

## SCHEDULES

### SCHEDULE 1

Section 17

#### SUMMARY DEALING OR TRIAL AND FUNCTIONS OF PROSECUTING AUTHORITY

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

- 1 In section 76A(4) of the Army Act 1955 (which provides that a charge against an officer may be dealt with summarily if the officer is below the rank of lieutenant-colonel), for “lieutenant-colonel” there is substituted “colonel”.
- 2 In section 82(2) of that Act (officers who may act as appropriate superior authorities) in paragraph (a) for “or brigadier” there is substituted “, brigadier or commodore”.
- 3 (1) Section 83BB of that Act (cases where charge may be referred back to commanding officer) is amended as follows.  
(2) After subsection (2) there is inserted—  
    “(2A) Where—  
    (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,  
    (b) the prosecuting authority—  
        (i) in respect of the case or part of the case, does not determine any charge to be preferred, or  
        (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and  
    (c) the accused is below the rank of colonel,  
    the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”
- 4 (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.  
After that section there is inserted—

##### **“83B CPower of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following—
  - (a) the Royal Military Police;
  - (b) the Royal Navy Regulating Branch;
  - (c) the Royal Air Force Police;
  - (d) the Ministry of Defence Police;

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- (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (f) the metropolitan police force;
- (g) the City of London police force;
- (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (i) the Police Service of Northern Ireland;
- (j) the British Transport Police;
- (k) the National Crime Squad.”

*Air Force Act 1955 (c. 19)*

5 In section 76A(4) of the Air Force Act 1955 (which provides that a charge against an officer may be dealt with summarily if the officer is below the rank of wing commander), for “wing commander” there is substituted “group captain”.

6 In section 82(2) of that Act (officers who may act as appropriate superior authorities), after “general officer” there is inserted “, commodore”.

7 (1) Section 83BB of that Act (cases where charge may be referred back to commanding officer) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) Where—

- (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,
- (b) the prosecuting authority—
  - (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
  - (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and
- (c) the accused is below the rank of group captain,

the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”

(3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.

8 After that section there is inserted—

**“83BC Power of prosecuting authority to advise police forces**

(1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).

(2) In this section “police force” means any of the following—

- (a) the Royal Air Force Police;
- (b) the Royal Military Police;
- (c) the Royal Navy Regulating Branch;
- (d) the Ministry of Defence Police;

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- (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (f) the metropolitan police force;
- (g) the City of London police force;
- (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (i) the Police Service of Northern Ireland;
- (j) the British Transport Police;
- (k) the National Crime Squad.”

*Naval Discipline Act 1957 (c. 53)*

9 (1) Section 52B of the 1957 Act (investigation of charges by commanding officer) is amended as follows.

(2) In subsection (5), for “subsection (6)” there is substituted “subsections (6) and (6A)”.

(3) For subsection (6) there is substituted—

“(6) The commanding officer may not try summarily any charge which is not capable of being tried summarily.

(6A) The commanding officer may not try summarily any charge against an officer unless—

- (a) the commanding officer is of or above the rank of commander,
- (b) the rank of the commanding officer is at least two ranks higher than that of the accused, and
- (c) the accused is below the rank of captain.

(6B) For the purposes of subsection (6A) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.”

10 In section 52C of that Act (powers of higher authority) after subsection (3) there is inserted—

“(3A) If the charge is against an officer below the rank of captain and is capable of being tried summarily, the higher authority may, subject to subsection (4) below—

- (a) in a case where the commanding officer satisfies the conditions in section 52B(6A)(a) and (b) of this Act, refer the charge back to the commanding officer to be so tried, and
- (b) in any other case, refer the charge to the appropriate superior authority to be so tried.”

11 (1) Section 52D of that Act (summary trial) is amended as follows.

(2) In subsection (2), after “If”, where first occurring, there is inserted “the charge is against a rating and”.

(3) After that subsection there is inserted—

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“(2ZA) If the charge is against an officer, the appropriate superior authority shall afford the accused the opportunity of electing court-martial trial.”

(4) In subsection (3), after “commanding officer” there is inserted “or appropriate superior authority”.

(5) For subsection (4) there is substituted—

“(4) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—

- (a) if the accused is a rating, refer the charge back to the commanding officer of the accused;
- (b) if the accused is an officer, refer the charge back to the appropriate superior authority;

for the commanding officer or appropriate superior authority to try the charge summarily.”

(6) After subsection (4) there is inserted—

“(4A) Subsections (2) and (2ZA) above do not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the commanding officer or appropriate superior authority under subsection (4) above.

(4B) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.

(4C) Where under subsection (4B) above a charge is amended or one charge is substituted for another, subsection (2) or (2ZA) above applies in relation to the amended or substituted charge.”

(7) In subsections (5), (6), (7) and (8), after “commanding officer” there is inserted “or appropriate superior authority”.

(8) After subsection (8) there is inserted—

“(9) Nothing in this section or section 52C of this Act shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.”

12 After section 52E of that Act there is inserted—

**“52EE Officers who may act as appropriate superior authorities**

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

- (a) he is of or above the rank of commander, and
- (b) his rank is at least two ranks higher than that of the accused.

(2) The appropriate superior authority in relation to a person charged with an offence shall be appointed by the higher authority.

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- (3) For the purposes of subsection (1) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.”
- 13 In section 52F of that Act (regulations as to summary trial etc) in subsection (2)—
- (a) in paragraph (e), for “a specified description of commanding officer” there is substituted “a commanding officer or appropriate superior authority of a specified description;”, and
  - (b) for paragraph (k) there is substituted—
    - “(k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
    - (l) who is to act as the higher authority and the appropriate superior authority in any particular case.”
- 14 (1) Section 52II of that Act (cases where charge may be referred back to commanding officer) is amended as follows.
- (2) After subsection (2) there is inserted—
- “(2A) Where—
- (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,
  - (b) the prosecuting authority—
    - (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
    - (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and
  - (c) the accused is below the rank of captain,
- the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”
- (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.
- 15 After that section there is inserted—

**“52IJ Power of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following—
- (a) the Royal Navy Regulating Branch;
  - (b) the Royal Air Force Police;
  - (c) the Royal Military Police;
  - (d) the Ministry of Defence Police;
  - (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);

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- (f) the metropolitan police force;
  - (g) the City of London police force;
  - (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
  - (i) the Police Service of Northern Ireland;
  - (j) the British Transport Police;
  - (k) the National Crime Squad.”
- 16 In section 122 of that Act (powers of command of members of co-operating military or air forces) in subsection (2), for “section eleven, and section forty-five” there is substituted “sections 11, 45 and 52EE”.
- 17 In section 135(1) of that Act (general interpretation), after the definition of “air signal” there is inserted—
- ““appropriate superior authority” means a person who may act as an appropriate superior authority by virtue of section 52EE of this Act;”.