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SCHEDULES

SCHEDULE 1

PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

Annotations:

Commencement Information

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

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 ^{M1}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.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—

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- (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.
 - (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)

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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 ^{M2}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

- M1** 1990 c. 41.
M2 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—

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- (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.
- (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.

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- (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 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 ^{M3}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

M3 1990 c. 41.

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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.
- (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;

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- (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 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 ^{M4}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

M4 1990 c. 41.

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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 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. 2009/1167 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 \(N.I.\)](#))