



Armed Forces Act 1981

1981 CHAPTER 55

PART II

TRIAL AND PUNISHMENT OF OFFENCES

2 Young service offenders: custodial orders.

- (1) The following section shall be inserted after section 71A of the Army Act 1955^{M1} and the Air Force Act 1955^{M2}—

“71AA Young service offenders : custodial orders.

- (1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial 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 section referred to as a “custodial order”) committing him to be detained in accordance with the provisions of this section for a maximum period to be specified in the order of not more than two years.
- (2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable after the confirmation of the sentence is completed be removed to the United Kingdom.
- (3) A person in respect of whom a custodial order has been made shall be detained 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 section.
- (4) 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 Secretary of State’s direction.
- (5) Sections 71(3) and (4), 114(1), 118(1), 119A(1) and (3) and 145 of this Act shall apply in the case of a sentence under a custodial order as they apply in the

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case of a sentence of detention (or, in the case of section 71(3), imprisonment) ; and so shall sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B for the period before a person sentenced under such an order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received).

- (6) In this section “appropriate institution” means—
- (a) where the offender is in or removed to England or Wales—
 - (i) if the maximum period specified in the order exceeds six months, a borstal institution, and
 - (ii) in any other case, a detention centre ;
 - (b) where the offender is in or removed to Scotland—
 - (i) in the case of a male person ordered to be detained for a period of at least twenty-eight days but not exceeding four months, a detention centre, and
 - (ii) in any other case, a young offenders institution ;
 - (c) where the offender is in or removed to Northern Ireland, a young offenders centre.

(7) This section does not apply to offenders who are civilians (as regards whom similar provision is made by paragraph 10 of Schedule 5A to this Act).”

- (2) The following section shall be inserted after section 43A of the Naval Discipline Act 1957^{M3}—

“43AA Young service offenders : custodial orders.

- (1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial 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 section referred to as a “custodial order”) committing him to be detained in accordance with the provisions of this section for a maximum period to be specified in the order of not more than two years.
- (2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.
- (3) A person in respect of whom a custodial order has been made shall be detained 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 section.
- (4) 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 Secretary of State’s direction.
- (5) Sections 43(3) and (4), 85(1), 89(1) and (3) and 92(1) of this Act shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of detention (or, in the case of section 43(3), imprisonment) ; and so shall sections 81, 82, 87, 88, 104, 119 and 130A for the period before a person sentenced under such an order is received into the institution where he

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is to be detained (or for the currency of the sentence if its term ends before he is so received).

- (6) In this section “appropriate institution” means—
- (a) where the offender is in or removed to England or Wales—
 - (i) if the maximum period specified in the order exceeds six months, a borstal institution, and
 - (ii) in any other case, a detention centre ;
 - (b) where the offender is in or removed to Scotland—
 - (i) in the case of a male person ordered to be detained for a period of at least twenty-eight days but not exceeding four months, a detention centre, and
 - (ii) in any other case, a young offenders institution ;
 - (c) where the offender is in or removed to Northern Ireland, a young offenders centre.

(7) This section does not apply to offenders who are civilians (as regards whom similar provision is made by paragraph 10 of Schedule 4A to this Act).”

(3) Accordingly—

- (a) the following paragraph shall be inserted after section 71(1)(b) of the Army Act 1955^{M4} and the Air Force Act 1955^{M5}—

“(bb) detention by virtue of a custodial order made under section 71AA of this Act ;”

- (b) the following paragraph shall be inserted after section 43(1)(b) of the Naval Discipline Act 1957^{M6}—

“(bb) detention by virtue of a custodial order made under section 43AA of this Act ;”

Modifications etc. (not altering text)

- C1** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

- M1** 1955 c. 18.
M2 1955 c. 19.
M3 1957 c. 53.
M4 1955 c. 18.
M5 1955 c. 19.
M6 1957 c. 53

3 Power to stay further proceedings under one of the Services Acts with a view to other proceedings.

- (1) Sections 77 to 79 of the Army Act 1955 and the Air Force Act 1955 (which prescribe the procedure to be followed for the trial of offences under those Acts) shall be amended as provided in subsections (2) to (5) of this section.
- (2) In section 77, after subsection (4), there shall be inserted the following subsection—

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1981, Part II. (See end of Document for details)

“(4A) This section has effect subject to section 77A of this Act”.

(3) After section 77 there shall be inserted the following section—

“77A Power to stay further proceedings.

Where, in the course of investigating a charge, it appears to the accused’s commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice ought to be, taken against the accused otherwise than under this Act he may stay further proceedings on the charge.”

- (4) In section 78, in subsection (1), there shall be added at the end the words “and has not stayed further proceedings thereon”.
- (5) In section 79, in subsection (1), after the word “dismissed” there shall be inserted the words “or stayed further proceedings on”.
- (6) The Naval Discipline Act 1957^{M7} shall have effect with the insertion after section 52 of a section 52A in the same terms as the section 77A inserted by subsection (3) above in the Army Act 1955 and the Air Force Act 1955.

Modifications etc. (not altering text)

- C2** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

- M7** 1957 c. 53.

4 Marines: forfeiture of service where desertion confessed.

- (1) So much of section 81(2) of the Army Act 1955 as relates to forfeiture of service (period of service as respects which confession of desertion is made to be forfeited in certain circumstances) shall apply to warrant officers, non-commissioned officers and marines of the Royal Marines and of the Royal Marines Reserve and to warrant officers, non-commissioned officers and marines of the Royal Fleet Reserve who have served in the Royal Marines.
- (2) Accordingly, in paragraph 6 of Schedule 7 to that Act the words “and so much of Part II as relates to forfeiture of service” shall cease to have effect.

Modifications etc. (not altering text)

- C3** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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5 Power on review or confirmation to annul the taking into consideration of other offences.

- (1) In section 110 of the Army Act 1955^{M8} and the Air Force Act 1955^{M9} (which confer various powers on confirming officers when dealing with the finding or sentence of a court-martial), after subsection (4), there shall be inserted the following subsection—

“(4A) Where it appears to a confirming officer that a court-martial, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 105 of this Act to take other offences into consideration, he shall, whether or not he substitutes a different sentence or remits or commutes punishment, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon ; and where he does so, the offence or offences shall be treated for all purposes as not having been taken into consideration.”

- (2) In section 113 of the Army Act 1955 and the Air Force Act 1955, in subsection (5) (which confers like powers on a reviewing authority when reviewing the finding or sentence of a court-martial), for paragraph (c) there shall be substituted the following paragraph—

“(c) in any case, 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 a confirming officer by subsections (2) to (4A) of section 110 of this Act ;”

- (3) In Schedule 3 to the Armed Forces Act 1976^{M10}, in paragraph 20(2) (which confers like powers on a reviewing authority when reviewing the finding or sentence of a Standing Civilian Court), for paragraph (c) there shall be substituted the following paragraph—

“(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 a confirming officer in relation to the findings and sentences of courts-martial by subsections (2) to (4A) of section 110 of the Army Act 1955 ;”

- (4) In consequence of the amendments made by subsections (1) and (2) above the following amendments shall be made in sections 133 and 134 of those Acts (which prevent a person being tried twice, whether by a court-martial or other service authority or by a civil court, for an offence of or in respect of which he has been convicted or sentenced), that is to say—

- (a) in section 133(2), at the end of paragraph (b), there shall be added the words “(as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or reviewing authority)” ; and
- (b) in section 134(2), at the end of paragraph (b), there shall be added the words “(as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or reviewing authority)”.

- (5) In section 72 of the Naval Discipline Act 1957^{M11} (which confers various powers on the Defence Council on the review of the sentence of a court-martial), after subsection (1), there shall be inserted the following subsection—

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1981, Part II. (See end of Document for details)

“(1A) Where it appears to the Defence Council that the court, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 58(2)(aa) of this Act to take other offences into consideration they shall, whether or not they remit or commute the sentence or substitute a different sentence, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon ; and where they do so, the offence or offences shall be treated for all purposes as not having been taken into consideration.”

Modifications etc. (not altering text)

C4 The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M8 1955 c. 18.
M9 1955 c. 19
M10 1976 c. 52.
M11 1957 c. 53.

6 Trial of persons ceasing to be subject to service law and time limits for trials.

- (1) Sections 131 and 132 of the Army Act 1955 ^{M12} and the Air Force Act 1955 ^{M13} and sections 51 and 52 of the Naval Discipline Act 1957 (which respectively provide for the trial by court-martial of persons ceasing to be subject to service law and set time limits for the initiation of proceedings) shall be amended as provided in this section.
- (2) In section 131 of the Army Act 1955, in subsection (1), after the words “investigation of charges” there shall be inserted the words “summary dealing with charges” and, in subsection (2), there shall be omitted the words “and the provisions thereof as to the summary dealing with charges”.
- (3) In section 132 of the Army Act 1955—
- (a) ^{F1}
- (c) for subsection (3) there shall be substituted the following subsections—
- “(3) Except in relation to the offences specified in subsection (3A) below, no proceedings shall be taken against a person by virtue of subsection (1) of section 131 of this Act unless—
- (a) in a case where the charge is one which may be dealt with summarily, the proceedings on the summary dealing with the charge are begun within three months or the trial by court-martial is begun within six months after he ceases to be subject to military law ;
- (b) in a case where the charge is one which cannot be dealt with summarily, the trial is begun within six months after he ceases to be subject to military law.
- (3A) Subsection (3) above does not apply to an offence against section 31 or 32 of this Act or desertion or to an offence against section 70 where

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1981, Part II. (See end of Document for details)

the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the proceedings.”

- (4) In the corresponding subsections of sections 131 and 132 of the Air Force Act 1955^{M14} the same amendments shall be made as are made by subsections (2) and (3) above in those sections of the Army Act 1955^{M15} except that the words “air-force law” shall be substituted for the words “military law” wherever those words occur.
- (5) In section 51 of the Naval Discipline Act 1957, subsection (2) (trial of a person no longer subject to the Act to be by court-martial only) shall be omitted.
- (6) In section 52 of the Naval Discipline Act 1957, in subsection (2), after the words “three months” there shall be inserted the words “or, in the case of trial by court-martial, six months”.

Textual Amendments

F1 S. 6(3)(a)(b) repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), [Sch. 2](#)

Modifications etc. (not altering text)

C5 The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M12 1955 c. 18.
M13 1955 c. 19.
M14 1955 c. 19.
M15 1955 c. 18

7 Extent of accused’s right to copy of record of court-martial proceedings.

- (1) Sections 141 of the Army Act 1955^{M16} and the Air Force Act 1955^{M17} and section 66 of the Naval Discipline Act 1957^{M18} (which require the record of the proceedings of a court-martial to be kept for a prescribed period and a copy thereof supplied to the accused or his personal representatives) shall be amended as provided in this section.
- (2) In the said sections 141—
 - (a) after subsection (3), there shall be inserted the following subsection—

“(3A) The right of a person or his representation to obtain a copy of the record under this section does not extend to so much of the record as relates only to a charge of which he was found not guilty.” ;
 - (b) in subsection (4), for the words “either of the two last foregoing subsections”, there shall be substituted the words “this section”.
- (3) In the said section 66, after subsection (3), there shall be inserted the following subsection—

“(3A) The right of a person or his representatives to obtain a copy of the record under this section does not extend to so much of the record as relates only to a charge of which he was found not guilty.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1981, Part II. (See end of Document for details)

- (4) This section shall not apply to a record of proceedings commenced before this section comes into force.

Modifications etc. (not altering text)

- C6** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

- M16** 1955 c. 18
M17 1955 c. 19
M18 1957 c. 53.

8 Right of penalised parent or guardian to copy of record of court-martial proceedings.

- (1) The following section shall be inserted after section 141 of the Army Act 1955 and the Air Force Act 1955—

“141A Right of penalised parent or guardian to copy of record of court-martial proceedings.

- (1) Subject to the provisions of this section, where a court-martial imposes a fine on or makes a compensation order against a parent or guardian under paragraph 13 of Schedule 5A to this Act, the parent or guardian shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period therefore at such rate as the Judge Advocate General may determine a copy of the relevant part of the record of the proceedings of the court.
- (2) Where the parent or guardian dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the rate determined under subsection (1) above a copy of the relevant part of the record of the proceedings of the court.
- (3) In a case where this section applies, any entitlement conferred by subsection (1) or (2) above is in addition to any entitlement conferred by section 141(2) or (3) of this Act.
- (4) If, on an application in pursuance of this section for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.
- (5) In this section “the relevant period” means the period of five years beginning with the date of the promulgation of the findings and sentence.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1981, Part II. (See end of Document for details)

- (6) In this section “the relevant part of the record” means so much of the record as relates to compliance with the requirements of the said paragraph 13 or to any matters taken into account by the court in deciding to impose the fine or make the compensation order.
- (7) Subsection (6) of section 141 of this Act applies for the purposes of this section as it applies for the purposes of that section.”
- (2) Accordingly, in section 141(1) of the Army Act 1955 ^{M19} and the Air Force Act 1955 ^{M20} (record of court-martial proceedings to be kept for certain period) after “subsections” there shall be inserted “and by section 141A below”.
- (3) The following section shall be inserted after section 66 of the Naval Discipline Act 1957 ^{M21}—

“66A Right of penalised parent or guardian to copy of record of court-martial proceedings.

- (1) Subject to the provisions of this section, where a court-martial imposes a fine on or makes a compensation order against a parent or guardian under paragraph 13 of Schedule 4A to this Act, the parent or guardian shall be entitled, on application made to the Defence Council within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the relevant part of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by the Defence Council.
- (2) Where the parent or guardian dies within the period of five years mentioned in subsection (1) of this section, his personal representatives, or any person who in the opinion of the Defence Council ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to the Defence Council within one year after his death, have the like right to receive a copy of the relevant part of the record as that person would have had on application made under that subsection.
- (3) In a case where this section applies, any entitlement conferred by subsection (1) or (2) above is in addition to any entitlement conferred by section 66(2) or (3) of this Act.
- (4) If, on application made in pursuance of this section for a copy of the record of any proceedings, the Defence Council certify that it is necessary for reasons of security that any part of the proceedings should not be disclosed, the applicant shall not be entitled to a copy of the part to which the certificate relates.
- (5) In this section “the relevant part of the record” means so much of the record as relates to compliance with the requirements of the said paragraph 13 or to any matters taken into account by the court in deciding to impose the fine or make the compensation order.”

Modifications etc. (not altering text)

- C7** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Status: Point in time view as at 01/02/1991.

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Marginal Citations

- M19** 1955 c. 18.
M20 1955 c. 19.
M21 1957 c. 53.

9 **F2**

Textual Amendments

- F2** S. 9 repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119, [Sch. 7 Pt. III](#)

10 Amendments relating to trial and punishment of civilians under the Services Acts.

Schedule 1 to this Act (which amends provisions of the Services Acts relating to the trial and punishment of civilians under those Acts and related matters) shall have effect.

Modifications etc. (not altering text)

- C8** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

11 Minor amendments and repeals relating to procedure and evidence.

Schedule 2 to this Act (which amends or repeals provisions of the Services Acts and other enactments relating to procedure and evidence) shall have effect.

Modifications etc. (not altering text)

- C9** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

12 Increase in fine for certain minor offences under the Reserve Forces Act 1980

M22

In section 143(1) of the Reserve Forces Act 1980 (fine not exceeding £5 for member of Ulster Defence Regiment for failure to attend or comply with orders, etc.) for “£5” there shall be substituted “£50”.

Modifications etc. (not altering text)

- C10** The text of ss. 2, 3, 4(2), 5, 6(1)(2)(3)(c)(4)(5)(6), 7, 8, 10–12, 15, 16, 18, 19, 20(3), 21–23, 24(2), 28(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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Marginal Citations

M22 1980 c. 9.

Status:

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Changes to legislation:

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