



# Armed Forces Act 2001

## 2001 CHAPTER 19

### PART 1

#### CONTINUANCE OF SERVICES ACTS

#### **1 Continuation of services Acts**

- (1) The 1955 Acts and the 1957 Act shall (instead of expiring on 31st August 2001) expire on 31st August 2002 unless continued in force in accordance with this section.
- (2) Subject to subsection (3), Her Majesty may from time to time by Order in Council provide for the 1955 Acts and the 1957 Act to continue in force for a period not exceeding twelve months beyond the day on which they would otherwise expire.
- (3) The 1955 Acts and the 1957 Act may not be continued under subsection (2) beyond the end of the year 2006.
- (4) No recommendation shall be made to Her Majesty in Council to make an Order under subsection (2) unless a draft of the Order has been laid before, and approved by a resolution of, each House of Parliament.

### PART 2

#### POWERS OF ENTRY, SEARCH AND SEIZURE

##### *Powers to stop and search*

#### **2 Powers to stop and search persons, vehicles etc**

- (1) A service policeman may exercise any power conferred by this section—
  - (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission,

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- (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling or service living accommodation, and
  - (c) in any premises which at the time when he proposes to exercise the power are permanently or temporarily occupied or controlled by any of Her Majesty's forces but are not service living accommodation.
- (2) Subject to subsections (3) to (6), a service policeman—
- (a) may search—
    - (i) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law,
    - (ii) a service vehicle which is in the charge of any person,
    - (iii) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law, or
    - (iv) anything which is in or on a service vehicle or a vehicle falling within sub-paragraph (iii),
 for stolen or prohibited articles, controlled drugs or Her Majesty's stores, and
  - (b) may detain for the purpose of such a search—
    - (i) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law,
    - (ii) any person in charge of a service vehicle,
    - (iii) any service vehicle, and
    - (iv) any vehicle falling within paragraph (a)(iii).
- (3) This section does not give a service policeman power to search a person or vehicle or anything in or on a vehicle unless—
- (a) he has reasonable grounds for suspecting that he will find—
    - (i) stolen or prohibited articles, or
    - (ii) Her Majesty's stores that have been unlawfully obtained, or
  - (b) he has reasonable grounds for suspecting—
    - (i) in the case of the search of a person, that the person is in possession of a controlled drug in circumstances in which he commits an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is an offence under the Misuse of Drugs Act 1971 (c. 38), or
    - (ii) in the case of the search of a vehicle, that he will find a controlled drug that is in a person's possession in such circumstances.
- (4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or of any service living accommodation falling within section 15(1)(a) or on other land so occupied and used, a service policeman may not by virtue of subsection (1) (a) or (b) search him in the exercise of the power conferred by this section unless the service policeman has reasonable grounds for believing—
- (a) that he does not reside in the dwelling or service living accommodation, and
  - (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or of any service living accommodation falling within section 15(1)(a) or on other land so occupied and used, a service policeman may not by virtue of subsection (1)(a)

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- or (b) search the vehicle or anything in or on it in the exercise of the power conferred by this section unless the service policeman has reasonable grounds for believing—
- (a) that the person in charge of the vehicle does not reside in the dwelling or service living accommodation, and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (6) In subsections (4) and (5) “dwelling” does not include any dwelling which is permanently or temporarily occupied or controlled by any of Her Majesty’s forces.
- (7) If in the course of a search under this section a service policeman discovers an article which he has reasonable grounds for suspecting to be—
- (a) a stolen or prohibited article,
  - (b) evidence of an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is an offence under the Misuse of Drugs Act 1971 (c. 38), or
  - (c) any of Her Majesty’s stores that have been unlawfully obtained,
- he may seize it.
- (8) An article is prohibited for the purposes of this section if it is—
- (a) an offensive weapon other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty’s forces, or
  - (b) an article—
    - (i) made or adapted for use in the course of or in connection with an offence specified in subsection (9) or an offence as respects which the corresponding civil offence is an offence specified in that subsection; or
    - (ii) intended by the person having it with him for such use by him or by some other person.
- (9) The offences referred to in subsection (8)(b)(i) are—
- (a) burglary,
  - (b) theft,
  - (c) offences under section 12 of the Theft Act 1968 (c. 60) (taking motor vehicle or other conveyance without authority), and
  - (d) offences under section 15 of that Act (obtaining property by deception).
- (10) In this section—
- “Her Majesty’s stores” has the same meaning as in the Public Stores Act 1875 (c. 25);
  - “offensive weapon” means any article—
    - (a) made or adapted for use for causing injury to persons, or
    - (b) intended by the person having it with him for such use by him or by some other person;
  - “service vehicle” means a vehicle which—
    - (a) belongs to any of Her Majesty’s forces, or
    - (b) is in use for the purposes of any of those forces.

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### **3 Provisions relating to search under s. 2**

- (1) The time for which a person or vehicle may be detained for the purposes of a search under section 2 is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.
- (2) The power conferred by section 2 is not to be construed as authorising a service policeman to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves.
- (3) The Secretary of State may by order make provision, in relation to the search of persons or vehicles under section 2 (whether carried out by service policemen or by virtue of section 4 by other persons), which is equivalent to that made by any provision of—
  - (a) subsections (1) to (7) and (9)(b) of section 2 (provisions relating to search under section 1 of that Act and other powers) of the Police and Criminal Evidence Act 1984 (c. 60) (in this Part referred to as “the 1984 Act”), and
  - (b) section 3 of that Act (duty to make records concerning searches),subject to such modifications as the Secretary of State thinks fit.
- (4) An order under subsection (3) may, in particular, apply any of the provisions mentioned in paragraphs (a) and (b) of that subsection subject to modifications specified in the order.
- (5) Section 2 and this section apply to vessels, aircraft and hovercraft as they apply to vehicles.
- (6) Nothing in section 2 limits the powers exercisable on any premises if, or to the extent that, the premises are being used—
  - (a) for holding persons in custody under any of the services Acts, or
  - (b) for the accommodation of persons serving military, air-force or naval sentences of detention or imprisonment.

### **4 Power of commanding officer in relation to stopping and searching of persons, vehicles etc**

- (1) Subject to subsections (2) and (3), in relation to a person who is subject to service law or a vehicle in the charge of such a person, the powers conferred on a service policeman by section 2 may also be exercised—
  - (a) by that person’s commanding officer, or
  - (b) by any member of Her Majesty’s forces who is authorised by that person’s commanding officer.
- (2) The power conferred on a commanding officer by virtue of subsection (1)(a) may be exercised only by giving orders for the search of a particular person or vehicle.
- (3) A commanding officer may not give orders by virtue of subsection (1)(a) or give authority under subsection (1)(b) unless he has reasonable grounds for believing that it is likely that, if the powers conferred by section 2 could not be exercised before the earliest time by which it would be practicable to obtain—
  - (a) the assistance of a service policeman, or
  - (b) in a case where corresponding powers conferred by section 1 of the 1984 Act or any other enactment are exercisable by a member of a United Kingdom police force, the assistance of a member of such a force who is capable of exercising those corresponding powers,

offences against section 70 of either of the 1955 Acts or section 42 of the 1957 Act would be committed or persons who have committed such offences would avoid apprehension.

### *Entry and search of premises*

## **5 Power of judicial officer to authorise entry and search of certain premises**

- (1) If, on an application made by a service policeman, a judicial officer is satisfied that there are reasonable grounds for believing—
- (a) that an offence to which this section applies has been committed, and
  - (b) that there is on relevant residential premises specified in the application material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  - (c) that the material is likely to be relevant evidence, and
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
  - (e) that any of the conditions specified in subsection (4) applies,
- he may issue a warrant authorising a service policeman to enter and search the premises.
- (2) This section applies to the following offences—
- (a) any offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is, or if it were committed in England and Wales would be, a serious arrestable offence for the purposes of the 1984 Act;
  - (b) any offence against section 24, 25, 26, 30, 31, 32, 37, 48A or 49 of either of the 1955 Acts or against section 2, 3, 4, 5, 9, 10, 16, 19 or 20 of the 1957 Act;
  - (c) any offence specified for the purposes of this subsection in an order made by the Secretary of State;
  - (d) any offence against either of the 1955 Acts or under the 1957 Act whose commission—
    - (i) has led to any of the consequences specified in subsection (5), or
    - (ii) is intended or is likely to lead to any of those consequences.
- (3) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).
- (4) The conditions mentioned in subsection (1)(e) are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) that entry to the premises will not be granted unless a warrant is produced;
  - (d) in the case of service living accommodation falling within section 15(1)(b) or (c), that the person for whom it is provided will not agree to grant access to it unless a warrant is produced or that it is not practicable to communicate with him;

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- (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.
- (5) The consequences mentioned in subsection (2)(d)(i) are—
- (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any person;
  - (e) substantial financial gain to any person;
  - (f) serious financial loss to any person;
  - (g) the undermining of discipline or morale among members of any of Her Majesty's forces.
- (6) In subsection (5)(d) “injury” includes any disease and any impairment of a person's physical or mental condition.
- (7) For the purposes of subsection (5)(f), loss is serious if, having regard to all the circumstances, it is serious for the person who suffers it.
- (8) In this section “relevant residential premises” means—
- (a) service living accommodation, or
  - (b) other premises occupied as a residence (alone or with other persons) by—
    - (i) a person who is subject to service law, or
    - (ii) a person who is suspected of having committed while subject to service law an offence in relation to which the warrant is sought.
- (9) In this section “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.
- (10) The Secretary of State may by order—
- (a) authorise the use, in connection with any application to a judicial officer for a warrant under this section, of live television links or similar arrangements, and
  - (b) make provision, in relation to warrants issued under this section to service policemen or entry and search under such a warrant, which is equivalent to that made by any provision of sections 15 and 16 of the 1984 Act (which relate to the issue to constables of warrants to enter and search premises), subject to such modifications as the Secretary of State thinks fit.

## **6 Special provisions as to access**

- (1) The Secretary of State may by order enable a service policeman to obtain access to excluded material or special procedure material on relevant residential premises, for the purposes of an investigation of an offence to which section 5 applies, by making an application in accordance with the order to a judicial officer.
- (2) An order under this section may, in particular—
- (a) provide for any provision of Schedule 1 to the 1984 Act (which relates to applications by constables to circuit judges for access to excluded material or special procedure material) to apply with specified modifications for the purposes of the order, and

- (b) authorise the use, in connection with any application made by virtue of the order, of live television links or similar arrangements.
- (3) In this section “relevant residential premises” has the same meaning as in section 5.

## **7 Power of commanding officer to authorise entry and search of certain premises**

- (1) If an officer has reasonable grounds for believing—
- (a) that the conditions specified in paragraphs (a) to (e) of section 5(1) are satisfied in relation to—
    - (i) service living accommodation of a person as respects whom the officer is commanding officer, or
    - (ii) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer, and
  - (b) that it is likely that, if no search could be carried out before the earliest time by which it would be practicable—
    - (i) for a service policeman to obtain and execute a warrant under section 5 authorising the entry and search of the premises, or
    - (ii) in a case where a member of a United Kingdom police force could obtain a warrant under section 8 of the 1984 Act or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain such a warrant,the purpose of the search would be frustrated or seriously prejudiced,
- the officer may authorise a service policeman or, subject to subsection (2), any other member of Her Majesty’s forces to enter and search the premises.
- (2) An officer may not authorise a person other than a service policeman to exercise the powers conferred by subsection (1) unless—
- (a) the premises to be searched consist of service living accommodation falling within section 15(1)(b) or (c), and
  - (b) it is likely that, if no search could be carried out before the earliest time by which it would be practicable to obtain the assistance of a service policeman, the purpose of the search would be frustrated or seriously prejudiced.
- (3) Subject to section 8, a person authorised under subsection (1) may seize and retain anything for which the search under this section was authorised.

## **8 Review by judicial officer**

- (1) Where any property has been seized and retained during a search under section 7, the officer who authorised the search must as soon as practicable request a judicial officer to undertake a review of the search and of the seizure and retention of anything seized and retained during it.
- (2) In relation to a review under this section, a judicial officer shall have such powers and duties as may be prescribed by the Secretary of State by order.

## **9 Entry for purpose of arrest etc**

- (1) Subject to the following provisions of this section, a service policeman may enter and search any relevant residential premises for the purpose—

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- (a) of arresting a person under any of the services Acts, or
  - (b) of saving life or limb or preventing serious damage to property.
- (2) In subsection (1) “relevant residential premises” means—
- (a) service living accommodation, or
  - (b) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law.
- (3) Subject to the following provisions of this section and without prejudice to any other enactment, a service policeman may enter and search any premises which are occupied as a residence (alone or with other persons) by a person to whom this subsection applies, for the purpose of arresting that person under any of the services Acts.
- (4) Subsection (3) applies to a person in relation to whom the power of arrest under any of the services Acts is exercisable only by virtue of section 131 of each of the 1955 Acts or section 51 of the 1957 Act.
- (5) Except for the purpose specified in paragraph (b) of subsection (1), the powers of entry and search conferred by this section—
- (a) are only exercisable if the service policeman has reasonable grounds for believing that the person whom he is seeking is on the premises, and
  - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
    - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling, and
    - (ii) any such dwelling in which the service policeman has reasonable grounds for believing that the person whom he is seeking may be.
- (6) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (7) Subject to subsections (8) and (9), an officer may authorise a member of Her Majesty’s forces who is not a service policeman to exercise, in relation to premises consisting of—
- (a) service living accommodation of a person as respects whom the officer is commanding officer, or
  - (b) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer,
- the powers conferred by subsection (1) on a service policeman.
- (8) An officer may not authorise a person other than a service policeman to exercise the power conferred by subsection (1)(a) unless—
- (a) the offence in respect of which the arrest is to be made is an offence to which section 5 applies, and
  - (b) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain—
    - (i) the assistance of a service policeman, or
    - (ii) in a case where the powers conferred by section 17(1)(b) or (c) of the 1984 Act (entry for purposes of arrest) are exercisable by a member of a United Kingdom police force, the assistance of a member of such a force capable of exercising them,



the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence or be a danger to himself or to others, or discipline or morale among members of any of Her Majesty's forces might be undermined.

- (9) An officer may not authorise a person other than a service policeman to exercise the power conferred by subsection (1)(b) in relation to premises falling within subsection (2)(b) unless it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.
- (10) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

#### *Powers exercisable on arrest*

### **10 Search upon arrest**

- (1) A service policeman or the person exercising the power of arrest may search a person arrested under any of the services Acts if the service policeman or, as the case may be, the person making the arrest has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) Subject to subsections (4), (8) and (9), a service policeman shall also have power to search the arrested person for anything—
- (a) which he might use to assist him to escape from custody, or
  - (b) which might be evidence relating to an offence.
- (3) For the purposes of the following provisions of this section, a thing is “subject to search” if it is something for which a search by a service policeman is permitted under subsection (2).
- (4) A service policeman may not search a person in the exercise of the power conferred by subsection (2) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything that is subject to search.
- (5) Subject to subsections (6) to (9), where a person (“the arrested person”) is to be or has been arrested under any of the services Acts by a person other than a service policeman, the commanding officer of the arrested person—
- (a) may, if the commanding officer has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search, order the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search, or
  - (b) may authorise the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search.
- (6) A commanding officer may not order or authorise the search of an arrested person under subsection (5)(a) or (b) unless he has reasonable grounds for believing that it is likely that, if the search could not be carried out before the earliest time by which it would be practicable to obtain assistance from—
- (a) a service policeman, or
  - (b) in a case where the powers conferred by section 32 of the 1984 Act (search upon arrest) are exercisable by a member of a United Kingdom police force, a member of such a force capable of exercising those powers,

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- the person who is to be or has been arrested would escape from custody or conceal, alter or destroy evidence.
- (7) A person authorised under paragraph (b) of subsection (5) may not search a person in the exercise of the power conferred by that paragraph unless he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (8) The power to search conferred by subsection (2) or (5) is only a power to search to the extent that is reasonably required for the purpose of discovering anything that is subject to search.
- (9) The power conferred by subsection (1), (2) or (5) is not to be construed as authorising the person exercising the power to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves, but the power does authorise the search of a person's mouth.
- (10) Any person searching another person in the exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.
- (11) A service policeman or authorised person searching a person in the exercise of the power conferred by subsection (2) or (5) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—
- (a) that the person searched might use it to assist him to escape from lawful custody; or
  - (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.
- (12) In subsection (11) “authorised person” means a person ordered under subsection (5) (a) or authorised under subsection (5)(b).
- (13) The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under any of the services Acts, which is equivalent to that made by any of the provisions of section 32 of the 1984 Act which relate to the power to enter and search premises, subject to such modifications as the Secretary of State thinks fit.
- (14) The power conferred by subsection (13) includes, in particular, power to apply any provision of section 32 of the 1984 Act relating to the power to enter and search premises, subject to modifications specified in the order.
- (15) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

*Seizure etc.*

## **11 Power to make provision equivalent to that made by ss. 18 to 22 of Police and Criminal Evidence Act 1984**

- (1) The Secretary of State may by order make provision, in relation to premises occupied or controlled by a person who—
- (a) has been arrested under any of the services Acts, and

- (b) is being held in military, air-force or naval custody without being charged, which is equivalent to that made by any provision of section 18 of the 1984 Act (entry and search after arrest), subject to such modifications as the Secretary of State thinks fit.
- (2) The Secretary of State may by order make provision, in relation to—
- (a) a service policeman who is on any premises in the exercise of any power conferred by or under this Part, or
- (b) any power of seizure conferred by or under this Part,
- which is equivalent to that made by any provision of sections 19 to 21 of the 1984 Act (which relate to seizure) or section 22(1) to (4) of that Act (power to retain property seized), subject to such modifications as the Secretary of State thinks fit.
- (3) In subsection (1) “charged”—
- (a) in relation to a person held in military custody, is to be construed in accordance with section 75(4) of the Army Act 1955 (c. 18),
- (b) in relation to a person held in air-force custody, is to be construed in accordance with section 75(4) of the Air Force Act 1955 (c. 19), and
- (c) in relation to a person held in naval custody, is to be construed in accordance with section 47A(4) of the 1957 Act.
- (4) No provision made by virtue of this section affects the power conferred by section 12.

## **12 Property in possession of service police or commanding officer**

- (1) The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman or a person’s commanding officer in connection with the investigation of an offence.
- (2) The regulations may, in particular—
- (a) enable a court-martial, Standing Civilian Court or judicial officer to make an order for the delivery of the property to the person appearing to the court or judicial officer to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judicial officer thinks fit,
- (b) enable the commanding officer of a person charged with an offence against any of the services Acts—
- (i) to determine that any property seized under this Part in connection with the investigation of an offence be delivered to the person appearing to the commanding officer to be the owner of the property, or
- (ii) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate,
- (c) enable the commanding officer of a person—
- (i) in whose possession the property was before it was seized under this Part, or
- (ii) who claims to be the owner of the property,
- to determine that it should be delivered to that person,
- (d) make provision as to appeals against orders made by virtue of paragraph (a) and determinations made by virtue of paragraph (b) or (c), and

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- (e) provide that, on the expiration of a specified period from the making of an order by virtue of paragraph (a), the right of any person to take proceedings for the recovery of the property is to cease.
- (3) A determination made by virtue of subsection (2)(b) or (c) does not bar the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered.

### *Supplementary*

## **13 Orders and codes of practice under s. 113 of Police and Criminal Evidence Act 1984**

- (1) Section 113 of the 1984 Act (application of Act to armed forces) is amended as follows.
- (2) In subsection (1) (which confers on the Secretary of State power by order to apply provisions of the 1984 Act to investigations etc under either of the 1955 Acts or under the 1957 Act) for “this Act” there is substituted “Part 5 of this Act (or Part 11 of this Act so far as relating to that Part)”.
- (3) In subsection (3) (which requires the Secretary of State to issue one or more codes of practice for persons other than police officers who are concerned with enquiries into offences under the 1955 Acts or the 1957 Act) for the words from “with” onwards there is substituted—
  - “with—
  - (a) the exercise of the powers conferred by Part 2 of the Armed Forces Act 2001, or
  - (b) enquiries into offences under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”
- (4) In subsection (4) for the words “enquiries into such offences” there is substituted “the powers mentioned in subsection (3)(a) above or the enquiries mentioned in subsection (3)(b) above”.

## **14 Power to use reasonable force**

Where a power is conferred on any person by or under this Part, the person on whom the power is conferred may use reasonable force, if necessary, in the exercise of the power.

## **15 Meaning of “service living accommodation”**

- (1) Subject to subsection (2), in this Part “service living accommodation” means—
  - (a) any building or part of a building which is occupied for the purposes of any of Her Majesty’s forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his family, as living accommodation or as a garage,
  - (b) any other room, structure or area (whether on land or on a vessel) which is occupied for the purposes of any of Her Majesty’s forces and is used for the provision of sleeping accommodation for one or more persons subject to service law, or

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- (c) any locker which—
  - (i) is provided by any of Her Majesty’s forces for personal use by a person subject to service law in connection with his sleeping accommodation, but
  - (ii) is not in a room, structure or area falling within paragraph (b).
- (2) Premises are not service living accommodation for the purposes of this Part if, or to the extent that, they are being used—
  - (a) for holding persons in custody under any of the services Acts, or
  - (b) for the accommodation of persons serving military, air-force or naval sentences of detention or imprisonment.

## 16 Part 2: supplementary provisions

- (1) In this Part—

“the 1984 Act” means the Police and Criminal Evidence Act 1984 (c. 60);

“Commonwealth force” has the same meaning as in the 1955 Acts and the 1957 Act;

“controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38);

“the corresponding civil offence”, in relation to an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act, means the civil offence (within the meaning of the Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) or the 1957 Act) the commission of which constitutes an offence under that section;

“excluded material” has the same meaning as in the 1984 Act;

“Her Majesty’s forces” does not include any Commonwealth force;

“items subject to legal privilege” has the same meaning as in the 1984 Act;

“judicial officer” means a judicial officer appointed under section 75L of either of the 1955 Acts or under section 47M of the 1957 Act;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft, and
- (b) any tent or movable structure;

“the services Acts” means the 1955 Acts and the 1957 Act;

“service living accommodation” has the meaning given by section 15;

“service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police;

“special procedure material” has the same meaning as in the 1984 Act;

“stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 (c. 60) in the provisions of that Act relating to goods which have been stolen;

“United Kingdom police force” means any of the following—

- (a) the Ministry of Defence Police,
- (b) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London),
- (c) the metropolitan police force,
- (d) the City of London police force,

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- (e) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c. 77), or
  - (f) the Police Service of Northern Ireland.
- (2) In this Part any reference to a person subject to service law is a reference to—
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) any other person to whom any provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply because he is a person falling within—
    - (i) section 209(1) or (2) of either of the 1955 Acts (application of Act to civilians), or
    - (ii) section 118(1) or (2) of the 1957 Act (application of Act to civilians).
- (3) This Part shall, to such extent and subject to such modifications as may be prescribed by regulations made by the Defence Council, apply to persons embarked as passengers on board Her Majesty's ships or Her Majesty's aircraft (not being persons who are subject to service law) as it applies to persons subject to service law.
- (4) In subsection (3), "Her Majesty's ships" has the same meaning as in the Army Act 1955 and "Her Majesty's aircraft" has the same meaning as in the Air Force Act 1955.
- (5) For the purposes of this Part "commanding officer"—
- (a) in relation to a person subject to military law, means the officer who would be that person's commanding officer for the purposes of section 82 of the Army Act 1955 (c. 18) if he were charged with an offence;
  - (b) in relation to a person subject to air-force law, means the officer who would be that person's commanding officer for the purposes of section 82 of the Air Force Act 1955 (c. 19) if he were charged with an offence;
  - (c) in relation to a person subject to the 1957 Act or a person falling within subsection (2)(b)(ii), means—
    - (i) the officer in command of the ship or naval establishment to which he belongs, or
    - (ii) any other person who by virtue of regulations under section 52E of that Act would be able to exercise the powers conferred by that Act on a commanding officer in relation to that person if he were charged with an offence;
  - (d) in relation to a person falling within subsection (2)(b)(i), means the person who is by virtue of regulations of the Defence Council made for the purposes of section 209(3)(f) of either of the 1955 Acts the commanding officer for the purposes of Part 2 of the Act in question in relation to him;
  - (e) in relation to a person falling within subsection (3), means such officer as may be determined by or under regulations of the Defence Council made for the purposes of that subsection.
- (6) For the purposes of this Part, the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by the Air Force Act 1955 on provost officers are to be taken to be members of the Royal Air Force Police.
- (7) Nothing in this Part limits—
- (a) any power of a service policeman or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes

- of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation,
- (b) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation,
  - (c) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to search a person or to stop and search a service vehicle, or
  - (d) any power of a service policeman or commanding officer to search a service vehicle which is not in the charge of any person.
- (8) In subsection (7) "service vehicle" means a vehicle, vessel, aircraft or hovercraft which—
- (a) belongs to any of Her Majesty's forces, or
  - (b) is in use for the purposes of any of those forces.

### PART 3

#### TRIAL AND PUNISHMENT OF OFFENCES

#### **17 Summary dealing or trial and functions of prosecuting authority**

Schedule 1 (which contains amendments relating to summary dealing or trial under the 1955 Acts or the 1957 Act and to the functions of the prosecuting authority under those Acts) shall have effect.

#### **18 Abolition of naval disciplinary courts**

Section 52G of the 1957 Act (under which a disciplinary court may be ordered for the trial of an officer below the rank of commander) shall cease to have effect.

#### **19 Membership of courts-martial**

Schedule 2 (which contains amendments of the 1955 Acts and the 1957 Act relating to the composition of courts-martial, including provisions relating to the eligibility of warrant officers for membership) shall have effect.

#### **20 Eligibility of warrant officers for membership of summary appeal courts**

- (1) The Secretary of State may by order provide that, in such circumstances and subject to such conditions as may be prescribed, warrant officers are to be eligible to be members of any of the summary appeal courts.
- (2) An order under this section may amend either of the 1955 Acts or the 1957 Act.
- (3) No order under this section may enable any of the summary appeal courts to include a warrant officer as a member unless the appellant is of a rank below that of the warrant officer in question.
- (4) In this section "the summary appeal courts" means the court established by section 83ZA of each of the 1955 Acts and the court established by section 52FF of the 1957 Act.

## 21 Review of sentences by Courts-Martial Appeal Court

(1) After section 113A of each of the 1955 Acts there is inserted—

### “113B Scope of section 113C

- (1) Section 113C of this Act applies to any case—
- (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or
  - (b) in which a sentence is passed by a court-martial on a person—
    - (i) in respect of an offence against section 70 of this Act which satisfies the condition in subsection (2) below, or
    - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the corresponding civil offence is—
- (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 113C of this Act—
- (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following any review under section 113 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 113C Review of sentences by Courts-Martial Appeal Court

- (1) If it appears to the Attorney General—
- (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,
- he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may—
- (a) quash the sentence passed by the court-martial on the person; and



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- (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
  - (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that—
    - (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 113 of this Act; or
    - (b) the sentence passed on the person was not that required by section 70(3B), (3E) or (3G) of this Act.
  - (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
  - (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
  - (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
  - (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
  - (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
  - (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) After section 71A of the 1957 Act there is inserted—

**“71AB Scope of section 71AC**

- (1) Section 71AC of this Act applies to any case—
  - (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or

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- (b) in which a sentence is passed by a court-martial on a person—
  - (i) in respect of an offence against section 42 of this Act which satisfies the condition in subsection (2) below, or
  - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the civil offence is—
  - (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 71AC of this Act—
  - (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following a review under section 70 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **71AC Review of sentences by Courts-Martial Appeal Court**

- (1) If it appears to the Attorney General—
  - (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,
 he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may—
  - (a) quash the sentence passed by the court-martial on the person; and
  - (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
- (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that—

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- (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 70 of this Act; or
  - (b) the sentence passed on the person was not that required by section 42(1B), (1E) or (1G) of this Act.
- (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
- (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
- (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
- (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## **22 Required custodial sentences**

- (1) Schedule 3 (which contains amendments of the 1955 Acts and the 1957 Act relating to required custodial sentences) shall have effect.
- (2) Any provision of that Schedule or of Part 2 of Schedule 7 (“the relevant provision”) has effect in relation to a person who falls to be sentenced on being convicted of an offence against section 70 of either of the 1955 Acts or (as the case may be) section 42 of the 1957 Act if that offence is committed on or after the day on which the relevant provision comes into force.

### **23 Restriction of judicial review of courts-martial**

- (1) Section 29 of the Supreme Court Act 1981 (c. 54) (orders of mandamus, prohibition and certiorari) is amended as follows.
- (2) In subsection (1) at the beginning there is inserted “Subject to subsection (3A),”.
- (3) After subsection (3) there is inserted—

“(3A) The High Court shall have no jurisdiction to make orders of mandamus, prohibition or certiorari in relation to the jurisdiction of a court-martial in matters relating to—

- (a) trial by court-martial for an offence, or
- (b) appeals from a Standing Civilian Court;

and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

### **24 Offences in relation to courts-martial etc**

- (1) In each of the provisions specified in subsection (2), for “document in his custody or under his control” there is substituted “document or other thing which is in his custody or under his control and”.
- (2) The provisions referred to in subsection (1) are—
  - (a) section 57(1)(c) of the Army Act 1955 (c. 18) (refusal of person subject to military law to produce document),
  - (b) section 101(1)(c) of that Act (refusal of person not subject to military law to produce document),
  - (c) section 57(1)(c) of the Air Force Act 1955 (c. 19) (refusal of person subject to air-force law to produce document),
  - (d) section 101(1)(c) of that Act (refusal of person not subject to air-force law to produce document), and
  - (e) section 38(1)(c) of the 1957 Act (refusal of person subject to that Act to produce document).

### **25 Powers to compel attendance of witnesses**

- (1) After section 101 of the Army Act 1955 there is inserted—

#### **“101A Powers to compel attendance of witnesses**

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
  - (a) that a person not subject to military law who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and

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- (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,

the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.

- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the commencement of the trial by court-martial, a judicial officer and, thereafter, the judge advocate.

- (3) Where—

- (a) a person not subject to military law (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
- (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
- (c) it is proved on oath or in such manner as may be prescribed by rules under section 103 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of rules made under that section), and
- (d) it appears to the judge advocate that there is no just excuse for the defaulter’s failure to attend,

the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.

- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.

- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—

- (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
- (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
- (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
- (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 75M of this Act; and
- (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.

- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—

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- (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
- (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
- (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
  - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 83ZB of this Act, and
  - (ii) thereafter, the summary appeal court;
- (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 83ZJ of this Act; and
- (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”

(2) After section 101 of the Air Force Act 1955 (c. 19) there is inserted—

**“101A Powers to compel attendance of witnesses**

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
  - (a) that a person not subject to air-force law who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,

the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the commencement of the trial by court-martial, a judicial officer and, thereafter, the judge advocate.
- (3) Where—
  - (a) a person not subject to air-force law (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
  - (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
  - (c) it is proved on oath or in such manner as may be prescribed by rules under section 103 of this Act that the defaulter has been duly served

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with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of rules made under that section), and

- (d) it appears to the judge advocate that there is no just excuse for the defaulter's failure to attend,

the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.

- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
- (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 75M of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
- (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
    - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 83ZB of this Act, and
    - (ii) thereafter, the summary appeal court;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 83ZJ of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”

- (3) After section 65 of the 1957 Act there is inserted—

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### **“65A Powers to compel attendance of witnesses**

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
- (a) that a person not subject to this Act who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,
- the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the court-martial is convened, a judicial officer and, thereafter, the judge advocate.
- (3) Where—
- (a) a person not subject to this Act (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
  - (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
  - (c) it is proved on oath or in such manner as may be prescribed by rules under section 58 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of section 65(3) of this Act), and
  - (d) it appears to the judge advocate that there is no just excuse for the defaulter’s failure to attend,
- the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.
- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
- (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;



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- (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
  - (d) for paragraph (c) of subsection (3) above there is substituted—
    - “(c) it is proved on oath or in such manner as may be prescribed by rules under section 47N of this Act that he has been duly served with the summons and that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and”;
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
- (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
    - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 52FG of this Act, and
    - (ii) thereafter, the summary appeal court;
  - (d) for paragraph (c) of subsection (3) above there is substituted—
    - “(c) it is proved on oath or in such manner as may be prescribed by rules under section 52FP of this Act that he has been duly served with the summons and that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and”;
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”

## **26 Provision for orders as to costs**

- (1) The Secretary of State may by regulations make provision empowering courts-martial, the summary appeal courts, the Courts-Martial Appeal Court and Standing Civilian Courts, in any case where the court is satisfied that one party to proceedings for an offence under any of the services Acts has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
- (2) Regulations under this section may, in particular—
- (a) allow the making of such an order as is mentioned in subsection (1) at any time during the proceedings,
  - (b) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or

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any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 (c. 34) or under any legal aid scheme operated by any of Her Majesty's forces,

- (c) make provision as to the account to be taken of such an order as is mentioned in subsection (1) in the making of any other order as to costs in respect of the proceedings,
  - (d) contain provision in relation to a Standing Civilian Court equivalent to that made by section 18(5) of the Prosecution of Offences Act 1985 (c. 23) in relation to a magistrates' court, subject to such modifications as the Secretary of State thinks fit, and
  - (e) make provision as to appeals against orders made by virtue of the regulations.
- (3) Regulations under this section shall provide—
- (a) that a person against whom an order is made by a court-martial under the regulations may appeal to the Courts-Martial Appeal Court, and
  - (b) that a person against whom an order is made by a summary appeal court or a Standing Civilian Court under the regulations may appeal to the High Court in England and Wales.

- (4) In this section and sections 27 and 28—

“the services Acts” means the 1955 Acts and the 1957 Act;

“summary appeal court” means the court established by section 83ZA of either of the 1955 Acts or the court established by section 52FF of the 1957 Act.

## **27 Costs against legal representatives etc**

- (1) In any proceedings for an offence under any of the services Acts—

- (a) a court-martial,
- (b) a summary appeal court,
- (c) the Courts-Martial Appeal Court, or
- (d) a Standing Civilian Court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

- (2) Regulations shall provide—

- (a) that a legal or other representative against whom action is taken by a court-martial under subsection (1) may appeal to the Courts-Martial Appeal Court, and
- (b) that a legal or other representative against whom action is taken by a summary appeal court or a Standing Civilian Court under subsection (1) may appeal to the High Court in England and Wales.

- (3) In this section—

“legal or other representative”, in relation to any proceedings, means—

- (a) a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or
- (b) a prosecuting officer appointed under section 83C of either of the 1955 Acts or under section 52J of the 1957 Act;

“regulations” means regulations made by the Secretary of State;

- “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

## **28 Provisions supplementary to ss. 26 and 27**

- (1) Where any of Her Majesty’s forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the services Acts, those costs shall, subject to any provision made by virtue of subsection (2), be taken for the purposes of sections 26 and 27 to have been incurred by the prosecuting authority.
- (2) Regulations under section 26 or 27 may make provision—
  - (a) as to the costs incurred by any of Her Majesty’s forces which are or are not to be taken for the purposes of that section to have been incurred by the prosecuting authority, and
  - (b) as to the person to whom, or account into which, any payment in respect of costs incurred by the prosecuting authority is to be made.
- (3) In this section “the prosecuting authority” means the prosecuting authority appointed under section 83A of either of the 1955 Acts or section 52H of the 1957 Act, as the case requires.
- (4) In section 103 of each of the 1955 Acts (court-martial rules), in subsection (2) after paragraph (m) there is inserted—
  - “(mm) enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;”.
- (5) In section 58 of the 1957 Act (court-martial rules), in subsection (2) after paragraph (n) there is inserted—
  - “(nn) enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;”.

## **29 Custody**

Schedule 4 (which contains amendments of the 1955 Acts and the 1957 Act relating to custody) shall have effect.

## **30 Conditional release from custody**

- (1) The Secretary of State may by order make provision enabling a person who has been sentenced by a court-martial, a summary appeal court or a Standing Civilian Court (in this section referred to as “the convicted person”) to be released from custody subject to conditions pending a relevant determination.
- (2) In subsection (1), “relevant determination” means—
  - (a) in the case of a person sentenced by a court-martial—
    - (i) the determination of an appeal to the Courts-Martial Appeal Court, or

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- (ii) the completion of a review under section 113 of either of the 1955 Acts or section 70 of the 1957 Act of any finding of guilt or any sentence,
  - (b) in the case of a person sentenced by a summary appeal court, the determination of an appeal to the High Court under section 83ZH(2) of either of the 1955 Acts or section 52FN(2) of the 1957 Act or of any appeal from the High Court to the House of Lords under section 1 of the Administration of Justice Act 1960 (c. 65), and
  - (c) in the case of a person sentenced by a Standing Civilian Court—
    - (i) the determination of an appeal to a court-martial or of an appeal from a court-martial to the Courts-Martial Appeal Court, or
    - (ii) the completion of a review under paragraph 20 of Schedule 3 to the Armed Forces Act 1976 (c. 52) of any finding or sentence.
- (3) An order under this section may, in particular, make provision—
- (a) as to the court to which or person to whom any application for release from custody is to be made,
  - (b) as to the manner in which any such application is to be made,
  - (c) as to the criteria to be applied when making a decision under the order,
  - (d) as to the conditions that may be imposed,
  - (e) as to the enforcement of the attendance or return to custody of the convicted person,
  - (f) as to appeals against decisions taken under the order, and
  - (g) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject.
- (4) An order under this section may—
- (a) make provision equivalent to that made by any provision of the Bail Act 1976 (c. 63), the Magistrates' Courts Act 1980 (c. 43) or the Supreme Court Act 1981 (c. 54) relating to bail in criminal proceedings, subject to such modifications as may be specified in the order,
  - (b) make different provision in relation to different courts,
  - (c) confer powers of arrest,
  - (d) subject to subsection (6), create offences punishable with imprisonment for such term not exceeding two years as may be prescribed or by any less punishment provided by the 1955 Acts or the 1957 Act, and
  - (e) make such amendments of the 1955 Acts, the 1957 Act, the Courts-Martial (Appeals) Act 1968 (c. 20) or the Armed Forces Act 1976 (c. 52) as appear to the Secretary of State to be necessary or appropriate in consequence of the order.
- (5) Subsection (4)(d) is to be construed in accordance with section 71(1) of the 1955 Acts and section 43 of the 1957 Act.
- (6) An order under this section may not make provision enabling a Standing Civilian Court to award by sentence—
- (a) imprisonment for a term exceeding six months, or
  - (b) a fine exceeding £5,000.
- (7) In section 42 of the Courts-Martial (Appeals) Act 1968 (bail) there are omitted—

- (a) in subsection (1), the words “to whom this section applies”, and
- (b) subsection (2).

## PART 4

### MISCELLANEOUS AND GENERAL

#### *Provision equivalent to criminal justice enactments*

### **31 Power to make provision in consequence of enactments relating to criminal justice**

- (1) In this section a “criminal justice enactment” means any enactment which—
  - (a) is contained in an Act passed after or in the same Session as this Act, and
  - (b) amends the law of England and Wales relating to any of the matters specified in subsection (2).
- (2) Those matters are—
  - (a) the powers of the police in connection with the investigation of offences or the detection of offenders,
  - (b) powers of arrest and detention in connection with crime or criminal proceedings,
  - (c) the functions of any authority in relation to criminal prosecutions,
  - (d) remand in custody or on bail,
  - (e) the rights and duties of an accused person in relation to proceedings in criminal courts,
  - (f) evidence or procedure in criminal courts,
  - (g) the powers of criminal courts, including powers in relation to sentence, and
  - (h) such other matters relating to criminal justice as the Secretary of State may by order prescribe for the purposes of this paragraph.
- (3) The Secretary of State may, if he thinks fit to do so in consequence of a criminal justice enactment, by order make provision, in relation to service policemen, service courts, persons subject to service law or proceedings for offences under the services Acts, which is equivalent to that made by—
  - (a) the criminal justice enactment,
  - (b) any enactment relating to any of the matters mentioned in subsection (2) which is amended by the criminal justice enactment, or
  - (c) any subordinate legislation made under the criminal justice enactment or under any Act which is amended by the criminal justice enactment,subject to such modifications as he thinks fit.
- (4) In the following provisions of this section “the relevant provision” means the criminal justice enactment, the enactment falling within subsection (3)(b) or the subordinate legislation falling within subsection (3)(c).
- (5) An order under subsection (3) may make provision in such way as the Secretary of State thinks fit and may, in particular, apply the relevant provision subject to such modifications as he thinks fit and specifies in the order.

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- (6) An order under subsection (3) may—
- (a) in relation to any relevant provision, be made in relation to all cases to which the order-making power extends or only in relation to specified cases,
  - (b) make different provision for different cases, including different provision in relation to different service courts, and
  - (c) amend, repeal or revoke any enactment (including the relevant provision and any enactment contained in this Act).
- (7) For the purposes of this section, Chapter 2 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and custody of young offenders) is to be taken to be contained in an Act falling within subsection (1)(a).
- (8) In this section any reference to a person subject to service law is a reference to—
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) any other person to whom provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply (whether with or without any modifications).
- (9) In this section—
- “criminal court” means any court of criminal jurisdiction other than a service court;
  - “the services Acts” means the 1955 Acts and the 1957 Act;
  - “service court” means a court-martial, a summary appeal court, a Standing Civilian Court or the Courts-Martial Appeal Court;
  - “service policeman” has the same meaning as in Part 2;
  - “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30);
  - “summary appeal court” means either of the courts established by section 83ZA of the 1955 Acts or the court established by section 52FF of the 1957 Act.

### *Testing for alcohol or drugs*

## **32 Powers to test for alcohol or drugs after serious incident**

- (1) This section applies where—
- (a) an incident has occurred which, in the opinion of an officer designated for the purposes of this subsection in accordance with regulations made by the Defence Council (in this section referred to as “the designated officer”)—
    - (i) resulted in, or
    - (ii) created a risk of,
 death or serious injury to any person or serious damage to any property; and
  - (b) in the opinion of the designated officer, it is possible that one or more persons subject to service law may have caused, or in any way contributed—
    - (i) to the occurrence of the incident, or
    - (ii) to any death or serious injury to any person or serious damage to any property resulting from it, or to the risk of any such death, injury or damage occurring.

- (2) Any designation made for the purposes of subsection (1) may be expressed to have effect only in relation to a particular incident or description of incident.
- (3) Where the designated officer is the commanding officer of any person in relation to whom he is of the opinion referred to in subsection (1)(b), the designated officer may request that person to provide a sample for the purpose of ascertaining whether, or to what extent, that person has, or has had, alcohol or drugs in his body.
- (4) Where the designated officer is of the opinion referred to in subsection (1)(b) in relation to one or more persons as respects whom he is not the commanding officer, the designated officer may direct the commanding officer of any person specified in the direction, or of persons falling within a class so specified—
  - (a) to request that person, or (as the case may be) every person appearing to the commanding officer to fall within the specified class, to provide a sample for the purpose referred to in subsection (3); or
  - (b) to consider whether the commanding officer is of the opinion referred to in subsection (1)(b) in respect of that person or (as the case may be) of any persons falling within the specified class and, if so, to request that person or (as the case may be) every person who appears to him to fall within that class and as to whom he is of that opinion, to provide a sample for the purpose referred to in subsection (3).
- (5) The Defence Council may by regulations make provision about the obtaining of samples under subsection (3) or (4) and the testing of such samples; and any such regulations may in particular make provision—
  - (a) as to the number of samples which a commanding officer may request a person to provide;
  - (b) as to the circumstances in which a commanding officer may request a person to provide more than one type of sample;
  - (c) enabling the commanding officer making the request to specify the manner in which the sample is to be provided;
  - (d) as to the circumstances in which a person who would (apart from regulations made under this paragraph) be liable to be requested to provide a sample under subsection (3) or (4) is not to be so requested;
  - (e) as to the equipment to be used, and the procedures to be followed, in obtaining samples and conducting tests;
  - (f) as to the qualifications and training of any persons engaged in obtaining samples and conducting tests.
- (6) The results of tests performed on samples provided by a person pursuant to a request made under subsection (3) or (4) shall not be admissible in evidence against—
  - (a) that person, or
  - (b) any other person,in proceedings before a court-martial, commanding officer or appropriate superior authority.
- (7) The Defence Council may by regulations provide for the delegation—
  - (a) by a designated officer of his functions under subsections (1), (3) and (4); and
  - (b) by a commanding officer of his functions under subsection (4).
- (8) Nothing in this section—
  - (a) limits the powers conferred by—

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- (i) sections 6 and 7 of the Road Traffic Act 1988 (c. 52) (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
  - (ii) any provision of Part 5 of the Police and Criminal Evidence Act 1984 (c. 60) as applied by order under section 113(1) of that Act; or
  - (b) affects the admissibility in any proceedings of evidence obtained under those powers.
- (9) Schedule 5 (which contains amendments of the 1955 Acts and the 1957 Act relating to testing for alcohol and drugs) shall have effect.

### 33 Interpretation of s. 32

- (1) The provisions of this section have effect for the interpretation of section 32.
- (2) “Drug” means—
  - (a) a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38), or
  - (b) any other drug, or description of drug, specified in an order made by the Secretary of State for the purposes of this paragraph.
- (3) “Sample” means—
  - (a) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, alcohol in his body, a sample of urine or breath,
  - (b) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, drugs in his body, a sample of urine, and
  - (c) in either case, any other sample specified by the Secretary of State in an order made for the purposes of this paragraph.
- (4) The power conferred by subsection (2)(b) includes power to specify a description of drug by reference to the effects or likely effects of taking drugs within that description.
- (5) The power conferred by subsection (3)(c) does not include power to specify a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person’s body orifice (other than the mouth).
- (6) In the case of a sample falling within subsection (3)(c), any reference to a person being requested to provide a sample includes a reference to a person being requested to consent to the taking from him of a sample.
- (7) In section 32, any reference to a person subject to service law is a reference to—
  - (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) subject to subsection (8), a person to whom any provisions of Part 2 of the Army Act 1955 (c. 18) , Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply by virtue of—
    - (i) section 209(1) or (2) of either of the 1955 Acts (application of Act to civilians), or
    - (ii) section 118(1) or (2) of the 1957 Act (application of Act to civilians).
- (8) A person is not to be regarded for the purposes of section 32 as a person subject to service law if provisions of either of the 1955 Acts or the 1957 Act apply to him only by virtue of his falling within any description specified in paragraphs 5 to 9 of



Schedule 5 to the 1955 Acts or (as the case may be) paragraphs 5 to 9 of Schedule 3 to the 1957 Act.

- (9) For the purposes of section 32, the commanding officer of a person subject to service law is—
- (a) in relation to a person subject to military law, the officer who would be that person's commanding officer for the purposes of section 82 of the Army Act 1955 if he were charged with an offence;
  - (b) in relation to a person subject to air-force law, the officer who would be that person's commanding officer for the purposes of section 82 of the Air Force Act 1955 if he were charged with an offence;
  - (c) in relation to a person subject to the 1957 Act or a person to whom provisions of that Act apply by virtue of section 118(1) or (2) of that Act, the officer in command of the ship or naval establishment to which he belongs or any other person who, by virtue of regulations made under section 52E of that Act, would be able to exercise the powers conferred by that Act in relation to that person if he were charged with an offence;
  - (d) in relation to a person to whom provisions of Part 2 of either of the 1955 Acts apply by virtue of subsection (1) or (2) of section 209 of the Act in question, the person who is by virtue of regulations of the Defence Council made for the purposes of section 209(3)(f) of that Act the commanding officer for the purposes of Part 2 of that Act in relation to him.

#### *Miscellaneous amendments*

### **34 Miscellaneous amendments**

Schedule 6 (which contains miscellaneous amendments relating to the armed forces) shall have effect.

#### *General*

### **35 Orders and regulations**

- (1) Any power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing (whether alone or with other provisions)—
- (a) an order under section 8(2),
  - (b) an order under section 31(2)(h), or
  - (c) an order under section 30 or 31(3) which by virtue of section 30(4)(e) or 31(6) makes any provision adding to, replacing or omitting any part of the text of an Act,
- shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument which contains—
- (a) an order made by the Secretary of State under—
    - (i) any provision of Part 2,
    - (ii) section 20,

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- (iii) section 30,
- (iv) section 31(3), or
- (v) section 33(2)(b) or (3)(c), or
- (b) regulations made by the Secretary of State under—
  - (i) any provision of Part 2,
  - (ii) section 26, or
  - (iii) section 27,

and which is not subject to the requirement in subsection (2) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) Any power of the Secretary of State to make an order or regulations under this Act includes power to make such incidental, consequential or transitional provision as the Secretary of State thinks fit.

### **36 Application to Channel Islands and Isle of Man**

- (1) Section 216 of the Army Act 1955 (c. 18), section 214 of the Air Force Act 1955 (c. 19) 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 section 20 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.
- (2) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in subsection (3) shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Channel Islands and the Isle of Man.
- (3) The provisions referred to in subsection (2) are—
  - (a) Part 2,
  - (b) sections 26 to 28,
  - (c) section 30,
  - (d) section 31, and
  - (e) sections 32 and 33.

### **37 Interpretation**

In this Act—

“the 1955 Acts” means the Army Act 1955 (c. 18) and the Air Force Act 1955 (c. 19);

“the 1957 Act” means the Naval Discipline Act 1957 (c. 53).

### **38 Repeals**

The enactments specified in Schedule 7 (which includes enactments that are spent in consequence of section 21(5) of the Human Rights Act 1998 (c. 42) or section 60 of the Youth Justice and Criminal Evidence Act 1999 (c. 23)) are repealed to the extent specified in that Schedule.

### **39 Short title and commencement**

- (1) This Act may be cited as the Armed Forces Act 2001.
- (2) Subject to subsections (3) and (4), this Act shall come into force on such day as the Secretary of State may by order appoint.
- (3) The following provisions shall come into force on the day on which this Act is passed—
  - (a) section 1,
  - (b) section 35,
  - (c) section 36,
  - (d) section 37,
  - (e) this section,
  - (f) Parts 4 and 5 of Schedule 6, and section 34 so far as relating to those Parts, and
  - (g) Parts 4 to 6 of Schedule 7, and section 38 so far as relating to those Parts.
- (4) The repeal by this Act of section 1 of the Armed Forces Act 1996 (c. 46) shall come into force on 1st September 2001.
- (5) An order under subsection (2) may appoint different days for different purposes.
- (6) An order under subsection (2) 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.