



Armed Forces Act 2001

2001 CHAPTER 19

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.

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- (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,

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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—
 - (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—

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“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
 - (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—
 - (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.

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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—

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