



# Armed Forces Act 1996

## 1996 CHAPTER 46

An Act to continue the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957; to amend those Acts and other enactments relating to the armed forces; to make further provision in relation to proceedings before service courts; to provide for the taking of fingerprints and samples from offenders convicted in service proceedings; to amend the Courts-Martial (Appeals) Act 1968; to make further provision in relation to complaints to<sup>[F1]</sup> employment tribunals] by members of the armed forces; to provide for further exemptions from the Firearms Act 1968; to make further provision in relation to Greenwich Hospital; to amend the Visiting Forces Act 1952; and for connected purposes. [24th July 1996]

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

### *Continuance of Services Acts*

<sup>F2</sup>1 .....

#### **Annotations:**

#### **Amendments (Textual)**

**F2** S. 1 repealed (1.9.2001) by 2001 c. 19, ss. 38, 39(4), Sch. 7 Pt. 7

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### *Terms and conditions of service*

## 2 Enlistment or entry for local service.

(1) In section 2(1) of the <sup>M1</sup>Armed Forces Act 1966 (regulations as to engagement of persons in the regular services), after paragraph (i) there shall be inserted the following paragraphs—

- “(j) enabling a person to restrict his service to service in a particular area;
- (k) requiring a person who has restricted his service to service in a particular area to serve outside that area for a number of days in any year not exceeding the maximum number provided for by the regulations.”

(2) In section 2(1A) of that Act, after the words “Northern Ireland” there shall be inserted the words “by virtue of regulations made under subsection (1)(i) above”.

#### Annotations:

#### Marginal Citations

M1 1966 c. 45.

## 3 Discharge certificates.

(1) In section 11(4) of the 1955 Acts and paragraph 5(7) of Schedule 7 to the <sup>M2</sup>Army Act 1955 (certificates of discharge), for the words from “such particulars” to the end there shall be substituted the words “the following particulars, namely—

- (a) his name, rank and service number;
- (b) his reserve liability (if applicable); and
- (c) the reason for his discharge and the date of discharge,

together with any other particulars which are required to be included in the certificate by directions of the Defence Council or an officer authorised by them.”

(2) In section 6(3) of the Armed Forces Act 1966 (certificates of discharge) for the words from “such particulars” to the end there shall be substituted the words “the following particulars, namely—

- (a) his name, rating and service number;
- (b) his reserve liability (if applicable); and
- (c) the reason for his discharge and the date of discharge,

together with any other particulars which are required to be included in the certificate by directions of the Defence Council or an officer authorised by them.”

#### Annotations:

#### Marginal Citations

M2 1955 c. 18.

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#### **4 Mode of making regulations relating to enlistment etc.**

(1) In section 22 of the 1955 Acts (regulations as to enlistment), the existing provision shall be numbered subsection (1) and after that subsection there shall be inserted the following subsection—

“(2) Any power conferred by this Part of this Act to make regulations (including the power under paragraph 5 of Schedule 1 to this Act) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In Part I of Schedule 7 to the Army Act 1955 (application of Part I to marines), after paragraph 10 there shall be inserted the following paragraph—

“10A Subsection (2) of section 22 applies to the powers to make regulations conferred by this Part of this Schedule as it applies to other powers under Part I of this Act.”

(3) In section 14 of the <sup>M3</sup>Armed Forces Act 1966 (interpretation of Part II), after subsection (2) there shall be added the following subsection—

“(3) Any power to make regulations conferred on the Defence Council by any provision of this Part of this Act shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(4) This section does not affect the validity of any regulations made under the 1955 Acts or the Armed Forces Act 1966 which are in force immediately before the commencement of this section.

#### **Annotations:**

#### **Marginal Citations**

**M3** 1966 c. 45.

### *Trial and punishment of offences under Services Acts*

#### **5 Procedure for dealing with offences under Services Acts.**

Schedule 1 (amendment of provisions relating to the procedure for dealing with offences under the 1955 Acts and the 1957 Act) shall have effect.

#### **6 Abrogation of common law corroboration rules.**

(1) For the avoidance of doubt section 32 of the <sup>M4</sup>Criminal Justice and Public Order Act 1994 (abolition of corroboration rules) and section 34(2) of the <sup>M5</sup>Criminal Justice Act 1988 (abrogation of requirements for corroboration warning) apply to any service disciplinary proceedings in which the rules abrogated by those sections would have been applied.

(2) Nothing in this section shall be taken as affecting the determination of any question as to the law applicable to service disciplinary proceedings before the commencement of this section.

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- (3) In this section “service disciplinary proceedings” means proceedings for any offence taking place under the 1955 Acts or the 1957 Act and proceedings on appeal to the Courts-Martial Appeal Court.

**Annotations:**

**Extent Information**

**E2** For the application of this section to Channel Islands and Isle of Man, see s. 36(6)

**Marginal Citations**

**M4** 1994 c. 33.

**M5** 1988 c. 33.

**7 Evidence from children.**

In Schedule 13 to the Criminal Justice Act 1988 (application of provisions of that Act to courts-martial etc.), after paragraph 8 there shall be added the following paragraphs

- “9
- (1) The Secretary of State may by order direct that section 32A above shall have effect in relation—
    - (a) to proceedings before Service courts; or
    - (b) to proceedings, or proceedings of specified descriptions, before Service courts in specified places,
 subject to such modifications as may be specified in the order.
  - (2) The power to make an order conferred by this paragraph shall be exercisable by statutory instrument and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (3) Without prejudice to the generality of any enactment conferring power to make procedural instruments, procedural instruments may make such provision as appears to the authority making them to be necessary or expedient for the purposes of section 32A above in their application to proceedings such as are mentioned in sub-paragraph (1) above by virtue of an order under that sub-paragraph.
  - (4) In this paragraph “modifications” includes additions, omissions and amendments.
- 10
- (1) The Secretary of State may by order direct that section 34A above shall have effect in relation—
    - (a) to proceedings before Service courts; or
    - (b) to proceedings or proceedings of specified descriptions before Service courts in specified places,
 subject to such modifications as may be specified in the order.
  - (2) The power to make an order conferred by this paragraph shall be exercisable by statutory instrument and a statutory instrument containing

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any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) In this paragraph “modifications” includes additions, omissions and amendments.”

PROSPECTIVE

## **8 Findings of unfitness to stand trial and insanity.**

Schedule 2 (amendments of the 1955 Acts, the 1957 Act and the <sup>M6</sup>Courts-Martial (Appeals) Act 1968 relating to findings of unfitness to stand trial and insanity) shall have effect.

### **Annotations:**

#### **Marginal Citations**

**M6** 1968 c. 20.

## **9 Postponement of sentences of courts-martial.**

(1) After section 120 of the <sup>M7</sup>Army Act 1955 there shall be inserted the following section

### **“120A Postponement of sentences.**

- (1) On passing any sentence a court-martial may order that the sentence shall not have effect until the end of the period specified in the order.
- (2) On reviewing a sentence under section 113 of this Act, the reviewing authority may—
  - (a) if the sentence has not had effect, order that the sentence shall not have effect until the end of the period specified in the order;
  - (b) if the sentence has had effect, order that the sentence shall cease to have effect on the making of the order until the end of the period specified in the order.
- (3) On exercising any power under section 113AA of this Act to pass or substitute a sentence, the reviewing authority may order that the sentence shall not have effect until the end of the period specified in the order.
- (4) The Defence Council or any officer authorised by them may terminate the period specified in an order under this section or extend such a period for a further period specified by them.
- (5) On the termination of such a period the sentence in respect of which the order in question was made shall have effect or (in the case of an order under subsection (2)(b) above) resume effect.
- (6) Nothing in this section shall be taken to prevent section 118(1) of this Act from applying in relation to a military sentence of imprisonment or detention.”

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- (2) After section 120 of the <sup>M8</sup>Air Force Act 1955 there shall be inserted the following section—

**“120A Postponement of sentences.**

- (1) On passing any sentence a court-martial may order that the sentence shall not have effect until the end of the period specified in the order.
  - (2) On reviewing a sentence under section 113 of this Act, the reviewing authority may—
    - (a) if the sentence has not had effect, order that the sentence shall not have effect until the end of the period specified in the order;
    - (b) if the sentence has had effect, order that the sentence shall cease to have effect on the making of the order until the end of the period specified in the order.
  - (3) On exercising any power under section 113AA of this Act to pass or substitute a sentence, the reviewing authority may order that the sentence shall not have effect until the end of the period specified in the order.
  - (4) The Defence Council or any officer authorised by them may terminate the period specified in an order under this section or extend such a period for a further period specified by them.
  - (5) On the termination of such a period the sentence in respect of which the order in question was made shall have effect or (in the case of an order under subsection (2)(b) above) resume effect.
  - (6) Nothing in this section shall be taken to prevent section 118(1) of this Act from applying in relation to an air-force sentence of imprisonment or detention.”
- (3) After section 89 of the 1957 Act there shall be inserted the following section—

*“ Postponement of sentences*

**89A Postponement of sentences.**

- (1) On passing any sentence a court-martial may order that the sentence shall not have effect until the end of the period specified in the order.
- (2) On reviewing a sentence under section 70 of this Act, the reviewing authority may—
  - (a) if the sentence has not had effect, order that the sentence shall not have effect until the end of the period specified in the order;
  - (b) if the sentence has had effect, order that the sentence shall cease to have effect on the making of the order until the end of the period specified in the order.
- (3) On exercising any power under section 71 of this Act to pass or substitute a sentence, the reviewing authority may order that the sentence shall not have effect until the end of the period specified in the order.

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- (4) The Defence Council or any officer authorised by them may terminate the period specified in an order under this section or extend such a period for a further period specified by them.
- (5) On the termination of such a period the sentence in respect of which the order in question was made shall have effect or (in the case of an order under subsection (2)(b) above) resume effect.
- (6) Nothing in this section shall be taken to prevent section 85(1) of this Act from applying in relation to a sentence of imprisonment or detention awarded under this Act.”.

**Annotations:**

**Marginal Citations**

- M7** 1955 c. 18.  
**M8** 1955 c. 19.

**10 Community supervision orders.**

Schedule 3 (amendment of provisions of the 1955 Acts and the 1957 Act relating to community supervision orders) shall have effect.

*Fingerprints and samples*

**11 Fingerprinting of certain offenders.**

- (1) A service policeman may take the fingerprints of a person for the record without his consent if that person has been convicted of an offence in service disciplinary proceedings.
- (2) The power under subsection (1) above may not be exercised in relation to a person convicted of an offence—
  - (a) where the person concerned has had his fingerprints taken by a service policeman in the course of the investigation of the offence or since his conviction; or
  - (b) after the end of the period of three months beginning with the date of the conviction.
- (3) A service policeman may use reasonable force, if necessary, in exercising the power under subsection (1) above.
- (4) In this section—

“fingerprints” includes palm prints;  
[<sup>F3</sup>“the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers;]  
“service disciplinary proceedings” means—
  - (a) any proceedings before a court-martial or a standing civilian court under the 1955 Acts or the 1957 Act;
  - (b) <sup>F4</sup> .....

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(c) any proceedings by way of summary trial under section 52D of that Act; and

“service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police [<sup>F5</sup>or the Royal Air Force Police].

(5) This section is without prejudice to any power to take fingerprints under any other enactment or under any rule of law.

#### Annotations:

#### Extent Information

**E3** For the application of this section to Channel Islands and Isle of Man, see s. 36(6)

#### Amendments (Textual)

- F3** Definition of “the Royal Air Force Police” in s. 11(4) inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 48**; S.I. 2001/3234, **art. 2** (subject to **art. 3**)
- F4** Para. (b) in the definition of “service disciplinary proceedings” in s. 11(4) repealed (28.2.2002) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F5** Words in the definition of “service policeman” in s. 11(4) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 48**; S.I. 2001/3234, **art. 2** (subject to **art. 3**)

## 12 Taking of samples from certain offenders.

- (1) A service policeman may, for the purpose of recording information, take a sample to which this section applies from a person without his consent if that person has been convicted of an offence in service disciplinary proceedings.
- (2) This section applies to a sample of hair (other than pubic hair) or to a swab taken from a person’s mouth.
- (3) The power under subsection (1) above may be exercised in relation to a person convicted of an offence only if—
- he has not had a sample to which this section applies taken from him since his conviction; or
  - where he has had such a sample taken from him, the sample has proved insufficient.
- (4) The power under subsection (1) above may not be exercised after the end of the period of three months beginning—
- in a case falling within subsection (3)(a) above, with the date of the conviction;
  - in a case falling within subsection (3)(b) above, with the date on which a service policeman is informed of the fact that the sample has proved insufficient.
- (5) A service policeman may use reasonable force, if necessary, in exercising the power under subsection (1) above.

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- (6) A sample of hair may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than are reasonably considered to be necessary for a sufficient sample.
- (7) In this section—  
“service disciplinary proceedings” and “service policeman” have the same meanings as in section 11 above; and  
“sufficient” and “insufficient”, in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.
- (8) This section is without prejudice to any power to take samples under any other enactment or under any rule of law.

#### *Rehabilitation of service offenders*

### **13 Application of Rehabilitation of Offenders Act 1974.**

- (1) The <sup>M9</sup>Rehabilitation of Offenders Act 1974 shall be amended as follows.
- (2) In section 2 (rehabilitation of persons dealt with in service disciplinary proceedings), subsections (2) to (4) shall cease to have effect.
- (3) In section 6 (the rehabilitation period)—  
(a) in subsection (6) the words “Subject to subsection (7) below” shall cease to have effect; and  
(b) after subsection (6)(b) there shall be inserted the following paragraph—  
“(bb) any conviction in service disciplinary proceedings for an offence listed in the Schedule to this Act;”, and  
(c) in subsection (7) for the words “Notwithstanding subsection (6) above” there shall be substituted the words “ Except as provided by subsection (6)(bb) above ”.
- (4) The provisions set out in Schedule 4 to this Act shall be inserted as the Schedule to the <sup>M10</sup>Rehabilitation of Offenders Act 1974.
- (5) The Rehabilitation of Offenders Act 1974 shall apply to convictions before the commencement date as if the amendments made by this section had always had effect; but this subsection does not apply to convictions to which section 2(1) of that Act applied before that date.
- (6) Where by virtue of subsection (5) above a rehabilitation period applicable to a conviction would have ended before the commencement date, the individual concerned shall (subject to section 1(2) of the Rehabilitation of Offenders Act 1974) be treated as a rehabilitated person in respect of the conviction, and the conviction shall be regarded as spent, on and after that date.
- (7) In this section “the commencement date” means the date on which this section comes into force.

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**Annotations:****Marginal Citations**

- M9** 1974 c. 53.  
**M10** 1974 c. 53.

**14 Application of Rehabilitation of Offenders (Northern Ireland) Order 1978.**

- (1) The <sup>M11</sup>Rehabilitation of Offenders (Northern Ireland) Order 1978 shall be amended as follows.
- (2) In Article 4 (rehabilitation of persons dealt with in service disciplinary proceedings), paragraphs (2) to (4) shall cease to have effect.
- (3) In Article 7 (the rehabilitation period)—
- (a) in paragraph (6) the words “Subject to paragraph (7)” shall cease to have effect; and
  - (b) after paragraph (6)(b) there shall be inserted the following sub-paragraph—  
“(bb) any conviction in service disciplinary proceedings for an offence listed in the Schedule;” and
  - (c) in paragraph (7) for the words “Notwithstanding paragraph (6)” there shall be substituted the words “ Except as provided by paragraph (6)(bb) ”.
- (4) A Schedule corresponding to the Schedule to be inserted into the Rehabilitation of Offenders Act 1974 by section 13(4) above shall be inserted as the Schedule to the Rehabilitation of Offenders (Northern Ireland) Order 1978, with the substitution—
- (a) in the Schedule heading, for the words “Section 6(4)” of the words “ Article 7 ”; and
  - (b) in paragraph 1, for the words “section 6(6)(bb) of this Act” of the words “ Article 7(6)(bb) ”.
- (5) The <sup>M12</sup>Rehabilitation of Offenders (Northern Ireland) Order 1978 shall apply to convictions before the commencement date as if the amendments made by this section had always had effect; but this subsection does not apply to convictions to which Article 4(1) of that Order applied before that date.
- (6) Where by virtue of subsection (5) above a rehabilitation period applicable to a conviction would have ended before the commencement date, the individual concerned shall (subject to Article 3(2) of the Rehabilitation of Offenders (Northern Ireland) Order 1978) be treated as a rehabilitated person in respect of the conviction, and the conviction shall be regarded as spent, on and after that date.
- (7) In this section “the commencement date” means the date on which this section comes into force.

**Annotations:****Marginal Citations**

- M11** S.I. 1978/1908 (N.I.27).  
**M12** S.I. 1978/1908 (N.I. 27).

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### *Review and appeal*

#### **15 Abolition of confirmation.**

The provisions of the 1955 Acts providing for findings of courts-martial to be subject to confirmation and to revision at the direction of the confirming officer shall cease to have effect.

#### **16 Review of findings and sentences.**

Schedule 5 (amendment of provisions relating to the review of findings and sentences) shall have effect.

#### **17 Appeals against sentence.**

(1) The <sup>M13</sup>Courts-Martial (Appeals) Act 1968 shall be amended as follows.

(2) In section 8 (right of appeal)—

(a) in subsection (1), for the words from “against” (in the first place it appears) to the end there shall be substituted the words “—

(a) against his conviction; and

(b) against any sentence (not being a sentence fixed by law) passed on him for the offence for which he was convicted.”;

(b) in subsection (1A), paragraph (a) shall cease to have effect;

(c) subsection (5) shall cease to have effect.

(3) For section 17A (appeals by civilians) there shall be substituted the following section

#### **“17A Appeals by civilians: application of Service Act provisions.**

For the avoidance of doubt, the exercise of the power conferred by sections 13, 14, 15 and 16A above, in relation to an order under Schedule 5A to the <sup>M14</sup>Army Act 1955, Schedule 5A to the <sup>M15</sup>Air Force Act 1955 or Schedule 4A to the <sup>M16</sup>Naval Discipline Act 1957 (powers of court on trial of civilians) shall be subject to the restrictions contained in paragraph 15 of each of those Schedules.”

#### **Annotations:**

#### **Marginal Citations**

**M14** 1955 c. 18.

**M15** 1955 c. 19.

**M16** 1957 c. 53.

(4) In section 34 (reference of cases by Service authorities), for subsection (4) there shall be inserted the following subsections—

“(4) The Secretary of State may, if consideration by the Appeal Court appears to him for any reason desirable, refer the sentence passed on any person convicted by a court-martial to the Appeal Court.

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- (5) Any reference under subsection (4) above shall be treated as an appeal by the person convicted against sentence for all purposes except those of section 32 of this Act.”
- (5) In section 46 (restitution orders), in subsection (2) and subsection (3)(a), after the word “conviction” there shall be inserted the words “ or, in the case of an appeal against sentence, the order ”.
- (6) In section 53(1) (exclusion of certain appeals) in subsection (1), for the word “against” there shall be substituted the words “ in relation to ”.
- (7) In section 57 (interpretation), after the definition of “the registrar” there shall be inserted the words “; and  
“sentence”, in relation to an offence, includes any order made by a court when dealing with an offender.”

**Annotations:**

**Marginal Citations**

M13 1968 c. 20.

**18 Powers exercisable by registrar.**

After section 36 of the <sup>M17</sup>Courts-Martial (Appeals) Act 1968 there shall be inserted the following section—

**“36A Powers under Part II which are exercisable by registrar.**

- (1) The following powers of the Appeal Court under this Part of this Act, namely the power—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given; and
  - (b) to order a witness to attend for examination,
- may be exercised by the registrar in the same manner as they may be exercised by the Court and subject to the same restrictions.
- (2) If the registrar refuses an application on the part of an appellant to exercise in his favour any power specified in subsection (1) above, the appellant shall be entitled to have the application determined by any judge of the Appeal Court.”

**Annotations:**

**Marginal Citations**

M17 1968 c. 20.

**19 Appeals on behalf of deceased persons.**

Immediately before section 49 of the Courts-Martial (Appeals) Act 1968 there shall be inserted the following section—

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#### **“48A Appeals on behalf of deceased persons.**

- (1) Where a person has died—
  - (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Appeal Court; and
  - (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.
- (2) In this section “relevant appeal” means—
  - (a) an appeal under section 8, 21 or 24 of this Act; or
  - (b) an appeal under section 39 of this Act from any decision of the Appeal Court on an appeal under any of those sections.
- (3) Approval for the purposes of this section may only be given to—
  - (a) the widow or widower of the dead person;
  - (b) a personal representative of the dead person; or
  - (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.
- (4) An application for such approval may not be made after the end of the period of one year beginning with the date of death.
- (5) Where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.
- (6) The power of the Appeal Court to approve a person under this section may be exercised by any judge of the Appeal Court in the same manner as by the Court and subject to the same provisions; but if the judge refuses the application, the applicant shall be entitled to have the application determined by the Appeal Court.
- (7) In subsection (3)(b) above “personal representative” means—
  - (a) for England and Wales, a person who is a personal representative within the meaning of section 55(1)(xi) of the <sup>M18</sup>Administration of Estates Act 1925;
  - (b) for Scotland, an executor confirmed to the estate of the dead person; or
  - (c) for Northern Ireland, a person who is one of the personal representatives within the meaning of the <sup>M19</sup>Administration of Estates Act (Northern Ireland) 1955.”

#### **Annotations:**

#### **Marginal Citations**

**M18** 1925 c. 23.

**M19** 1955 c. 24 (N.I.).

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### *Redress of complaints*

## **20 Services redress of complaints procedures.**

- (1) For section 180 of the <sup>M20</sup>Army Act 1955 there shall be substituted the following section—

### **“180 Redress of complaints.**

- (1) If a person subject to military law thinks himself wronged in any matter relating to his service he may make a complaint with respect to that matter to such officer as may be prescribed.
- (2) A person may not make a complaint under this section with respect to a matter against which he may present a petition under section 113 of this Act, ask for a review under section 115 of this Act or bring an appeal under the <sup>M21</sup>Courts-Martial (Appeals) Act 1968.
- (3) The procedure for making and dealing with a complaint under this section shall be laid down in Queen’s Regulations, which may, in particular, provide
  - (a) for a complaint not to be made after the end of such period as may be prescribed;
  - (b) for any such period to be extended, in the case of a complaint made after the end of the period, in such circumstances as may be prescribed;
  - (c) for a complaint to be referred, for its first consideration, by the officer to whom it was made to a superior officer; and
  - (d) if the complainant does not obtain the redress to which he thinks he is entitled (whether from the officer who first considered the complaint or from a superior officer by virtue of provision made as mentioned in this paragraph), for the complaint to be referred to, and considered by, a superior officer.
- (4) Any period prescribed for the purposes mentioned in subsection (3)(a) above shall not be less than three months beginning with the day on which the matter complained of occurred.
- (5) An officer to whom a complaint is made or referred under provision made by virtue of subsection (3) above shall grant any redress which appears to him necessary.
- (6) If the complainant does not obtain the redress to which he thinks he is entitled by the procedure referred to in subsection (3) above, he may submit his complaint to the Defence Council in accordance with the procedure laid down in Queen’s Regulations.
- (7) The Defence Council shall have any complaint submitted to them investigated and shall grant any redress which appears to them necessary.
- (8) Where a complaint by an officer has been submitted to the Defence Council and he does not obtain the redress to which he thinks he is entitled, the Defence Council shall, at his request, make a report on the complaint through the

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*Status: This version of this Act contains provisions that are prospective.*  
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Secretary of State to Her Majesty in order to receive the directions of Her Majesty thereon.

(9) This section applies to a person who is not subject to military law, in relation to any matter which took place while he was so subject, as it applies to a person who is subject to military law.

(10) In this section “prescribed” means prescribed by Queen’s Regulations.”

**Annotations:**

**Marginal Citations**

**M21** 1968 c. 20.

(2) For section 180 of the <sup>M22</sup>Air Force Act 1955 there shall be substituted the following section—

**“180 Redress of complaints.**

(1) If a person subject to air-force law thinks himself wronged in any matter relating to his service he may make a complaint with respect to that matter to such officer as may be prescribed.

(2) A person may not make a complaint under this section with respect to a matter against which he may present a petition under section 113 of this Act, ask for a review under section 115 of this Act or bring an appeal under the <sup>M23</sup>Courts-Martial (Appeals) Act 1968.

(3) The procedure for making and dealing with a complaint under this section shall be laid down in Queen’s Regulations, which may, in particular, provide

- (a) for a complaint not to be made after the end of such period as may be prescribed;
- (b) for any such period to be extended, in the case of a complaint made after the end of the period, in such circumstances as may be prescribed;
- (c) for a complaint to be referred, for its first consideration, by the officer to whom it was made to a superior officer; and
- (d) if the complainant does not obtain the redress to which he thinks he is entitled (whether from the officer who first considered the complaint or from a superior officer by virtue of provision made as mentioned in this paragraph), for the complaint to be referred to, and considered by, a superior officer.

(4) Any period prescribed for the purposes mentioned in subsection (3)(a) above shall not be less than three months beginning with the day on which the matter complained of occurred.

(5) An officer to whom a complaint is made or referred under provision made by virtue of subsection (3) above shall grant any redress which appears to him necessary.

(6) If the complainant does not obtain the redress to which he thinks he is entitled by the procedure referred to in subsection (3) above, he may submit his

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complaint to the Defence Council in accordance with the procedure laid down in Queen's Regulations.

- (7) The Defence Council shall have any complaint submitted to them investigated and shall grant any redress which appears to them necessary.
- (8) Where a complaint by an officer has been submitted to the Defence Council and he does not obtain the redress to which he thinks he is entitled, the Defence Council shall, at his request, make a report on the complaint through the Secretary of State to Her Majesty in order to receive the directions of Her Majesty thereon.
- (9) This section applies to a person who is not subject to air-force law, in relation to any matter which took place while he was so subject, as it applies to a person who is subject to air-force law.
- (10) In this section "prescribed" means prescribed by Queen's Regulations."

**Annotations:**

**Marginal Citations**

**M23** 1968 c. 20.

- (3) For section 130 of the 1957 Act there shall be substituted the following section—

**"130 Redress of complaints.**

- (1) If a person subject to this Act thinks himself wronged in any matter relating to his service he may make a complaint with respect to that matter to such officer as may be prescribed.
- (2) A person may not make a complaint under this section with respect to a matter against which he may present a petition under section 70 of this Act, ask for a review under section 71B of this Act or bring an appeal under the <sup>M24</sup>Courts-Martial (Appeals) Act 1968.
- (3) The procedure for making and dealing with a complaint under this section shall be laid down in Queen's Regulations, which may, in particular, provide
  - (a) for a complaint not to be made after the end of such period as may be prescribed;
  - (b) for any such period to be extended, in the case of a complaint made after the end of the period, in such circumstances as may be prescribed;
  - (c) for a complaint to be referred, for its first consideration, by the officer to whom it was made to a superior officer; and
  - (d) if the complainant does not obtain the redress to which he thinks he is entitled (whether from the officer who first considered the complaint or from a superior officer by virtue of provision made as mentioned in this paragraph), for the complaint to be referred to, and considered by, a superior officer.

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- (4) Any period prescribed for the purposes mentioned in subsection (3)(a) above shall not be less than three months beginning with the day on which the matter complained of occurred.
- (5) An officer to whom a complaint is made or referred under provision made by virtue of subsection (3) above shall grant any redress which appears to him necessary.
- (6) If the complainant does not obtain the redress to which he thinks he is entitled by the procedure referred to in subsection (3) above, he may submit his complaint to the Defence Council in accordance with the procedure laid down in Queen's Regulations.
- (7) The Defence Council shall have any complaint submitted to them investigated and shall grant any redress which appears to them necessary.
- (8) Where a complaint by an officer has been submitted to the Defence Council and he does not obtain the redress to which he thinks he is entitled, the Defence Council shall, at his request, make a report on the complaint through the Secretary of State to Her Majesty in order to receive the directions of Her Majesty thereon.
- (9) This section applies to a person who is not subject to this Act, in relation to any matter which took place while he was so subject, as it applies to a person who is subject to this Act.
- (10) In this section "prescribed" means prescribed by Queen's Regulations."

**Annotations:**

**Marginal Citations**

M24 1968 c. 20.

**Annotations:**

**Marginal Citations**

M20 1955 c. 18.

M22 1955 c. 19.

*Complaints to <sup>F6</sup>employment tribunals]*

**Annotations:**

**Amendments (Textual)**

F6 Words in cross-heading preceding s. 21 substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**21 Sex discrimination: Great Britain.**

- (1) Section 85 of the <sup>M25</sup>Sex Discrimination Act 1975 (application of that Act to the Crown) shall be amended as set out in subsections (2) to (5) below.

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- (2) In subsection (2), after paragraph (b) there shall be inserted—
- “or  
(c) service in the armed forces,”.
- (3) In subsection (4), for the words from “naval” to the end there shall be substituted the words “armed forces.”.
- (4) After subsection (9) there shall be inserted the following subsections—
- “(9A) This subsection applies to any complaint by a person (“the complainant”) that another person—
- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of section 6; or
- (b) is by virtue of section 41 or 42 to be treated as having committed such an act of discrimination against the complainant,
- if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.
- (9B) No complaint to which subsection (9A) applies shall be presented to an [F7employment tribunal] under section 63 unless—
- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.
- (9C) Regulations may make provision enabling a complaint to which subsection (9A) applies to be presented to an [F7employment tribunal] under section 63 in such circumstances as may be specified by the regulations, notwithstanding that subsection (9B) would otherwise preclude the presentation of the complaint to an [F7employment tribunal].
- (9D) Where a complaint is presented to an [F7employment tribunal] under section 63 by virtue of regulations under subsection (9C), the service redress procedures may continue after the complaint is so presented.
- (9E) Regulations under subsection (9C) shall be made by the Secretary of State by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) For subsection (10) there shall be substituted the following subsection—
- “(10) In this section—
- “armed forces” means any of the naval, military or air forces of the Crown;
- “service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the <sup>M26</sup>House of Commons Disqualification Act 1975;
- “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the <sup>M27</sup>Army Act 1955,

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section 180 of the <sup>M28</sup>Air Force Act 1955 and section 130 of the <sup>M29</sup>Naval Discipline Act 1957; and

“statutory body” means a body set up by or in pursuance of an enactment and “statutory office” means an office so set up.”

- (6) In section 76(1) of the <sup>M30</sup>Sex Discrimination Act 1975 (period within which complaint under section 63 of that Act to be presented to an [<sup>F7</sup>employment tribunal]), for the words from “the period” to the end there shall be substituted the following words “—
- (a) the period of three months beginning when the act complained of was done; or
  - (b) in a case to which section 85(9A) applies, the period of six months so beginning.”

**Annotations:**

**Amendments (Textual)**

- F7** Words in s. 21(4)(6) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2); S.I. 1998/1658, art. 2(1), Sch. 1

**Marginal Citations**

- M25** 1975 c. 65.  
**M26** 1975 c. 24.  
**M27** 1955 c. 18.  
**M28** 1955 c. 19.  
**M29** 1957 c. 53.  
**M30** 1975 c. 65.

**22 Sex discrimination: Northern Ireland.**

- (1) Article 82 of the <sup>M31</sup>Sex Discrimination (Northern Ireland) Order 1976 (application of that Order to the Crown) shall be amended as set out in subsections (2) to (5) below.
- (2) In paragraph (2), after sub-paragraph (b) there shall be inserted—
- “or
  - (c) service in the armed forces”.
- (3) In paragraph (5), for the words from “naval” to the end there shall be substituted the words “armed forces”.
- (4) After paragraph (9) there shall be inserted the following paragraphs—
- “(9A) This paragraph applies to any complaint by a person (“the complainant”) that another person—
- (a) has committed an act of discrimination against the complainant which is unlawful by virtue of Article 8; or
  - (b) is by virtue of Article 42 or 43 to be treated as having committed such an act of discrimination against the complainant,
- if at the time when the act complained of was done the complainant was serving in the armed forces and the discrimination in question relates to his service in those forces.

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- (9B) No complaint to which paragraph (9A) applies shall be presented to an industrial tribunal under Article 63 unless—
- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
  - (b) the Defence Council have made a determination with respect to the complaint.
- (9C) Regulations made by the Secretary of State may make provision enabling a complaint to which paragraph (9A) applies to be presented to an industrial tribunal under Article 63 in such circumstances as may be specified by the regulations, notwithstanding that paragraph (9B) would otherwise preclude the presentation of the complaint to an industrial tribunal.
- (9D) Where a complaint is presented to an industrial tribunal under Article 63 by virtue of regulations under paragraph (9C), the service redress procedures may continue after the complaint is so presented.
- (9E) Regulations under paragraph (9C) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the <sup>M32</sup>Statutory Instruments Act 1946 shall apply accordingly.”
- (5) For paragraph (10) there shall be substituted the following paragraph—
- “(10) In this Article—
- “armed forces” means any of the naval, military or air forces of the Crown;
- “service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the <sup>M33</sup>House of Commons Disqualification Act 1975;
- “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the <sup>M34</sup>Army Act 1955, section 180 of the <sup>M35</sup>Air Force Act 1955 and section 130 of the <sup>M36</sup>Naval Discipline Act 1957; and
- “statutory body” means a body set up by or in pursuance of a statutory provision and “statutory office” means an office so set up.”
- (6) In Article 76(1) of the <sup>M37</sup>Sex Discrimination (Northern Ireland) Order 1976 (period within which complaint under Article 63 of that Order to be presented to an industrial tribunal), for the words from “the period” to the end there shall be substituted the following words “—
- (a) the period of three months beginning when the act complained of was done; or
  - (b) in a case to which Article 82(9A) applies, the period of six months so beginning.”.
- (7) In Article 80(1) of the Sex Discrimination (Northern Ireland) Order 1976 (orders and regulations subject to negative resolution of the Northern Ireland Assembly), after the words “regulations made under this Order” there shall be inserted the words “(except Article 82(9C))”.

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**Annotations:**

**Marginal Citations**

- M31 S.I. 1976/1042 (N.I. 15).
- M32 1946 c. 36.
- M33 1975 c. 24.
- M34 1955 c. 18.
- M35 1955 c. 19.
- M36 1957 c. 53.
- M37 S.I. 1976/1042 (N.I. 15).

**23 Racial discrimination. E+W+S**

(1) Section 75 of the <sup>M38</sup>Race Relations Act 1976 (application of that Act to the Crown) shall be amended as set out in subsections (2) and (3) below.

(2) For subsection (9) there shall be substituted the following subsections—

“(9) No complaint to which subsection (8) applies shall be presented to an [<sup>F8</sup>employment tribunal] under section 54 unless—

- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.

(9A) Regulations may make provision enabling a complaint to which subsection (8) applies to be presented to an [<sup>F8</sup>employment tribunal] under section 54 in such circumstances as may be specified by the regulations, notwithstanding that subsection (9) would otherwise preclude the presentation of the complaint to an [<sup>F8</sup>employment tribunal].

(9B) Where a complaint is presented to an [<sup>F8</sup>employment tribunal] under section 54 by virtue of regulations under subsection (9A), the service redress procedures may continue after the complaint is so presented.”

(3) In subsection (10), after paragraph (a) there shall be inserted the following paragraphs

- 
- “(aa) “regulations” means regulations made by the Secretary of State;
- (ab) “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the <sup>M39</sup>Army Act 1955, section 180 of the <sup>M40</sup>Air Force Act 1955 and section 130 of the <sup>M41</sup>Naval Discipline Act 1957;”.

(4) In section 68(1) of the <sup>M42</sup>Race Relations Act 1976 (period within which complaint under section 54 of that Act to be presented to an [<sup>F8</sup>employment tribunal]), for the words from “the period” to the end there shall be substituted the following words “—

- (a) the period of three months beginning when the act complained of was done; or
- (b) in a case to which section 75(8) applies, the period of six months so beginning.”

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- (5) In section 74(2) of the Race Relations Act 1976 (parliamentary control of orders and regulations), after the words “section 75(5)(a)” there shall be inserted the words “ or (9A) ”.

**Annotations:**

**Extent Information**

- E4** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

**Amendments (Textual)**

- F8** Words in s. 23(2)(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**Marginal Citations**

- M38** 1976 c. 74.  
**M39** 1955 c. 18.  
**M40** 1955 c. 19.  
**M41** 1957 c. 53.  
**M42** 1976 c. 74.

**23 Racial discrimination. N.I.**

- (1) Section 75 of the <sup>M145</sup>Race Relations Act 1976 (application of that Act to the Crown) shall be amended as set out in subsections (2) and (3) below.
- (2) For subsection (9) there shall be substituted the following subsections—
- “(9) No complaint to which subsection (8) applies shall be presented to an industrial tribunal under section 54 unless—
- (a) the complainant has made a complaint to an officer under the service redress procedures applicable to him and has submitted that complaint to the Defence Council under those procedures; and
  - (b) the Defence Council have made a determination with respect to the complaint.
- (9A) Regulations may make provision enabling a complaint to which subsection (8) applies to be presented to an industrial tribunal under section 54 in such circumstances as may be specified by the regulations, notwithstanding that subsection (9) would otherwise preclude the presentation of the complaint to an industrial tribunal.
- (9B) Where a complaint is presented to an industrial tribunal under section 54 by virtue of regulations under subsection (9A), the service redress procedures may continue after the complaint is so presented.”
- (3) In subsection (10), after paragraph (a) there shall be inserted the following paragraphs
- “(aa) “regulations” means regulations made by the Secretary of State;
  - (ab) “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the <sup>M146</sup>Army Act 1955,

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section 180 of the <sup>M147</sup>Air Force Act 1955 and section 130 of the <sup>M148</sup>Naval Discipline Act 1957;”.

- (4) In section 68(1) of the <sup>M149</sup>Race Relations Act 1976 (period within which complaint under section 54 of that Act to be presented to an industrial tribunal), for the words from “the period” to the end there shall be substituted the following words “—
- (a) the period of three months beginning when the act complained of was done; or
  - (b) in a case to which section 75(8) applies, the period of six months so beginning.”
- (5) In section 74(2) of the Race Relations Act 1976 (parliamentary control of orders and regulations), after the words “section 75(5)(a)” there shall be inserted the words “ or (9A) ”.

**Annotations:**

**Extent Information**

- E6** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only

**Marginal Citations**

- M145** 1976 c. 74.  
**M146** 1955 c. 18.  
**M147** 1955 c. 19.  
**M148** 1957 c. 53.  
**M149** 1976 c. 74.

**24 Equal treatment: Great Britain.**

- (1) Section 1(9) of the <sup>M43</sup>Equal Pay Act 1970 (exclusion of armed forces from requirement of equal treatment for women and men in same employment) shall cease to have effect.
- (2) For section 7 of that Act (service pay) there shall be substituted the following section—

**“7A Service pay and conditions.**

- (1) Sections 1 and 6 above shall apply, with the modifications mentioned in subsection (2) below and any other necessary modifications, to service by a woman in any of the armed forces as they apply to employment by a private person.
- (2) In the application of those sections to service by a woman in any of the armed forces—
  - (a) references to a contract of employment shall be regarded as references to the terms of service;
  - (b) in section 1, in subsection (6), paragraph (c) and the words “or any associated employer” and subsections (8) to (11) (which have no application) shall be omitted; and
  - (c) references to an equality clause shall be regarded as referring to a corresponding term of service capable of requiring the terms of

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service applicable in her case to be treated as modified or as including other terms.

- (3) Any claim in respect of the contravention of a term of service modified or included, in relation to a woman's service in any of the armed forces, by a term corresponding to an equality clause in a contract of employment (including a claim for arrears of pay or damages in respect of the contravention) may be presented by way of complaint to an [F<sup>9</sup>employment tribunal].

Any such contravention shall be regarded for the purposes of a claim under this subsection as if it were a breach of contract.

- (4) Subsections (5) to (10) below apply in relation to any claim by a woman ("the claimant") arising from a contravention of a term of service referred to in subsection (3) above.

- (5) No complaint in respect of the claim shall be presented to an [F<sup>9</sup>employment tribunal] unless—

- (a) the claimant has made a complaint to an officer under the service redress procedures applicable to her and has submitted that complaint to the Defence Council under those procedures; and
- (b) the Defence Council have made a determination with respect to the complaint.

- (6) Regulations may make provision enabling a complaint in respect of the claim to be presented to an [F<sup>9</sup>employment tribunal] in such circumstances as may be specified by the regulations, notwithstanding that subsection (5) above would otherwise preclude its presentation.

- (7) Where a complaint is presented to an [F<sup>9</sup>employment tribunal] by virtue of regulations under subsection (6) above, the service redress procedures may continue after the complaint is presented.

- (8) No complaint in respect of the claim shall be presented to an [F<sup>9</sup>employment tribunal] if the period of service during which the claim arose ended more than nine months before the date of the presentation of the complaint to the tribunal.

- (9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of pay or damages in respect of a time earlier than two years before the date on which her complaint under the service redress procedures was made.

- (10) Section 2A above shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an [F<sup>9</sup>employment tribunal] under section 2(1) above.

- (11) Regulations under subsection (6) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (12) In this section—

“armed forces” means the naval, military or air forces of the Crown; and

“the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to

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Her Majesty, referred to in section 180 of the <sup>M44</sup>Army Act 1955, section 180 of the <sup>M45</sup>Air Force Act 1955 and section 130 of the <sup>M46</sup>Naval Discipline Act 1957.”

**Annotations:**

**Amendments (Textual)**

**F9** Words in s. 24(3)(5)(6)(7)(8)(10) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

**Marginal Citations**

**M44** 1955 c. 18.

**M45** 1955 c. 19.

**M46** 1957 c. 53.

**Annotations:**

**Marginal Citations**

**M43** 1970 c. 41.

**25 Equal treatment: Northern Ireland.**

- (1) Section 1(10) of the <sup>M47</sup>Equal Pay Act (Northern Ireland) 1970 (exclusion of armed forces from requirement of equal treatment for women and men in same employment) shall cease to have effect.
- (2) After section 6 of that Act there shall be inserted the following section—

**“6A Service pay and conditions.**

- (1) Sections 1 and 6 shall apply, with the modifications mentioned in subsection (2) and any other necessary modifications, to service by a woman in any of the armed forces as they apply to employment by a private person.
- (2) In the application of those sections to service by a woman in any of the armed forces—
  - (a) references to a contract of employment shall be regarded as references to the terms of service;
  - (b) in section 1, in subsection (7), paragraph (c) and the words “or any associated employer” and subsections (9) to (12) (which have no application) shall be omitted; and
  - (c) references to an equality clause shall be regarded as referring to a corresponding term of service capable of requiring the terms of service applicable in her case to be treated as modified or as including other terms.
- (3) Any claim in respect of the contravention of a term of service modified or included, in relation to a woman’s service in any of the armed forces, by a term corresponding to an equality clause in a contract of employment (including a claim for arrears of pay or damages in respect of the contravention) may be presented by way of complaint to an industrial tribunal.

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Any such contravention shall be regarded for the purposes of a claim under this subsection as if it were a breach of contract.

- (4) Subsections (5) to (10) apply in relation to any claim by a woman (“the claimant”) arising from a contravention of a term of service referred to in subsection (3).
- (5) No complaint in respect of the claim shall be presented to an industrial tribunal unless—
- (a) the claimant has made a complaint to an officer under the service redress procedures applicable to her and has submitted that complaint to the Defence Council under those procedures; and
  - (b) the Defence Council have made a determination with respect to the complaint.
- (6) Regulations made by the Secretary of State may make provision enabling a complaint in respect of the claim to be presented to an industrial tribunal in such circumstances as may be specified by the regulations, notwithstanding that subsection (5) would otherwise preclude its presentation.
- (7) Where a complaint is presented to an industrial tribunal by virtue of regulations under subsection (6), the service redress procedures may continue after the complaint is presented.
- (8) No complaint in respect of the claim shall be presented to an industrial tribunal if the period of service during which the claim arose ended more than nine months before the date of the presentation of the complaint to the tribunal.
- (9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of pay or damages in respect of a time earlier than two years before the date on which her complaint under the service redress procedures was made.
- (10) Section 2A shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an industrial tribunal under section 2(1).
- (11) Regulations under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the <sup>M48</sup>Statutory Instruments Act 1946 shall apply accordingly.
- (12) In this section—
- “armed forces” means the naval, military or air forces of the Crown; and
- “the service redress procedures” means the procedures, excluding those which relate to the making of a report on a complaint to Her Majesty, referred to in section 180 of the <sup>M49</sup>Army Act 1955, section 180 of the <sup>M50</sup>Air Force Act 1955 and section 130 of the <sup>M51</sup>Naval Discipline Act 1957.”

**Annotations:**

**Marginal Citations**

**M48** 1946 c. 36.

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*Status: This version of this Act contains provisions that are prospective.*  
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**M49** 1955 c. 18.  
**M50** 1955 c. 19.  
**M51** 1957 c. 53.

**Annotations:**

**Marginal Citations**

**M47** 1970 c. 32 (N.I.).

**26 Other complaints: Great Britain.**

- (1) Section 192 of the <sup>M52</sup>Employment Rights Act 1996 (application of Act to armed forces) shall be amended as follows.
- (2) In subsection (4), for the words from “the person” to the end there shall be substituted the following words “—
- (a) the person aggrieved has made a complaint to an officer under the service procedures for the redress of complaints applicable to him and has submitted that complaint to the Defence Council under those procedures; and
  - (b) the Defence Council have made a determination with respect to the complaint.”
- (3) For subsection (5) there shall be substituted the following subsection—
- “(5) Where modifications made by an Order in Council under subsection (3) include provision such as is mentioned in subsection (4), the Order in Council shall also include provision—
- (a) enabling a complaint or reference to be made to an [<sup>F10</sup>employment tribunal] in such circumstances as may be specified in the Order, notwithstanding that provision such as is mentioned in subsection (4) would otherwise preclude the making of the complaint or reference; and
  - (b) where a complaint or reference is made to an [<sup>F10</sup>employment tribunal] by virtue of provision such as is mentioned in paragraph (a), enabling the service procedures for the redress of complaints to continue after the complaint or reference is made.”
- (4) In subsection (6), for the words “sections 180 and 181” in both places where those words occur there shall be substituted the words “ section 180 ”.

**Annotations:**

**Amendments (Textual)**

**F10** Words in s. 26(3) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**Marginal Citations**

**M52** 1996 c. 18.

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## 27 Other complaints: Northern Ireland.

- (1) Article 10 of the <sup>M53</sup>Industrial Relations (Northern Ireland) Order 1993 (application of Industrial Relations Orders to armed forces) shall be amended as follows.
- (2) In paragraph (3), for the words from “the person” to the end there shall be substituted the following words “—
  - (a) the person aggrieved has made a complaint to an officer under the service procedures for the redress of complaints applicable to him and has submitted that complaint to the Defence Council under those procedures; and
  - (b) the Defence Council have made a determination with respect to the complaint.”
- (3) For paragraph (4) there shall be substituted the following paragraph—
 

“(4) Where modifications made by an order under paragraph (2) include provision such as is mentioned in paragraph (3), the order shall also include provision—

  - (a) enabling a complaint or reference to be made to an industrial tribunal in such circumstances as may be specified in the order, notwithstanding that provision such as is mentioned in paragraph (3) would otherwise preclude the making of the complaint or reference; and
  - (b) where a complaint or reference is made to an industrial tribunal by virtue of provision such as is mentioned in paragraph (a), enabling the service procedures for the redress of complaints to continue after the complaint or reference is made.”
- (4) In paragraph (7), for the words “sections 180 and 181” in both places where those words occur there shall be substituted the words “ section 180 ”.

### Annotations:

#### Marginal Citations

M53 [S.I. 1993/2668 \(N.I. 11\)](#).

### Miscellaneous

## 28 Exemptions from Firearms Act 1968.

- (1) In section 54 of the <sup>M54</sup>Firearms Act 1968 (application of Parts I and II to Crown servants), after subsection (3) there shall be added the following subsections—
  - “(4) For the purposes of this section and any rule of law whereby any provision of this Act does not bind the Crown, the persons specified in subsection (5) of this section shall be deemed to be in the naval, military or air service of Her Majesty, insofar as they are not otherwise in, or treated as being in, any such service.
  - (5) The persons referred to in subsection (4) of this section are the following—
    - (a) members of any foreign force when they are serving with any of the naval, military or air forces of Her Majesty;

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- (b) members of any cadet corps approved by the Secretary of State when—
    - (i) they are engaged as members of the corps in, or in connection with, drill or target practice; and
    - (ii) in the case of possession of prohibited weapons or prohibited ammunition when engaged in target practice, they are on service premises; and
  - (c) persons providing instruction to any members of a cadet corps who fall within paragraph (b).
- (6) In subsection (5) of this section—  
“foreign force” means any of the naval, military or air forces of a country other than the United Kingdom; and  
“service premises” means premises, including any ship or aircraft, used for any purpose of any of the naval, military or air forces of Her Majesty.”
- (2) After section 16 of the <sup>M55</sup>Firearms (Amendment) Act 1988 there shall be inserted the following section—

**“16A Possession of firearms on service premises.**

- (1) A person under the supervision of a member of the armed forces may, without holding a certificate or obtaining the authority of the Secretary of State under section 5 of the principal Act, have in his possession a firearm and ammunition on service premises.
- (2) Subsection (1) above does not apply to a person while engaged in providing security protection on service premises.
- (3) In this section—  
“armed forces” means any of the naval, military or air forces of Her Majesty; and  
“service premises” means premises, including any ship or aircraft, used for any purpose of the armed forces.”

**Annotations:**

**Marginal Citations**

M54 1968 c. 27.

M55 1988 c. 45.

**29 Exemptions from Firearms (Northern Ireland) Order 1981.**

- (1) In Article 57 of the <sup>M56</sup>Firearms (Northern Ireland) Order 1981 (application of Parts II and III to Crown servants), after paragraph (2) there shall be added the following paragraphs—
- “(3) For the purposes of this Article, the persons specified in paragraph (4) shall be deemed to be in the naval, military or air service of the Crown, in so far as they are not otherwise in, or treated as being in, any such service.

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- (4) The persons referred to in paragraph (3) are the following—
- (a) members of any foreign force when they are serving with any of the naval, military or air forces of the Crown;
  - (b) members of any cadet corps approved by the Secretary of State when—
    - (i) they are engaged as members of the corps in, or in connection with, drill or target practice; and
    - (ii) in the case of possession of prohibited weapons or prohibited ammunition when engaged in target practice, they are on service premises; and
  - (c) persons providing instruction to any members of a cadet corps who fall within sub-paragraph (b).

- (5) In paragraph (4)—

“foreign force” means any of the naval, military or air forces of a country other than the United Kingdom; and

“service premises” means premises, including any ship or aircraft, used for any purpose of any of the naval, military or air forces of the Crown.”

- (2) After Article 12 of that Order there shall be inserted the following Article—

**“12A Possession of firearms on service premises.**

- (1) A person under the supervision of a member of the armed forces may, without holding a firearm certificate or obtaining the authority of the Secretary of State under Article 6, have in his possession a firearm and ammunition on service premises.
- (2) Paragraph (1) does not apply to a person while engaged in providing security protection on service premises.
- (3) In this Article—
  - “armed forces” means any of the naval, military or air forces of the Crown; and
  - “service premises” means premises, including any ship or aircraft, used for any purpose of the armed forces.”.

**Annotations:**

**Marginal Citations**

M56 S.I. 1981/155 (N.I. 2).

**30 Greenwich Hospital.**

- (1) This section applies to the following land vested in the Secretary of State and held by him in trust for Her Majesty for the exclusive benefit of Greenwich Hospital, that is to say—
  - (a) the site known as the Royal Naval College, including the premises known as the Trident Hall and the Trafalgar Quarters;

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- (b) the premises known as the Dreadnought Seamen's Hospital;
  - (c) the premises known as the Devonport Nurses' Home.
- (2) In the exercise of his functions under the Greenwich Hospital Acts 1865 to 1996 in relation to the land to which this section applies, the Secretary of State shall have regard to—
- (a) the importance of preserving for the benefit of the nation the historic buildings and monuments on the land and of maintaining the architectural integrity of the Royal Naval College site;
  - (b) the desirability of securing reasonable public access to the land (and in particular to the historic buildings and monuments on the land); and
  - (c) the desirability of preventing any use of the land appearing to him to be out of keeping with its unique character and history.
- (3) It shall be lawful for the Secretary of State to grant a lease of any of the land to which this section applies, with its appurtenances, to any person appearing to him to be suitable for a term not exceeding 150 years.
- (4) Where any land to which this section applies is the subject of a lease granted under subsection (3), no sub-lease of any of the land may be granted, and no interest in the land may be assigned, except in accordance with subsection (5).
- (5) Where any land to which this section applies is the subject of a lease granted under subsection (3), the Secretary of State may, for the purpose of enabling all or any of the land (with its appurtenances) to be occupied by a person appearing to him to be suitable—
- (a) authorise the lessee to grant a sub-lease, or to assign the lease, to that person; or
  - (b) authorise a person to whom the lease has been assigned under this subsection to grant a sub-lease, or to assign the lease, to that person.
- (6) Any lease or sub-lease under this section shall be granted, at a rent or rent-free, on such terms (including terms as to the granting of licences to occupy or otherwise use all or any of the land) as the Secretary of State thinks fit.
- (7) Part II of the <sup>M57</sup>Landlord and Tenant Act 1954 (security of tenure for business tenants) shall not apply to any lease or sub-lease granted under this section.
- (8) It shall be lawful for the Secretary of State to permit any of the land to which this section applies which is not the subject of a lease under subsection (3), with its appurtenances, to be occupied and used for the purposes of any government department or for any other purpose, at a rent or rent-free, and on such terms as the Secretary of State thinks fit.
- (9) Any proceeds of, or income arising from, a lease granted by the Secretary of State under this section shall be held and applied for the benefit of Greenwich Hospital in accordance with the Greenwich Hospital Acts 1865 to 1996.
- (10) Section 7 of the <sup>M58</sup>Greenwich Hospital Act 1869 shall cease to have effect.
- (11) Nothing in this section shall be construed as preventing any of the land to which this section applies being used for any of the purposes of Greenwich Hospital.
- (12) This section and the Greenwich Hospital Acts 1865 to 1990 may be cited together as the Greenwich Hospital Acts 1865 to 1996.

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**Annotations:****Marginal Citations**

- M57 1954 c. 56.  
M58 1869 c. 44.

**31 Grants for preservation of Royal Naval College site.**

After section 31 of the <sup>M59</sup>National Heritage Act 1983 there shall be inserted the following section—

*“ The Royal Naval College*

**31A Grants for preservation of Royal Naval College site.**

- (1) The Secretary of State may out of money provided by Parliament make grants towards expenditure in connection with the repair or maintenance of—
- (a) the land and buildings on the site known as the Royal Naval College; or
  - (b) any object of historical interest situated on that land or in those buildings.
- (2) Grants under this section may be paid to such persons and on such conditions as the Secretary of State considers appropriate.”.

**Annotations:****Marginal Citations**

- M59 1983 c. 47.

**32 Offences connected with services drug testing programmes.**

- (1) After section 34 of the <sup>M60</sup>Army Act 1955 there shall be inserted the following section

**“34A Failure to provide a sample for drug testing.**

- (1) Any person subject to military law who, when requested to do so by a drug testing officer, fails to provide a sample of his urine for testing for the presence of drugs shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.
- (2) For the purposes of this section—
- “drug” means any drug which is a controlled drug for the purposes of the <sup>M61</sup>Misuse of Drugs Act 1971; and
- “drug testing officer” means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with Queen’s Regulations for the purpose of supervising the conduct of tests for the presence of drugs.”

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**Annotations:**

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**Marginal Citations**

**M61** 1971 c. 38.

- (2) After section 34 of the <sup>M62</sup>Air Force Act 1955 there shall be inserted the following section—

**“34A Failure to provide a sample for drug testing.**

- (1) Any person subject to air-force law who, when requested to do so by a drug testing officer, fails to provide a sample of his urine for testing for the presence of drugs shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.

- (2) For the purposes of this section—

“drug” means any drug which is a controlled drug for the purposes of the <sup>M63</sup>Misuse of Drugs Act 1971; and

“drug testing officer” means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with Queen’s Regulations for the purpose of supervising the conduct of tests for the presence of drugs.”

**Annotations:**

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**Marginal Citations**

**M63** 1971 c. 38.

- (3) After section 12 of the <sup>M64</sup>Naval Discipline Act 1957 there shall be inserted the following section—

**“12A Failure to provide a sample for drug testing.**

- (1) Any person subject to this Act who, when requested to do so by a drug testing officer, fails to provide a sample of his urine for testing for the presence of drugs shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.

- (2) For the purposes of this section—

“drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971; and

“drug testing officer” means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with Queen’s Regulations for the purpose of supervising the conduct of tests for the presence of drugs.”

**Annotations:**

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**Marginal Citations**

**M60** 1955 c. 18.

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**M62** 1955 c. 19.  
**M64** 1957 c. 53.

### 33 Application of Visiting Forces Act 1952.

In section 1(2) of the <sup>M65</sup>Visiting Forces Act 1952 (countries which may be designated as countries to which the Act applies)—

- (a) after the word “to” in the second place it appears there shall be inserted “ (a) ”; and
- (b) for the word “to” in the third place it appears there shall be substituted the words “; or  
(b) any other arrangements for defence co-operation,  
to ”.

**Annotations:**

**Marginal Citations**

**M65** 1952. c. 67.

### *Supplemental*

### 34 The 1955 Acts and the 1957 Act.

In this Act—

- “the 1955 Acts” means the <sup>M66</sup>Army Act 1955 and the Air Force Act 1955;
- and
- “the 1957 Act” means the Naval Discipline Act 1957.

**Annotations:**

**Marginal Citations**

**M66** 1955 c. 18.

### 35 Minor and consequential amendments and repeals.

- (1) The enactments mentioned in Schedule 6 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on the provisions of this Act).
- (2) The enactments mentioned in Schedule 7 to this Act (which include some that are spent) are repealed to the extent specified in the third column of that Schedule.

**Annotations:**

**Commencement Information**

- II** [S. 35](#) in force at 1.10.1996 (subject to savings) in relation to Sch. 6 paras. 1-3, 5, 6 and 10-13 and specified provisions of Sch. 7 Pt. III by [S.I. 1996/2474](#), [art.2](#) (with [art. 3](#)); in force at 1.4.1997 (subject to savings) so far as it relates to Sch. 6 paras. 4, 7-9, 14 and 15, Sch. 7 Pts. I and II, and Pt. III

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(to the extent as specified in Sch. 1 to the Order 1997/304, Sch. 1) by S.I. 1997/304, [art. 2](#) (with [art. 4, Sch. 2](#)); in force at 1.5.2001 insofar as not already in force by S.I. 2001/1519, [art. 2\(1\)\(b\)](#) (subject to savings in [art. 2\(2\)](#))

### **36 Short title, commencement and application to Channel Islands and Isle of Man.**

- (1) This Act may be cited as the Armed Forces Act 1996.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) Sections 1 and 34 shall come into force on the passing of this Act.
- (4) The repeal by this Act of section 1 of the <sup>M67</sup>Armed Forces Act 1991 shall come into force on 1st September 1996.
- (5) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.
- (6) Section 216 of the <sup>M68</sup>Army Act 1955, section 214 of the <sup>M69</sup>Air Force Act 1955 and section 125 of the 1957 Act (application of those Acts to Channel Islands and Isle of Man) shall each apply in relation to the provisions of sections 6 and 11 of this Act as if those provisions were contained in the Army Act 1955, the Air Force Act 1955 or the 1957 Act, as the case may require.

#### **Annotations:**

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

- C1** [S. 36\(2\)\(5\)](#): power partly exercised (25.9.1996): 1.10.1996 appointed day for specified provisions by S.I. 1996/2474, [art. 2, Sch.](#) (subject to saving in [art. 3](#))  
[S. 36\(2\)\(5\)](#): power partly exercised (2.12.1997): 1.4.1997 appointed day for specified provisions by S.I. 1997/304, [art. 2, Sch.](#) (subject to transitional provisions in [art. 3, Sch. 2](#))  
[S. 36\(2\)\(5\)](#): power partly exercised (29.8.1997): 1.10.1997 appointed day for specified provisions by S.I. 1997/2164, [art. 2](#) (subject to transitional provisions in [art. 3, Sch](#))  
[S. 36\(2\)](#): power partly exercised: 1.5.2001 appointed for specified provisions by S.I. 2001/1519, [art. 2\(1\)](#) (subject to savings in [art. 2\(2\)](#))

##### **Marginal Citations**

- M67** 1991 c. 62.  
**M68** 1955 c. 18.  
**M69** 1955 c. 19.

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## SCHEDULES

### SCHEDULE 1

Section 5.

#### PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

**Annotations:**

**Commencement Information**

**I2** Sch. 1 in force at 1.4.1997 (subject to savings) by S.I. 1997/304, art. 2 (with art. 3)

### PART I

#### SUMMARY DISPOSAL OF OFFENCES

##### *Army Act 1955 (c. 18)*

- 1 The Army Act 1955 shall be amended as follows.
- 2 For section 76 there shall be substituted the following sections—

**“76 Investigation of charges by commanding officer**

- (1) An allegation that a person subject to military law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the 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 should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
  - (a) dismiss the charge;
  - (b) refer the charge to higher authority; or
  - (c) deal summarily with the charge.

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- (6) The commanding officer may not deal summarily with a charge if—
  - (a) the accused is an officer or warrant officer; or
  - (b) the charge is not capable of being dealt with summarily.
- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

#### **76A Powers of higher authority.**

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or soldier and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of lieutenant-colonel or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.
- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

#### **76B Summary dealings.**

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.

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- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.
- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
  - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
  - (b) if the accused is a non-commissioned officer or soldier, refer the charge back to the commanding officer of the accused,
 for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

#### **76C Punishments available on summary dealings.**

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
  - (a) if the offender is a soldier, detention for a period not exceeding 60 days;
  - (b) fine;
  - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
  - (d) where the offence has occasioned any expense, loss or damage, stoppages;
  - (e) any minor punishment for the time being authorised by the Defence Council.

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- (3) The appropriate superior authority may award one or more of the following punishments—
  - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
  - (b) fine;
  - (c) severe reprimand or reprimand;
  - (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
  - (a) the amount of the offender's pay for twenty-eight days; or
  - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.
- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
  - (a) the amount of the offender's pay for twenty-eight days; or
  - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (10) If the offender is a lance-corporal or lance-bombardier, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender to be reduced to the ranks.
- (11) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
  - (a) to revert to his permanent rank;
  - (b) to assume an acting rank lower than that held by him but higher than his permanent rank; or
  - (c) where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks."

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4 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

“(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—

- (a) he is a general officer, flag officer, air officer or brigadier, or
- (b) where the Defence Council so direct, he is a colonel or a naval or air force officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

5 For section 83 there shall be substituted the following section—

**“83 Regulations as to summary dealings etc.**

(1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.

(2) Regulations under this section may in particular make provision with respect to—

- (a) the reporting of a charge to a commanding officer;
- (b) the procedure to be followed by a commanding officer investigating a charge;
- (c) the delegation by the commanding officer of any of his functions;
- (d) the charges which are capable of being dealt with summarily;
- (e) the amendment or substitution of charges;
- (f) the procedure on summary dealings;
- (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
- (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
- (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
- (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
- (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
- (l) who is to act as the higher authority and the appropriate superior authority in any particular case.

(3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

*Air Force Act 1955 (c. 19)*

6 The Air Force Act 1955 shall be amended as follows.

7 For section 76 there shall be substituted the following sections—

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## **“76 Investigation of charges by commanding officer**

- (1) An allegation that a person subject to air-force law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the 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 should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
  - (a) dismiss the charge;
  - (b) refer the charge to higher authority; or
  - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
  - (a) the accused is an officer or warrant officer; or
  - (b) the charge is not capable of being dealt with summarily.
- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

## **76A Powers of higher authority.**

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or airman and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of wing commander or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.

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- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

### **76B Summary dealings.**

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.
- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
  - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
  - (b) if the accused is a non-commissioned officer or airman, refer the charge back to the commanding officer of the accused,
 for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.

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- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

### **76C Punishments available on summary dealings.**

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
  - (a) if the offender is an airman, detention for a period not exceeding 60 days;
  - (b) fine;
  - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
  - (d) where the offence has occasioned any expense, loss or damage, stoppages;
  - (e) any minor punishment for the time being authorised by the Defence Council.
- (3) The appropriate superior authority may award one or more of the following punishments—
  - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
  - (b) fine;
  - (c) severe reprimand or reprimand;
  - (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
  - (a) the amount of the offender's pay for twenty-eight days; or
  - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.

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- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
- (a) the amount of the offender’s pay for twenty-eight days; or
  - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day’s pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (10) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
- (a) to revert to his permanent rank; or
  - (b) to assume an acting rank lower than that held by him but higher than his permanent rank.”

8 Sections 77 to 80 shall cease to have effect.

9 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

- “(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—
- (a) he is an air officer, flag officer, general officer or brigadier, or
  - (b) where the Defence Council so direct, he is a group captain or a naval or military officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

10 For section 83 there shall be substituted the following section—

**“83 Regulations as to summary dealings etc.**

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
  - (a) the reporting of a charge to a commanding officer;
  - (b) the procedure to be followed by a commanding officer investigating a charge;
  - (c) the delegation by the commanding officer of any of his functions;
  - (d) the charges which are capable of being dealt with summarily;
  - (e) the amendment or substitution of charges;
  - (f) the procedure on summary dealings;

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- (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
  - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
  - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
  - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
  - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
  - (l) who is to act as the higher authority and the appropriate superior authority in any particular case.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

*Naval Discipline Act 1957 (c. 53)*

- 11 The Naval Discipline Act 1957 shall be amended as follows.  
12 Sections 49, 50 and 52A shall cease to have effect.  
13 After section 52A there shall be inserted the following sections—

*“ Investigation and summary trial*

**52B Investigation of charges by commanding officer**

- (1) An allegation that a person subject to this Act (“the accused”) has committed an offence against any provision of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the 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 should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge, the commanding officer may, subject to subsection (6) below—
  - (a) dismiss the charge;
  - (b) refer the charge to higher authority; or
  - (c) try the accused summarily.
- (6) The commanding officer may not try summarily—

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- (a) any charge against an officer; or
  - (b) any charge which is not capable of being tried summarily.
- (7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than an offence punishable by sentence of death or an offence of murder.

#### **52C Powers of higher authority.**

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it; and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a rating and is capable of being tried summarily, the higher authority may, subject to subsection (4) below, refer it back to the commanding officer of the accused to be so tried.
- (4) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) This section has effect subject to any power of the higher authority under section 52G(1) below to order a disciplinary court.

#### **52D Summary trial.**

- (1) This section applies where a charge is to be tried summarily.
- (2) If the commanding officer considers that, if the charge were proved, he would award a punishment—
  - (a) in the case of a warrant officer, of disrating, a fine or stoppages;
  - (b) in the case of any other rating, of dismissal from Her Majesty's service, detention or disrating,he shall afford the accused an opportunity of electing court-martial trial.
- (3) If the accused so elects and does not withdraw his election with leave, the commanding officer shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (4) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) If, in the course of trying the charge, the commanding officer considers that it should not be tried summarily, he may refer the charge to higher authority.
- (6) If the commanding officer determines that the charge has not been proved, he shall acquit the accused.

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- (7) If the commanding officer determines that the charge has been proved, he shall record a finding of guilt and award punishment accordingly.
- (8) A commanding officer shall not have power on a summary trial to award a sentence of dismissal with disgrace from Her Majesty's service, a sentence of imprisonment or a sentence of detention for any term exceeding three months.

#### **52E Commanding officers.**

- (1) In this Act "the commanding officer", in relation to a person charged with an offence, means the officer in command of the ship or naval establishment to which he belongs at the time of the commission of the offence or at the time of its investigation or summary trial.
- (2) The Defence Council may by regulations make provision—
  - (a) enabling the powers conferred by this Act on the commanding officer of an accused to be exercised by other persons of such descriptions as may be specified;
  - (b) with respect to the delegation by the commanding officer, or other person exercising the powers of a commanding officer by virtue of regulations under paragraph (a) above, of any of his powers to any officer not below the rank of lieutenant or corresponding rank.
- (3) An officer to whom any powers are delegated by virtue of subsection (2) (b) above shall not have power to award any punishment other than a fine, stoppages or those described in section 43(1)(m) of this Act.
- (4) The reference in subsection (3) above to stoppages does not include a reference to stoppages for personal injury.

#### **52F Regulations as to summary trial etc.**

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary trial.
- (2) Regulations under this section may in particular make provision with respect to—
  - (a) the reporting of a charge to a commanding officer;
  - (b) the procedure to be followed by a commanding officer investigating a charge;
  - (c) the amendment or substitution of charges;
  - (d) the procedure on summary trial;
  - (e) limitations on the punishments which may be awarded on summary trial by a specified description of commanding officer;
  - (f) limitations on the punishments which may be so awarded to a specified description of accused;
  - (g) requirements for punishments to be approved before taking effect;
  - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
  - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;

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- (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
  - (k) who may act as the higher authority.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

#### *Disciplinary courts*

### **52G Disciplinary courts.**

- (1) If an officer of Her Majesty's naval forces below the rank of commander is charged with an offence to which this section applies at a time when the force to which he belongs is on active service, the higher authority to whom the charge was referred may order a disciplinary court.
- (2) A disciplinary court shall have power, subject to the provisions of this section and of any rules made under it, to try and punish the offence accordingly.
- (3) This section applies to any offence triable by court-martial under this Act other than an offence under the following provisions—
  - (a) sections 2 to 4, 6, 9, 10, 23 and 24, section 29(1) so far as relating to public or service property, section 29A, and sections 34 to 37 and 42;
  - (b) sections 40 and 41, so far as applicable to an offence under any of the provisions mentioned in paragraph (a) of this subsection.
- (4) A disciplinary court shall consist of not less than three nor more than five officers, at least one of whom is not below the rank of commander.
- (5) An officer shall not be a member of a disciplinary court unless he is an officer of Her Majesty's naval forces and is subject to this Act.
- (6) The officer who orders a disciplinary court shall not be a member of the court.
- (7) A disciplinary court shall not have power to award any punishment greater than dismissal from Her Majesty's service.
- (8) The Secretary of State may by statutory instrument make rules as to the assembling, constitution, procedure and practice of disciplinary courts.
- (9) Rules under subsection (8) above may apply in relation to disciplinary courts and to proceedings of such courts, with the necessary modifications, any provisions of this Part of this Act or of rules under section 58 of this Act relating to courts-martial and proceedings of courts-martial."

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## PART II

### THE PROSECUTING AUTHORITY

#### *Army Act 1955 (c. 18)*

14 After section 83 of the Army Act 1955 there shall be inserted the following sections

*“ The prosecuting authority*

#### **83A The prosecuting authority.**

- (1) Her Majesty may appoint a qualified officer belonging to Her military forces to be the prosecuting authority for the Army; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
  - (a) a person who has a ten year general qualification within the meaning of section 71 of the <sup>M70</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland of at least ten years’ standing; or
  - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years’ standing.

#### **Annotations:**

#### **Marginal Citations**

M70 1990 c. 41.

#### **83B Functions of the prosecuting authority.**

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
  - (a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;
  - (b) if the accused is a non-commissioned officer or soldier, refer the case to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the preliminary charge has been proved and award punishment accordingly.
- (3) In subsection (2) above “the preliminary charge” means the charge for which punishment would have been awarded had the accused not elected court-martial trial.

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- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—
  - (a) determine any charge to be preferred and (subject to subsection (5) below) whether any such charge is to be tried by general court-martial or district court-martial; and
  - (b) prefer any charge so determined by him.
- (5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.
- (6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—
  - (a) amend, or substitute another charge or charges for, any charge preferred;
  - (b) prefer an additional charge, or additional charges, against the accused;
  - (c) discontinue proceedings on any charge.
- (9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (11) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in subsection (8)(b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.
- (12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (13) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that, for the

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purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.

- (14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

### **83C Prosecuting officers.**

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
- (a) a person who has a general qualification within the meaning of section 71 of the <sup>M71</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

#### **Annotations:**

#### **Marginal Citations**

M71 1990 c. 41.

#### *Air Force Act 1955 (c. 19)*

- 15 After section 83 of the Air Force Act 1955 there shall be inserted the following sections—

“ *The prosecuting authority*

### **83A The prosecuting authority.**

- (1) Her Majesty may appoint a qualified officer belonging to Her air forces to be the prosecuting authority for the Royal Air Force; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
- (a) a person who has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland of at least ten years’ standing; or
  - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years’ standing.

### **83B Functions of the prosecuting authority.**

- (1) This section applies where a case has been referred to the prosecuting authority.

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
  - (a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;
  - (b) if the accused is a non-commissioned officer or airman, refer the case to the commanding officer of the accused,
 for the appropriate superior authority or commanding officer to record a finding that the preliminary charge has been proved and award punishment accordingly.
- (3) In subsection (2) above “the preliminary charge” means the charge for which punishment would have been awarded had the accused not elected court-martial trial.
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—
  - (a) determine any charge to be preferred and (subject to subsection (5) below) whether any such charge is to be tried by general court-martial or district court-martial; and
  - (b) prefer any charge so determined by him.
- (5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.
- (6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—
  - (a) amend, or substitute another charge or charges for, any charge preferred;
  - (b) prefer an additional charge, or additional charges, against the accused;
  - (c) discontinue proceedings on any charge.
- (9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (11) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in

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subsection (8)(b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.

- (12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (13) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that, for the purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.
- (14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

### **83C Prosecuting officers.**

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
- (a) a person who has a general qualification within the meaning of section 71 of the <sup>M72</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

#### **Annotations:**

#### **Marginal Citations**

M72 1990 c. 41.

#### *Naval Discipline Act 1957 (c. 53)*

- 16 After section 52G of the Naval Discipline Act 1957 there shall be inserted the following sections—

“ *The prosecuting authority*

### **52H The prosecuting authority.**

- (1) Her Majesty may appoint a qualified officer of Her naval forces to be the prosecuting authority for the Royal Navy; and in this Act “the prosecuting authority” means the officer so appointed.

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- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
- (a) a person who has a five year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland of at least five years' standing; or
  - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least five years' standing.

## **52I Functions of the prosecuting authority.**

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall refer the case to the commanding officer of the accused for the preliminary charge to be tried summarily.
- (3) In subsection (2) above “the preliminary charge” means the charge which would have been tried summarily had the accused not elected court-martial trial.
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall determine any charge to be preferred and prefer any such charge.
- (5) The prosecuting authority shall, in accordance with rules under section 58 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (6) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (7) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 58 of this Act—
  - (a) amend, or substitute another charge or charges for, any charge preferred;
  - (b) prefer an additional charge, or additional charges, against the accused;
  - (c) discontinue proceedings on any charge.
- (8) The powers mentioned in subsection (7)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (9) The prosecuting authority may not exercise any power mentioned in subsection (7)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (10) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned

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in subsection (7)(b) above, he may, in accordance with rules under section 58 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (5) above shall apply with such exceptions and modifications as may be prescribed.

- (11) The prosecuting authority may not exercise the power mentioned in subsection (7)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (12) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that the accused shall not be liable to be tried summarily or by court-martial for the offence charged.
- (13) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (12) above.

#### **52J Prosecuting officers.**

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
  - (a) a person who has a general qualification within the meaning of section 71 of the <sup>M73</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

#### **Annotations:**

#### **Marginal Citations**

**M73** 1990 c. 41.

### **PART III**

#### **TRIAL OF OFFENCES BY COURT-MARTIAL**

#### *Army Act 1955 (c. 18)*

- 17 The Army Act 1955 shall be amended as follows.
- 18 Section 84 shall cease to have effect.
- 19 After section 84 there shall be inserted the following sections—

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#### **“84A Court administration officers.**

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

#### **84B Judge advocates.**

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
  - (a) a person who has a five year general qualification within the meaning of section 71 of the <sup>M74</sup>Courts and Legal Services Act 1990;
  - (b) an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
  - (c) a member of the Bar of Northern Ireland of at least five years’ standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

#### **Annotations:**

#### **Marginal Citations**

M74 1990 c. 41.

#### **84C Convening of general and district courts-martial.**

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial;
  - (d) any other officers appointed for the purpose of filling vacancies,

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and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.

- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
  - (a) the court administration officer;
  - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
  - (c) the higher authority to whom the preliminary charge against the accused was referred;
  - (d) any other officer who has investigated the subject matter of the charge against the accused;
  - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

#### **84D Constitution of general and district courts-martial.**

- (1) A general court-martial shall consist of the president, not less than four other military officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other military officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of captain.
- (6) A general court-martial for the trial of an officer above the rank of captain shall not include any member below the rank of captain.
- (7) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.

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(8) If, in the opinion of the court administration officer, the necessary number of military officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.

(9) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the <sup>M75</sup>Naval Discipline Act 1957.”

**Annotations:**

**Marginal Citations**

**M75** 1957 c. 53.

20 Section 85(3) shall cease to have effect.

21 Sections 86 to 90 shall cease to have effect.

22 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.

(2) In subsection (1)—

(a) for the words “Her Majesty’s dominions” there shall be substituted the words “ the United Kingdom ”; and

(b) the words from “and the convening officer” to the end shall cease to have effect.

(3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “ may ”.

23 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.

(2) In subsection (1), for the word “officer” there shall be substituted the word “ member ”.

(3) In subsection (2)—

(a) for the word “they” there shall be substituted the words “ the officers appointed members ”; and

(b) for the words “those officers” there shall be substituted the words “ the members ”.

(4) In subsection (3)—

(a) for the word “officer” there shall be substituted the word “ member ”; and

(b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.

(5) In subsection (4)—

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- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to the president is allowed”; and
  - (b) for the word “convening” there shall be substituted the words “court administration”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to any other officer appointed a member of the court is allowed”;
  - (b) for the word “member” in the second place it appears there shall be substituted the word “officer”;
  - (c) for the word “members” in the second place it appears there shall be substituted the word “officers”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 24 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “officer appointed a”; and
  - (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 25 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- “(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
  - (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
  - (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 26 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and
  - (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that

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- a court-martial should be dissolved, he may by order dissolve the court-martial.”
- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “ judge advocate ”.
- (5) Subsection (4) shall cease to have effect.
- 27 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “ the finding of a court-martial and any sentence awarded ”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “ entitled to vote on the finding ”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “ those members ”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 28 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “ and any reasons for the sentence ”.
- 29 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “ trials on indictment ”; and
- (b) for the words “before a civil court” there shall be substituted the words “ in a trial on indictment ”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “ trial on indictment ”.
- 30 For section 103 there shall be substituted the following section—
- “103 Rules.**
- (1) The Secretary of State may make rules with respect to—
- (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
- (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by general or district courts-martial;
- (b) the appointment of a judge advocate for any preliminary proceedings;
- (c) the delegation by court administration officers of any of their functions;
- (d) the convening and constitution of general and district courts-martial;

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- (e) the sittings, adjournment and dissolution of general and district courts-martial;
  - (f) the procedure to be followed in trials by general and district courts-martial;
  - (g) the representation of the accused at such trials and any preliminary proceedings;
  - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
  - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
  - (j) enabling a general or district court-martial, where the particulars proved or admitted at the 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 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) directing that the powers conferred by section 7 of the <sup>M76</sup>Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a general or district court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
  - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
  - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
  - (n) the recording of the proceedings of a general or district court-martial;
  - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

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**Annotations:**

**Marginal Citations**

**M76** 1879 c. 11.

31 After section 103 there shall be inserted the following sections—

*“ Field General Courts-Martial*

**103A Field general courts-martial.**

- (1) Where an officer to whom this subsection applies—
  - (a) is commanding a body of the regular forces on active service; and
  - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,
 he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
  - (a) the commanding officer who has investigated the charge;
  - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
  - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.
- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.
- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

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### **103B Constitution of field general courts-martial.**

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other military officers.
- (2) If the officer who convened the field general court-martial is of opinion that three military officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other military officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
  - (a) a person who has a general qualification within the meaning of section 71 of the <sup>M77</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of captain.
- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of military officers having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—
  - “air force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
  - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the <sup>M78</sup>Naval Discipline Act 1957.

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**Annotations:**

**Marginal Citations**

**M77** 1990 c. 41.

**M78** 1957 c. 53.

**103C Field General Court-Martial Rules.**

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
  - (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;
  - (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

32 Sections 104 to 106 shall cease to have effect.

*Air Force Act 1955 (c. 19)*

33 The Air Force Act 1955 shall be amended as follows.

34 Section 84 shall cease to have effect.

35 After section 84 there shall be inserted the following sections—

**“84A Court administration officers.**

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

**84B Judge advocates.**

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
  - (a) a person who has a five year general qualification within the meaning of section 71 of the <sup>M79</sup>Courts and Legal Services Act 1990;

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- (b) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
  - (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

**Annotations:**

**Marginal Citations**

M79 1990 c. 41.

**84C Convening of general and district courts-martial.**

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
- (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial;
  - (d) any other officers appointed for the purpose of filling vacancies, and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
- (a) the court administration officer;
  - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
  - (c) the higher authority to whom the preliminary charge against the accused was referred;
  - (d) any other officer who has investigated the subject matter of the charge against the accused;
  - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

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#### **84D Constitution of general and district courts-martial.**

- (1) A general court-martial shall consist of the president, not less than four other air-force officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other air-force officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (6) A general court-martial for the trial of an officer above the rank of flight lieutenant shall not include any member below the rank of flight lieutenant.
- (7) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.
- (8) If, in the opinion of the court administration officer, the necessary number of air-force officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.
- (9) In this section—
  - “air-force officer” means an officer belonging to Her Majesty's air forces and subject to air-force law;
  - “military officer” means an officer belonging to Her Majesty's military forces and subject to military law; and
  - “naval officer” means an officer belonging to Her Majesty's naval forces and subject to the <sup>M80</sup>Naval Discipline Act 1957.”

#### **Annotations:**

#### **Marginal Citations**

**M80** 1957 c. 53.

36 Section 85(3) shall cease to have effect.

37 Sections 86 to 90 shall cease to have effect.

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- 38 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “Her Majesty’s dominions” there shall be substituted the words “ the United Kingdom ”; and
- (b) the words from “and the convening officer” to the end shall cease to have effect.
- (3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “ may ”.
- 39 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1), for the word “officer” there shall be substituted the word “ member ”.
- (3) In subsection (2)—
- (a) for the word “they” there shall be substituted the words “ the officers appointed members ”; and
- (b) for the words “those officers” there shall be substituted the words “ the members ”.
- (4) In subsection (3)—
- (a) for the word “officer” there shall be substituted the word “ member ”; and
- (b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.
- (5) In subsection (4)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to the president is allowed ”; and
- (b) for the word “convening” there shall be substituted the words “ court administration ”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to any other officer appointed a member of the court is allowed ”;
- (b) for the word “member” in the second place it appears there shall be substituted the word “ officer ”; and
- (c) for the word “members” in the second place it appears there shall be substituted the word “ officers ”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 40 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “ officer appointed a ”; and

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- (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 41 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- “(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 42 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and
- (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may by order dissolve the court-martial.”
- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “judge advocate”.
- (5) Subsection (4) shall cease to have effect.
- 43 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 44 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.

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- 45 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “ trials on indictment ”; and
  - (b) for the words “before a civil court” there shall be substituted the words “ in a trial on indictment ”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “ trial on indictment ”.
- 46 For section 103 there shall be substituted the following section—

**“103 Rules.**

- (1) The Secretary of State may make rules with respect to—
- (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
  - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by general or district courts-martial;
  - (b) the appointment of a judge advocate for any preliminary proceedings;
  - (c) the delegation by court administration officers of any of their functions;
  - (d) the convening and constitution of general and district courts-martial;
  - (e) the sittings, adjournment and dissolution of general and district courts-martial;
  - (f) the procedure to be followed in trials by general and district courts-martial;
  - (g) the representation of the accused at such trials and any preliminary proceedings;
  - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
  - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
  - (j) enabling a general or district court-martial, where the particulars proved or admitted at the 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 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) directing that the powers conferred by section 7 of the <sup>M81</sup>Bankers’ Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers’ books for the purposes of legal proceedings) may be exercised for the purposes of a general or district court-martial (whether within or without the United Kingdom) by the

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- commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
  - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
  - (n) the recording of the proceedings of a general or district court-martial;
  - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Annotations:**

**Marginal Citations**

**M81** 1879 c. 11.

After section 103 there shall be inserted the following sections—

*“ Field General Courts-Martial*

**103A Field general courts-martial.**

- (1) Where an officer to whom this subsection applies—
  - (a) is commanding a body of the regular air force on active service; and
  - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,
 he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
  - (a) the commanding officer who has investigated the charge;
  - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;

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- (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.
- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.
- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

### **103B Constitution of field general courts-martial.**

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other air-force officers.
- (2) If the officer who convened the field general court-martial is of opinion that three air-force officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other air-force officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
  - (a) a person who has a general qualification within the meaning of section 71 of the <sup>M82</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of flight lieutenant.

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- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of air-force officers having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
- “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
- “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the <sup>M83</sup>Naval Discipline Act 1957.

**Annotations:**

**Marginal Citations**

**M82** 1990 c. 41.

**M83** 1957 c. 53.

**103C Field General Court-Martial Rules.**

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
- (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;
- (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

48 Sections 104 to 106 shall cease to have effect.

*Naval Discipline Act 1957 (c. 53)*

49 The Naval Discipline Act 1957 shall be amended as follows.

50 Section 53 shall cease to have effect.

51 After section 53 there shall be inserted the following sections—

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### **“53A Court administration officers.**

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to order courts-martial and perform such other functions as may be prescribed by rules under section 58 of this Act; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who ordered the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

### **53B Judge advocates.**

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Chief Naval Judge Advocate to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
  - (a) a person who has a five year general qualification within the meaning of section 71 of the <sup>M84</sup>Courts and Legal Services Act 1990;
  - (b) an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
  - (c) a member of the Bar of Northern Ireland of at least five years’ standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

#### **Annotations:**

#### **Marginal Citations**

**M84** 1990 c. 41.

### **53C Ordering of courts-martial.**

- (1) On being notified by the prosecuting authority of the charge preferred, a court administration officer shall order a court-martial.
- (2) The order assembling the court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial;
  - (d) any other officers appointed for the purpose of filling vacancies,and shall state that a judge advocate appointed by or on behalf of the Chief Naval Judge Advocate is to be a member of the court-martial.

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- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 58 of this Act, amend or withdraw the order assembling the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
  - (a) the court administration officer;
  - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
  - (c) the higher authority to whom the preliminary charge against the accused was referred;
  - (d) any other officer who has investigated the subject matter of the charge against the accused;
  - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.”

52 For section 54 there shall be substituted the following section—

**“54 Composition of courts-martial.**

- (1) A court-martial shall consist of the president, not less than four nor more than eight other naval officers and the judge advocate.
- (2) An officer shall not be appointed a member of a court-martial unless he is of or above the rank of lieutenant and he has been an officer of any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (3) The officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (4) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (5) A court-martial for the trial of an officer of flag rank shall not include any member below the rank of captain.
- (6) A court-martial for the trial of a commodore or captain shall not include any member below the rank of commander.
- (7) A court-martial for the trial of a commander shall include at least two members, in addition to the president, who are not below the rank of commander.
- (8) If, in the opinion of the court administration officer, the necessary number of naval officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any military or air-force officer of corresponding rank to that required for a naval officer.

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(9) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act.”

53 Section 55 shall cease to have effect.

54 (1) Section 56 (place and time of sittings of courts-martial) shall be amended as follows.

(2) In subsection (1), for the words from “appointed” to the end there shall be substituted the words “ specified in the order assembling the court ”.

(3) In subsection (2), the words from “and shall” to the end shall cease to have effect.

(4) In subsection (3), for the word “prosecutor” there shall be substituted the words “ prosecuting authority ”.

55 After section 56 there shall be inserted the following section—

**“56A Dissolution of courts-martial.**

(1) Where, before the commencement of the trial, it appears to the court administration officer necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.

(2) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend, the court-martial shall be dissolved.

(4) Where a court-martial is dissolved the accused may be tried by another court.”

56 (1) Section 57 (quorum) shall be amended as follows.

(2) Subsections (1) and (3) shall cease to have effect.

(3) In subsection (2)—

(a) for the word “members” in both places it appears there shall be substituted the word “ officers ”; and

(b) after the word “that” there shall be inserted the words “ an officer appointed ”.

57 For section 58 there shall be substituted the following section—

**“58 Rules.**

(1) The Secretary of State may make rules with respect to—

(a) the investigation, prosecution and trial of, and the awarding of punishment for, offences cognizable by courts-martial;

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- (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by courts-martial;
  - (b) the appointment of a judge advocate for any preliminary proceedings;
  - (c) the delegation by court administration officers of any of their functions;
  - (d) the ordering and composition of courts-martial;
  - (e) the sittings, adjournment and dissolution of courts-martial;
  - (f) the procedure to be followed in trials by courts-martial;
  - (g) the functions of the clerk of the court and the exercise by him of those functions;
  - (h) the representation of the accused at trials by courts-martial and any preliminary proceedings;
  - (i) procuring the attendance of witnesses at such trials and any preliminary proceedings;
  - (j) enabling a court-martial, in such cases and to such extent as may be prescribed by the rules, to amend a charge which is being tried by the court;
  - (k) enabling a court-martial, where the particulars proved or admitted at the 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 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;
  - (l) directing that the powers conferred by section 7 of the <sup>M85</sup>Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate, as well as by the court or a judge within the meaning of that Act;
  - (m) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
  - (n) the cases in which, and extent to which, offences may be taken into consideration by a court-martial and the powers of the court in relation to any offences taken into consideration;
  - (o) the recording of the proceedings of a court-martial;
  - (p) the procedure to be followed on review of findings and sentences of courts-martial.
- (3) Rules made by virtue of paragraph (j) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- (4) Rules under this section which are inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

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- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Annotations:**

**Marginal Citations**

**M85** 1879 c. 11.

- 58 (1) Section 59 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the words “Before the” there shall be inserted the words “ officers appointed ”;
- (b) for the words “officers constituting” there shall be substituted the words “ members of ”; and
- (c) for the words from “being” to the end there shall be substituted the words “ any of those members ”.
- (3) In subsection (2)—
- (a) for the word “officer” there shall be substituted the word “ member ”; and
- (b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.
- (4) For subsection (3) there shall be substituted the following subsection—
- “(3) If an objection to the president is allowed, the court shall be dissolved.”
- (5) In subsection (4)—
- (a) for the words from “objection” to “the member” there shall be substituted the words “ an objection to any other officer appointed a member of the court is allowed ”;
- (b) for the word “nominated” there shall be substituted the word “ appointed ”; and
- (c) for the words “section fifty-four” there shall be substituted the words “ section 53C ”.
- (6) After subsection (4) there shall be inserted the following subsection—
- “(4A) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Chief Naval Judge Advocate.”
- (7) Subsection (5) shall cease to have effect.
- (8) In subsection (6)—
- (a) after the words “After the” there shall be inserted the words “ officers appointed ”; and
- (b) for the words “Defence Council” there shall be substituted the words “ reviewing authority ”.
- 59 (1) Section 60 (administration of oaths) shall be amended as follows.

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- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) An oath shall be administered separately to each member of a court-martial, to the clerk of the court and any officer or other person in attendance for instruction, and to any person appointed to attend as interpreter.”
- (3) In subsection (5), for the words “General Orders” there shall be substituted the word “rules”.
- 60 In section 61 (courts-martial to sit in open court), after subsection (2) there shall be added the following subsections—
- “(3) A court-martial shall sit in closed court while deliberating on their finding and sentence on any charge.
- (4) A court-martial may sit in closed court on any other deliberation amongst the members.
- (5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed by rules under section 58 of this Act.
- (6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court.”
- 61 (1) Section 62 (findings and sentences of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3), after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.
- (5) In subsection (4)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- 62 In section 64(1) (summoning of witnesses), for the words “clerk of the court” there shall be substituted the words “court administration officer”.
- 63 After section 64 there shall be inserted the following sections—

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#### “64A Rules of evidence

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall, subject to Schedule 13 to the <sup>M86</sup>Criminal Justice Act 1988 (evidence before courts-martial etc) and to service modifications, be the same as those observed in trials on indictment in England, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings in a trial on indictment in England.
- (2) In this section “service modifications” means such modifications as the Secretary of State may by regulations made by statutory instrument prescribe, being modifications which appear to him to be necessary or proper for the purposes of proceedings before a court-martial; and it is hereby declared that in this section—
  - “rules” includes rules contained in or made by virtue of an enactment; and
  - “enactment” includes an enactment contained in an Act passed after this Act.
- (3) Regulations under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a trial on indictment in England.

#### Annotations:

#### Marginal Citations

**M86** 1988 c. 33.

#### 64B Proofs at courts-martial by written statement

- (1) Without prejudice to section 64A above, section 9 of the <sup>M87</sup>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 Parts I and II of this Act are applied by section 117 or section 118 of this Act, or to whom Part II of the <sup>M88</sup>Army Act 1955 or Part II of the <sup>M89</sup>Air Force Act 1955 is applied by section 208A or section 209 of the Army Act 1955 or the Air Force Act 1955 respectively,

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and the persons mentioned in this paragraph include persons to whom section 119 of this Act, section 131 of the Army Act 1955 or section 131 of the Air Force Act 1955 apply.

- (3) In subsection (1) above “service modifications” means—
- (a) modifications made by any regulations under section 12 of the <sup>M90</sup>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.

**Annotations:**

**Marginal Citations**

- M87** 1967 c. 80.  
**M88** 1955 c. 18.  
**M89** 1955 c. 19.  
**M90** 1967 c. 80.

**64C Proof of service facts and records.**

- (1) This section applies with respect to proceedings before a court-martial.
- (2) A letter, return or other document stating that any person—
- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty’s forces;
  - (b) was discharged from any part of those forces at or before any specified time;
  - (c) held or did not hold at any specified time any specified rank or appointment in any of those forces;
  - (d) had at or before any specified time been attached, posted or transferred to any part of those forces;
  - (e) at any specified time or during any specified time was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
  - (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem;

shall if purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matter stated in the document.

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- (3) A record—
- (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval duty; and
  - (b) purporting to be signed by the commanding officer or by any person whose duty it was to make or keep the records,
- may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (4) A copy of a record (including the signature thereto) such as is mentioned in subsection (3) above, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the record, may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (5) A document purporting to be issued by order of the Defence Council and to contain instructions given or regulations made by the Defence Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.
- (6) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, and stating—
- (a) that a decoration of a description specified in, or as annexed to, the certificate is a military, naval or air force decoration; or
  - (b) that a badge or emblem of a description specified in, or as annexed to, the certificate is one supplied or authorised by the Defence Council;
- shall be evidence of the matters stated in the certificate.
- (7) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—
- (a) any ship, train or aircraft;
  - (b) any formation or unit or body of Her Majesty's forces; or
  - (c) any command or other area, or place;
- shall in proceedings against that person be evidence of the matters stated in the certificate.
- (8) Any document which would be evidence in any proceedings under the <sup>M91</sup>Army Act 1955 or the <sup>M92</sup>Air Force Act 1955 shall in like manner, subject to the like conditions, and for the like purposes, be evidence in a court-martial under this Act.

**Annotations:**

**Marginal Citations**

**M91** 1955 c. 18.

**M92** 1955 c. 19.

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## 64D Privilege of witnesses and others at courts-martial

A witness before a court-martial 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 the High Court in England.”

### PART IV

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Courts-Martial (Appeals) Act 1951 (c. 46)*

- 64 In section 28(2) of the Courts-Martial (Appeals) Act 1951 (qualification for appointment as Judge Advocate of Her Majesty’s Fleet), in paragraph (b), for the words from “been” to “and” there shall be substituted the words “ had a right of audience in the Court of Session or ”.
- 65 In section 31 of that Act (qualification for appointment as Judge Advocate General and his assistants), in paragraph (b) in each of subsections (1), (2) and (3), for the words from “been” to “and” there shall be substituted the words “ had a right of audience in the Court of Session or ”.

##### *Army Act 1955 (c. 18)*

- 66 The Army Act 1955 shall be amended as follows.
- 67 In section 134 (persons not to be tried under Act for offences already disposed of), in subsection (1)(b), for the words “been found guilty on the charge” there shall be substituted the words “ had a finding that the charge has been proved recorded against him ”.
- 68 Section 139 shall cease to have effect.
- 69 In section 143(1) (interpretation of Part II)—
- (a) the definition of “convening officer” shall cease to have effect; and
  - (b) in the definition of “prescribed”, for the words “Rules of Procedure” there shall be substituted the words “ rules under section 103 of this Act ”.
- 70 In section 198 (general provisions as to evidence), in subsection (9), after the words “that Act” there shall be inserted the words “ , or in any proceedings under the <sup>M93</sup>Naval Discipline Act 1957, by virtue of section 64C of that Act, ”.

#### **Annotations:**

#### **Marginal Citations**

**M93** 1957 c. 53.

- 71 In section 209(3) (modifications of Act in relation to trial of civilians by courts-martial)—
- (a) paragraph (d) shall cease to have effect;
  - (b) in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above” shall cease to have effect; and

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- (c) after paragraph (fa) there shall be inserted the following paragraph—  
“(faa) references to the officers appointed members of a court-martial shall be construed as including references to persons who are members of a court-martial by virtue of paragraph (fa) above;”.
- 72 (1) Section 209(3B) (modifications of Act in its application to any area for which Standing Civilian Courts are established) shall be amended as follows.
- (2) After paragraph (a) there shall be inserted the following paragraph—  
“(aa) section 83 above shall have effect as if after subsection (1) there were inserted the following subsection—  
(1A) Regulations under this section may provide for sections 76 to 76C of this Act to have effect subject to such modifications as may be specified in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try.”;
- (3) For paragraph (b) there shall be substituted the following paragraph—  
“(b) section 103(1) above shall have effect as if the following paragraph were inserted after paragraph (b)— “  
(c) the hearing by courts-martial of appeals against findings and sentences of Standing Civilian Courts.”;”;
- (4) In paragraph (c)—  
(a) for “77, 79 and 80” there shall be substituted “ to 76C ”; and  
(b) for the words from “consequential” to “Procedure” there shall be substituted the words “ as may be specified by regulations under section 83 of this Act ”.
- 73 In section 211 (application of Act to reserve forces), in subsection (7), for the words “subsection (3) of section seventy-eight” there shall be substituted the words “ section 76C(2) ”.
- 74 In section 225(1) (general provisions as to interpretation of Act)—  
(a) in the definition of “appropriate superior authority” for the words from “has” to “and” there shall be substituted the words “ means a person who may act as an appropriate superior authority by virtue of ”;  
(b) after the definition of “corresponding rank” there shall be inserted the following definition—  
““court administration officer” and “the court administration officer” have the meanings assigned to them by section 84A of this Act;”;
- (c) after the definition of “Her Majesty’s air forces”, “Her Majesty’s military forces” and “Her Majesty’s naval forces” there shall be inserted the following definition—  
““the judge advocate” has the meaning assigned to it by section 84B(1) of this Act;”;
- (d) after the definition of “property” there shall be inserted the following definition—  
““the prosecuting authority” has the meaning assigned to it by section 83A(1) of this Act;”;
- (e) the definition of “Rules of Procedure” shall cease to have effect.

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- 75 In Schedule 5A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “Rules of Procedure” there shall be substituted the word “rules”.

*Air Force Act 1955 (c. 19)*

- 76 The Air Force Act 1955 shall be amended as follows.
- 77 In section 134 (persons not to be tried under Act for offences already disposed of), in subsection (1)(b), for the words “been found guilty on the charge” there shall be substituted the words “had a finding that the charge has been proved recorded against him”.
- 78 Section 139 shall cease to have effect.
- 79 In section 143(1) (interpretation of Part II)—
- (a) the definition of “convening officer” shall cease to have effect; and
  - (b) in the definition of “prescribed”, for the words “Rules of Procedure” there shall be substituted the words “rules under section 103 of this Act”.
- 80 In section 198 (general provisions as to evidence), in subsection (9), after the words “that Act” there shall be inserted the words “, or in any proceedings under the <sup>M94</sup>Naval Discipline Act 1957, by virtue of section 64C of that Act, ”.

**Annotations:**

**Marginal Citations**

M94 1957 c. 53.

- 81 In section 209(3) (modifications of Act in relation to trial of civilians by courts-martial)—
- (a) paragraph (d) shall cease to have effect;
  - (b) in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above” shall cease to have effect; and
  - (c) after paragraph (fa) there shall be inserted the following paragraph—
    - “(faa) references to the officers appointed members of a court-martial shall be construed as including references to persons who are members of a court-martial by virtue of paragraph (fa) above;”.
- 82 (1) Section 209(3B) (modifications of Act in its application to any area for which Standing Civilian Courts are established) shall be amended as follows.
- (2) After paragraph (a) there shall be inserted the following paragraph—
- “(aa) section 83 above shall have effect as if after subsection (1) there were inserted the following subsection—
- (1A) Regulations under this section may provide for sections 76 to 76C of this Act to have effect subject to such modifications as may be specified in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try.”;
- (3) For paragraph (b) there shall be substituted the following paragraph—

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- (b) section 103(1) above shall have effect as if the following paragraph were inserted after paragraph (b)—
- (c) the hearing by courts-martial of appeals against findings and sentences of Standing Civilian Courts.”;
- (4) In paragraph (c)—
- (a) for “77, 79 and 80” there shall be substituted “ to 76C ”; and
- (b) for the words from “consequential” to “Procedure” there shall be substituted the words “ as may be specified by regulations under section 83 of this Act ”.
- 83 In section 210 (application of Act to reserve forces), in subsection (7), for the words “subsection (3) of section seventy-eight” there shall be substituted the words “ section 76C(2) ”.
- 84 In section 223(1) (general provisions as to interpretation of Act)—
- (a) in the definition of “appropriate superior authority” for the words from “has” to “and” there shall be substituted the words “ means a person who may act as an appropriate superior authority by virtue of ”;
- (b) after the definition of “corresponding rank” there shall be inserted the following definition—
- ““court administration officer” and “the court administration officer” have the meanings assigned to them by section 84A of this Act;”;
- (c) after the definition of “Her Majesty’s air forces”, “Her Majesty’s military forces” and “Her Majesty’s naval forces” there shall be inserted the following definition—
- ““the judge advocate”, in relation to a court-martial, has the meaning assigned to it by section 84B(1) of this Act;”;
- (d) after the definition of “property” there shall be inserted the following definition—
- ““the prosecuting authority” has the meaning assigned to it by section 83A(1) of this Act;”;
- and
- (e) the definition of “Rules of Procedure” shall cease to have effect.
- 85 In Schedule 5A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “Rules of Procedure” there shall be substituted the word “ rules ”.

*Naval Discipline Act 1957 (c. 53)*

- 86 The Naval Discipline Act 1957 shall be amended as follows.
- 87 In section 65(4) (contempt of court-martial by civilians), for the words “subsection (5) of section fifty” there shall be substituted the words “ section 52G(9) ”.
- 88 In section 66(1) (record of proceedings of court-martial) for the words from “judge” to “it” there shall be substituted the words “ court administration officer shall transmit the record of the proceedings ”.
- 89 In section 76 (restitution or compensation on conviction of larceny etc.)—

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- (a) in subsection (6)(a), the words from “by the officer” to the end shall cease to have effect; and
- (b) in subsection (6)(b), for the words “section forty-nine” there shall be substituted the words “ section 52D ”.
- 90 In section 81 (place of imprisonment or detention)—
- (a) in subsection (3)(c) for the words “officer who ordered the court-martial” there shall be substituted the words “ court-martial by which he is tried ”; and
- (b) in subsection (3)(d) for the words “section forty-nine” there shall be substituted the words “ section 52D ”.
- 91 In section 85(2) (commencement of sentences) for the words “section forty-nine” there shall be substituted the words “ section 52D ”.
- 92 In section 103(1) (arrest under warrants of naval authorities) for the words from “subsection (4)” to the end there shall be substituted the words “ regulations under section 52E(2)(a) above may exercise the powers of that person’s commanding officer ”.
- 93 In section 129(1) (jurisdiction of civil courts) for the words “section forty-nine” there shall be substituted the words “ section 52D ”.
- 94 In section 135(1) (general provisions as to interpretation of Act)—
- (a) after the definition of “civil prison” there shall be inserted the following definition—
- ““the commanding officer,” in relation to a person charged with an offence, has the meaning assigned to it by section 52E(1) of this Act;”;
- (b) after the definition of “constable” there shall be inserted the following definition—
- ““court administration officer” and “the court administration officer” have the meanings assigned to them by section 53A of this Act;”;
- (c) after the definition of “Her Majesty’s forces” there shall be inserted the following definition—
- ““the judge advocate”, in relation to a court-martial, has the meaning assigned to it by section 53B(1) of this Act;”; and
- (d) after the definition of “property” there shall be inserted the following definition—
- ““the prosecuting authority” has the meaning assigned to it by section 52H(1) of this Act;”.
- 95 In Schedule 1 (application of Act to marine forces), in paragraph 3, for the words “section forty-nine” there shall be substituted the words “ section 52D ”.
- 96 In Schedule 2 (application of Act to attached military and air forces)—
- (a) in paragraph 6, for the words “section forty-nine” there shall be substituted the words “ section 52D ”; and
- (b) in paragraph 7, for the words “section fifty” there shall be substituted the words “ section 52G ” and for the words “subsection (3)” there shall be substituted the words “ subsection (5) ”.

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- 97 In Schedule 4 (application of Act to certain civilians), in paragraph 4—  
(a) for the words “section forty-nine” in both places there shall be substituted the words “ section 52D ”; and  
(b) the words from “and subsections” to “not apply” shall cease to have effect.
- 98 In Schedule 4A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “General Orders” there shall be substituted the word “ rules ”.

*Criminal Justice Act 1967 (c. 80)*

- 99 In section 12 of the Criminal Justice Act 1967 (application to courts-martial of certain provisions relating to admissibility of evidence)—  
(a) after the words “<sup>M95</sup> Air Force Act 1955” in the first place they appear there shall be inserted the words “ , or section 64A(1) of the Naval Discipline Act 1957, ”; and  
(b) for paragraphs (a) and (b) there shall be substituted the words “ sections 10 and 11 above shall apply to proceedings before courts-martial ”.

**Annotations:**

**Marginal Citations**

**M95** 1957 c. 53.

*Civil Evidence Act 1968 (c. 64)*

<sup>F11</sup>100 .....

**Annotations:**

**Amendments (Textual)**

**F11** Sch. 1 para. 100 repealed (28.2.2002) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to art. 3)

*Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))*

- 101 In section 7 of the Civil Evidence Act (Northern Ireland) 1971 (convictions as evidence in civil proceedings), in subsection (6), for the words “section 50” there shall be substituted the words “ section 52G ”.

*Armed Forces Act 1976 (c. 52)*

- 102 In section 6 of the Armed Forces Act 1976 (establishment of Standing Civilian Courts), in subsection (15), for the words “authority who directs the trial or trials” there shall be substituted the words “ court administration officer notified by the prosecuting authority that the trial or trials are ”.
- 103 (1) Schedule 3 to that Act (Standing Civilian Courts) shall be amended as follows.  
(2) In paragraph 1 (interpretation)—

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- (a) after the definition of “the court” there shall be inserted the following definitions—

““court administration officer” has the same meaning as in the <sup>M96</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;”;

- (b) the definition of “the directing officer” shall cease to have effect; and  
 (c) after the definition of “prescribed” there shall be inserted the following definition—

““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>M97</sup>Air Force Act 1955 applies, has the same meaning as in that Act;”.

- (3) In paragraph 2 (sittings of the Standing Civilian Court)—

- (a) in sub-paragraphs (1) and (3), for the word “directing” there shall be substituted the words “ court administration ”; and  
 (b) in sub-paragraph (2), for the word “shall” there shall be substituted the word “ may ” and the words from “if so” to “direction” shall cease to have effect.

- (4) In paragraph 4 (right of accused to elect trial by court-martial)—

- (a) in sub-paragraph (4), for the words from “report” to the end there shall be substituted the words “ shall refer the case to the prosecuting authority ”; and  
 (b) sub-paragraph (5) shall cease to have effect.

- (5) For paragraph 6 there shall be substituted the following paragraph—

*“ Unfitness to stand trial and insanity*

- 6 (1) Where on a trial by the court the question arises (whether at the instance of the defence or otherwise)—

- (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>M98</sup>Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.”

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Annotations:**

**Marginal Citations**

**M98** 1964 c. 84.

- (6) Paragraph 7 shall cease to have effect.
- (7) In paragraph 8 (re-trial where Standing Civilian Court ceases to be properly constituted)—
- (a) in sub-paragraph (1), for the words from the beginning to “directing” there shall be substituted the words “The court administration”;
  - (b) in sub-paragraphs (2) and (3), for the word “directing” there shall be substituted the words “court administration”.
- (8) In paragraph 12 (procedures etc. of Standing Civilian Court)—
- (a) in sub-paragraph (1), after the word “namely” there shall be inserted the following paragraph—
    - “(aa) the prosecution of offences which may be tried by Standing Civilian Courts;”;
  - (b) after sub-paragraph (4)(b) there shall be inserted the following paragraphs—
    - “(ba) proceedings preliminary to trials by Standing Civilian Courts;
    - (bb) the appointment of a magistrate for any preliminary proceedings;”;
  - (c) in sub-paragraph (4)(f), after the word “trials” there shall be inserted the words “and any preliminary proceedings”;
  - (d) in sub-paragraph (4)(h), the words “and the directing officer” shall cease to have effect; and
  - (e) sub-paragraph (4)(m) shall cease to have effect.
- (9) In paragraph 18 (appeals to courts-martial)—
- (a) in sub-paragraphs (3) and (4), for the words “directing officer” there shall be substituted the words “higher authority”;
  - (b) in sub-paragraph (4), for the words “Rules of Procedure” there shall be substituted the word “rules”; and
  - (c) in sub-paragraph (10), the words “or as judge advocate” shall cease to have effect.
- (10) In paragraph 20 (review of findings and sentences of Standing Civilian Court), in sub-paragraph (9), for the words “directing officer” there shall be substituted the words “higher authority”.

**Annotations:**

**Marginal Citations**

**M96** 1955 c. 18.

**M97** 1955 c. 19.

*Status: This version of this Act contains provisions that are prospective.*

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*Police and Criminal Evidence Act 1984 (c. 60)*

104 The Police and Criminal Evidence Act 1984 shall be amended as follows.

<sup>F12</sup>105 .....

**Annotations:**

**Amendments (Textual)**

**F12** Sch. 1 para. 105 repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to art. 3)

106 In section 72(1) (meaning of certain expressions used in Part VII), in the definition of “proceedings”—

- (a) in paragraph (a), for the words “or the <sup>M99</sup>Air Force Act 1955” there shall be substituted the words “, the <sup>M100</sup>Air Force Act 1955 or the Naval Discipline Act 1957 ”; and
- (b) in paragraph (b)(i), the words from “or from” to “1957” shall cease to have effect.

**Annotations:**

**Marginal Citations**

**M99** 1955 c. 19.  
**M100** 1957 c. 53.

107 In section 82(1) (meaning of certain expressions used in Part VIII), in the definition of “proceedings”—

- (a) in paragraph (a), for the words “or the Air Force Act 1955” there shall be substituted the words “, the Air Force Act 1955 or the Naval Discipline Act 1957 ”; and
- (b) in paragraph (b)(i), the words from “or from” to “1957” shall cease to have effect.

*Criminal Justice Act 1988 (c. 33)*

<sup>F13</sup>108 .....

**Annotations:**

**Amendments (Textual)**

**F13** Sch. 1 para. 108 repealed (28.2.2002) by 2001 c. 19, ss. 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to art. 3)

109 (1) Schedule 13 to that Act (evidence before courts-martial etc.) shall be amended as follows.

(2) In paragraph 1 (interpretation)—

- (a) for the words “Rules of Procedure” there shall be substituted the word “ rules ”;
- (b) for the words “General Orders” there shall be substituted the word “ rules ”; and

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<sup>F14</sup>(c) .....

- (3) In paragraph 4 (application of section 26 of the Act of 1988)—
- (a) for the words “section 77” in both places they appear there shall be substituted the words “ section 76B ”; and
  - (b) for the words “section 49” there shall be substituted the words “ section 52D ”.
- (4) In paragraph 7 (forms of evidence and glossaries)—
- (a) .....
  - (b) for the words “Rules of Procedure” there shall be substituted the word “ rules ”; and
  - (c) for the words “General Orders” there shall be substituted the word “ rules ”.

**Annotations:**

**Amendments (Textual)**

<sup>F14</sup> Sch. 1 para. 109(2)(c)(4)(a) repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to art. 3)

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

- 110 In Article 66(11)(a) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (codes of practice supplementary), for the words “section 50” there shall be substituted the words “ section 52G ”.

*Criminal Justice and Public Order Act 1994 (c. 33)*

<sup>F15</sup>111 .....

**Annotations:**

**Amendments (Textual)**

<sup>F15</sup> Sch. 1 para. 111 repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to art. 3)

PROSPECTIVE

SCHEDULE 2

Section 8.

FINDINGS OF UNFITNESS TO STAND TRIAL AND INSANITY

*The 1955 Acts*

- 1 For section 116 of each of the 1955 Acts (provisions where accused found insane) there shall be substituted the following sections—

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*Status: This version of this Act contains provisions that are prospective.*  
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*“ Findings of unfitness to stand trial and insanity*

**115A Fitness to stand trial.**

- (1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the <sup>M101</sup>Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.
- (3) If, having regard to the nature of the supposed disability, the court is of opinion that it is expedient to do so and in the interests of the accused, it may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.
- (4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the court and—
  - (a) where it falls to be determined on the commencement of the trial and the trial proceeds, the accused shall be tried by a court-martial other than that which determined that question;
  - (b) where it falls to be determined at any later time, it shall be determined by a court-martial other than that by which the accused is being tried.
- (7) A court shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

**Annotations:**

**Marginal Citations**

M101 1964 c. 84.

**115B Finding that the accused did the act or made the omission charged against him.**

- (1) This section applies where in accordance with section 115A(6) above it is determined by a court-martial that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
  - (a) on the evidence (if any) already given in the trial; and

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- (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,  
whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) above shall be made—
  - (a) where the question of fitness to stand trial was determined on the commencement of the trial, by a court-martial other than that which determined that question; and
  - (b) where that question was determined at any later time, by the court-martial by whom the accused was being tried.

#### **116 Findings of insanity.**

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

#### **116A Powers to deal with persons unfit to stand trial or not guilty by reason of insanity.**

- (1) This section applies where, on a trial of a person by a court-martial—
  - (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
  - (b) the accused is found not guilty by reason of insanity.
- (2) Subject to subsections (3) and (4) below, the court shall make one of the following orders in respect of the accused, namely—
  - (a) an admission order;
  - (b) a guardianship order;
  - (c) a supervision and treatment order; or
  - (d) an order discharging him absolutely,as the court thinks most suitable in all the circumstances of the case.

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- (3) The court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the finding relates is an offence the sentence for which is fixed by law.
- (4) The court shall not make a guardianship order or a supervision and treatment order unless it has power to do so by virtue of section 116C or section 116D below.
- (5) An order under subsection (2)(a), (b) or (c) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed.

#### **116B Admission orders.**

- (1) In this Act “admission order” means an order that the person in respect of whom it is made be admitted, in accordance with regulations under subsection (3) below, to such hospital as may be specified by the Secretary of State.
- (2) Where an admission order is made by a court-martial, the court may, in such circumstances as may be prescribed, direct the accused to be treated as if an order restricting his discharge had been made under the appropriate mental health legislation, either without limit of time or (if a civil court would have been permitted to do so under the legislation concerned) during such period as may be specified in the direction.
- (3) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an admission order has been made.
- (4) Regulations under subsection (3) above may in particular make provision—
  - (a) for a person in respect of whom an admission order has been made to be conveyed to, and detained in, a place of safety pending his admission to the hospital;
  - (b) for the period within which such a person is to be admitted to the hospital;
  - (c) for the appropriate mental health legislation to apply, with such modifications as may be prescribed, in relation to admission orders as the legislation concerned applies in relation to hospital orders;
  - (d) for a person in respect of whom an admission order has been made to be remitted for trial in such circumstances as may be prescribed.
- (5) In this section “hospital”, “hospital order” and “place of safety” have the same meanings as in the appropriate mental health legislation.

#### **116C Guardianship orders.**

- (1) In this Act “guardianship order” means an order placing the accused under the guardianship of—

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- (a) in a case where the order is treated as if it had been made by a civil court in England and Wales, a local social services authority or such other person approved by a local social services authority as may be specified in the order;
  - (b) in a case where the order is treated as if it had been made by a civil court in Scotland, a local authority or such other person approved by a local authority as may be specified in the order;
  - (c) in a case where the order is treated as if it had been made by a civil court in Northern Ireland, a Board or an authorised HSS trust or such other person approved by a Board or an authorised HSS trust as may be specified in the order.
- (2) In subsection (1) above—
- “authorised HSS trust” and “Board” have the same meanings as in the <sup>M102</sup>Mental Health (Northern Ireland) Order 1986;
  - “local authority” has the same meaning as in the <sup>M103</sup>Mental Health (Scotland) Act 1984; and
  - “local social services authority” has the same meaning as in the <sup>M104</sup>Mental Health Act 1983.
- (3) A court-martial shall not make a guardianship order unless—
- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that—
    - (i) the accused is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
    - (ii) the mental disorder is of a nature or degree which warrants his reception into guardianship; and
  - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the accused and the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of a guardianship order.
- (4) A court-martial shall not make a guardianship order unless it is also satisfied that the authority or other person intended to be specified in the order is willing to receive the accused into guardianship.
- (5) A guardianship order shall specify the form or forms of mental disorder referred to in subsection (3)(a) above from which, upon the evidence taken into account under that subsection, the accused is found by the court to be suffering; and a guardianship order shall not be made unless the accused is described by each of the practitioners whose evidence is taken into account under that subsection as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms of mental disorder.
- (6) The appropriate mental health legislation shall apply, with such modifications as may be prescribed, in relation to guardianship orders under this section as it applies to guardianship orders under the legislation concerned.

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- (7) In this section “mental disorder”, “mental impairment”, “psychopathic disorder” and “severe mental impairment” have the same meanings as in the <sup>M105</sup>Mental Health Act 1983.

**Annotations:**

**Marginal Citations**

**M102** S.I. 1986/595 (N.I. 4).

**M103** 1984 c. 36.

**M104** 1983 c. 20.

**M105** 1983 c. 20.

**116D Supervision and treatment orders.**

- (1) In this Act “supervision and treatment order” means an order requiring the person in respect of whom it is made (“the supervised person”)—
- (a) to be under the supervision of a person (“the supervising officer”) specified in the order for a period specified in the order of not more than two years;
  - (b) to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner at a place specified in the order with a view to the improvement of his mental condition; and
  - (c) to comply with such other requirements as may be specified in the order.
- (2) The Secretary of State may by order direct that subsection (1)(a) above shall be amended by substituting, for the period for the time being specified in that paragraph such other period as may be specified in the order.
- (3) A court-martial shall not make a supervision and treatment order unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused;
  - (b) on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly approved, that the mental condition of the accused—
    - (i) is such as requires and may be susceptible to treatment; but
    - (ii) is not such as to warrant the making of an admission order or a guardianship order.
- (4) The court shall not make a supervision and treatment order unless it is also satisfied—
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (b) that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the accused where he is to be required to submit to treatment as a resident patient).

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- (5) The Secretary of State may by regulations make further provision in relation to supervision and treatment orders.
- (6) Regulations under subsection (5) above may in particular make provision—
- (a) as to the procedure to be followed by a court-martial making a supervision and treatment order;
  - (b) as to the requirements which may be specified in such an order;
  - (c) as to the descriptions of supervising officer who may be so specified;
  - (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
  - (e) for the amendment and revocation of any supervision and treatment order.

#### **116E Provisions supplementary to sections 115A to 116D.**

- (1) In this section and sections 115A to 116D above—
- “the appropriate mental health legislation” means—
- (a) in a case where an order is treated as if it had been made by a civil court in England and Wales, the <sup>M106</sup>Mental Health Act 1983;
  - (b) in a case where an order is treated as if it had been made by a civil court in Scotland, the <sup>M107</sup>Mental Health (Scotland) Act 1984 and Part VI of the <sup>M108</sup>Criminal Procedure (Scotland) Act 1995;
  - (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the <sup>M109</sup>Mental Health (Northern Ireland) Order 1986;
- “duly approved” means—
- (a) approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);
  - (b) approved for the purposes of section 20 or 39 of the <sup>M110</sup>Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act); or
  - (c) appointed for the purposes of Part II of the <sup>M111</sup>Mental Health (Northern Ireland) Order 1986 by the Mental Health Commission for Northern Ireland;
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 115A, 116, 116C and 116D of this Act which permit a court to act on the written evidence of a registered medical practitioner or a registered medical practitioner

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who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (3) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the court may require the signatory of any such report to be called to give oral evidence.

- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
  - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 116A, 116B, 116C and 116D above, and orders under section 116D(2) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Annotations:**

**Marginal Citations**

- M106** 1983 c. 20.  
**M107** 1984 c. 36.  
**M108** 1995 c. 43.  
**M109** S.I. 1986/595 (N.I. 4).  
**M110** 1984 c. 36.  
**M111** S.I. 1986/595 (N.I. 4).

2

In section 225(1) of the <sup>M112</sup>Army Act 1955 (general provisions as to interpretation)—

- (a) after the definition of “active service” there shall be inserted the following definition—
 

““admission order” has the meaning assigned to it by section 116B(1) of this Act;”;
- (b) after the definition of “Governor” there shall be inserted the following definition—
 

““guardianship order” has the meaning assigned to it by section 116C(1) of this Act;”;
- (c) after the definition of “stoppages” there shall be inserted the following definition—
 

““supervision and treatment order” has the meaning assigned to it by section 116D(1) of this Act;”.

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**Annotations:**

**Marginal Citations**

M112 1955 c. 18.

3 In section 223(1) of the <sup>M113</sup>Air Force Act 1955 (general provisions as to interpretation)—

(a) after the definition of “active service” there shall be inserted the following definition—

““admission order” has the meaning assigned to it by section 116B(1) of this Act;”;

(b) after the definition of “Governor” there shall be inserted the following definition—

““guardianship order” has the meaning assigned to it by section 116C(1) of this Act;” and

(c) after the definition of “stoppages” there shall be inserted the following definition—

““supervision and treatment order” has the meaning assigned to it by section 116D(1) of this Act;”.

**Annotations:**

**Marginal Citations**

M113 1955 c. 19.

*The 1957 Act*

4 For section 63 of the 1957 Act (special finding of insane at time of trial or offence) there shall be substituted the following sections—

**“62A Fitness to stand trial.**

(1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused is fit to stand trial.

(2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the <sup>M114</sup>Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.

(3) If, having regard to the nature of the supposed disability, the court is of opinion that it is expedient to do so and in the interests of the accused, it may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.

(4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.

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- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the court and—
  - (a) where it falls to be determined on the commencement of the trial and the trial proceeds, the accused shall be tried by a court-martial other than that which determined that question;
  - (b) where it falls to be determined at any later time, it shall be determined by a court-martial other than that by which the accused is being tried.
- (7) A court shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

**Annotations:**

**Marginal Citations**

M114 1964 c. 84.

**62B Finding that the accused did the act or made the omission charged against him.**

- (1) This section applies where in accordance with section 62A(6) above it is determined by a court-martial that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
  - (a) on the evidence (if any) already given in the trial; and
  - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,
 whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) above shall be made—
  - (a) where the question of fitness to stand trial was determined on the commencement of the trial, by a court-martial other than that which determined that question; and
  - (b) where that question was determined at any later time, by the court-martial by whom the accused was being tried.

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### **63 Findings of insanity.**

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

### **63A Powers to deal with persons not guilty by reason of insanity or unfit to stand trial.**

- (1) This section applies where, on a trial of a person by a court-martial—
  - (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
  - (b) the accused is found not guilty by reason of insanity.
- (2) Subject to subsections (3) and (4) below, the court shall make one of the following orders in respect of the accused, namely—
  - (a) an admission order;
  - (b) a guardianship order;
  - (c) a supervision and treatment order; or
  - (d) an order discharging him absolutely,as the court thinks most suitable in all the circumstances of the case.
- (3) The court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the finding relates is an offence the sentence for which is fixed by law.
- (4) The court shall not make a guardianship order or a supervision and treatment order unless it has power to do so by virtue of section 63C or section 63D below.
- (5) An order under subsection (2)(a), (b) or (c) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed.

### **63B Admission orders.**

- (1) In this Act “admission order” means an order that the person in respect of whom it is made be admitted, in accordance with regulations under subsection (3) below, to such hospital as may be specified by the Secretary of State.
- (2) Where an admission order is made by a court-martial, the court may, in such circumstances as may be prescribed, direct the accused to be treated as if an order restricting his discharge had been made under the appropriate

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mental health legislation, either without limit of time or (if a civil court would have been permitted to do so under the legislation concerned) during such period as may be specified in the direction.

- (3) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an admission order has been made.
- (4) Regulations under subsection (3) above may in particular make provision
  - (a) for a person in respect of whom an admission order has been made to be conveyed to, and detained in, a place of safety pending his admission to the hospital;
  - (b) for the period within which such a person is to be admitted to the hospital;
  - (c) for the appropriate mental health legislation to apply, with such modifications as may be prescribed, in relation to admission orders as the legislation concerned applies in relation to hospital orders;
  - (d) for a person in respect of whom an admission order has been made to be remitted for trial in such circumstances as may be prescribed.
- (5) In this section “hospital”, “hospital order” and “place of safety” have the same meanings as in the appropriate mental health legislation.

### **63C Guardianship orders.**

- (1) In this Act “guardianship order” means an order placing the accused under the guardianship of—
  - (a) in a case where the order is treated as if it had been made by a civil court in England and Wales, a local social services authority or such other person approved by a local social services authority as may be specified in the order;
  - (b) in a case where the order is treated as if it had been made by a civil court in Scotland, a local authority or such other person approved by a local authority as may be specified in the order;
  - (c) in a case where the order is treated as if it had been made by a civil court in Northern Ireland, a Board or an authorised HSS trust or such other person approved by a Board or an authorised HSS trust as may be specified in the order.
- (2) In subsection (1) above—
 

“authorised HSS trust” and “Board” have the same meanings as in the <sup>M115</sup>Mental Health (Northern Ireland) Order 1986;

“local authority” has the same meaning as in the <sup>M116</sup>Mental Health (Scotland) Act 1984; and

“local social services authority” has the same meaning as in the <sup>M117</sup>Mental Health Act 1983.
- (3) A court-martial shall not make a guardianship order unless—
  - (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that—

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- (i) the accused is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
    - (ii) the mental disorder is of a nature or degree which warrants his reception into guardianship; and
  - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the accused and the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of a guardianship order.
- (4) A court-martial shall not make a guardianship order unless it is also satisfied that the authority or other person intended to be specified in the order is willing to receive the accused into guardianship.
  - (5) A guardianship order shall specify the form or forms of mental disorder referred to in subsection (3)(a) above from which, upon the evidence taken into account under that subsection, the accused is found by the court to be suffering; and a guardianship order shall not be made unless the accused is described by each of the practitioners whose evidence is taken into account under that subsection as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms of mental disorder.
  - (6) The appropriate mental health legislation shall apply, with such modifications as may be prescribed, in relation to guardianship orders under this section as it applies to guardianship orders under the legislation concerned.
  - (7) In this section “mental disorder”, “mental impairment”, “psychopathic disorder” and “severe mental impairment” have the same meanings as in the Mental Health Act 1983.

**Annotations:**

**Marginal Citations**

M115 S.I. 1986/595 (N.I. 4).

M116 1984 c. 36.

M117 1983 c. 20.

**63D Supervision and treatment orders.**

- (1) In this Act “supervision and treatment order” means an order requiring the person in respect of whom it is made (“the supervised person”)—
  - (a) to be under the supervision of a person (“the supervising officer”) specified in the order for a period specified in the order of not more than two years;
  - (b) to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner at a place specified in the order with a view to the improvement of his mental condition; and

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- (c) to comply with such other requirements as may be specified in the order.
- (2) The Secretary of State may by order direct that subsection (1)(a) above shall be amended by substituting, for the period for the time being specified in that paragraph such other period as may be specified in the order.
- (3) A court-martial shall not make a supervision and treatment order unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused;
  - (b) on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly approved, that the mental condition of the accused—
    - (i) is such as requires and may be susceptible to treatment; but
    - (ii) is not such as to warrant the making of an admission order or a guardianship order.
- (4) The court shall not make a supervision and treatment order unless it is also satisfied—
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (b) that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the accused where he is to be required to submit to treatment as a resident patient).
- (5) The Secretary of State may by regulations make further provision in relation to supervision and treatment orders.
- (6) Regulations under subsection (5) above may in particular make provision—
- (a) as to the procedure to be followed by a court-martial making a supervision and treatment order;
  - (b) as to the requirements which may be specified in such an order;
  - (c) as to the descriptions of supervising officer who may be so specified;
  - (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
  - (e) for the amendment and revocation of any supervision and treatment order.

### **63E Provisions supplementary to sections 62A to 63D.**

- (1) In this section and sections 62A to 63D above—
- “the appropriate mental health legislation” means—
- (a) in a case where an order is treated as if it had been made by a civil court in England and Wales, the <sup>M118</sup>Mental Health Act 1983;

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- (b) in a case where an order is treated as if it had been made by a civil court in Scotland, the <sup>M119</sup>Mental Health (Scotland) Act 1984 and Part VI of the <sup>M120</sup>Criminal Procedure (Scotland) Act 1995;
  - (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the <sup>M121</sup>Mental Health (Northern Ireland) Order 1986;  
“duly approved” means—
    - (a) approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);
    - (b) approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act); or
    - (c) appointed for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986 by the Mental Health Commission for Northern Ireland;“prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 62A, 63, 63C and 63D of this Act which permit a court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (3) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the court may require the signatory of any such report to be called to give oral evidence.
- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
  - (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
  - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 63A, 63B, 63C and 63D above, and orders under section 63D(2) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

**Annotations:**

**Marginal Citations**

**M118** 1983 c. 20.

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**M119** 1984 c. 36.  
**M120** 1995 c. 43.  
**M121** S.I. 1986/595 (N.I. 4).

- 5 In section 135(1) of the 1957 Act (general provisions as to interpretation)—
- (a) before the definition of “aircraft” there shall be inserted the following definition—
- ““admission order” has the meaning assigned to it by section 63B(1) of this Act;”;
- (b) after the definition of “Governor” there shall be inserted the following definition—
- ““guardianship order” has the meaning assigned to it by section 63C(1) of this Act;”;
- (c) after the definition of “steals” there shall be inserted the following definition—
- ““supervision and treatment order” has the meaning assigned to it by section 63D(1) of this Act;”.

*The Courts-Martial (Appeals) Act 1968 (c. 20)*

- 6 For section 16 of the <sup>M122</sup>Courts-Martial (Appeals) Act 1968 (“the 1968 Act”) there shall be substituted the following section—

**“16 Substitution of finding of insanity or findings of unfitness to plead etc.**

- (1) This section applies where, on an appeal against conviction, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
- (a) that the proper finding would have been one of not guilty by reason of insanity; or
- (b) that the case is not one where there should have been a finding of not guilty, but that there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) Subject to subsections (3) and (4) below, the Appeal Court shall make one of the following orders in respect of the appellant, namely—
- (a) an admission order;
- (b) a guardianship order;
- (c) a supervision and treatment order; or
- (d) an order discharging him absolutely,
- as they think most suitable in all the circumstances of the case.
- (3) The Appeal Court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the appeal relates is an offence the sentence for which is fixed by law.
- (4) An order under subsection (2)(a), (b) or (c) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Appeal Court may direct, and the appropriate mental health

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legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.

- (5) The provisions of, or made under, the relevant Service Act in relation to admission orders, guardianship orders and supervision and treatment orders shall apply to the Appeal Court as if—
- (a) references to a court-martial were references to the Appeal Court;
  - (b) references to the accused were references to the appellant,
- and with such other modifications as may be prescribed by regulations made by the Secretary of State.
- (6) The power of the Secretary of State under subsections (4) and (5) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Annotations:**

**Marginal Citations**

M122 1968 c. 20.

- 7 In section 21(1) of the 1968 Act (appeal against finding of not guilty by reason of insanity), after the word “except” there shall be inserted the words “ section 8(2) and ”.
- 8 In section 22(4) of the 1968 Act (consequences where appeal under section 21 allowed), at the beginning there shall be inserted the words “ Subject to section 23 below, ”.
- 9 For section 23 of the 1968 Act there shall be substituted the following sections—

**“23 Substitution of findings of unfitness to plead etc.**

- (1) This section applies where, on an appeal under section 21 of this Act, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—
- (a) the case is not one where there should have been a finding of not guilty; but
  - (b) there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) Subject to subsections (3) and (4) below, the Appeal Court shall make one of the following orders in respect of the appellant, namely—
- (a) an admission order;
  - (b) a guardianship order;
  - (c) a supervision and treatment order; or
  - (d) an order discharging him absolutely,
- as they think most suitable in all the circumstances of the case.

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- (3) The Appeal Court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the appeal relates is an offence the sentence for which is fixed by law.
- (4) An order under subsection (2)(a), (b) or (c) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (5) The provisions of, or made under, the relevant Service Act in relation to admission orders, guardianship orders and supervision and treatment orders shall apply to the Appeal Court as if—
  - (a) references to a court-martial were references to the Appeal Court;
  - (b) references to the accused were references to the appellant,
 and with such other modifications as may be prescribed by regulations made by the Secretary of State.
- (6) The power of the Secretary of State under subsections (4) and (5) above to make regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **23A Substitution of finding of not guilty.**

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

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shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section “hospital” and “mental disorder” have the same meanings as in the appropriate mental health legislation.”.

10 (1) Section 24 of the 1968 Act (appeal against finding of unfitness to stand trial) shall be amended as follows.

(2) In subsection (1)—

(a) for the words “his trial” there shall be substituted the words “ trial and to have done the act or made the omission charged against him ”; and

(b) for the words “the finding” there shall be substituted the words “ either or both of those findings ”.

(3) In subsection (2), after the word “except” there shall be inserted the words “ section 8(2) and ”.

11 For section 25 of the 1968 Act there shall be substituted the following section—

**“25 Disposal of appeal under section 24.**

(1) This section applies to appeals under section 24 of this Act.

(2) Where the Appeal Court allow an appeal against a finding that the appellant is unfit to stand trial—

(a) the appellant may be tried accordingly for the offence with which he was charged; and

(b) the Court may make such orders as appear to them necessary or expedient pending any such trial for the custody, release or continued detention of the appellant.

(3) Where, otherwise than in a case falling within subsection (2) above, the Appeal Court allow an appeal against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a finding of not guilty to be recorded (but not a finding of not guilty by reason of insanity).”

12 (1) Section 57 of the 1968 Act (interpretation) shall be amended as follows.

(2) In subsection (1)—

(a) before the definition of “the Air Force Act” there shall be inserted the following definition—

““admission order” has the same meaning as in the relevant Service Act;”;

(b) after the definition of “appellant” there shall be inserted the following definition—

““the appropriate mental health legislation” means—

(a) in a case where an order is treated as if it had been made by a civil court in England and Wales, the <sup>M123</sup>Mental Health Act 1983;

(b) in a case where an order is treated as if it had been made by a civil court in Scotland, the <sup>M124</sup>Mental Health (Scotland) Act

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- 1984 and Part VI of the <sup>M125</sup>Criminal Procedure (Scotland) Act 1995;
- (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the <sup>M126</sup>Mental Health (Northern Ireland) Order 1986;”;
- (c) after the definition of “army court-martial” there shall be inserted the following definition—
- ““civil court” has the same meaning as in the relevant Service Act;”;
- (d) after the definition of “court-martial;” there shall be inserted the following definition—
- ““duly approved” means—
- (a) approved for the purposes of section 12 of the <sup>M127</sup>Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);
- (b) approved for the purposes of section 20 or 39 of the <sup>M128</sup>Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act); or
- (c) appointed for the purposes of Part II of the <sup>M129</sup>Mental Health (Northern Ireland) Order 1986 by the Mental Health Commission for Northern Ireland;”;
- (e) after the definition of “enactment” there shall be inserted the following definition—
- ““guardianship order” has the same meaning as in the relevant Service Act;”;
- (f) at the end there shall be inserted the following definition—
- ““supervision and treatment order” has the same meaning as in the relevant Service Act.”
- (3) After subsection (2) there shall be inserted the following subsections—
- “(2A) For the purposes of the provisions of sections 16, 23 and 23A of this Act which permit the Appeal Court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (2B) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the Appeal Court may require the signatory of any such report to be called to give oral evidence.
- (2B) Where, in pursuance of a direction of the Appeal Court, any such report is tendered in evidence otherwise than by or on behalf of the appellant, then—
- (a) if the appellant is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
- (b) if the appellant is not so represented, the substance of the report shall be disclosed to him; and

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- (c) the appellant may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the appellant or on his behalf.”

**Annotations:**

**Marginal Citations**

- M123 1983 c. 20.  
M124 1984 c. 36.  
M125 1995 c. 43.  
M126 S.I. 1986/595 (N.I. 4).  
M127 1983 c. 20.  
M128 1984 c. 36.  
M129 S.I. 1986/595 (N.I. 4).

SCHEDULE 3

Section 10.

COMMUNITY SUPERVISION ORDERS

*The 1955 Acts*

- 1 (1) Paragraph 4 of Schedule 5A to each of the 1955 Acts (power of court to impose community supervision order on trial of civilian) shall be amended as follows.
- (2) In sub-paragraph (1), for the words “12 months” there shall be substituted the words “three years”.
- (3) After sub-paragraph (7) there shall be inserted the following sub-paragraphs—
- “(7A) Without prejudice to any other power of arrest, a person found committing an offence under sub-paragraph (6) above or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested by a provost officer, by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces.
- (7B) The power of arrest given to any person by sub-paragraph (7A) above may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person’s arrest.
- (7C) A person shall not be arrested by virtue of sub-paragraph (7A) above after the end of a period of 6 months beginning with the end of the supervision period.
- (7D) No proceedings shall be taken against a person for an offence under sub-paragraph (6) above unless the trial is begun within 6 months after the end of the supervision period.”
- (4) In sub-paragraph (10), for “£50” there shall be substituted “£1,000”.
- 2 In section 209 of each of the 1955 Acts (application to civilians), after subsection (3B) there shall be inserted the following subsection—

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“(3C) In its application to a person subject to a community supervision order under paragraph 4 of Schedule 5A to this Act, section 132 of this Act shall have effect as if subsections (3) and (3A) were omitted.”

*The 1957 Act*

- 3 (1) Paragraph 4 of Schedule 4A to the 1957 Act (power of court to impose community supervision order on trial of civilian) shall be amended as follows.
- (2) In sub-paragraph (1), for the words “12 months” there shall be substituted the words “three years”.
- (3) After sub-paragraph (7) there shall be inserted the following sub-paragraphs—
- “(7A) Without prejudice to any other power of arrest, a person found committing an offence under sub-paragraph (6) above or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested by a provost officer, by any officer or person legally exercising authority under a provost officer or on his behalf, or by or on the orders of any officer subject to this Act.
- (7B) The power of arrest given to any person by sub-paragraph (7A) above may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person’s arrest.
- (7C) A person shall not be arrested by virtue of sub-paragraph (7A) above after the end of a period of 6 months beginning with the end of the supervision period.
- (7D) No proceedings shall be taken against a person for an offence under sub-paragraph (6) above unless the trial is begun within 6 months after the end of the supervision period.”
- (4) In sub-paragraph (10), for “£50” there shall be substituted “£1,000”.
- 4 In the Fourth Schedule to the 1957 Act (application to civilians), after paragraph 4A there shall be inserted the following paragraph—
- “4B In its application to a person subject to a community supervision order under paragraph 4 of Schedule 4A to this Act, section 52 of this Act shall have effect as if subsection (2) was omitted.”

SCHEDULE 4

Section 13.

SCHEDULE TO BE INSERTED IN THE REHABILITATION OF OFFENDERS ACT 1974

“SCHEDULE

SECTION 6(4): SERVICE DISCIPLINARY CONVICTIONS

- 1 Any conviction for an offence mentioned in this Schedule is a conviction referred to in section 6(6)(bb) of this Act (convictions to be disregarded for the purposes of extending a period of rehabilitation following subsequent conviction).

*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Armed Forces Act 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

*Provisions of the Army Act 1955 and the Air Force Act 1955*

- 2 Any offence under any of the provisions of the <sup>M130</sup>Army Act 1955 or the <sup>M131</sup>Air Force Act 1955 listed in the first column of the following table:—

**Annotations:**

**Marginal Citations**

[M130 1955 c. 18.](#)

[M131 1955 c. 19.](#)

- 3 Any offence under section 68 (attempt to commit military offence) or 68A (aiding and abetting etc., and inciting, military offence) of the <sup>M132</sup>Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

**Annotations:**

**Marginal Citations**

[M132 1955 c. 18.](#)

- 4 Any offence under section 68 (attempt to commit air-force offence) or 68A (aiding and abetting etc., and inciting, air-force offence) of the <sup>M133</sup>Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

**Annotations:**

**Marginal Citations**

[M133 1955 c. 19.](#)

*Provisions of the Naval Discipline Act 1957*

- 5 Any offence under any of the provisions of the <sup>M134</sup>Naval Discipline Act 1957 listed in the first column of the following table:—

**Annotations:**

**Marginal Citations**

[M134 1957 c. 53.](#)

- 6 Any offence under section 40 (attempt to commit naval offence) or 41 (aiding and abetting etc., and inciting, naval offence) of the <sup>M135</sup>Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.”

**Annotations:**

**Marginal Citations**

[M135 1957 c. 53.](#)

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## SCHEDULE 5

Section 16.

### REVIEW OF FINDINGS AND SENTENCE

#### Annotations:

#### Commencement Information

- I3** [Sch. 5](#) in force at 1.4.1997 (subject to savings as mentioned in [S.I. 1997/304, art. 3\(2\)](#)) by [S.I. 1997/304, arts. 2, 3](#)

#### *The 1955 Acts*

- 1 The 1955 Acts shall be amended as follows.
- 2 Section 108 (power of accused to present petition against finding or sentence at any time after finding or sentence) shall cease to have effect.
- 3 For section 112 (approval required for death sentences) there shall be substituted the following section—

*“ Review of proceedings of courts-martial*

#### **112 Approval required for death sentences.**

- (1) A sentence of death passed by a court-martial shall not be carried out until it has been reviewed under section 113 of this Act and has not been quashed or replaced by another sentence on the review.
- (2) A sentence of death passed by a court-martial shall not be carried out in a colony unless it is also approved by the Governor of the colony.”
- 4 For section 113 (review of findings and sentences of courts-martial) there shall be substituted the following sections—

#### **“113 Review of findings and sentences of courts-martial.**

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review under this section shall (if it does not begin sooner) begin as soon as is practicable after—
- (a) in a case where a petition has been presented under this section, the presentation of the petition;
  - (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review under this section of the finding or sentence has been completed—

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- (a) the reviewing authority shall complete the review as soon as is practicable; but
  - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
- (5) For the purposes of this Act the reviewing authority is—
- (a) the Defence Council; or
  - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.
- (6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.

### **113AA Powers of the reviewing authority.**

- (1) On a review under section 113 of this Act of a finding or sentence of a court-martial the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—
- (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
  - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;
- and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to a court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
- (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
  - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
- (a) revoke an order made by the court under section 120A(1) of this Act;
  - (b) remit in whole or part any punishment awarded by the court;
  - (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment)

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annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.

(7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—

- (a) shall be treated for all purposes as having been made or passed by the court;
- (b) shall be promulgated and shall have effect as from the date of promulgation.”

5 In section 113A (power of reviewing authority to authorise retrial)—

- (a) in subsection (1), for the words “Her Majesty or the Defence Council” there shall be substituted the words “ the reviewing authority ”; and
- (b) in subsection (2), for the words “Defence Council” there shall be substituted the words “ reviewing authority ”.

6 For section 115 of the <sup>M136</sup>Army Act 1955 (review of summary findings and awards) there shall be substituted the following section—

**“115 Review of summary findings and awards**

(1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.

(2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.

(3) The finding or any punishment awarded (or both) may be reviewed at any other time.

(4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.

(5) A review under this section may be carried out by—

- (a) the Defence Council;
- (b) any military, naval or air-force officer superior in command to the officer who dealt summarily with the charge;
- (c) a general officer or brigadier appointed by the Defence Council to carry out the review or any class of review which includes the review.

(6) Section 113AA of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 113 of this Act by the reviewing authority.

(7) In the application of section 113AA to reviews under this section, that section shall have effect as if—

- (a) references to the court-martial were references to the officer who dealt summarily with the charge;
- (b) references to a finding of guilt were references to a finding that the charge has been proved;

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- (c) references to a sentence passed were references to a punishment awarded; and
- (d) subsections (5)(a) and (6) were omitted.”

**Annotations:**

**Marginal Citations**

M136 1955 c. 18.

7 For section 115 of the <sup>M137</sup>Air Force Act 1955 (review of summary findings and awards) there shall be substituted the following section—

**“115 Review of summary findings and awards**

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.
- (2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.
- (3) The finding or any punishment awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
  - (a) the Defence Council;
  - (b) any air-force, naval or military officer superior in command to the officer who dealt summarily with the charge;
  - (c) an air officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 113AA of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 113 of this Act by the reviewing authority.
- (7) In the application of section 113AA to reviews under this section, that section shall have effect as if—
  - (a) references to the court-martial were references to the officer who dealt summarily with the charge;
  - (b) references to a finding of guilt were references to a finding that the charge has been proved;
  - (c) references to a sentence passed were references to a punishment awarded; and
  - (d) subsections (5)(a) and (6) were omitted.”

**Annotations:**

**Marginal Citations**

M137 1955 c. 19.

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*Status: This version of this Act contains provisions that are prospective.*  
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*The 1957 Act*

- 8 The 1957 Act shall be amended as follows.
- 9 For section 70 (review of findings and sentences) there shall be substituted the following section—

**“70 Review of findings and sentences of courts-martial.**

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review shall (if it does not begin sooner) begin as soon as is practicable after—
  - (a) in a case where a petition has been presented under this section, the presentation of the petition;
  - (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review of the finding or sentence has been completed—
  - (a) the reviewing authority shall complete the review as soon as is practicable; but
  - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
- (5) For the purposes of this Act the reviewing authority is—
  - (a) the Defence Council; or
  - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.
- (6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.
- (7) This section and section 71 of this Act apply to disciplinary courts as they apply to courts-martial.
- (8) In this section “prescribed” means prescribed by rules under section 58 of this Act.”

- 10 For section 71 (power to quash or alter findings) there shall be substituted the following section—

**“71 Powers of the reviewing authority.**

- (1) On a review under section 70 of this Act the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—

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- (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
- (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to the court-martial on making such a finding as appears proper.

- (3) The findings referred to in subsection (2) above are—
  - (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
  - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
  - (a) revoke an order made by the court under section 89A(1) of this Act;
  - (b) remit in whole or part any punishment awarded by the court;
  - (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
  - (a) shall be treated for all purposes as having been made or passed by the court;
  - (b) shall be promulgated and shall have effect as from the date of promulgation.”.

11 In section 71A (power to authorise retrial), for the words “Defence Council” in both places where they appear there shall be substituted the words “ reviewing authority ”.

12 After section 71A there shall be inserted the following section—

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**“71B Review of summary findings and awards.**

- (1) This section applies where on a summary trial the accused has been found guilty of any offence.
- (2) The accused may at any time request a review of the finding or any sentence awarded (or both); and where he does so, the finding or sentence (or both) shall be reviewed.
- (3) The finding or any sentence awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
  - (a) the Defence Council;
  - (b) any naval officer superior in command to the officer who tried the charge summarily;
  - (c) a flag officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 71 of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 70 of this Act by the reviewing authority.
- (7) In the application of section 71 to reviews under this section, that section shall have effect as if—
  - (a) references to the court-martial were references to the officer before whom the summary trial took place; and
  - (b) subsections (5)(a) and (6) were omitted.”.

13 Section 72 (power to remit or alter sentences) shall cease to have effect.

SCHEDULE 6

Section 35(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

**Annotations:**

**Commencement Information**

**I4** Sch. 6 partly in force: Sch. 6 not in force at royal assent; Sch. 6 partly in force at 1.10.1996 by S.I. 1997/2474, art. 2 (with Sch.); Sch. 6 partly in force at 1.4.1997 by S.I. 1997/304, art. 2 (with art. 3)

*Naval Medical Compassionate Fund*

1 In section 1 of the <sup>M138</sup>Naval Medical Compassionate Fund Act 1915 (power by Order in Council to regulate fund), in subsection (1)(f) (eligibility for benefits), after the word “widows” there shall be inserted the word “, widowers”.

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**Annotations:**

**Marginal Citations**

M138 1915 c. 28.

*Affidavits and declarations outside the United Kingdom*

- 2 In section 204(1) of the <sup>M139</sup>Army Act 1955 (officers entitled to take affidavits and declarations outside the United Kingdom) after the words “the legal” there shall be inserted the words “ services branch of any ”.

**Annotations:**

**Marginal Citations**

M139 1955 c. 18.

*Enlistment in the Royal Air Force*

- 3 For section 3 of the <sup>M140</sup>Air Force Act 1955 (enlistment for general or corps service) there shall be substituted the following section—

**“3 Enlistment for general service.**

Recruits shall be enlisted for general service.”

**Annotations:**

**Marginal Citations**

M140 1955 c. 19.

*Suspension of sentences*

- 4 (1) In section 120 of each of the 1955 Acts (suspension of sentences of imprisonment and detention)—
- (a) in subsection (2), for the words from the beginning to “officer” there shall be substituted the “ On passing such a sentence, the court ”;
  - (b) for subsection (3) there shall be substituted the following subsection—

“(3) On the review of a sentence which is not for the time being suspended, the reviewing authority may order that the balance of the sentence be suspended.”; and
  - (c) in subsection (5)(c), for the words from “neither” to “said powers” there shall be substituted the words “ the court does not exercise the powers conferred by paragraph (a) above ”.
- (2) In section 118 (commencement of sentences of imprisonment and detention), in the proviso to subsection (2), for the words “the confirming officer” there shall be substituted the words “ a court-martial ”.

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### *Remission of sentences*

- 5 In section 122 of each of the 1955 Acts (Imprisonment and Detention Rules), in subsection (1)(e) (rules about remission of part of sentences), the words “for good conduct and industry” shall cease to have effect.
- 6 In section 82 of the 1957 Act (Naval Detention Quarters Rules), in subsection (1) (d) (rules about remission of part of sentences), the words “for good conduct and industry” shall cease to have effect.

### *Reviews*

- 7 In Schedule 5A to each of the 1955 Acts (powers of court on trial of civilians), in paragraph 13(3), for the words “section 108” in both places they appear there shall be substituted the words “section 113”.
- 8 In Schedule 4A to the 1957 Act (powers of court on trial of civilians), in paragraph 13(3), for the words “section 70(2)” there shall be substituted the words “section 70(1)”.
- 9 In Schedule 3 to the <sup>M141</sup>Armed Forces Act 1976 (Standing Civilian Courts)—
- (a) in paragraph 19 (petitions for reviews), the words from “but” to “period” shall cease to have effect; and
  - (b) in paragraph 20 (reviews of findings and sentences), in sub-paragraph (2) (c), for the words from “a confirming” to “section 110” there shall be substituted the words “an authority carrying out a review under section 115”.

#### **Annotations:**

#### **Marginal Citations**

M141 1976 c. 52.

### *Removal or amendment of spent expressions*

- 10 In section 111(1) of the 1957 Act (persons subject to Act) for the words from “, Queen Alexandra’s” to “Women’s Royal Naval Service” there shall be substituted the words “and Queen Alexandra’s Royal Naval Nursing Service”.
- 11 In section 6(9)(b) of the Armed Forces Act 1976 (membership of Standing Civilian Courts) for the words from “Queen Alexandra’s” to “Women’s Royal Naval Service” there shall be substituted the words “or Queen Alexandra’s Royal Naval Nursing Service”.

### *Queen’s Regulations for the Royal Navy*

- 12 In section 135(1) of the 1957 Act (general interpretation), after the definition of “public or service property” there shall be inserted the following definition—
- ““Queen’s Regulations” means the Queen’s Regulations for the Royal Navy;”.

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*Meaning of “protected prisoner of war”*

- 13 In paragraph 1 of Schedule 3 to the <sup>M142</sup>Courts-Martial (Appeals) Act 1968 (meaning of “protected prisoner of war”) for the words from “means” (in the first place it appears) to “Schedule 3 to” there shall be substituted the words “ has the same meaning as in section 7(1) of ”.

**Annotations:**

**Marginal Citations**

[M142 1968 c. 20.](#)

*Abolition of confirmation*

- 14 In section 82(2) of the <sup>M143</sup>Police and Criminal Evidence Act 1984 (meaning of references to conviction before a Service court in Part VIII), for the words from “references” (in the second place it appears) to “and” there shall be substituted the words “ references to a finding of guilty which is, or falls to be treated as, the finding of the court; and ”.

**Annotations:**

**Marginal Citations**

[M143 1984 c. 60.](#)

- 15 In Article 70(2) of the <sup>M144</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (meaning of references to conviction before a Service court in Part IX), for the words from “references” (in the second place it appears) to the end there shall be substituted the words “ references to a finding of guilty which is, or falls to be treated as, the finding of the court. ”

**Annotations:**

**Marginal Citations**

[M144 S.I. 1989/1341 \(N.I. 12\).](#)

SCHEDULE 7

Section 35(2).

REPEALS

**Annotations:**

**Commencement Information**

- I5** [Sch. 7](#) partly in force: [Sch. 7](#) not in force at Royal Assent, [Sch. 7](#) in force for specified purposes at 1.9.1996, see [s. 36\(2\)\(4\)](#); [Sch. 7](#) in force for specified purposes at 1.10.1996 by [S.I. 1996/2474](#), [art. 2](#) (with [art. 3](#)); [Sch. 7](#) in force for specified purposes at 1.4.1997 by [S.I. 1997/304](#), [art. 2](#) (with [Sch. 2](#)); [Sch. 7](#) in force at 1.5.2001 insofar as not already in force (subject to certain exceptions) by [S.I. 2001/1519](#), [art. 2\(1\)\(2\)](#)

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## PART I

### REPEALS RELATING TO CHANGES TO PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS

Chapter	Short title	Extent of repeal
1933 c. 6.	Visiting Forces (British Commonwealth) Act 1933.	In section 4(4)(b) the words from “and may” to “courts martial”.
1955 c. 18.	Army Act 1955.	Sections 77 to 80. Section 82(3). Section 84. Section 85(3). Sections 86 to 90. In section 91(1), the words from “and the convening officer” to the end. In section 93, in subsection (1), the words “other than an exempted person” and “judge advocate”, and subsection (1A). Section 95(4). In section 96(5), the words from “or on” to “finding”. Sections 104 to 106. Section 139. In section 143(1), the definition of “convening officer”. In section 209(3), paragraph (d) and, in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above”. In section 225(1), the definition of “Rules of Procedure”.
1955 c. 19.	Air Force Act 1955.	Sections 77 to 80. Section 82(3). Section 84.

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		Section 85(3).
		Sections 86 to 90.
		In section 91(1), the words from “and the convening officer” to the end.
		In section 93, in subsection (1), the words “other than an exempted person” and “judge advocate”, and subsection (1A).
		Section 95(4).
		In section 96(5), the words from “or on” to “finding”.
		Sections 104 to 106.
		Section 139.
		In section 143(1), the definition of “convening officer”.
		In section 209(3), paragraph (d) and, in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above”.
		In section 223(1), the definition of “Rules of Procedure”.
1957 c. 53.	Naval Discipline Act 1957.	Sections 49, 50, 52A, 53 and 55.
		In section 56(2), the words from “and shall” to the end.
		In section 57, subsections (1) and (3).
		Section 59(5).
		In section 76(6)(a), the words from “by the officer” to the end.
		In Schedule 4, in paragraph 4, the words from “and subsections” to “not apply”.
1966 c. 45.	Armed Forces Act 1966.	Sections 24, 30 and 31.

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1967 c. 80.	Criminal Justice Act 1967.	In section 12, the words “or orders”.
1976 c. 52.	Armed Forces Act 1976.	Section 5.  In Schedule 3, in paragraph 1, the definition of “directing officer”, in paragraph 2(2), the words from “if so” to “direction”, paragraph 4(5), paragraph 7, in paragraph 12(4)(h), the words “and the directing officer”, paragraph 12(4)(m) and, in paragraph 18(10), the words “or as judge advocate”.
1984 c. 60.	Police and Criminal Evidence Act 1984.	In section 72(1), in paragraph (b)(i) of the definition of “proceedings”, the words from “or from” to “1957”.  In section 82(1), in paragraph (b)(i) of the definition of “proceedings”, the words from “or from” to “1957”.

## PART II

### REPEALS RELATING TO ABOLITION OF CONFIRMATION

Chapter	Short title	Extent of repeal
1955 c. 18.	Army Act 1955.	In section 97, subsection (2) and, in subsection (3), the words from “and” (in the first place it appears) to the end.  Section 107.  Sections 109 to 111.  In section 120, in subsection (5), paragraph (b) and, in paragraph (d), the words “the confirming officer” and, in subsection (6), the words “not being confirmed or by its”.  In section 127, in subsection (4), the words “confirming officer

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or" (in both places) and subsection (5).

In section 131, in subsection (1), the word "confirmation" and, in subsection (3), the words "and the sentence has been confirmed".

In section 133(2), paragraph (a) and, in paragraph (b), the words "confirmation of the sentence is withheld or" and "confirming officer or".

In section 134, in subsection (2), paragraph (a) and, in paragraph (b), the words "confirmation of the sentence is withheld or" and "confirming officer or" and subsection (3).

In section 138, in subsection (7), the words "by the confirming officer" and "officer", in subsection (8), the words from the beginning to "officer; and" and the words "confirmation and", in subsection (10), the word "officer" (in both places).

In section 140, the words "confirming officer or" and "as the case may be".

In section 141, in subsection (5), the words from "or" (in the second place it appears) to "confirmation" (in the first place it appears) and the words from "or of" to the end and subsection (6).

In Schedule 5A, in paragraph 4(12), the words "confirming officer or", in paragraph 5(2) (b), the words "confirmation, revision or" and, in paragraph 15, in subparagraph (4), the words "confirmation" and "or revision", and, in

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1955 c. 19.

Air Force Act 1955.

subparagraphs (5), (6) and (7), the words “confirmation” and “revision”.

In section 97, subsection (2) and, in subsection (3), the words from “and” (in the first place it appears) to the end.

Section 107.

Sections 109 to 111.

In section 120, in subsection (5), paragraph (b) and, in paragraph (d), the words “the confirming officer” and, in subsection (6), the words “not being confirmed or by its”.

In section 127, in subsection (4), the words “confirming officer or” (in both places) and subsection (5).

In section 131, in subsection (1), the word “confirmation” and, in subsection (3), the words “and the sentence has been confirmed”.

In section 133(2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or”.

In section 134, in subsection (2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or” and subsection (3).

In section 138, in subsection (7), the words “by the confirming officer” and “officer”, in subsection (8), the words from the beginning to “officer; and” and the words “confirmation and”,

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		<p>in subsection (10), the word “officer”(in both places).</p> <p>In section 140, the words “confirming officer or”and “as the case may be”.</p> <p>In section 141, in subsection (5), the words from “or”(in the second place it appears) to “confirmation”(in the first place it appears) and the words from “or of”to the end and subsection (6).</p> <p>In Schedule 5A, in paragraph 4(12), the words “confirming officer or”, in paragraph 5(2) (b), the words “confirmation, revision or”and, in paragraph 15, in subparagraph (4), the words “confirmation”and “or revision”, and, in subparagraphs (5), (6) and (7), the words “confirmation”and “revision”.</p>
1957 c. 53.	Naval Discipline Act 1957.	<p>In Schedule 4A, in paragraph 4(12), the words “confirming officer or”, in paragraph 5(2) (b), the words “confirmation, revision or” and, in paragraph 15, in subparagraph (4), the words “confirmation” and “or revision”, and, in subparagraphs (5), (6) and (7), the words “confirmation” and “revision”.</p>
1968 c. 20.	Courts-Martial (Appeals) Act 1968.	<p>In section 17(2)(b), the words from “being” to the end.</p> <p>In section 37(2), the words from “(including” to “court-martial” (in the last place it appears).</p> <p>In Schedule 2, paragraph 3.</p>
1968 c. 64.	Civil Evidence Act 1968.	<p>In section 11(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).</p>

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1968 c. 70.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.	In section 10(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).
1971 c. 36 (N.I.).	Civil Evidence Act (Northern Ireland) 1971.	In section 7(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).
1986 c. 21.	Armed Forces Act 1986.	In Schedule 1, paragraph 1(1)(d).

### PART III

#### OTHER REPEALS

Chapter	Short title	Extent of repeal
1869 c. 44.	Greenwich Hospital Act 1869.	Section 7.
1955 c. 18.	Army Act 1955.	Section 108. In section 122(1)(e), the words “for good conduct and industry”. Section 181. In Schedule 7, paragraph 8.
1955 c. 19.	Air Force Act 1955.	Section 108. In section 122(1)(e), the words “for good conduct and industry”. Section 181.
1957 c. 53.	Naval Discipline Act 1957.	Section 72. In section 82(1)(d), the words “for good conduct and industry”. In section 111(2) the words “or the Women’s Royal Naval Service”. In section 132, in subsection (5), the words “the Women’s Royal Naval Service,”.
1966 c. 45.	Armed Forces Act 1966.	Section 2(4).

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1968 c. 20.	Courts-Martial (Appeals) Act 1968.	In section 8, subsection (1A) (a), in subsection (2) (a) the words from “or (if” to “annulled” and subsection (5).  In section 32(2)(a), the words from “under” to “1968”.  Section 53.  In section 57(1), the word “and” after the definition of “prescribed”.
1968 c. 27.	Firearms Act 1968.	Section 11(3).
1970 c. 41.	Equal Pay Act 1970.	Section 1(9).
1970 c. 32 (N.I.).	Equal Pay Act (Northern Ireland) 1970.	Section 1(10).
1974 c. 53.	Rehabilitation of Offenders Act 1974.	In section 2, in subsection (1) the words “Subject to the following provisions of this section” and subsections (2) to (4).  In section 6, in subsection (6) the words “Subject to subsection (7) below” and subsection (7).
1976. c. 52.	Armed Forces Act 1976.	Section 17.  In Schedule 3, in paragraph 19, the words from “but” to “period”.  In Schedule 9, paragraph 20(2).
1976 c. 74.	Race Relations Act 1976.	In section 54(2), the words “or to a complaint to which section 75(8) applies”.
S.I. 1978/1908 (N.I. 27).	Rehabilitation of Offenders (Northern Ireland) Order 1978.	In Article 4, in paragraph (1), the words “Subject to the following provisions of this Article,” and paragraphs (2) to (4).  In Article 7, in paragraph (6) the words “Subject to paragraph (7)” and paragraph (7).
1981 c. 55.	Armed Forces Act 1981.	In section 20(2) the words “and the Women’s Royal Naval Service”.

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		In Schedule 3, in paragraph 11(1) the words "and the Women's Royal Naval Service" and in paragraphs 11(2) and 12 to 14 the words "or the Women's Royal Naval Service".
		In Schedule 4, paragraphs 2(1) and 3(1).
1983 c. 20.	Mental Health Act 1983.	Section 46.
1984 c. 36.	Mental Health (Scotland) Act 1984.	Section 69.
S.I. 1986/595 (N.I.4).	Mental Health (Northern Ireland) Order 1986.	Article 52.
1991 c. 62.	Armed Forces Act 1991.	Section 1.
1995 c. 35.	Criminal Appeal Act 1995.	In Schedule 2, paragraphs 1 and 2.

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**Changes and effects yet to be applied to :**

- s. 2-4 repealed by [2006 c. 52 Sch. 17](#)
- s. 6(2) repealed by [2006 c. 52 Sch. 17](#)
- s. 6(2) savings for effects of [2006 c. 52 Sch. 17](#) by [S.I. 2009/1059 Sch. 1 para. 38](#)
- s. 6(3) text amended by [2006 c. 52 Sch. 16 para. 138](#)
- s. 8 repealed by [2004 c. 28 Sch. 11](#)
- s. 9-12 repealed by [2006 c. 52 Sch. 17](#)
- s. 15 repealed by [2006 c. 52 Sch. 17](#)
- s. 16 repealed by [2006 c. 52 Sch. 17](#)
- s. 17(3) repealed by [2006 c. 52 Sch. 17](#)
- s. 17(5) repealed by [2006 c. 52 Sch. 17](#)
- s. 17(6) repealed by [2006 c. 52 Sch. 17](#)
- s. 20 repealed by [2006 c. 52 Sch. 17](#)
- s. 21 repealed by [2010 c. 15 Sch. 27 Pt. 1](#) (as substituted) by [S.I. 2010/2279 Sch. 2](#)
- s. 23 repealed by [2010 c. 15 Sch. 27 Pt. 1](#) (as substituted) by [S.I. 2010/2279 Sch. 2](#)
- s. 24 repealed by [2010 c. 15 Sch. 27 Pt. 1](#) (as substituted) by [S.I. 2010/2279 Sch. 2](#)
- s. 29 repealed by [S.I. 2004/702 \(N.I.\) Sch. 8](#)
- s. 32 repealed by [2006 c. 52 Sch. 17](#)
- s. 34 repealed by [2006 c. 52 Sch. 17](#)
- s. 36(6) repealed by [2006 c. 52 Sch. 17](#)
- Sch. 1 para. 1-64 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 1 para. 66-99 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 1 para. 102-107 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 1 para. 110 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 2 repealed by [2004 c. 28 Sch. 11](#)
- Sch. 3 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 5 repealed by [2006 c. 52 Sch. 17](#)
- Sch. 6 para. 2-15 repealed by [2006 c. 52 Sch. 17](#)

**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

- Blanket Amendment words substituted by [2005 c. 4 Sch. 11 para. 5](#)

**Commencement Orders yet to be applied to the Armed Forces Act 1996:**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2005/1119 art. 2](#) commences ([1996 c. 46](#))

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2005/579 art. 2 3](#) commences ([2004 c. 28](#))
- [S.I. 2009/812 art. 3](#) commences ([2006 c. 52](#))
- [S.I. 2009/1059](#) Order transitional provisions for effects of commencing [SI 2009/812](#)
- [S.I. 2009/1167 art. 3 4](#) commences ([2006 c. 52](#))
- [S.I. 2009/1604 art. 2](#) commences ([2005 c. 4](#))
- [S.I. 2010/2317 art. 2 3](#) commences ([2010 c. 15](#))

– [S.R. 2005/4 art. 3 commences \(S.I. 2004/702 \(N.I.\)\)](#)