

SCHEDULES

SCHEDULE 6

Section 34

MISCELLANEOUS AMENDMENTS

PART 1

AMENDMENTS OF SEXUAL OFFENCES (AMENDMENT) ACT 1992

- 1 At the end of section 2 of the Sexual Offences (Amendment) Act 1992 (c. 34) (offences to which that Act applies) there is inserted—

“(4) This Act applies to a service offence (wherever committed) if the corresponding civil offence is mentioned in subsection (1).”

- 2 At the end of section 4 of that Act (special rules for cases of incest or buggery) there is inserted—

“(9) For the purposes of this section, a service offence is a section 10 offence, a section 11 offence or a section 12 offence if the corresponding civil offence is a section 10 offence, a section 11 offence or a section 12 offence, as the case may be.”

- 3 (1) Section 6 of that Act (interpretation etc.) is amended as follows.

- (2) In subsection (1)—

- (a) after the definition of “complainant” there is inserted—

““corresponding civil offence”, in relation to a service offence, means the civil offence (within the meaning of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957) the commission of which constitutes the service offence;” and

- (b) after the definition of “relevant programme” there is inserted—

““service offence” means an offence against section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957;”.

- (3) In subsection (3) after “accused of an offence” there is inserted “, other than a service offence,”.

- (4) After subsection (3) there is inserted—

“(3A) For the purposes of this Act, a person is accused of a service offence if he is treated by section 75(4) of the Army Act 1955, section 75(4) of the Air Force Act 1955 or section 47A(4) of the Naval Discipline Act 1957 as charged with the offence, and references in section 3 to an accusation alleging an offence shall be construed accordingly.”

Status: This is the original version (as it was originally enacted).

- 4 (1) Section 7 of that Act (application of Act in relation to courts-martial) is amended as follows.
- (2) In subsection (1), for “section 2(1)” there is substituted “section 2(4)”.
- (3) In subsection (2), paragraph (f) and the word “and” preceding it are omitted.

PART 2

ABOLITION OF OFFICE OF DEPUTY JUDGE ADVOCATE

Courts-Martial (Appeals) Act 1951 (c. 46)

- 5 In section 30(1)(b) of the Courts-Martial (Appeals) Act 1951 (assistants to Judge Advocate General), there are omitted—
- (a) the words “, and such number of officers to be known as Deputy Judge Advocates,” and
 - (b) the words “in each case”.
- 6 In section 31 of that Act (qualifications of Judge Advocate General and assistants)—
- (a) in subsection (2)—
 - (i) at the end of paragraph (b) there is inserted “or”, and
 - (ii) paragraph (d) and the word “or” preceding it are omitted,
 - (b) subsection (3) is omitted, and
 - (c) in subsection (4), for “, an Assistant Judge Advocate General or a Deputy Judge Advocate” there is substituted “or an Assistant Judge Advocate General”.
- 7 In section 32(1) of that Act (tenure of Judge Advocate General and assistants) for “, an Assistant Judge Advocate General or a Deputy Judge Advocate” there is substituted “or an Assistant Judge Advocate General”.

House of Commons Disqualification Act 1975 (c. 24) and Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 8 In Part 3 of Schedule 1 to each of the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), in the entry beginning “Judge Advocate General”, for “, Assistant Judge Advocate General or Deputy Judge Advocate” there is substituted “or Assistant Judge Advocate General”.

Courts and Legal Services Act 1990 (c. 41)

- 9 In Schedule 11 to the Courts and Legal Services Act 1990 (judges etc. barred from legal practice) in the entry relating to an Assistant or Deputy Judge Advocate General, the words “or Deputy” are omitted.

Judicial Pensions and Retirement Act 1993 (c. 8)

- 10 In section 27(3) of the Judicial Pensions and Retirement Act 1993 (completion of proceedings after retirement), paragraph (f) is omitted.

PART 3

AMENDMENTS OF RESERVE FORCES ACT 1996

Delegation by Secretary of State of certain functions

- 11 In section 35(1) of the Reserve Forces Act 1996 (c. 14) (exercise of certain functions under section 32 or 33 of that Act) after “section” there is inserted “31,”.

Notice given by special member

- 12 In section 41 of that Act (cessation of liabilities), in subsection (4) the word “been” is omitted.

Absence for voting

- 13 In section 125 of that Act (absence for voting), in paragraph (a), after “Member of the Scottish Parliament” there is inserted “, a Member of the National Assembly for Wales, a Member of the Northern Ireland Assembly”.

PART 4

AMENDMENTS CONSEQUENTIAL ON SECTION 21(5) OF HUMAN RIGHTS ACT 1998

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

- 14 In section 24(3) of each of the 1955 Acts (penalty for offence of misconduct in action) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.
- 15 In section 25(2) of each of those Acts (penalty for offence of assisting the enemy) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.
- 16 In section 26(3) of each of those Acts (penalty for offence of obstructing operations) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.
- 17 In section 32 of each of those Acts (failure to suppress mutiny) for the words from “court-martial” onwards there is substituted “court-martial be liable to imprisonment or any less punishment provided by this Act”.
- 18 (1) Section 126 of each of those Acts (special provisions as to carrying out of sentences outside the United Kingdom otherwise than in military establishments) is amended as follows.
- (2) In subsection (1)—
- (a) the words from “sentences of death” to “authorities and” are omitted, and
 - (b) for “such establishments” there is substituted “establishments under the control of those authorities”.
- (3) In subsection (2), for “sections one hundred and twenty-one and one hundred and twenty-two of this Act” there is substituted “section one hundred and twenty-two of this Act.”

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

- (4) In subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and” are omitted.

Naval Discipline Act 1957 (c. 53)

- 19 In section 2(3) of the 1957 Act (penalty for misconduct in action) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 20 In section 3(2) of that Act (penalty for assisting the enemy) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 21 In section 4(3) of that Act (penalty for obstructing operations) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 22 For subsection (7) of section 52B of that Act (investigation of charges by commanding officer) there is substituted—
- “(7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than—
- (a) an offence listed in subsection (8) below (offences which, before the passing of the Human Rights Act 1998, were punishable by sentence of death), or
- (b) an offence under section 42 of this Act where the civil offence is one for which the sentence is fixed by law as life imprisonment.
- (8) The offences are—
- (a) an offence under section 2 of this Act, if it consists in an act or omission falling within subsection (1) or (2)(a) of that section and it is charged that it was committed with intent to assist the enemy;
- (b) an offence under section 3 of this Act, if it consists in an act or omission falling within subsection (1)(a), (b), (c), (d) or (f) of that section and it is charged that it was committed with intent to assist the enemy;
- (c) an offence under section 4 of this Act, if it is charged that it was committed with intent to assist the enemy;
- (d) an offence under section 9 of this Act, if it is charged that the mutiny had as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against the enemy, or the impeding of the performance of any such duty or service;
- (e) an offence under section 10 of this Act, if it is charged that it was committed with intent to assist the enemy;
- (f) an offence under section 42 of this Act, where the civil offence is treason.”

PART 5

QUEEN ALEXANDRA’S ROYAL NAVAL NURSING SERVICE AND FORMER WOMEN’S ROYAL NAVAL SERVICE

Naval Discipline Act 1957 (c. 53)

- 23 In section 111 of the 1957 Act there are omitted—
- (a) in subsection (1), the words “and Queen Alexandra’s Royal Naval Nursing Service”, and
 - (b) in subsection (2), the words “or of Queen Alexandra’s Royal Naval Nursing Service”.
- 24 In section 132(5) of that Act, the words “Queen Alexandra’s Royal Naval Nursing Service” are omitted.

Armed Forces Act 1976 (c. 52)

- 25 In section 6(9)(b) of the Armed Forces Act 1976, the words “or Queen Alexandra’s Royal Naval Nursing Service” are omitted.

House of Commons Disqualification Act 1975 (c. 24)

- 26 In section 1(3) of the House of Commons Disqualification Act 1975, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 27 In section 1(2) of the Northern Ireland Assembly Disqualification Act 1975, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

Armed Forces Act 1981 (c. 55)

- 28 Section 20(2) of, and Part 3 of Schedule 3 to, the Armed Forces Act 1981 (which apply to members of Queen Alexandra’s Royal Naval Nursing Service provisions of the Armed Forces Act 1966 relating to discharge etc.) shall cease to have effect.

Housing Act 1985 (c. 68)

- 29 In section 622 of the Housing Act 1985, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

Housing Act 1996 (c. 52)

- 30 In section 199(4) of the Housing Act 1996, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

PART 6

OTHER AMENDMENTS

Marriages in service chapels

- 31 In section 68 of the Marriage Act 1949 (c. 76) (solemnization of marriages in naval, military and air force chapels)—
- (a) in subsection (2)(e), after “daughter” there is inserted “, son, step-daughter or step-son”, and
 - (b) in subsection (3), the words from “and the expression” to the end are omitted.

Retirement age for assistants to Judge Advocate General

- 32 (1) In section 32(2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (tenure of office of Judge Advocate General and assistants), for “sixty-five” there is substituted “seventy”.
- (2) The amendment made by sub-paragraph (1) applies in relation to any such officer as is mentioned in section 30(1) of that Act (assistants to Judge Advocate General) whether appointed before or after the commencement of sub-paragraph (1).

Sentence where penalty for civil offence fixed by law as life imprisonment

- 33 (1) Section 70(3) of each of the 1955 Acts (punishment of civil offences) is amended as follows.
- (2) For paragraphs (aa) and (ab) there is substituted—
- “(aa) if the corresponding civil offence is one for which the sentence is fixed by law as life imprisonment, be sentenced to imprisonment for life;”.
- 34 (1) Section 42(1) of the 1957 Act (punishment of civil offences) is amended as follows.
- (2) The words “Subject to section 43A below” are inserted at the beginning and the words “subject to section 43A below be liable” are omitted.
- (3) For paragraph (b) there is substituted—
- “(b) in the case of an offence constituted by a civil offence the sentence for which is fixed by law as life imprisonment, be sentenced to imprisonment for life;”.
- (4) In paragraph (c), after “any other offence,” there is inserted “be liable”.

Qualification for appointment as judicial officer

- 35 (1) Section 75L of each of the 1955 Acts (judicial officers) is amended as follows.
- (2) In subsection (2) the word “or” at the end of paragraph (a) is omitted and at the end of paragraph (b) there is inserted—
- “or

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- (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Judge Advocate General to be appropriate.”

(3) After that subsection there is inserted—

“(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates' Courts).”

36 (1) Section 47M of the 1957 Act (judicial officers) is amended as follows.

(2) In subsection (2) the word “or” at the end of paragraph (a) is omitted and at the end of paragraph (b) there is inserted—

“or

- (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Chief Naval Judge Advocate to be appropriate.”

(3) After that subsection there is inserted—

“(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates' Courts).”

Evidence given before boards of inquiry

37 In section 135 of the Army Act 1955 (c. 18) (boards of inquiry), for subsection (5) there is substituted—

“(5) Evidence given before a board of inquiry convened—

- (a) under this section,
- (b) under section 135 of the Air Force Act 1955, or
- (c) under the Queen’s Regulations for the Royal Navy,

shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 70 of this Act where the corresponding civil offence is perjury.”

38 In section 135 of the Air Force Act 1955 (c. 19) (boards of inquiry), for subsection (5) there is substituted—

“(5) Evidence given before a board of inquiry convened—

- (a) under this section,
- (b) under section 135 of the Army Act 1955, or
- (c) under the Queen’s Regulations for the Royal Navy,

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shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 70 of this Act where the corresponding civil offence is perjury.”

Compensation for loss

- 39 In subsection (2) of section 147 of each of the 1955 Acts (compensation for loss occasioned by wrongful act or negligence), for the words from “may order” to “made)” there is substituted “may, at a time when the person responsible is a member of the regular forces, order him”.
- 40 In subsection (2) of section 128C of the 1957 Act (compensation for loss occasioned by wrongful act or negligence), for the words from “may order” to “made)” there is substituted “may, at a time when the person responsible is subject to this Act, order him”.

Redress of complaints

- 41 In section 180 of each of the 1955 Acts (redress of complaints) for subsection (2) there is substituted—
- “(2) A person (“the person aggrieved”) may not make a complaint under this section with respect to—
- (a) any decision of a judicial officer or judge advocate under section 75C, 75F, 75G, 75H, 75J or 75K of this Act,
 - (b) any decision of a judicial officer under Part 2 of the Armed Forces Act 2001,
 - (c) any matter against which the person aggrieved may present a petition under section 113 of this Act, or
 - (d) any matter against which the person aggrieved may bring an appeal under section 83ZE of this Act or under the Courts-Martial (Appeals) Act 1968.”
- 42 In section 130 of the 1957 Act (redress of complaints) for subsection (2) there is substituted—
- “(2) A person (“the person aggrieved”) may not make a complaint under this section with respect to—
- (a) any decision of a judicial officer or judge advocate under section 47D, 47G, 47H, 47J, 47K and 47L of this Act,
 - (b) any decision of a judicial officer under Part 2 of the Armed Forces Act 2001,
 - (c) any matter against which the person aggrieved may present a petition under section 70 of this Act, or
 - (d) any matter against which he may bring an appeal under section 52FK of this Act or under the Courts-Martial (Appeals) Act 1968.”
- 43 In paragraph 9 of Schedule 6 to each of the 1955 Acts (provisions not applying to attached members of other services), the words “and one hundred and eighty” are omitted.

Civilian contractors attached to or accompanying armed forces

- 44 In Schedule 5 to each of the 1955 Acts (which lists civilians who are subject to Part 2 of the Act when outside the United Kingdom), in paragraph 4—
- (a) after “profession” there is inserted “, business”, and
 - (b) at the end there is inserted “or by an officer authorised by the Defence Council”.
- 45 In Schedule 3 to the 1957 Act (which lists civilians who are subject to certain provisions of the Act when outside the United Kingdom), in paragraph 4—
- (a) after “profession” there is inserted “, business”, and
 - (b) at the end there is inserted “or by an officer authorised by the Defence Council”.

Interpretation of references to “Royal Air Force Police”

- 46 In section 225(1) of the Army Act 1955 (c. 18) and section 135(1) of the 1957 Act (interpretation), after the definition of “the relevant time” there is inserted—
- ““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers;”.
- 47 In section 223(1) of the Air Force Act 1955 (c. 19) (interpretation) after the definition of “the relevant time” there is inserted—
- ““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under this Act on provost officers;”.
- 48 In subsection (4) of section 11 of the Armed Forces Act 1996 (c. 46) (which relates to the interpretation of that section)—
- (a) after the definition of “fingerprints” there is inserted—

““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers;”,
and
 - (b) in the definition of “service policeman”, for “, the Royal Air Force Police or the staff of the Royal Air Force Provost Marshal” there is substituted “or the Royal Air Force Police”.

Interpretation of references to a “constable”

- 49 At the end of the definition of “constable” in each of the following provisions—
- (a) section 225(1) of the Army Act 1955 (c. 18) ,
 - (b) section 223(1) of the Air Force Act 1955 (c. 19), and
 - (c) section 135(1) of the 1957 Act,
- there is inserted “but does not include a provost officer or a person exercising authority under or on behalf of a provost officer”.

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

Application to civilians

- 50 (1) Section 209 of each of the 1955 Acts (application of Act to civilians) is amended as follows.
- (2) In paragraphs (a) and (b) of the proviso to subsection (2), for “section 68 so far as it relates” there is substituted “sections 68 and 68A so far as they relate”.
- (3) In subsection (3)(f), for “the provisions of this Act relating to custody and the investigation of offences” there is substituted “Part 2 of this Act”.
- (4) Subsection (3C) is omitted.
- 51 In Schedule 4 to the 1957 Act (application of Act to civilians), paragraph 4B is omitted.
- 52 In paragraph 4 of Schedule 5A to each of the 1955 Acts (community supervision orders) after sub-paragraph (7D) there is inserted—
- “(7E) Section 132(3) of this Act (as applied to civilians by section 209 of this Act) does not apply in relation to an offence under sub-paragraph (6) above.”
- 53 In paragraph 4 of Schedule 4A to the 1957 Act (community supervision orders) after sub-paragraph (7D) there is inserted—
- “(7E) Section 52(2) of this Act (as applied to civilians by section 118 of this Act) does not apply in relation to an offence under sub-paragraph (6) above.”

Arrest of civilian whose sentence is deferred

- 54 In paragraph 2A of Schedule 5A to each of the 1955 Acts (deferment of award of sentence)—
- (a) in sub-paragraph (8) for “the Court or the directing officer” there is substituted “a magistrate appointed under section 6(4) of the Armed Forces Act 1976”,
- (b) in sub-paragraph (9)—
- (i) for “subject to service law” there is substituted “a person to whom Part 2 of this Act is applied by section 209 above”, and
- (ii) in paragraph (b), for “the directing officer or by any superior officer or authority” there is substituted “a magistrate appointed under section 6(4) of the Armed Forces Act 1976”,
- (c) in sub-paragraph (10) for the words “the Standing Civilian Court or directing officer” there is substituted “the magistrate”, and
- (d) sub-paragraph (13) is omitted.

Right of appeal to Courts-Martial Appeal Court

- 55 (1) Section 8 of the Courts-Martial (Appeals) Act 1968 (c. 20) (right of appeal) is amended as follows.
- (2) In subsection (1A), for “any of those Schedules” there is substituted “Schedule 5A to the Army Act, Schedule 5A to the Air Force Act or Schedule 4A to the Naval Discipline Act”.
- (3) For subsections (2) and (3) there is substituted—

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“(2) Subject to subsection (3) below, the person’s right of appeal is not exercisable—

- (a) unless he has presented a petition to the Defence Council under section 113 of the Army Act or the Air Force Act or section 70 of the Naval Discipline Act within the period prescribed for the purposes of the section in question, and
- (b) until either the prescribed period (beginning with the day on which the petition is presented) expires or he is notified by the reviewing authority of the result of its review under the section in question, whichever first occurs.

(3) The Appeal Court may direct that a person who—

- (a) has not presented a petition as mentioned in subsection (2)(a) above,
- (b) has been notified by the reviewing authority of the result of its review under section 113 of the Army Act or the Air Force Act or section 70 of the Naval Discipline Act, and
- (c) has applied for leave to appeal,

may appeal if they think that there is a reasonable explanation for his not having exercised his right to present a petition and that it is in the interests of justice that he should appeal.”

(4) In subsection (4) for “subsection (1)” there is substituted “subsection (2)”.

56 In section 36(1)(a) of that Act (functions of Courts-Martial Appeal Court which are exercisable by any judge of that court) for “be treated as not having lost his right of” there is substituted “may”.

Children in respect of whom protective orders may be made

57 In section 17 of the Armed Forces Act 1991 (c. 62) (power to make service family child assessment orders), for subsections (1) and (2) there is substituted—

“(1) The power to make an order under this section (in this Part of this Act referred to as an “assessment order”) is exercisable only with respect to a child who—

- (a) resides outside the British Islands with the family of a person subject to service law serving in a country or territory outside the British Islands or of a civilian in a corresponding position, or
- (b) is staying (for however short a time) outside the British Islands with such a family.

(2) In the following provisions of this section and in section 18 of this Act, any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying.”

58 In section 19 of that Act (power to make orders for the emergency protection of children of service families) for subsections (1) and (2) there is substituted—

“(1) The power to make an order under this section (in this Part of this Act referred to as a “protection order”) is exercisable only with respect to a child who—

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

- (a) resides outside the British Islands with the family of a person subject to service law serving in a country or territory outside the British Islands or of a civilian in a corresponding position, or
 - (b) is staying (for however short a time) outside the British Islands with such a family.
- (2) In the following provisions of this Part, any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying.”

Amendment relating to abolition of naval disciplinary courts

59 In section 5 of the Sex Offenders Act 1997 (c. 51) (certificates for purposes of Part 1 of that Act) for subsection (6) there is substituted—

“(6) In this section “court” includes a court-martial and a Standing Civilian Court.”