

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.”
 - (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.
- 4 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.

- (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;”.

SCHEDULE 2

Section 19

MEMBERSHIP OF COURTS-MARTIAL

Army Act 1955 (c. 18)

- 1 (1) Section 84C of the Army Act 1955 (convening of general and district courts-martial) is amended as follows.
- (2) In subsection (2)—
- (a) after paragraph (c) there is inserted—
 - “(cc) any warrant officers who are to be members of the court-martial;”, and
 - (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e) after “officer” there is inserted “or warrant officer”.
- 2 For section 84D of that Act (constitution of general and district courts-martial) there is substituted—

“84D Constitution of general and district courts-martial

- (1) A general court-martial shall consist of—
 - (a) the president, who shall be a military officer,
 - (b) the judge advocate, and
 - (c) at least four other persons of whom—
 - (i) two shall each be either a military officer or a military warrant officer, and
 - (ii) the rest shall be military officers.
- (2) A district court-martial shall consist of—
 - (a) the president, who shall be a military officer,
 - (b) the judge advocate, and

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- (c) at least two other persons of whom—
 - (i) one shall be either a military officer or a military warrant officer, and
 - (ii) the rest shall be military officers.
- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless—
 - (a) he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or
 - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above “the qualifying period” means—
 - (a) in relation to a general court-martial, three years, and
 - (b) in relation to a district court-martial, two years.
- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of captain; and, in the case of a general court-martial for the trial of an officer above the rank of captain, all the members so appointed shall be of or above the rank of captain.
- (10) If, in the opinion of the court administration officer, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—
 - (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or

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- (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.

(11) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;

“military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;

“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

3 (1) Section 92 of that Act (challenges by accused) is amended as follows.

(2) In subsection (2) after “appointed members” there is inserted “, and any warrant officers so appointed,”.

(3) In subsection (5)—

(a) after “court” there is inserted “or to any warrant officer so appointed”,

(b) after “the officer” there is inserted “or warrant officer”,

(c) for “officers” there is substituted “members who are officers or warrant officers”, and

(d) for “another officer” there is substituted “another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)”.

4 In section 93 of that Act (administration of oaths) in subsection (1) after “every officer” there is inserted “or warrant officer”.

5 (1) Section 103A of that Act (field general courts-martial) is amended as follows.

(2) In subsection (4) after paragraph (c) there is inserted—

“(d) any warrant officer who is to be a member of the court-martial.”

(3) After that subsection there is inserted—

“(4A) Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial.”

6 (1) Section 103B of that Act (constitution of field general courts-martial) is amended as follows.

(2) In subsection (1) for the words from “consist” onwards there is substituted—

“consist of—

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- (a) the president, who shall be a military officer, and
 - (b) at least two persons appointed under this paragraph, of whom—
 - (i) one shall be either a military officer or a military warrant officer, and
 - (ii) the rest shall be military officers.”
 - (3) In subsection (2) for the words from “three” to “available” there is substituted “three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above”.
 - (4) After subsection (6) there is inserted—
 - “(6A) A field general court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.”
 - (5) For subsection (7) there is substituted—
 - “(7) If a field general court-martial is to be convened at any place where, in the opinion of the officer convening it, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1) (b) above, he may appoint under that provision—
 - (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or
 - (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.”
 - (6) In subsection (8), for “less than three officers” there is substituted “only two persons, apart from any judge advocate (as defined by subsection (4) above),”.
 - (7) In subsection (9)—
 - (a) after the definition of “air-force officer” there is inserted—
 - ““air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;”
 - (b) after the definition of “military officer” there is inserted—
 - ““military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;”
 - (c) after the definition of “naval officer” there is inserted—
 - ““naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”
- 7 In section 209 (application of Acts to civilians), in subsection (3)(fa) for “officers” there is substituted “officers or warrant officers”.

Air Force Act 1955 (c. 19)

- 8 (1) Section 84C of the Air Force Act 1955 (convening of general and district courts-martial) is amended as follows.

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- (2) In subsection (2)—
- (a) after paragraph (c) there is inserted—
 - “(cc) any warrant officers who are to be members of the court-martial;”, and
 - (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e), after “officer” there is inserted “or warrant officer”.
- 9 For section 84D of that Act (constitution of general and district courts-martial) there is substituted—

“84D Constitution of general and district courts-martial

- (1) A general court-martial shall consist of—
 - (a) the president, who shall be an air-force officer,
 - (b) the judge advocate, and
 - (c) at least four other persons, of whom—
 - (i) two shall each be either an air-force officer or an air-force warrant officer, and
 - (ii) the rest shall be air-force officers.
- (2) A district court-martial shall consist of—
 - (a) the president, who shall be an air-force officer,
 - (b) the judge advocate, and
 - (c) at least two other persons, of whom—
 - (i) one shall be either an air-force officer or an air-force warrant officer, and
 - (ii) the rest shall be air-force officers.
- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless—
 - (a) he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or
 - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above “the qualifying period” means—
 - (a) in relation to a general court-martial, three years, and

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- (b) in relation to a district court-martial, two years.
- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of warrant officer.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of flight lieutenant; and, in the case of a general court-martial for the trial of an officer above the rank of flight lieutenant, all the members so appointed shall be of or above the rank of flight lieutenant.
- (10) If, in the opinion of the court administration officer, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—
- (a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or
 - (b) where an air-force warrant officer could be appointed, a naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.
- (11) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
 - “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
 - “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
 - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;
 - “naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”
- 10 (1) Section 92 of that Act (challenges by accused) is amended as follows.
- (2) In subsection (2) after “appointed members” there is inserted “, and any warrant officers so appointed,”.
- (3) In subsection (5)—
- (a) after “court” there is inserted “or to any warrant officer so appointed”,
 - (b) after “the officer” there is inserted “or warrant officer”,
 - (c) for “officers” there is substituted “members who are officers or warrant officers”, and

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- (d) for “another officer” there is substituted “another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)”.
- 11 In section 93 of that Act (administration of oaths) in subsection (1) after “every officer” there is inserted “or warrant officer”.
- 12 (1) Section 103A of that Act (field general courts-martial) is amended as follows.
- (2) In subsection (4) after paragraph (c) there is inserted—
- “(d) any warrant officer who is to be a member of the court-martial.”
- (3) After that subsection there is inserted—
- “(4A) Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial.”
- 13 (1) Section 103B of that Act (constitution of field general courts-martial) is amended as follows.
- (2) In subsection (1) for the words from “consist” onwards there is substituted—
- “consist of—
- (a) the president, who shall be an air-force officer, and
- (b) at least two persons appointed under this paragraph, of whom—
- (i) one shall be either an air-force officer or an air-force warrant officer, and
- (ii) the rest shall be air-force officers.”
- (3) In subsection (2) for the words from “three” to “available” there is substituted “three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above”.
- (4) After subsection (6) there is inserted—
- “(6A) A field general court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.”
- (5) For subsection (7) there is substituted—
- “(7) If a field general court-martial is to be convened at any place where, in the opinion of the officer convening it, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1) (b) above, he may appoint under that provision—
- (a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or
- (b) where an air-force warrant officer could be appointed, any naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.”

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- (6) In subsection (8), for “less than three officers” there is substituted “only two persons, apart from any judge advocate (as defined by subsection (4) above)”.
- (7) In subsection (9)—
- (a) after the definition of “air-force officer” there is inserted—
- ““air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;”,
- (b) after the definition of “military officer” there is inserted—
- ““military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;”, and
- (c) after the definition of “naval officer” there is inserted—
- ““naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”.
- 14 In section 209 (application of Acts to civilians), in subsection (3)(fa) for “officers” there is substituted “officers or warrant officers”.

Naval Discipline Act 1957

- 15 (1) Section 53C of the 1957 Act (ordering of courts-martial) is amended as follows.
- (2) In subsection (2)—
- (a) after paragraph (c) there is inserted—
- “(cc) any warrant officers who are to be members of the court-martial;”, and
- (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e) after “officer” there is inserted “or warrant officer”.
- 16 For section 54 of that Act (composition of courts-martial) there is substituted—

“54 Composition of courts-martial

- (1) A court-martial shall consist of—
- (a) the president, who shall be a naval officer,
- (b) the judge advocate, and
- (c) not less than four nor more than eight other persons, of whom—
- (i) two shall each be either a naval officer or a naval warrant officer, and
- (ii) the rest shall be naval officers.
- (2) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (3) An officer shall not be appointed under subsection (1)(c) above as a member of a court-martial unless—
- (a) he is of or above the rank of lieutenant and has held a commission in any of Her Majesty’s naval, military or air forces for a period of

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- not less than three years, or for periods amounting in the aggregate to not less than three years, or
- (b) immediately before he received his commission, he was a warrant officer in any of those forces.
- (4) The officers and warrant officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (5) The members appointed under subsection (1)(c) above—
- (a) shall not include any warrant officer, unless the court-martial is for the trial of a person of a rank or rate below that of a warrant officer,
- (b) shall not include any officer who qualifies under subsection (3) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank or rate below that which the officer held immediately before he received his commission,
- (c) in the case of a trial of an officer of flag rank, shall be of or above the rank of captain,
- (d) in the case of a trial of a commodore or captain, shall be of or above the rank of commander,
- (e) in the case of a trial of a commander, shall include at least two members who are of or above the rank of commander.
- (6) If, in the opinion of the court administration officer, the necessary number of naval officers or naval warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) above, he may appoint under that provision—
- (a) any military or air-force officer having qualifications corresponding to those required for a naval officer, or
- (b) where a naval warrant officer could be appointed, any military or air-force warrant officer having qualifications corresponding to those required for a naval warrant officer.
- (7) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
- “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
- “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
- “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
- “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act;
- “naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to this Act;
- “warrant officer” does not include an acting warrant officer (that is, a warrant officer whom a commanding officer has power under Queen’s Regulations to order to revert from the rank of warrant officer).”

17 (1) Section 59 of that Act (challenges by accused) is amended as follows.

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

- (2) In subsection (1), after “court-martial” there is inserted “, and any warrant officers so appointed,”.
- (3) In subsection (4)—
- (a) after “court”, where first occurring, there is inserted “or to any warrant officer so appointed”,
 - (b) after “officer”, where second occurring, there is inserted “or warrant officer”.
- (4) In subsection (6) after “court-martial” there is inserted “, and any warrant officers so appointed,”.
- 18 In section 118 (application of Acts to civilians), for subsection (3A) there is substituted—
- “(3A) A court-martial for the trial of any such person may include in place of the corresponding number of persons eligible to be appointed under section 54(1)(c) of this Act not more than two persons who are in the service of the Crown and are persons to whom this Act applies by virtue of this section.”

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.

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

(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.

(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;

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

“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—
- (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—

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

- (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.
- (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.

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

- (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,
- 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—

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

- “(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.
- (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,

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

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.”

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.”

SCHEDULE 4

Section 29

AMENDMENTS RELATING TO CUSTODY

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

1 In section 75H of each of the 1955 Acts (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.

2 In section 75J of each of the 1955 Acts (release from custody after charge or during proceedings), after subsection (2) there is inserted—

“(2A) On an application made—

- (a) by or on behalf of the accused, or
- (b) by the commanding officer of the accused,

any requirement imposed under subsection (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 75H(2) of this Act has effect, by the judge advocate in relation to the court-martial.”

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

3 (1) Section 75K of each of the 1955 Acts (arrest during proceedings) is amended as follows.

(2) After subsection (3) there is inserted—

“(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”

(3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.

4 After section 75L of each of the 1955 Acts there is inserted—

“75LL Custody in case of trial by Standing Civilian Court

In relation to any time after the commencement of the trial of the accused by a Standing Civilian Court, the provisions of Schedule 1A to this Act shall have effect in substitution for the provisions of sections 75H to 75K of this Act.”

5 (1) Section 75M of each of the 1955 Acts (custody rules) is amended as follows.

(2) At the end of subsection (1) there is inserted—

“(d) on an application under section 75J(2A) of, or paragraph 2(3) of Schedule 1A to, this Act.”

(3) In paragraph (h) of subsection (2) (which relates to the use of live television links, etc.)—

(a) after “or (8)(b) of” there is inserted “, or paragraph 3(4)(b) of Schedule 1A to,” and

(b) for “or judge advocate” there is substituted “, judge advocate or magistrate”.

6 After Schedule 1 to the Army Act 1955 (c. 18) there is inserted—

“SCHEDULE
1A

CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

Custody during Standing Civilian Court proceedings

1 (1) Where the accused is kept in military custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.

(2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.

(3) In section 75F(2), after paragraph (d) there shall be inserted—

“; or

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

- (e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in military custody.”
- (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 75F(2) does not authorise the keeping of the accused in military custody after he is sentenced by a Standing Civilian Court.

Release from custody during proceedings

- 2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in military custody.
- (2) Where this paragraph applies, the accused—
 - (a) subject to paragraph (b) below, shall be released from military custody forthwith, but
 - (b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him.
- (3) On an application made—
 - (a) by or on behalf of the accused, or
 - (b) by the commanding officer of the accused,
 any requirement imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph) may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

Arrest during Standing Civilian Court proceedings

- 3 (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into military custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.

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

- (2) For the purposes of this paragraph, taking the accused into military custody is justified if there are substantial grounds for believing that, if not taken into military custody, he would—
 - (a) fail to attend any hearing in the proceedings against him,
 - (b) commit an offence,
 - (c) injure himself, or
 - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into military custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
 - (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
 - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”

7 After Schedule 1 to the Air Force Act 1955 (c. 19) there is inserted—

“SCHEDULE
1A

CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

Custody during Standing Civilian Court proceedings

- 1 (1) Where the accused is kept in air-force custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
 - (2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
 - (3) In section 75F(2), after paragraph (d) there shall be inserted—

“; or

 - (e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in air-force custody.”
 - (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.

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

- (5) An order under section 75F(2) does not authorise the keeping of the accused in air-force custody after he is sentenced by a Standing Civilian Court.

Release from custody during proceedings

- 2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in air-force custody.
- (2) Where this paragraph applies, the accused—
- (a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but
 - (b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him.
- (3) On an application made—
- (a) by or on behalf of the accused, or
 - (b) by the commanding officer of the accused,
- any requirement imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph) may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

Arrest during Standing Civilian Court proceedings

- 3 (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into air-force custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.
- (2) For the purposes of this paragraph, taking the accused into air-force custody is justified if there are substantial grounds for believing that, if not taken into air-force custody, he would—
- (a) fail to attend any hearing in the proceedings against him,
 - (b) commit an offence,
 - (c) injure himself, or

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

- (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into air-force custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
 - (a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and
 - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”

Naval Discipline Act 1957 (c. 53)

- 8 In section 47J of the 1957 Act (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.
- 9 In section 47K of the 1957 Act (release from custody after charge or during proceedings), after subsection (2) there is inserted—
 - “(2A) On an application made—
 - (a) by or on behalf of the accused, or
 - (b) by the commanding officer of the accused,any requirement imposed under subsection (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 47J(2) of this Act has effect, by the judge advocate in relation to the court-martial.”
- 10 (1) Section 47L of the 1957 Act (arrest during proceedings) is amended as follows.
 - (2) After subsection (3) there is inserted—
 - “(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”
 - (3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.
- 11 In section 47N of that Act (custody rules), at the end of subsection (1) there is inserted—
 - “(d) on an application under section 47K(2A) of this Act.”

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

SCHEDULE 5

Section 32(9)

TESTING FOR ALCOHOL OR DRUGS

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

- 1 (1) Section 34A of each of the 1955 Acts is amended as follows.
- (2) In subsection (1), for “testing for the presence of drugs” there is substituted “the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body”.
- (3) After subsection (1) there is inserted—
- “(1A) A drug testing officer may not request a person to provide a sample under subsection (1) above if—
- (a) he is that person’s commanding officer, or
- (b) the commanding officer of that person is also his commanding officer.
- (1B) A request under subsection (1) above may not be made if the sample is sought in connection with—
- (a) an investigation under this Act of an offence, or
- (b) an investigation of such an incident as is referred to in section 32(1) (a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).
- (1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—
- (a) that person, or
- (b) any other person,
- in proceedings before a court-martial, commanding officer or appropriate superior authority.
- (1D) Nothing in this section—
- (a) limits the powers conferred by—
- (i) sections 6 and 7 of the Road Traffic Act 1988 (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
- (ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or
- (b) affects the admissibility in any proceedings of evidence obtained under those powers.”

- 2 After section 34A of the Army Act 1955 (c. 18) there is inserted—

“34B Failure to provide sample after serious incident

Any person subject to military law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-

martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.”

3 After section 34A of the Air Force Act 1955 (c. 19) there is inserted—

“34B Failure to provide sample after serious incident

Any person subject to air-force law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.”

4 In the proviso to section 209(2) of each of the 1955 Acts (application of Act to civilians), for the words from “except” onwards there is substituted—

“except—

- (a) sections 29, 35, 36 and 55 to 57, and section 68 so far as it relates to those sections, and
- (b) in the case of persons falling within any description specified in paragraphs 1 to 4 of Schedule 5, section 34B and section 68 so far as it relates to that section.”

Naval Discipline Act 1957 (c. 53)

5 (1) Section 12A of the 1957 Act (failure to provide a sample for drug testing) is amended as follows.

(2) In subsection (1)—

- (a) for “testing for the presence of drugs” there is substituted “the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body”, and
- (b) the words “on conviction by court-martial” are omitted.

(3) After that subsection there is inserted—

“(1A) A drug testing officer may not request a person to provide a sample under subsection (1) above if—

- (a) he is that person’s commanding officer, or
- (b) the commanding officer of that person is his commanding officer.

(1B) A request under subsection (1) above may not be made if the sample is sought in connection with—

- (a) an investigation under this Act of an offence, or
- (b) an investigation of such an incident as is referred to in section 32(1) (a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).

(1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—

- (a) that person, or
- (b) any other person,

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

in proceedings before a court-martial, commanding officer or appropriate superior authority.

(1D) Nothing in this section—

- (a) limits the powers conferred by—
 - (i) sections 6 and 7 of the Road Traffic Act 1988 (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
 - (ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or
- (b) affects the admissibility in any proceedings of evidence obtained under those powers.”

(4) In subsection (2), in the definition of “drug testing officer”, for “or non-commissioned officer” there is substituted “, chief petty officer, petty officer or leading rating”.

6 After section 12A of the 1957 Act there is inserted—

“12B Failure to provide sample after serious incident

Any person subject to this Act who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.”

7 In section 118(2) of the 1957 Act (application to certain civilians)—

- (a) in paragraph (a), after “sections” there is inserted “12B,”, and
- (b) at the end of the proviso there is inserted “and the said section 12B, and sections 40 and 41 so far relating thereto, shall apply only to persons falling within any description specified in paragraphs 1 to 4 of Schedule 3”.

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—

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

- “(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.”
- 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,

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- (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.”
- (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—

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

- (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).

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

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
- (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—

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

“(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,

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—

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

- (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—

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

“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”.

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.”

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

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—
- “(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—

- (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.”

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

SCHEDULE 7

Section 38

REPEALS

PART 1

REPEALS RELATING TO ABOLITION OF NAVAL DISCIPLINARY COURTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Criminal Evidence Act 1898 (c. 36)	In section 6(1), the words “and disciplinary courts”.
The Army Act 1955 (c. 18)	In section 57(3), the words “or disciplinary court”.
The Air Force Act 1955 (c. 19)	In section 57(3), the words “or disciplinary court”.
The Naval Discipline Act 1957 (c. 53)	In section 38(2), the words “and to a disciplinary court”. Section 52C(5). Section 52G. Section 65(4). Section 70(7). In section 73, the words “and disciplinary courts”. In section 76(6)(a), the words “or disciplinary court”. In section 77(1), the words “or disciplinary court”. In section 95(2), the words “and to disciplinary courts”. In section 129(1), the words “or disciplinary court”, in both places where they occur. In Schedule 5, in the entries relating to section 57 of the Army Act 1955 and section 57 of the Air Force Act 1955, the words from “after the word” to “court”, and”.
The Courts-Martial (Appeals) Act 1968 (c. 20)	In section 57(1), in the definition of “naval court-martial”, the words “, and includes a disciplinary court”.
The Civil Evidence Act 1968 (c. 64)	In section 11(6), the words from “or a disciplinary” to “Act of 1957”.
The Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))	In section 7(6), the words from “or a disciplinary” to “Act of 1957” and the words “disciplinary court”.

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

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Police and Criminal Evidence Act 1984 (c. 60)	<p>In section 67(12)(a), the words from “or a disciplinary” to “1957”.</p> <p>In section 82(1), in the definition of “court-martial”, the words from “or a disciplinary” to “Act of 1957”.</p> <p>In section 113(11)(a), the words from “or a disciplinary” to “Act of 1957”.</p>
The Criminal Justice Act 1988 (c. 33)	<p>In section 146, the words from “disciplinary” to “1957”.</p> <p>In Schedule 13, in paragraph 1, in paragraph (b) of the definition of “Service courts”, the words from “and disciplinary” to “that Act” and in paragraph 7(b) the words from “or disciplinary” to “that Act”.</p>
The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	<p>In Article 66(11)(a), the words from “or a disciplinary” to “1957”.</p> <p>In Article 70(2)(b), head (ii) and the word “or” immediately preceding it.</p>
The Criminal Justice and Public Order Act 1994 (c. 33)	<p>Section 39(2)(g).</p>
The Northern Ireland (Emergency Provisions) Act 1996 (c. 22)	<p>In section 54(9), in the definition of “criminal proceedings”, the words from “or a disciplinary” to “1957 Act”.</p>
The Armed Forces Act 1996 (c. 46)	<p>In section 11(4), paragraph (b) of the definition of “service disciplinary proceedings”.</p> <p>In Schedule 1, paragraphs 100, 105, 108, 109(2)(c) and (4)(a) and 111.</p>
The Police Act 1997 (c. 50)	<p>In section 108(1), in paragraph (a) of the definition of “criminal proceedings” the words from “or a disciplinary” to “Act of 1957”.</p>
The Youth Justice and Criminal Evidence Act 1999 (c. 23)	<p>In section 63(1), in paragraph (a) of the definition of “service court”, the words from “or a disciplinary” to the end.</p>
The Terrorism Act 2000 (c. 11)	<p>In section 101(9), in the definition of “criminal proceedings”, the words from “or a disciplinary” to “1957 Act”.</p>
The Regulation of Investigatory Powers Act 2000 (c. 23)	<p>In section 81(4)(a), sub-paragraph (ii) and the word “or” immediately preceding it.</p>
The Freedom of Information Act 2000 (c. 36)	<p>In section 30(5), in paragraph (a) of the definition of “criminal proceedings”, the words from “or a disciplinary” to “of 1957”.</p>

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

PART 2

REPEALS RELATING TO REQUIRED CUSTODIAL SENTENCES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Crime (Sentences) Act 1997 (c. 43)	Section 55(2). In Schedule 4, paragraphs 1(1) and (4), 2(1) and (4) and 3(1) and (4).
The Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraphs 8, 13 and 18.

PART 3

REPEALS RELATING TO ABOLITION OF OFFICE OF DEPUTY JUDGE ADVOCATE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Courts-Martial (Appeals) Act 1951 (c. 46)	In section 30(1)(b), the words “, and such number of officers to be known as Deputy Judge Advocates,” and the words “in each case”. In section 31— (a) in subsection (2), paragraph (d) and the word “or” which precedes it, and (b) subsection (3).
The Courts and Legal Services Act 1990 (c. 41)	In Schedule 11, in the entry relating to an Assistant or Deputy Judge Advocate General, the words “or Deputy”.
The Judicial Pensions and Retirement Act 1993 (c. 8)	In section 27(3), paragraph (f).

PART 4

REPEALS CONSEQUENTIAL ON HUMAN RIGHTS ACT 1998

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Army Act 1955 (c. 18)	In section 31, subsection (1) and, in subsection (2), the words “, in a case not falling within the last foregoing subsection”. In section 68, the proviso. In section 70(3), paragraph (a). In section 71(1), paragraph (a).

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

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In section 71A(3), the words from “, nor shall sentence of death” to “when the offence was committed”.
	In section 85(2), the words “of death or”.
	In section 96, subsections (3) and (4).
	Section 112.
	Section 113(6).
	Section 121.
	In section 123—
	(a) in subsection (1), the words “Regulations under section one hundred and twenty-one of this Act or” and the words “regulations or”, and
	(b) in subsection (2), the words “regulations or”.
	In section 125—
	(a) in subsection (1), the words “death or” and the words “regulations under section one hundred and twenty-one of this Act or of”, and
	(b) subsection (2).
	In section 126—
	(a) in subsection (1), the words from “sentences of death” to “authorities and”, and
	(b) in subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and”.
	Section 128(1).
	In section 129 (1) the words—
	(a) “regulations under section one hundred and twenty-one of this Act or”,
	(b) “regulations or”, and
	(c) “execution of the sentence is completed or”.
	In section 209(3)(a)(i), after the word “paragraphs”, the letter “(a)”,.
	Section 214(3).
	Section 215(4).
	In Schedule 5A—
	(a) in the Table at paragraph 15, the first entry in each of the first and second columns, and

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

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Air Force Act 1955 (c. 19)	<p>(b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.</p> <p>In section 31, subsection (1) and, in subsection (2), the words “, in a case not falling within the last foregoing subsection”.</p> <p>In section 68, the proviso.</p> <p>In section 70(3), paragraph (a).</p> <p>In section 71(1), paragraph (a).</p> <p>In section 71A(3), the words from “, nor shall sentence of death” to “when the offence was committed”.</p> <p>In section 85(2), the words “of death or”.</p> <p>In section 96, subsections (3) and (4).</p> <p>Section 112.</p> <p>Section 113(6).</p> <p>Section 121.</p> <p>In section 123—</p> <p>(a) in subsection (1), the words “Regulations under section one hundred and twenty-one of this Act or” and the words “regulations or”, and</p> <p>(b) in subsection (2), the words “regulations or”.</p> <p>In section 125—</p> <p>(a) in subsection (1), the words “death or” and the words “regulations under section one hundred and twenty-one of this Act or of”, and</p> <p>(b) subsection (2).</p> <p>In section 126—</p> <p>(a) in subsection (1), the words from “sentences of death” to “those authorities and”, and</p> <p>(b) in subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and”.</p> <p>Section 128(1).</p> <p>In section 129 (1) the words—</p> <p>(a) “regulations under section one hundred and twenty-one of this Act or”,</p> <p>(b) “regulations or”, and</p> <p>(c) “execution of the sentence is completed or”.</p>

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

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>In section 209(3)(a)(i), after the word “paragraphs”, the letter “(a),”.</p> <p>Section 212(3).</p> <p>Section 213(4).</p> <p>In Schedule 5A—</p> <p>(a) in the Table at paragraph 15, the first entry in each of the first and second columns, and</p> <p>(b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.</p>
The Naval Discipline Act 1957 (c. 53)	<p>In section 9, subsection (1) and, in subsection (2), the words “not described in the foregoing subsection”.</p> <p>In section 10, the words from “, if the offence is committed” to “in any other case,”.</p> <p>In section 40, the proviso to the section.</p> <p>In section 42(1), paragraph (a).</p> <p>In section 43(1), paragraph (a).</p> <p>In section 43A(3), the words from “nor shall sentence of death” to “when the offence was committed”.</p> <p>In section 62, subsections (4) and (5).</p> <p>Section 70(6).</p> <p>Sections 78 to 80.</p> <p>Section 123(4).</p> <p>Section 124(2).</p> <p>In section 125(2), the words “80 and”.</p> <p>In Schedule 4A—</p> <p>(a) in the Table at paragraph 15, the first entry in each of the first and second columns, and</p> <p>(b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.</p>

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

PART 5

REPEALS CONSEQUENTIAL ON YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Army Act 1955 (c. 18)	Section 200A.
The Air Force Act 1955 (c. 19)	Section 200A.
The Courts-Martial (Appeals) Act 1968 (c. 20)	Section 37A.
The Armed Forces Act 1976 (c. 52)	In Schedule 3, paragraph 17A.
The Police and Criminal Evidence Act 1984 (c. 60)	In Schedule 6, paragraphs 28(4), 29(4), 34 and 36.

PART 6

REPEALS RELATING TO QUEEN ALEXANDRA'S ROYAL NAVAL NURSING SERVICE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Naval Discipline Act 1957 (c. 53)	In section 111, in subsection (1), the words “and Queen Alexandra’s Royal Naval Nursing Service” and, in subsection (2), the words “or of Queen Alexandra’s Royal Naval Nursing Service”. In section 132(5), the words “Queen Alexandra’s Royal Naval Nursing Service”.
The Armed Forces Act 1976 (c. 52)	In section 6(9)(b), the words “or Queen Alexandra’s Royal Naval Nursing Service”.
The Armed Forces Act 1981 (c. 55)	Section 20(2). Part 3 of Schedule 3.

PART 7

OTHER REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Marriage Act 1949 (c. 76)	In section 68(3), the words from “and the expression” to the end.
The Army Act 1955 (c. 18)	In section 75L(2), the word “or” at the end of paragraph (a). Section 209(3C). Paragraph 2A(13) of Schedule 5A.

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

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Air Force Act 1955 (c. 19)	In paragraph 9 of Schedule 6, the words “and one hundred and eighty”. In section 75L(2), the word “or” at the end of paragraph (a). Section 209(3C). Paragraph 2A(13) of Schedule 5A.
The Naval Discipline Act 1957 (c. 53)	In paragraph 9 of Schedule 6, the words “and one hundred and eighty”. In section 12A(1), the words “on conviction by court-martial”. In section 42(1), the words “subject to section 43A below be liable”. In section 47M(2), the word “or” at the end of paragraph (a). Paragraph 4B of Schedule 4.
The Courts-Martial (Appeals) Act 1968 (c. 20)	In section 42, in subsection (1) the words “to whom this section applies”, and subsection (2).
The Sexual Offences (Amendment) Act 1992 (c. 34)	In section 7(2), paragraph (f) and the word “and” preceding it.
The Reserve Forces Act 1996 (c. 14)	In section 41(4), the word “been”.
The Armed Forces Act 1996 (c. 46)	Section 1.
