of the Army Act 1955 (safeguards against repeated trial for the same offence) shall have effect, with any necessary modifications, as if any reference to a court-martial included a reference to a Standing Civilian Court.
- 17 Section 138 of that Act (restitution or compensation for theft, etc.) shall have effect as if—
- (a) the reference to a court-martial in subsection (1) included a reference to a Standing Civilian Court; and
- (b) the following subsection were substituted for subsection (9):—
- “(9) The operation of an order under this section made by a Standing Civilian Court shall be suspended—
- (a) in any case until the end of the period within which notice of appeal may be given; and
- (b) if such notice is given, until the appeal is determined or abandoned.”

<sup>F24</sup>17A .....

**Textual Amendments**

**F24** Sch. 3 para. 17A repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. V

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### *Appeals*

- 18 (1) Subject to the provisions of this paragraph and to paragraphs 5(4) and 14(8) of Schedule 5A to the<sup>M12</sup> Army Act 1955 and Schedule 5A to the<sup>M13</sup> Air Force Act 1955 (no appeal from absolute and conditional discharges, community supervision orders and recognisances entered into by parents or guardians), a person found guilty by the court may appeal to a court-martial—
- (a) if he pleaded guilty, against his sentence;
  - (b) if he did not, against his conviction or sentence or both.
- (2) A person sentenced by the court for an offence in respect of which an order for conditional discharge or a community supervision order has been previously made under Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the<sup>M14</sup> Naval Discipline Act 1957 may appeal to a court-martial against the sentence.
- (3) The right of appeal conferred by this paragraph shall not be exercisable unless within [F2540] days of the date of the court's sentence the accused lodges with the prescribed person a notice in the prescribed form and addressed to the [F26higher authority] stating his intention to appeal against his conviction or sentence or both.
- (4) When the [F26higher authority] receives a notice of appeal lodged under sub-paragraph (3) above, he shall take the steps specified in [F27rules] under section 103 of the Army Act 1955 with a view to the appeal being heard by a court-martial.
- (5) An appeal against conviction on any charge shall take the form of a rehearing of that charge.
- (6) An appeal against sentence alone shall not take the form of a rehearing of the charge in respect of which the sentence was imposed.
- (7) The term of any sentence passed by a court-martial on such an appeal shall, unless the court otherwise directs, 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; and section 118 of the Army Act 1955 (commencement of sentences) shall accordingly not apply to any such sentence.
- (8) Subject to sub-paragraph (7) above [F28and sub-paragraph (12) below], a sentence passed on such an appeal shall be treated for the purposes of any enactment as if it had been a sentence passed on a trial by court-martial.
- (9) Subject to sub-paragraphs (10) and (11) below, and to any order under paragraph 12 above, the provisions of the Army Act 1955 or the Air Force Act 1955 relating to courts-martial shall apply to appeals under this paragraph.
- (10) A person who sat in the Standing Civilian Court on the trial shall not attend the court-martial as a member thereof<sup>F29</sup> . . .
- (11) Whether the appeal is against sentence or against conviction, the court-martial may only award a sentence which a Standing Civilian Court could award.
- [F30(12) Where a court-martial passes a sentence on an appeal under this paragraph in a case in which the sentence of the Standing Civilian Court was suspended under paragraph 20(4) below, the court-martial may, if it thinks fit, direct that the suspension shall

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apply to the sentence of the court-martial in the same way as it would have applied to the sentence of the Standing Civilian Court.]

#### Textual Amendments

- F25** Figure substituted by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#), s. 10, [Sch. 1 para. 4\(1\)\(2\)](#)
- F26** Words in Sch. 3 para. 18(3) and (4) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103\(9\)\(a\)](#); [S.I. 1997/304, art. 2](#) (with art. 3)
- F27** Word in Sch. 3 para. 18(4) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. IV para. 103\(9\)\(b\)](#); [S.I. 1997/304, art. 2](#) (with art. 3)
- F28** Words inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. [12\(2\)](#)
- F29** Words in Sch. 3 para. 18(10) repealed (1.4.1997) by [1996 c. 46, ss. 5, 35\(2\)](#), [Sch. 1 Pt. IV para. 103\(9\)\(c\)](#), [Sch. 7 Pt. I](#); [S.I. 1997/304, art. 2](#)(with art. 3)
- F30** Sch. 3 para. 18(12) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. [12\(1\)](#)

#### Marginal Citations

- M12** [1955 c. 18](#).
- M13** [1955 c. 19](#).
- M14** [1957 c. 53](#).

#### Review

- 19 At any time after a Standing Civilian Court has sentenced a person,<sup>F31</sup> . . . , he may present to the prescribed person a petition against finding or sentence or both in the prescribed form and addressed to a reviewing authority.

#### Textual Amendments

- F31** Words in Sch. 3 para. 19 repealed (1.4.1997) by [1996 c. 46, s. 35\(1\)\(2\)](#), [Sch. 6 para. 9\(a\)](#), [Sch. 7 Pt. III](#); [S.I. 1997/304, art. 2](#), [Sch. 1](#)

- 20 (1) A finding or sentence of a Standing Civilian Court may at any time be reviewed by a reviewing authority; and if a petition against finding or sentence is duly presented under paragraph 19 above, or notice is given of an appeal against a finding or sentence, the finding or sentence shall be reviewed by the reviewing authority as soon as may be after the presentation of the petition or notice and after consideration of the matters alleged in it.
- (2) On a review the reviewing authority may—
- (a) in so far as the review is of a finding, quash the finding, and if the sentence relates only to the finding quashed, the sentence; and
  - (b) in so far as the review is of a sentence, quash the sentence; and
  - <sup>F32</sup>(c) in any case, subject to sub-paragraph (3) below, exercise the like powers of substituting findings, substituting sentences, remitting or commuting punishment or annulling the taking of other offences into consideration (and orders dependent thereon) as are conferred on <sup>F33</sup>an authority carrying out a review under section 115] of the Army Act 1955;]
- and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court.

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(3) Neither the power to substitute a different sentence for a sentence imposed by the court nor the power to commute such a sentence shall be exercisable so as to impose a sentence which the court could not have imposed.

[<sup>F34</sup>(4) A reviewing authority may at any time suspend a sentence of a Standing Civilian Court.]

(5) Where the sentence of a person in custody is suspended under sub-paragraph (4) above, he shall thereupon be released.

<sup>F35</sup>( 5A ) . . . . .

(6) Where, while any sentence is so suspended the person sentenced is sentenced by a Standing Civilian Court or a court-martial under the Army Act 1955, the <sup>M15</sup>Air Force Act 1955 or the <sup>M16</sup>Naval Discipline Act 1957 for a fresh offence, [<sup>F36</sup>, the suspension of the earlier sentence may be determined by order of any such court on awarding the later sentence.]

<sup>F37</sup>( 7 ) . . . . .

(8) A sentence which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this sub-paragraph at the expiry of one year from the date on which the suspension took effect.

(9) The reviewing authorities for the purposes of this paragraph and paragraph 19 above shall be the [<sup>F38</sup>higher authority]and any superior officer or authority.

#### Textual Amendments

- F32** Sch. 3 para. 20(2) ( c ) substituted by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#) , s. 5(3)
- F33** Words in Sch. 3 para. 20(2)(c) substituted (1.4.1997) by [1996 c. 46](#) , s. 35(1) , Sch. 6 para. 9(b); [S.I. 1997/304](#) , art. 2 (with art. 3 )
- F34** Sch. 3 para. 20(4) substituted by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#) , s. 10 , [Sch. 1 para. 4\(3\)](#)
- F35** Sch. 3 para. 20(5A) omitted (18.7.2008) by virtue of [Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#) , arts. 1 , [26\(2\)](#)
- F36** Words in Sch. 3 para. 20(6) substituted (18.7.2008) by [Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#) , arts. 1 , [26\(3\)](#)
- F37** Sch. 3 para. 20(7) omitted (18.7.2008) by virtue of [Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#) , arts. 1 , [26\(4\)](#)
- F38** Words in Sch. 3 para. 20(9) substituted (1.4.1997) by [1996 c. 46](#) , s. 5 , [Sch. 1 Pt. IV para. 103\(10\)](#) ; [S.I. 1997/304](#) , art. 2 (with art. 3 )

#### Marginal Citations

- M15** [1955 c. 19](#) .
- M16** [1957 c. 53](#) .

[<sup>F39</sup>21.(1) Where the suspension of a sentence is determined under paragraph 20(6) above by order of a Standing Civilian Court—

- (a) for the purposes of paragraph 18 above and rules under section 103 of the Army Act 1955 or the Air Force Act 1955 the order is to be treated as a sentence passed on the offender for the offence for which the suspended sentence was passed; and
- (b) on an appeal against the order, the court-martial may quash the order.

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- (2) Sub-paragraphs (3) to (5) apply where the suspension of a sentence is determined under paragraph 20(6) above by order of a court-martial.
- (3) For the purposes of the Courts-Martial (Appeals) Act 1968 (c. 20) (“the 1968 Act”)—
- (a) the order is to be treated as a sentence passed on the offender for the offence for which the sentence was passed;
  - (b) the offender is to be treated as having been convicted by court-martial of that offence;
  - (c) any appeal, or application for leave to appeal, against the sentence passed in respect of the fresh offence is to be treated as also being an appeal or application for leave to appeal against the order; and
  - (d) any appeal, or application for leave to appeal, against the order is to be treated as also being an appeal or application for leave to appeal against the sentence passed in respect of the fresh offence.
- (4) In relation to any appeal against the order, section 16A of the 1968 Act (powers on appeals against sentence) is to be read as conferring power to quash the order.
- (5) Where the Appeal Court quashes the order, in relation to any appeal against the sentence passed in respect of the fresh offence—
- (a) section 16A of the 1968 Act has effect as if the words “and which is not of greater severity than that for which it is substituted” were omitted; but
  - (b) the Appeal Court may not exercise its powers under that section in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (6) Where a court-martial passing sentence on a person has power to determine the suspension of a sentence under paragraph 20(6) above but does not do so—
- (a) on an appeal against the sentence passed by the court-martial, the power of the Appeal Court under section 16A of the 1968 Act to pass a sentence in substitution for the sentence of the court-martial includes power to make an order under paragraph 20(6) above in respect of the suspended sentence; but
  - (b) the court may not exercise that power in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (7) In this paragraph—
- (a) “the fresh offence” means the offence mentioned in paragraph 20(6) above; and
  - (b) “the Appeal Court” means the Courts-Martial Appeal Court.]

#### **Textual Amendments**

**F39** Sch. 3 para. 21 inserted (18.7.2008) by [Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, 27

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## SCHEDULE 4

Section 8.

### ORDER THAT MAY BE MADE ON TRIAL OF CIVILIANS

#### Modifications etc. (not altering text)

- C3** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 1 The following Schedule shall be inserted after Schedule 5 to the Army Act 1955.

#### “SCHEDULE 5A

Section 8.

### POWERS OF COURT ON TRIAL OF CIVILIAN

#### *General*

- 1 The powers conferred by this Schedule shall be exercisable on the trial of a person (in this Schedule referred to as a “civilian”) to whom Part II of this Act is applied by section 209 above.
- 2 (1) In this Schedule—
- “Community supervision order” has the meaning assigned to it by paragraph 4(2) below; “compensation order” has the meaning assigned to it by paragraph 11(1) below; “the court” means a court-martial or a Standing Civilian Court; “custodial order” has the meaning assigned to it by paragraph 10(1) below; “local authority in England or Wales” means the council of a non-metropolitan county, a metropolitan district or a London borough or the Common Council of the City of London; “local authority in Scotland” means a regional or islands council; “order for absolute discharge” means an order under paragraph 3 below discharging a person absolutely; “order for conditional discharge” means an order under that paragraph discharging a person subject to a condition; “period of conditional discharge” means the period specified in an order for conditional discharge; “prescribed” means prescribed by regulations under paragraph 17 below; “reception order” has the meaning assigned to it by paragraph 6(1) below; “the Services Acts” means this Act, the Air Force Act 1955 and the Naval Discipline Act 1957; and “supervision period” and “supervisor” have the meanings assigned to them by paragraph 4(2) below.
- (2) A parent or guardian is a service parent or guardian for the purposes of this Schedule if—
- he is subject to service law, or
  - Part II of this Act is applied to him by section 209 above, or
  - Part II of the Air Force Act 1955 is applied to him by section 209 of that Act, or
  - Parts I and II of the Naval Discipline Act 1957 are applied to him by section 118 of that Act.

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*Absolute and conditional discharge*

- 3 (1) The court by which a civilian is found guilty of an offence (not being an offence the sentence for which is fixed by law) may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that, during such a period, not exceeding 3 years from the date of the order, as may be specified in the order, he commits no offence that may be tried by court-martial under any of the Services Acts or by a Standing Civilian Court.
- (2) If a court-martial under any of the Services Acts finds a person in whose case an order for conditional discharge has been made guilty of an offence committed during the period of conditional discharge, the court-martial may deal with him for the offence for which the order was made in any manner in which the court which made the order could deal with if it had just found him guilty of that offence.
- (3) If a Standing Civilian Court finds such a person guilty of an offence committed during the period of conditional discharge, the Standing Civilian Court may deal with him for the offence for which the order was made in any manner in which such a court could deal with him if it had just found him guilty of that offence.
- (4) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

*Community supervision orders*

- 4 (1) Subject to sub-paragraph (4) below, where a civilian under 21 years of age is found guilty of an offence and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient that he should undergo a period of supervision, the court may make an order directing him to comply during a specified period not exceeding 12 months with the reasonable requirements of a specified person nominated in the prescribed manner.
- (2) In this Schedule—  
“community supervision order” means an order under this paragraph;  
“supervision period” means the period specified in a community supervision order; and  
“supervisor” means a person with whose requirement a community supervision order for the time being requires compliance on the part of the person subject to it.
- (3) The court making a community supervision order may include in it directions to the person who is to be subject to it to comply during the whole or any specified part of the supervision period with such requirements of any prescribed description as the court, having regard to the circumstances, considers will be beneficial for him.
- (4) Before making a community supervision order the court—

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- (a) shall explain in ordinary language to the person who is to be subject to it the effect of such an order and the consequences under sub-paragraphs (6) to (10) below of breach of any requirement imposed by virtue of sub-paragraph (1) or (3) above, and
  - (b) shall obtain his consent and, if he is under 17 years of age, the consent of his parent or guardian, to the making of the order and to the inclusion in it of any requirement by virtue of sub-paragraph (3) above.
- (5) If the court makes a community supervision order against any person on finding him guilty of an offence, it may not make any other order except a compensation order in respect of his conviction for that offence.
- (6) If a person subject to a community supervision order fails without reasonable excuse to comply with any requirement reasonably imposed by his supervisor or with any requirement included in the order by virtue of sub-paragraph (3) above, he shall be guilty of an offence triable by court-martial.
- (7) Any such offence shall be treated as if it were an offence against a provision of Part II of this Act.
- (8) If a court-martial under any of the Services Acts finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the court-martial may deal with him for the offence for which the community supervision order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence.
- (9) If a Standing Civilian Court finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the Standing Civilian Court may deal with him for the offence for which the community supervision order was made in any manner in which such a court could deal with him if it had just found him guilty of it.
- (10) If the court finds a person guilty of an offence under sub-paragraph (6) above, it may, instead of dealing with him for the offence for which the community supervision order was made, impose a fine not exceeding £50 upon him.
- (11) An officer authorised by the Defence Council—
  - (a) may discharge a community supervision order or modify such an order in any way which in his opinion does not increase its severity, and
  - (b) may replace a supervisor by specifying a new supervisor nominated in the prescribed manner.
- (12) The powers conferred by sub-paragraph (11)(a) above are without prejudice to any of the powers of a confirming officer or reviewing authority.

*Absolute and conditional discharge and  
community supervision orders—supplementary*

- 5 (1) If upon finding a person guilty of an offence the court makes in respect of that offence—
  - (a) an order for his absolute discharge, or

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- (b) an order for his conditional discharge, or
  - (c) a community supervision order,
- he shall be deemed not to have been convicted of the offence except—
- (i) where the order was an order for conditional discharge or a community supervision order, for the purposes of paragraph 3(2) or (3) or 4(8) or (9) above, as the case may be, and
  - (ii) in all cases, for the purposes specified in sub-paragraph (2) below.
- (2) The purposes mentioned in sub-paragraph (1)(ii) above are the purposes—
- (a) of the proceedings in which the order is made,
  - (b) of any confirmation, revision or review or those proceedings,
  - (c) of any appeal against conviction in those proceedings, and
  - (d) of the Rehabilitation of Offenders Act 1974.
- (3) Sub-paragraph (1) above shall not affect—
- (a) any right of a person in respect of whom an order for absolute or conditional discharge or a community supervision order was made to rely on his conviction in bar or any subsequent proceedings for the same offence; or
  - (b) the restoration of any property in consequence of the conviction.
- (4) No appeal shall lie against any such order.
- (5) If a person is dealt with for an offence for which an order for conditional discharge or a community supervision order was made, the original order shall cease to have effect.
- (6) The powers conferred by paragraphs 3(2) and (3) and 4(8) and (9) above to deal with an offence for which an order for conditional discharge or a community supervision order has been made are without prejudice to any power of the court to deal with an offence, whenever committed, other than the offence for which the order in question was made.

*Reception orders and committal into care—general*

- 6 (1) Where a civilian under 17 years of age is found guilty of an offence punishable under this Act with imprisonment, the court may make an order (in this Schedule referred to as a “reception order”) declaring that the Secretary of State may authorise any local authority in England or Wales to receive him into their care, and the Secretary of State may authorise any such authority accordingly.
- (2) Before making a reception order, the court shall consider any report made in respect of the offender by or on behalf of the Secretary of State.
- (3) The Court shall give a copy of any such report to the offender or any person representing him.
- (4) The Secretary of State may at any time revoke an authorisation under this paragraph.
- (5) A reception order shall continue to have effect while the person named in it—
- (a) is in the care of a local authority in England or Wales under this paragraph or paragraph 7 below; or

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- (b) is subject to a supervision requirement of a children's hearing in Scotland following a reference under paragraph 8 below, or
  - (c) is in care in Northern Ireland by virtue of paragraph 9 below.
- (7) A reception order shall be sufficient authority for the detention of the person to whom it relates by any local authority in England or Wales, or by any constable, for the purpose of his transfer to the care of a local authority in England or Wales who are to receive him or his transfer to Scotland or Northern Ireland under paragraph 8 or 9 below.

*Committal into care—England and Wales*

- 7 (1) Without prejudice to the generality of sub-paragraph (4) of paragraph 6 above, the Secretary of State may revoke an authorisation under that paragraph and authorise another local authority in England or Wales to receive the person named in the reception order into their care.
- (2) When the Secretary of State informs a local authority that he has revoked an authorisation in accordance with sub-paragraph (1) above, they shall ensure the transfer of the person named in the reception order to the local authority named in the new authorisation.
- (3) A person in the care of a local authority in England or Wales by virtue of this paragraph or paragraph 6 above shall be deemed, subject to sub-paragraph (4) below, to be the subject of a care order as defined in section 20 of the Children and Young Persons Act 1969 (not being an interim order as so defined) committing him to the care of that authority.
- (4) The Children and Young Persons Act 1969 shall apply to such a person as if sections 20(3) (care order ceasing to have effect), 21(5) (appeals) and 25(2) (transfer of responsibility to Northern Ireland) were omitted.
- (5) An authorisation under this paragraph or paragraph 6 above shall cease to have effect—
- (a) when the Secretary of State informs the local authority that he has revoked it or that the reception order has been discharged on appeal or review; or
  - (b) when the case is disposed of under paragraph 8 below, or the person named in it is received into care under paragraph 9 below; or
  - (c) when the person named in it attains—
    - (i) 19 years of age if he had attained 16 years of age when the reception order naming him was originally made; or
    - (ii) 18 years of age in any other case.

*Committal into care—transfer to Scotland*

- 8 (1) Where a local authority in England or Wales for the time being having the care of a person by virtue of an authorisation under paragraph 6 or 7 above are satisfied that the person's welfare would be best served by his being subject to compulsory measures of care in Scotland, the authority may refer the case to the reporter of the local authority in Scotland which they consider relevant, and if the case is so referred the reporter shall arrange a children's hearing for the consideration and determination of the case under Part III

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of the Social Work (Scotland) Act 1968, as if the reference under this sub-paragraph were a reference under Part V of that Act in respect of a care order within the meaning of the Children and Young Persons Act 1969.

- (2) Any such reference shall include particulars of the authorisation by virtue of which the local authority in England or Wales has the care of the person in question; and for the purposes of any children's hearing arranged pursuant to the reference those particulars shall be conclusive of the existence of that authorisation in relation to the person.
- (3) Where a children's hearing is arranged under this paragraph it shall be the duty of the authority who make the reference as aforesaid to ensure the transfer of the person to the place notified to them by the reporter.

#### *Committal into care—transfer to Northern Ireland*

- 9 (1) If it appears to the Secretary of State, on the application of a local authority in England or Wales for the time being having the care of a person by virtue of an authorisation under paragraph 6 or 7 above, that the person's welfare would be best served by a transfer to care in Northern Ireland, the Secretary of State may make an order committing him to the care of the managers of a training school in Northern Ireland or to the care of the Department of Health and Social Services for Northern Ireland; and the provisions of the Children and Young Persons Act (Northern Ireland) 1968 (except sections 88(3), 90 and 91(3)) shall apply to an order under this sub-paragraph as if it were a training school order under that Act made on the date of the order under this sub-paragraph or, if the case so requires, a fit person under that Act made on that date.
- (2) An order under this paragraph shall, unless it is discharged earlier, cease to have effect on the date when the authorisation would have ceased by effluxion of time to have effect, or
  - (a) if the person to whom the order relates is committed by it to the care of the said Department and will attain 18 years of age before that date, on the date when he attains that age;
  - (b) if the order has effect as a training school order under the said Act and the period of supervision under that Act following the release from detention of the person to whom it applies expires before that date, on the date when that period expires.

#### *Custodial orders*

- 10 (1) Where a civilian who has attained 17 years of age but is under 21 years of age is found guilty of an offence punishable under this Act with imprisonment, the court shall have power, instead of so punishing him, to make an order (in this Schedule referred to as a "custodial order" committing him to be detained in accordance with the provisions of this paragraph for a maximum period to be specified in the order of not more than two years, if the order is made by a court-martial, or than six months if it is made by a Standing Civilian Court.
- (2) Before making a custodial order, the court shall consider any report made in respect of the offender by or on behalf of the Secretary of State.

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- (3) The court shall give a copy of any such report to the offender or any person representing him.
- (4) A person in respect of whom such an order is made shall as soon as practicable be removed to the United Kingdom and shall be detained there in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this paragraph.
- (5) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the specified in the Secretary of State's direction.
- (6) In this paragraph "appropriate institution" means—
  - (a) where the offender is removed to England or Wales—
    - (i) if the maximum period specified in the order exceeds six months, a borstal institution, and
    - (ii) if the maximum period so specified does not exceed six months and accommodation is available in a young offenders' centre, such a centre;and in sub-paragraph (4) above "enactment", in relation to an offender who is removed to Northern Ireland, includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly.

#### *Compensation orders*

- 11 (1) The court, on finding a civilian guilty of an offence, may, on application or otherwise (and whether or not it makes any other order), make an order (in this Schedule referred to as a "compensation order") requiring him to pay such sum as appears to the court to be just as or towards compensation for any loss or damage, other than personal injury, resulting from the offence or any other offence taken into consideration in determining sentence.
- (2) The sum specified in a compensation order made by a Standing Civilian Court shall not exceed £400.
- (3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of this paragraph as having resulted from the offence, however and by whomsoever the damage was caused.
- (4) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of his death, and no such order shall be made in respect of loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated by sub-paragraph (3) above as resulting from an offence of unlawfully obtaining any property.
- (5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order,

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the court shall have regard to his means so far as they appear or are known to the court.

- 12 (1) The operation of a compensation order made by a court-martial shall be suspended—
- (a) in any case until the end of the period specified under Part II of the Courts-Martial (Appeals) Act 1968 as the period within which an application for leave to appeal must be lodged; and
  - (b) if such an application is duly lodged, until either the application is finally refused or it is withdrawn or the appeal is determined or abandoned.
- (2) The operation of a compensation order made by a Standing Civilian Court shall be suspended—
- (a) in any case until the end of the period within which notice of appeal may be given; and
  - (b) if such notice is given, until the appeal is determined or abandoned.
- (3) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully petitions or appeals against his conviction of the offence or all the offences of which he was convicted in the proceedings in which the order was made; and
  - (b) he may petition or appeal against the order as if it were part of the sentence imposed for the offence in respect of which it was made.

*Imposition of fines on and making of compensation orders against parents and guardians*

- 13 (1) Subject to sub-paragraph (2) below, where a civilian under 17 years of age is found guilty of any offence, the court, instead of imposing a fine on or making a compensation order against him, may impose a fine on or make a compensation order against any parent or guardian of his who is a service parent or guardian, but shall not do so without giving the parent or guardian an opportunity of being heard unless—
- (a) he has been required in the manner prescribed by Rules of Procedure under section 103 above or, as the case may be, by an order under paragraph 12 of Schedule 3 to the Armed Forces 1976 to attend the court, and
  - (b) he has failed to do so.
- (2) The power conferred by sub-paragraph (1) above shall not be exercisable in any case where the court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care or control of the person found guilty of it.
- (3) A parent or guardian may petition or (notwithstanding any other enactment) appeal against a fine imposed on him or order made against him under this paragraph.
- (4) If a parent or guardian against whom a fine is so imposed or an order so made—

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- (a) is a member of the regular forces, or
  - (b) is a member of the regular air force, as defined by section 223(1) of the Air Force Act 1955, or
  - (c) is subject to the Naval Discipline Act 1957,
- any sum which he is liable to pay, in so far as not otherwise paid by him, may be deducted from his pay.

*Orders requiring parents or guardians to enter into recognisance*

- 14 (1) Subject to sub-paragraph (2) below, where a civilian under 17 years of age is found guilty of any offence, the court may make an order requiring any parent or guardian of his who is a service parent or guardian to enter into a recognisance for an amount not exceeding £50 for a period not exceeding one year to exercise proper control over him.
- (2) The power conferred by sub-paragraph (1) above shall not be exercisable unless the parent or guardian consents.
- (3) Before making an order in the exercise of that power the court shall explain to the parent or guardian in ordinary language that if the offender is found guilty by court-martial under any of the Services Acts or by a Standing Civilian Court of another offence committed during the period specified in the order, his recognisance may be forfeited under sub-paragraph (4) below.
- (4) If a person whose parent or guardian has entered into a recognisance under this paragraph is found guilty by court-martial under any of the Services Acts or by a Standing Civilian Court of any offence committed within the period specified in the order, the recognisance or any part of it may in the prescribed manner be declared to be forfeited( without prejudice to any power of the court to punish the offender or to make any other order against him or an order against his parent or guardian under this paragraph or paragraph 13 above) and the person bound by it adjudged, subject to sub-paragraphs (5) and (6) below, to pay the sum in which he is bound or any lesser sum.
- (5) No declaration may be made except against a person who is a service parent or guardian when it is made.
- (6) No declaration may be made against any person without giving him an opportunity of being heard unless—
- (a) he has been required in the manner prescribed by Rules of Procedure under section 103 above or, as the case may be, by an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976 to attend the court, and
  - (b) he has failed to do so.
- (7) Payment of any sum adjudged to be paid under this paragraph shall be enforceable as if it were a fine imposed for an offence against section 70 above.
- (8) No appeal shall lie from an order or declaration under this paragraph.
- 15 (1) In their application to civilians, references in this Act to any punishment provided by this Act are, subject to sub-paragraphs (4) to (7) below and to the limitation imposed in any particular case by the addition of the word “less”, references to any one or more of the punishments that may be awarded to

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civilians under this Act or of the orders that may be made against them under it.

- (2) For the purposes of Part II of this Act—
- (a) a punishment or order specified in any paragraph of one of the columns in the Table below shall be treated as less than any punishments or orders specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it; and
  - (b) a fine on or compensation order against an offender's parent or guardian shall be treated as involving the same degree of punishment as a fine of the same amount on the offender or, as the case may be, a compensation order of the same amount against him.
- (3) In the Table—
- (a) the first column applies in the case of a person who at the date of his conviction had attained 21 years of age;
  - (b) the second column applies in the case of a person who at the date of his conviction had attained 17 years of age but was under 21 years of age; and
  - (c) the third column applies in the case of a person who at the date of his conviction was under 17 years of age.

TABLE

Grading of Punishments and Orders

<b>Offender 21 or over</b>	<b>Offender 17 or over but under 21</b>	<b>Offender under 17</b>
1. Death.	1. Death.	1. Detention as the Secretary of State may direct.
2. Imprisonment.	2. Imprisonment.	2. Reception Order.
3. Fine.	3. Custodial Order.	3. Fine.
4. Compensation.	4. Fine.	4. Community supervision order.
5. Order for conditional discharge.	5. Community supervision order.	5. Compensation order.
6. Order for absolute discharge.	6. Compensation order.	6. Order binding over parent.
	7. Order for conditional discharge.	7. Order for conditional discharge.
	8. Order for absolute discharge.	8. Order for absolute discharge.

NOTE In the application of the above Table—

- (a) to a person convicted of murder who was under 18 years of age when the offence was committed, or

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(b) to a person convicted of any offence who was under 18 years of age when the offence was committed and would be sentenced to death but for section 71A(3) above,

the references to death shall be omitted from the first and second columns, and a reference to detention during Her Majesty's pleasure shall be substituted—

(i) for the reference to imprisonment in the second column, and

(ii) for the reference to detention as the Secretary of State may direct in the third column.

(4) No order requiring the giving of a consent or the making of an explanation may be made on any confirmation, review or revision of a sentence or any appeal against a sentence without the consent being given or the explanation made.

(5) If a community supervision order is made on any such confirmation, review, revision or appeal, no other order may be made except a compensation order.

(6) Where an order under paragraph 13 or 14 above was made at the trial, no other order under either of those paragraphs may be substituted for it on any such confirmation, review, revision or appeal.

(7) Where—

(a) on the trial of any person an order might have been made against his parent or guardian under paragraph 13 or 14 above, and

(b) there is power, on confirmation, review, revision or appeal, to substitute a fine or compensation order for the order made on the trial,

that power shall include—

(i) power to substitute a fine or compensation order of an equal or smaller amount under paragraph 13 above, and

(ii) power to make an order under paragraph 14 above which is not of greater severity, in the opinion of the person to whom it falls to exercise the power, than the order made on the trial.

#### *Indemnity for persons carrying out orders under Schedule*

16 No action shall lie in respect of anything done by any person in pursuance of an order under this Schedule if the doing thereof would have been lawful but for a defect in any instrument made for the purposes of that order.

17 (1) The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule.

(2) The power to make regulations conferred by this paragraph includes power to make provision for specified cases or classes of cases, and for the purpose of any such orders classes of cases may be defined by reference to any circumstances specified in the regulations.

(3) The power to make such regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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- 2 (1) The said Schedule shall also be inserted, with the modifications specified in sub-paragraphs (2) and (3) below, after Schedule 5 to the <sup>M17</sup> Air Force Act 1955.
- (2) In paragraph 2 for the words “Air Force” there shall be substituted the word “Army”—
- (a) in the definition of “the Services Acts” in sub-paragraph (1), and
- (b) in sub-paragraph (2)(c)
- (3) The following paragraphs shall be substituted for paragraphs 13(4)(a) and (b):—
- “(a) is a member of the regular air force, or
- (b) is a member of the regular forces, as defined by section 225(1) of the Army Act 1955, or”.

#### **Marginal Citations**

**M17** 1955 c.19.

- 3 (1) The said Schedule shall also be inserted, with the modifications specified in sub-paragraphs (2) to (10) below, after Schedule 4 to the <sup>M18</sup> Naval Discipline Act 1957, where it shall have effect as Schedule 4A to that Act.
- (2) In paragraph 1 for the words “Part II of this Act is applied by section 209 above” there shall be substituted the words “Parts I and II of this Act are applied by section 118 above”.
- (3) In paragraph 2(1) the following definitions shall be substituted for the definitions of “the court” and “the Services Acts”:— “ “the court” means a court-martial; “the Services Acts” means this Act, the Army Act 1955 and the Air Force Act 1955;.”
- (4) The following definition shall be inserted in that sub-paragraph after the definition of “the Services Acts”:— “ “Standing Civilian Court” means a Standing Civilian Court established under the Armed Forces Act 1976. ”
- (5) The following sub-paragraph shall be substituted for paragraph 2(2):—
- “(2) A parent or guardian is a service parent or guardian for the purposes of this Schedule if—
- (a) he is subject to service law, or
- (b) Parts I and II of this Act are applied to him by section 118 above, or
- (c) Part II of the Army Act 1955 is applied to him by section 209 of that Act, or
- (d) Part II of the Air Force Act 1955 is applied to him by section 209 of that Act.”.
- (6) There shall be omitted—
- (a) from paragraph 10(1) the words from “if the order” to the end;
- (b) paragraph 11(2); and
- (c) paragraph 12(2).
- (7) In paragraphs 13(1)(a) and 14(6)(a), for the words from “Rules” to “1976” there shall be substituted the words “General Orders under section 58 above”.
- (8) The following paragraphs shall be substituted for paragraphs 13(4)(a), (b) and (c):—

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- “(a) is a subject to this Act, or
- (b) is a member of the regular forces, as defined by section 225(1) of the Army Act 1955, or
- (c) is a member of the regular air force, as defined by section 223(1) of the Air Force Act 1955.”.

(9) In paragraph 14(7) for the word “70” there shall be substituted the words “42”.

(10) In paragraph 15, there shall be substituted—

- (a) in sub-paragraph (1), for the word “provided” the word “authorised”;
- (b) in sub-paragraph (2), for the word “II” and the word “I”; and
- (c) in paragraph (b) of the Note appended to the Table in sub-paragraph (3), for the words “section 71A(3)” the words “section 43A(3)”.

#### Marginal Citations

M18 1957 c. 53.

## SCHEDULE 5

Section 11.

### PROOF AT COURTS-MARTIAL BY WRITTEN STATEMENT

#### Modifications etc. (not altering text)

C4 The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

1 After section 99 of the <sup>M19</sup> Army Act 1955 (rules of evidence at courts-martial) there shall be inserted the following section—

#### “99A Proof at courts-martial by written statement.

- (1) Section 9 of the Criminal Justice Act 1967 (proof by written statement) shall apply subject to subsection (2) below and to service modifications, for the purposes of proceedings before courts-martial (whether held in the United Kingdom or not) as it applies to proceedings on indictment.
- (2) The statements rendered admissible by this section are statements made—
  - (a) in the United Kingdom by any person, and
  - (b) outside the United Kingdom by any person who at the time of making the statement was—
    - (i) a person subject to service law, or
    - (ii) a person to whom Part II of this Act or Part II of the Air Force Act 1955 is applied by section 208A or section 209 of this Act or that Act respectively, or to whom Parts I and II of the Naval Discipline Act 1957 are applied by section 118 of that Act; and the person mentioned in this paragraph include persons to whom section 131 of this Act, section 131 of the

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Air Force Act 1955 or section 119 of the Naval Discipline Act 1957 apply.

- (3) In subsection (1) above “service modifications” means—
- (a) modifications made by any regulations under section 12 of the Criminal Justice Act 1967 in force on the coming into force of this section, and
  - (b) such modifications in the said section 9, as applied by subsection (1) above, as the Secretary of State may by regulations made by statutory instrument prescribe thereafter, being modifications which appear to him to be necessary or proper for the purpose of the operation of that section in relation to proceedings before a court-martial.
- (4) Regulations under subsection (3)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Section 89 of the said Act of 1967 (punishment of making false statements tendered under section 9) shall apply to any statement rendered admissible by this section.”.

**Marginal Citations**

**M19** 1955 c. 18.

- 2 The said section shall also be inserted after section 99 of the <sup>M20</sup> Air Force Act 1955, but with the substitution throughout of the words “Army” for the words “Air Force”.

**Marginal Citations**

**M20** 1955 c. 19.

- 3 Accordingly—
- (a) in section 99(1) of the <sup>M21</sup> Army Act 1955 and section 99(1) of the Air Force Act 1955 (rules of evidence) after the word “shall”, in the first place where it occurs, there shall be inserted the words “, subject to section 99A below,”; and
  - (b) in section 12 of the Criminal Justice Act 1967 (application of provisions about evidence to courts-martial) for the words “the three last foregoing sections shall apply to such proceedings” there shall be substituted the following paragraphs:—
    - “(a) sections 10 and 11 above shall apply to proceedings before courts-martial under the Army Act 1955 and the Air Force Act 1955, and
    - (b) sections 9 to 11 above shall apply to proceedings before courts-martial under the Naval Discipline Act 1957,”.

**Marginal Citations**

**M21** 1955 c. 18.

*Status: Point in time view as at 18/07/2008.*

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## SCHEDULE 6

Section 13.

### IMPRISONMENT IN DEFAULT

#### Modifications etc. (not altering text)

- C5** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 1 The following section shall be inserted after section 71A of the <sup>M22</sup>Army Act 1955 and section 71A of the <sup>M23</sup>Air Force Act 1955—

#### “71B Power to impose imprisonment for default in payment of fines.

- (1) Subject to the provisions of this section, if a court-martial imposes a fine on a person found guilty of any offence—
- (a) who is sentenced to imprisonment on the same occasion for the same or another offence or,
  - (b) who is already serving or otherwise liable to serve a term of imprisonment,
- it may make an order fixing a further consecutive term of imprisonment such as is specified in subsection (2) below which the said person is to undergo if any part of the fine is not duly paid or recovered on or before the date on which he could otherwise be released.
- (2) The further term of imprisonment shall be such term, not exceeding 12 months, as the court in all the circumstances thinks fit.
- (3) Where the whole amount of the said fine is paid or recovered in the prescribed manner the order under subsection (1) above shall cease to have effect, and the person subject to it shall be released unless he is in custody for some other cause.
- (4) Where part of the said amount is paid or recovered in the prescribed manner, the period of the further term of imprisonment specified under subsection (1) above shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid or recovered bears to the amount of the said fine.
- (5) In calculating the reduction required under the last preceding subsection any fraction of a day shall be left out of account.
- (6) In this section, references to the due recovery of any amount include references to deductions from pay under Part III of this Act, but do not include references to amounts forfeited under the said Part III.”

#### Marginal Citations

- M22** 1955 c. 18.  
**M23** 1955 c. 19.

*Status: Point in time view as at 18/07/2008.*

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- 2 The said section shall also be inserted after section 43A of the <sup>M24</sup> Naval Discipline Act 1957, and shall have effect as section 43B of that Act, but with the substitution—
- (a) in subsection (4) of the words “such manner as may be prescribed by regulations of the Defence Council” for the words “the prescribed manner”; and
  - (b) in subsection (6) of “IV” “III” in both places where it occurs.

**Marginal Citations**

**M24** 1957 c. 53.

SCHEDULE 7

Section 14.

RESTITUTION AND COMPENSATION

**Modifications etc. (not altering text)**

**C6** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

*Army Act 1955 and Air Force Act 1955*

- 1 (1) At the end of section 138(1) of the <sup>M25</sup> Army Act 1955 and section 138(1) of the <sup>M26</sup> Air Force Act 1955 (restitution or compensation for theft, etc.) there shall be added the words “or where a person has been convicted of any offence by a court-martial and the court has taken such an offence of unlawfully obtaining property into consideration in sentencing him.”.
- (2) In subsection (9)(a) of the said section 138, for the words “the conviction” there shall be substituted the words “a relevant conviction”.
- (3) The following subsection shall be added after subsection (11):—
- “(12) In this section “relevant conviction” means—
- (a) where an order under this section was made as a result of such an offence of unlawfully obtaining property having been taken into consideration in determining sentence, the conviction or, if more than one, each conviction in respect of which the sentence fell to be determined.”.

**Marginal Citations**

**M25** 1955 c. 18.

**M26** 1955 c. 19.

*Status: Point in time view as at 18/07/2008.*

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### Naval Discipline Act 1957

- 2 At the end of section 58(2)(aa) of the<sup>M27</sup> Naval Discipline Act 1957 (General Orders as to procedure of court-martial) there shall be added the words “and for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender’s pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as the offence of which he was in fact found guilty;”.

#### Marginal Citations

M27 1957 c. 53.

- 3 (1) After subsection (1) of section 76 of that Act (restitution or compensation on conviction of certain offences) there shall be inserted the following subsection:—
- “(1A) The Defence Council may also exercise the powers conferred by subsection (1) above where the court has taken an offence mentioned in that subsection into consideration in determining sentence.”.
- (2) Subsection (5) of that section shall cease to have effect.
- 4 (1) In section 77(1)(a) and (2) of that Act (effect of appeal against conviction on order for restitution or compensation) for the words “the conviction”, in both places where they occur, there shall be substituted the words “a relevant conviction”.
- (2) The following subsection shall be added after subsection (4) of that section:—
- “(5) In this section “relevant conviction” means—
- (a) where an order under section 76 above was made as a result of a conviction of such an offence of unlawfully obtaining property as is mentioned in subsection (1) of that section, that conviction; or
  - (b) where an order under that section was made as a result of such an offence of unlawfully obtaining property having been taken into consideration in determining sentence, the conviction or, if more than one, each conviction in respect of which the said sentence fell to be determined.”.

## SCHEDULE 8

Section 16.

### FINANCIAL PENALTY ENFORCEMENT ORDERS

#### Modifications etc. (not altering text)

C7 The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 1 The following section shall be inserted after section 133 of the<sup>M28</sup> Army Act 1955:

—  
“133A) If—

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- (a) a financial penalty has been awarded against any person under this Act, and
- (b) it was awarded against him on his being convicted of a qualifying offence or as the parent or guardian of a person convicted of such an offence, and
- (c) no term of imprisonment was imposed in default of payment, and
- (d) no appeal is outstanding and the time provided for the giving of notice of appeal against the award has expired, and
- (e) the whole or any part of the penalty remains unpaid or unrecovered, and
- (f) the person against whom the award was made is a person to whom this section applies,

the Defence Council or an officer authorised by them may make an order (in this section referred to as a “financial penalty enforcement order”) for the registration of the penalty by the relevant court.

(2) This section applies to a person who is, or would be but for section 131 above, neither subject to service law nor a civilian to whom Part II of this Act is applied by section 209 below, Part II of the Air Force Act 1955 is applied by section 209 of that Act or Parts I and II of the Naval Discipline Act 1957 are applied by section 118 of that Act.

(3) In this section “qualifying offence” means

- (a) an offence under section 36 above committed outside the United Kingdom and consisting of or including acts or omissions that would constitute a comparable foreign offence or a local road traffic offence ;
- (b) an offence under section 70 above
- (c) an offence under any provision of this Act other than section 70 above consisting of or including acts or omissions which would also constitute an offence under section 70 above;

and for the purposes of this definition— “comparable foreign offence” means an offence under the civil law of any place outside the United Kingdom which is comparable to an offence under the law of England and Wales; and “local road traffic offence” means an offence under the civil law of any place outside the United Kingdom relating to road traffic.

(4) A financial penalty enforcement order shall contain a certificate issued on behalf of the Defence Council or by an officer authorised by them and stating—

- (a) that a financial penalty has been awarded against the person named in the order ;
- (b) that the conditions specified in paragraphs (b) to (f) of subsection (1) above are satisfied
- (c) the nature and amount of the penalty ;
- (d) the date on which and the charge or charges in respect of which it was awarded ;
- (e) if it was awarded against the person named in the order as the parent or guardian of some other person, the fact that it was so awarded and the name of that other person ;

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- (f) sufficient particulars of the case (including particulars of any offences taken into consideration at the trial) ;
  - (g) the date of any payment or recovery of a sum on account of the penalty
  - (h) the sum outstanding ; and
  - (j) the authority to whom and address to which any stoppages or compensation included in the penalty will fall, on recovery, to be remitted under subsection (7) below.
- (5) A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by an officer authorised by them shall be deemed to be such an order unless the contrary is proved, and a certificate under subsection (4) above shall be evidence of the matters stated.
- (6) Subject to subsection (7) below, upon registration of a financial penalty enforcement order—
- (a) service enforcement procedures shall cease to be available for the recovery of the sum certified as outstanding, and
  - (b) that sum shall be treated for all purposes as if it had been a fine imposed upon a conviction by the relevant court.
- (7) Stoppages or compensation recovered under this section shall be remitted to the authority at the address specified in the certificate under subsection (4) above.
- (8) Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one offence, it shall be deemed for the purposes of enforcement to be a single penalty only.
- (9) Where—
- (a) a financial penalty enforcement order has been made against any person, and
  - (b) he ceases to be a person to whom this section applies at a time when the whole or any part of the certified sum is still outstanding, service enforcement procedures shall apply to the amount outstanding as if it were a sum payable by way of a fine imposed by a civil court.
- (10) In this section “financial penalty” means—
- (a) a fine, including a fine imposed by virtue of paragraph 13 of Schedule 5A below
  - (b) stoppages ;
  - (c) a compensation order imposed by virtue of paragraph 11 or 13 of Schedule 5A below; or
  - (d) a fine together with stoppages or a compensation order ;  
“the relevant court” means—
    - (a) the magistrates’ court in England or Wales,
    - (b) the sheriff court in Scotland, or
    - (c) the court of summary jurisdiction in Northern Ireland, within whose jurisdiction the person against whom a financial penalty enforcement order is made appears to the Defence Council or an officer authorised by them to reside or to be likely to reside;

*Status: Point in time view as at 18/07/2008.*

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“service enforcement procedures” means any procedure available by virtue of any of the following enactments, namely—

- (a) sections 144, 146 and 209(4) and (4A) below and sections 144, 146 and 209(4) and (4A) of the Air Force Act 1955, and
- (b) sections 128A and 128B of the Naval Discipline Act 1957; and

“stoppages” does not include sums awarded by virtue of section 147 or 148 below.”.

**Marginal Citations**

**M28** 1955 c. 18.

- 2 The said section shall also be inserted after section 133 of the <sup>M29</sup> Air Force Act 1955, but with the substitution of the word “Army” for the words “Air Force” wherever occurring.

**Marginal Citations**

**M29** 1955 c. 19.

- 3 (1) The said section shall also be inserted after section 128E of the <sup>M30</sup> the Naval Discipline Act 1957 and shall have effect as section 128F of that Act but with the modifications specified in sub-paragraphs (2) and (3) below.

- (2) The following subsections shall be substituted for subsections (2) and (3):—

“(2) This section applies to a person who is, or would be but for section 119 above, neither subject to service law nor a civilian to whom Parts I and II of this Act are applied by section 118 above, Part II of the Army Act 1955 is applied by section 209 of that Act or Part 11 of the Air Force Act 1955 is applied by section 209 of that Act.

- (3) In this section “qualifying offence” means—

- (a) an offence under section 14A above committed outside the United Kingdom and consisting of or including acts or omissions that would constitute a comparable foreign offence or a local road traffic offence
- (b) an offence under section 42 above;
- (c) an offence under any provision of this Act other than section 42 above consisting of or including acts or omissions which would also constitute an offence under section 42 above ;

and for the purposes of this definition “comparable foreign offence” means an offence, under the civil law of any place outside the United Kingdom which is comparable to an offence under the law of England and Wales ; and “local road traffic offence” means an offence under the civil law of any place outside the United Kingdom relating to road traffic.”.

- (3) The following definitions shall be substituted for the definitions of “financial penalty”, “service enforcement procedures” and “stoppages” in subsection (10), namely—

““financial penalty” means—

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- (a) a fine, including a fine imposed by virtue of paragraph 13 of Schedule 4A below;
- (b) stoppages;
- (c) a compensation order imposed by virtue of paragraph 11 or 13 of Schedule 4A below ; or
- (d) a fine together with stoppages or a compensation order ;

“service enforcement procedures” means any procedure available by virtue of any of the following enactments, namely—

- (a) section 128A and section 128B above ; and
- (b) sections 144, 146 and 209(4) and (4A) of the Army Act 1955 and the Air Force Act 1955 ;

“stoppages” has the meaning assigned to it by section 43(1)l above except that it does not include sums awarded by virtue of section 128C above.”

**Marginal Citations**

**M30** 1957 c. 53.

- 4 (1) The following subsections shall be inserted after section 215(5) of the <sup>M31</sup>Army Act 1955—

(5A) Where a financial penalty enforcement order has been registered under section 133A above by a court of summary jurisdiction in Northern Ireland in respect of any person, a justice of the peace may issue a summons to that person requiring him to appear before the court which registered that penalty or a warrant for the arrest of that person.

(5B) Where a person appears before a court of summary jurisdiction in Northern Ireland in pursuance of a summons or warrant issued under subsection (5A) above, the court may exercise the like powers as are conferred on it by Part X of the Magistrates’ Courts Act (Northern Ireland) 1964 (satisfaction and enforcement of orders).

(5C) A financial penalty enforcement order shall be registered in Northern Ireland under section 133A above in accordance with Magistrates’ Courts Rules”.

- (2) The said subsections shall also be inserted after section 213(5) of the <sup>M32</sup>Air Force Act 1955.

- (3) The said subsections shall also be inserted, as subsections (6A) to (6C), after section 124(6) of the <sup>M33</sup>Naval Discipline Act 1957, but with the substitution—

- (a) of the words “128F below” for the words “133A above” (wherever they occur); and
- (b) of the words “(6A)” for the words “(5A)” in subsection (5B).

**Marginal Citations**

**M31** 1955 c. 18.

**M32** 1955 c. 19.

**M33** 1957 c. 53.

*Status: Point in time view as at 18/07/2008.*

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## SCHEDULE 9

Section 22.

## MISCELLANEOUS AMENDMENTS

**Modifications etc. (not altering text)**

- C8** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

*Criminal Evidence Act 1898*

- 1 In section 6(1) of the <sup>M34</sup> Criminal Evidence Act 1898 after the words “1957” there shall be inserted the words “and in Standing Civilian Courts established under the Armed Forces Act 1976”.

**Marginal Citations**

**M34** 1898 c. 36.

- 2 ..... <sup>F40</sup>

**Textual Amendments**

**F40** Sch. 9 para. 2 repealed by S.I. 1979/1714 (N.I.19), Sch. 2

*Army Act 1955 and Air Force Act 1955*

- 3 In section 86 of the <sup>M35</sup> Army Act 1955 and section 86 of the <sup>M36</sup> Air Force Act 1955 (officers having power to convene courts-martial) subsection (4) (which is inconsistent with amendments made to subsection (1) by the <sup>M37</sup> Armed Forces Act 1971) shall cease to have effect.

**Marginal Citations**

**M35** 1955 c. 18.

**M36** 1955 c.19.

**M37** 1971 c. 33.

- 4 The following section shall be inserted after section 198 of each of those Acts:—

**“198A Provision as to age.**

Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court-martial, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.”

*Status: Point in time view as at 18/07/2008.*

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- 5 The following paragraphs shall be substituted for paragraph (a) of subsection (3) of section 209 of each of those Acts (application to civilians):—
- “(a) on a trial—
    - (i) a court-martial may award the punishments specified in paragraphs (a), (b) and (h) of section 71(1) above, except that section 71(5)(a) above shall not apply to the amount of a fine ;
    - (ii) a Standing Civilian Court established under the Armed Forces Act 1976 may award any punishment authorised for such courts by section 8 of that Act ; and
    - (iii) a court-martial or Standing Civilian Court may make any order authorised by Schedule 5A below;
  - (aa) any such order shall be treated as a punishment for the purposes of this Act ;
  - (ab) paragraph 15 of Schedule 5A below shall have effect in substitution for the words in section 71(1) above from “and references in this Act” to the end ;”.
- 6 The following subsection shall be inserted after subsection (3) of each of those sections:—
- “(3A) In their application to any area for which Standing Civilian Courts are established under the Armed Forces Act 1976—
- (a) section 75(2) above shall have effect as if references to the assembling of a court-martial for a person’s trial included references to his being brought before a Standing Civilian Court;
  - (b) section 103(1) above shall have effect—
    - (i) as if the words “with respect to the hearing by courts-martial of appeals pursuant to paragraph 18 of Schedule 3 to the Armed Forces Act 1976 against finding and sentences of Standing Civilian Courts established under that Act” were inserted after the word “authorities”; and
    - (ii) as if the words “and may prescribe modifications of sections 76, 77, 79 and 80 above in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try” were added at the end; and
  - (c) subsection (3) above shall have effect in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try, but without prejudice to its effect in relation to other charges, as if the following paragraph were substituted for paragraph (e):—
  - (e) sections 76, 77, 79 and 80 above shall apply as they apply to officers and warrant officers, subject to such modifications consequential on the establishment of Standing Civilian Courts as may be prescribed by Rules of Procedure and by any order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976 ;”.
- 7 The following subsections shall be substituted for subsection (4) of each of those sections. -

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“(4) A fine awarded against any person by virtue of this section by a court-martial, a Standing Civilian Court or the appropriate superior authority, and a sum which an order under paragraph 11 of Schedule 5A below requires any person to pay shall be recoverable, in the United Kingdom or any colony, as a debt due to Her Majesty.

(4A) The registration of a financial penalty enforcement order under section 133A above shall not affect the power of recovery in a colony conferred by subsection (4) above.

(4B) Section 199 above shall apply to persons such as are mentioned in subsection (1) or (2) above, is it applies to persons subject to military law.”.

8 Section 215 of the <sup>M38</sup> Army Act 1955 and section 213 of the <sup>M39</sup> Air Force Act 1955 (application to Northern Ireland) shall have effect subject to the following amendments:—

- (a) in subsection (7), for the words “Minister of Home Affairs” there shall be substituted the words “Department of Health and Social Services” and for the words from “county inspector” onwards there shall be substituted the words “chief superintendent of the Royal Ulster Constabulary or any other officer having a rank equivalent to chief superintendent”; and
- (b) in subsection (8) for the words from “six” onwards there shall be substituted the words “75 of the Road Traffic Act (Northern Ireland) 1970 or any corresponding enactment for the time being in force in Northern Ireland”.

**Marginal Citations**

**M38** 1955 c. 18.  
**M39** 1955 c. 19.

9 ..... <sup>F41</sup>

**Textual Amendments**

**F41** Sch. 9 para. 9 repealed (with saving) by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#), s. 28(2), [Sch. 5 Pt. I](#)

*Naval Discipline Act 1957*

10 The following subsection shall be inserted after section 118(3A) of the <sup>M40</sup> Naval Discipline Act 1957 (application to civilians):—

“(3B) On the trial of such a person a court-martial may make an order authorised by Schedule 4A below, and any such order shall be treated as a punishment for the purposes of this Act.”

**Marginal Citations**

**M40** 1957 c. 53.

11 The following section shall be inserted after section 129D of that Act:—

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**“129E Provision as to age.**

Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court-martial, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.”

12 ..... F42

**Textual Amendments**

F42 Sch. 9 para. 12 repealed by Armed Forces Act 1981 (c. 55, SIF 7:1), s. 28, Sch. 5 Pt. II

13 In Schedule 3 to that Act (classes of civilians subject to Act) the heading (which is inconsistent with amendments made to section 118(2) by the Armed Forces Act 1966) shall be changed to “Persons subject to Act outside the United Kingdom”.

14 In Schedule 4 to that Act (application of Act to civilians subject to it)—  
(a) in paragraph 1 for the words from “and paragraphs” to the end there shall be substituted the words “and in relation to such persons—  
(i) paragraphs (e) to (m) of section 43(1) above shall be omitted; and  
(ii) paragraph 15 of Schedule 4A below shall have effect in substitution for the words in that subsection from “and references in this Act” to the end ” ; and  
(b) the following paragraph shall be added after paragraph 4:—  
“5 Section 129B above shall apply to a person to whom this Act applies by virtue of section 118 above, as it applies to a person subject to this Act.”

*Criminal Justice Act 1967*

15 In section 89(1) of the <sup>M41</sup> Criminal Justice Act 1967 (false written statements tendered in evidence) after the word “Act” there shall be inserted the words “or in proceedings before a court-martial by virtue of the said section 9 as extended by section 12 above or by section 99A of the Army Act 1955 or section 99A of the Air Force Act 1955”.

**Marginal Citations**

M41 1967 c. 80.

*Courts-Martial (Appeals) Act 1968*

16 The following subsection shall be inserted after section 8(1) of the <sup>M42</sup> Courts-Martial (Appeals) Act 1968 (right of appeal):—  
“(IA) An appeal may also be brought, with the leave of the Appeal Court,—  
(a) by a person convicted by a court-martial, against an order under paragraph 6, 10 or 11 of Schedule 5A to the Army Act, Schedule 5A

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- to the Air Force Act or Schedule 4A to the Naval Discipline Act (reception orders, custodial orders and compensation orders), and
- (b) by a person on whom a fine is imposed or against whom a compensation order is made under paragraph 13 of any of those Schedules (parents and guardians subject to service jurisdiction).”.

**Marginal Citations**  
M42 1968 c. 20.

17 The following section shall be inserted after section 17 of that Act:—

**“17A Appeals by civilians—supplementary.**

Any reference to a sentence in section 13, 14, 15, 16A or 17 above includes a reference to an order under Schedule 5A to the Army Act, Schedule 5A to the Air Force Act or Schedule 4A to the Naval Discipline Act, but the exercise of the power conferred by sections 13, 14, 15 and 16A above shall be subject to the restrictions contained in paragraph 15 of each of those Schedules.”.

*Treatment of Offenders Act (Northern Ireland) 1968*

18 In section 33(4)(b) of the <sup>M43</sup> Treatment of Offenders Act (Northern Ireland) 1968 after the words “court-martial” there shall be inserted the words “or a Standing Civilian Court established under the Armed Forces Act 1976”.

**Marginal Citations**  
M43 1968 c. 29 (N.I.).

19 ..... F43

**Textual Amendments**  
F43 Sch. 9 para. 19 repealed by Representation of the People Act 1983 (c. 2, SIF 42), s. 206, Sch. 9

*Rehabilitation of Offenders Act 1974*

20 (1) In subsection (1) of section 2 of the Rehabilitation of Offenders Act 1974 after the word “awarded” there shall be inserted the words “or order made by virtue of Schedule 5A to the Army Act 1955 or to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957”.

<sup>F44</sup>(2) .....

(3) The following paragraph shall be inserted after subsection (5)(b) of that section:—  
“(bb) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 ;”.

*Status: Point in time view as at 18/07/2008.*

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(4) In paragraph (d) of section 5(1) of that Act (sentences excluded from rehabilitation) at the end of the paragraph there shall be inserted the words “or a corresponding court-martial punishment”.

(5) The following subsection shall be inserted after that subsection:—

“(IA) In subsection (1)(d) above “corresponding court martial punishment” means a punishment awarded under section 71A(3) or (4) of the Army Act 1955, section 71A(3) or (4) of the Air Force Act 1955 or section 43A(3) or (4) of the Naval Discipline Act 1957.”

#### Textual Amendments

**F44** Sch. 9 para. 20(2) repealed (1.10.1996) 1996 c. 46, s. 35(2), Sch. 7 Pt. III; S.I. 1996/2474, art. 2, Sch.(with art. 3)

21 (1) The following entries shall be made in Table B in subsection (2) of section 5 of that Act (rehabilitation periods for particular sentences):—

(a) after the entry relating to a sentence of Borstal training—

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“A custodial order under Schedule 5A to the Army Act 1955 or the Air Force Act 1955, or under Schedule 4A to the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than six months. Seven years.”;

(b) after the entry relating to an order for detention in a detention centre:—

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“A custodial order under any of the Schedules to the said Acts of 1955 and 1957 mentioned above, where the maximum period of detention specified in the order is six months or less. Three years.”.

(2) The following paragraphs shall be added after subsection (5)(f) of that section:—

“(g) a community supervision order under Schedule 5A to the Army Act 1955 or the Air Force Act 1955, or under Schedule 4A to the Naval Discipline Act 1957;

(h) a reception order under any of those Schedules;”.

(3) The following subsection shall be inserted after subsection (10) of that section:—

“(10A) The reference in subsection (5) above to the period during which a reception order has effect includes a reference to any subsequent period during which by virtue of the order having been made the Social Work (Scotland) Act 1968 or the Children and Young Persons Act Northern Ireland) 1968 has effect in relation to the person in respect of whom the order was made and subsection (10) above shall accordingly have effect in relation to any such subsequent period.”

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*Treatment of Offenders (Northern Ireland) Order 1976*

- 22 In Article 2(2) of the <sup>M44</sup> Treatment of Offenders (Northern Ireland) Order 1976, in the definition of “court” after the words “court-martial” there shall be inserted the words “ or a Standing Civilian Court established under the Armed Forces Act 1976”.

**Marginal Citations**

**M44** Northern S.I. 1976 No. 226 (N.I.4).

SCHEDULE 10

Section 22.

REPEALS

**Modifications etc. (not altering text)**

- C9** The text of ss. 2, 5(1), 9–12, 15, 16, 18, 20, 22(5)(6), Schs. 1, 2, and 4–10 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

<b>Chapter</b>	<b>Short Title</b>	<b>Extent of Repeal</b>
55 & 56 Vict. c. 34.	Naval Knights of Windsor (Dissolution) Act 1892.	The whole Act.
4 Eliz. 2. c. 18.	The Army Act 1955.	In section 17(2), the words “except those relating to discharge by purchase”. In section 78(3), in the second proviso, in paragraph (a), the words “fourteen days or, where the offence was committed on active service,” and in paragraph (b) (i), the words “fourteen days or, where the civil offence constituting the offence against that section was committed on active service,”. Section 86(4). In section 93(1), the words “shorthand writer”. In section 225(1), in the definition of “Her Majesty’s forces”, the words “37 and”. In Schedule 7, in paragraph 1, the words from “10” to

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		<p>“and”, in the second place where it occurs, paragraph 5A, and in paragraph 6, the words “sections fourteen and seventeen”.</p>
3 & 4 Eliz. 2. c. 19.	The Air Force Act 1955.	<p>In section 17(2), the words “(except those relating to discharge by purchase)” .</p> <p>In section 78(3), in the second proviso, in paragraph (a), the words “fourteen days or, where the offence was committed on active service,” and in paragraph (b)(i), the words “fourteen days or, where the civil offence constituting the offence against that section was committed on active service,”.</p> <p>Section 86(4).</p> <p>In section 93(1), the words “shorthand writer”.</p> <p>In section 223(1), in the definition of “Her Majesty’s forces”, the words “37 and”.</p>
5 & 6 Eliz. 2. c. 53.	The Naval Discipline Act 1957.	<p>In section 60(1), the words “for the purpose of reporting or transcribing the proceedings or”.</p> <p>Section 76(5).</p> <p>Section 111(5)(a) and (b).</p> <p>Section 113(3).</p>
1966 c. 45.	The Armed Forces Act 1966.	<p>In section 13(1), the words from “and in place” to the end of the subsection.</p> <p>In Schedule 3, paragraph 2.</p>
1971 c. 33.	The Armed Forces Act 1971.	<p>Section 1.</p> <p>In section 67(3), the words from the beginning of the subsection to “have effect and”.</p> <p>In Schedule 1, paragraph 2(8).</p>

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		In Schedule 3, in paragraph 5(3), the words “and (8)”.
1974 c. 23.	The Juries Act 1974.	In Part III of Schedule 1 the words “or any Voluntary Aid Detachment serving with the Royal Navy”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	Section 10(4).
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	Section 5(3).

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**Status:**

Point in time view as at 18/07/2008.

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