

SCHEDULES

SCHEDULE 3

Section 22

REQUIRED CUSTODIAL SENTENCES

Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)

- 1 (1) Section 70 of the Army Act 1955 (civil offences) is amended as follows.
- (2) In subsection (3) before paragraph (b) there is inserted—
 - “(ac) if he is a person to whom subsection (3B), (3E) or (3G) below applies, be sentenced in accordance with the subsection in question;”.
- (3) For subsection (3A) there is substituted—
 - “(3A) Subsection (3B) below applies to a person convicted of an offence against this section if—
 - (a) the corresponding civil offence is a serious offence, and
 - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted—
 - (i) of a serious offence, or
 - (ii) of an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a serious offence.
 - (3B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
 - (3C) An offence the sentence for which is imposed under subsection (3B) above shall not be regarded as an offence the sentence for which is fixed by law.
 - (3D) Subsection (3E) below applies to a person convicted of an offence against this section if—
 - (a) the corresponding civil offence is a class A drug trafficking offence,
 - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a class A drug trafficking offence, or
 - (ii) an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a class A drug trafficking offence, and
 - (c) one of those other offences was committed after he had been convicted of the other.

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- (3E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3F) Subsection (3G) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a domestic burglary,
 - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a domestic burglary in respect of which he was convicted in England and Wales, or
 - (ii) an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a domestic burglary, and
 - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.
- (3G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsections (3A), (3D) and (3F) above to have been committed on the last of those days.”

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

“(7) In this section—

“class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;

“domestic burglary” has the same meaning as in section 111 of that Act;

“serious offence” has the same meaning as in section 109 of that Act.”

- 2 (1) Section 70 of the Air Force Act 1955 (c. 19) is amended as follows.
- (2) In subsection (3) before paragraph (b) there is inserted—
- “(ac) if he is a person to whom subsection (3B), (3E) or (3G) below applies, be sentenced in accordance with the subsection in question;”.
- (3) For subsection (3A) there is substituted—
- “(3A) Subsection (3B) below applies to a person convicted of an offence against this section if—

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- (a) the corresponding civil offence is a serious offence, and
 - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of—
 - (i) a serious offence, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a serious offence.
- (3B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
- (3C) An offence the sentence for which is imposed under subsection (3B) above shall not be regarded as an offence the sentence for which is fixed by law.
- (3D) Subsection (3E) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a class A drug trafficking offence,
 - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a class A drug trafficking offence, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a class A drug trafficking offence, and
 - (c) one of those other offences was committed after he had been convicted of the other.
- (3E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3F) Subsection (3G) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a domestic burglary,
 - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a domestic burglary in respect of which he was convicted in England and Wales, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a domestic burglary, and
 - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.

Status: This is the original version (as it was originally enacted).

(3G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which—

- (a) relate to any of the offences or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

(3H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsections (3A), (3D) and (3F) above to have been committed on the last of those days.”

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

“(7) In this section—

“class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;

“domestic burglary” has the same meaning as in section 111 of that Act;

“serious offence” has the same meaning as in section 109 of that Act.”

3 After section 70 of each of the 1955 Acts there is inserted—

“70A Reduction in minimum sentences for guilty pleas

(1) Where sentence falls to be imposed under subsection (3E) or (3G) of section 70 of this Act in respect of an offence to which the offender has pleaded guilty, nothing in that subsection shall prevent a court-martial, after taking into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which the indication was given,

from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

(2) Where, by virtue of subsection (1) above, a court-martial imposes a sentence which is less severe than that which it would otherwise have imposed, the court-martial shall state in open court that it has done so.

(3) For the purposes of subsection (1) above, a sentence falls to be imposed under subsection (3E) or (3G) of section 70 of this Act if it is required by that subsection and the court-martial is not of the opinion referred to in that subsection.

70B Reasons to be given for not passing life or minimum sentence

(1) If—

- (a) subsection (3B) of section 70 of this Act applies to a person, but
- (b) the court-martial is of the opinion that there are exceptional circumstances as mentioned in that subsection which justify its not imposing a sentence of imprisonment for life,

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the court shall state in open court that it is of that opinion and what the exceptional circumstances are.

(2) If—

- (a) subsection (3E) or (3G) of section 70 of this Act applies to a person, but
- (b) the court-martial is of the opinion that there are particular circumstances as mentioned in that subsection which, in all the circumstances, would make a sentence of imprisonment for the minimum term mentioned in that subsection unjust,

the court shall state in open court that it is of that opinion and what the particular circumstances are.”

4 In paragraph 3 of Schedule 5A to each of the 1955 Acts (powers of court on trial of civilian)—

- (a) in sub-paragraph (1) (absolute and conditional discharge of civilians) for the words “(not being an offence the sentence for which is fixed by law or falls to be imposed under section 70(3A) above) may” there is substituted “may (subject to sub-paragraph (1A) below)”, and
- (b) after that sub-paragraph there is inserted—

“(1A) No order may be made under this paragraph if—

- (a) the offence of which the civilian is found guilty is an offence against section 70 of this Act where the corresponding civil offence is one for which the sentence is fixed by law, or
- (b) the civilian is a person to whom subsection (3B), (3E) or (3G) of that section applies and the court-martial is not of the opinion mentioned in that subsection.”

Naval Discipline Act 1957 (c. 53)

5 (1) Section 42 of the 1957 Act (civil offences) is amended as follows.

(2) In subsection (1), after paragraph (b) there is inserted—

“(ba) if he is a person to whom subsection (1B), (1E) or (1G) below applies, be sentenced in accordance with the subsection in question;”.

(3) For subsection (1A) there is substituted—

“(1A) Subsection (1B) below applies to a person convicted of an offence against this section if—

- (a) the civil offence is a serious offence, and
- (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of—
 - (i) a serious offence, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a serious offence.

Status: This is the original version (as it was originally enacted).

- (1B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
- (1C) An offence the sentence for which is imposed under subsection (1B) above shall not be regarded as an offence the sentence for which is fixed by law.
- (1D) Subsection (1E) below applies to a person convicted of an offence against this section if—
- (a) the civil offence is a class A drug trafficking offence,
 - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a class A drug trafficking offence, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a class A drug trafficking offence, and
 - (c) one of those other offences was committed after he had been convicted of the other.
- (1E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (1F) Subsection (1G) below applies to a person convicted of an offence against this section if—
- (a) the civil offence is a domestic burglary,
 - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either—
 - (i) a domestic burglary in respect of which he was convicted in England and Wales, or
 - (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a domestic burglary, and
 - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.
- (1G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (1H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsections (1A), (1D) and (1F) above to have been committed on the last of those days.”

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

“(3) In this section—

“class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;

“domestic burglary” has the same meaning as in section 111 of that Act;

“serious offence” has the same meaning as in section 109 of that Act.”

6 After section 42 there is inserted—

“42A Reduction in minimum sentences for guilty pleas

(1) Where sentence falls to be imposed under subsection (1E) or (1G) of section 42 of this Act in respect of an offence to which the offender has pleaded guilty, nothing in that subsection shall prevent a court-martial, after taking into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which the indication was given,

from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

(2) Where, by virtue of subsection (1) above, a court-martial imposes a sentence which is less severe than that which it would otherwise have imposed, the court-martial shall state in open court that it has done so.

(3) For the purposes of subsection (1) above, a sentence falls to be imposed under subsection (1E) or (1G) of section 42 of this Act if it is required by that subsection and the court-martial is not of the opinion referred to in that subsection.

42B Reasons to be given for not passing life or minimum sentence

(1) If—

(a) subsection (1B) of section 42 of this Act applies to a person, but

(b) the court-martial is of the opinion that there are exceptional circumstances as mentioned in that subsection which justify its not imposing a sentence of imprisonment for life,

the court shall state in open court that it is of that opinion and what the exceptional circumstances are.

(2) If—

(a) subsection (1E) or (1G) of section 42 of this Act applies to a person, but

(b) the court-martial is of the opinion that there are particular circumstances as mentioned in that subsection which, in all the circumstances, would make a sentence of imprisonment for the minimum term mentioned in that subsection unjust,

the court shall state in open court that it is of that opinion and what the particular circumstances are.”

Status: This is the original version (as it was originally enacted).

- 7 In paragraph 3 of Schedule 4A to the 1957 Act (powers of court on trial of civilian)—
- (a) in sub-paragraph (1) (absolute and conditional discharge of civilians) for the words “(not being an offence the sentence for which is fixed by law or falls to be imposed under section 42(1A) above) may” there is substituted “may (subject to sub-paragraph (1A) below)”, and
 - (b) after that sub-paragraph there is inserted—
 - “(1A) No order may be made under this paragraph if—
 - (a) the offence of which the civilian is found guilty is an offence against section 42 of this Act constituted by a civil offence for which the sentence is fixed by law, or
 - (b) the civilian is a person to whom subsection (1B), (1E) or (1G) of that section applies and the court-martial is not of the opinion mentioned in that subsection.”