



# Air Force Act 1955

1955 CHAPTER 19 3 4 Eliz2

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

#### *Treachery, cowardice and offences arising out of air-force service*

#### **24 Aiding the enemy**

- (1) Any person subject to air-force law who with intent to assist the enemy—
- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or
  - (b) does any act calculated to imperil the success of operations of Her Majesty's forces, of any forces co-operating therewith or of any part of any of those forces, or
  - (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage, or
  - (d) furnishes the enemy with arms or ammunition or with supplies of any description, or
  - (e) harbours or protects an enemy not being a prisoner of war, or
  - (f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal, or
  - (g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertions to carry such orders into effect, or
  - (h) causes the capture or destruction by the enemy of any of Her Majesty's aircraft, shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

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- (2) Any person subject to air-force law who knowingly and without lawful excuse does any of the acts specified in paragraphs (a) to (g) of the last foregoing subsection shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.
- (3) Any person subject to air-force law who negligently causes the capture or destruction by the enemy of any of Her Majesty's aircraft shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

## **25 Communication with the enemy**

- (1) Any person subject to air-force law who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.
- (2) Any person subject to air-force law who without authority communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) In this section the expression "intelligence" means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:—
  - (a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty's forces or of any forces co-operating therewith, or any of Her Majesty's ships or aircraft or of the ships or aircraft of any such co-operating force;
  - (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid;
  - (c) any code, cipher, call sign, password or countersign;
  - (d) any measures for the defence or fortification of any place on behalf of Her Majesty ;
  - (e) the number, description or location of any prisoners of war;
  - (f) munitions of war.

## **26 Cowardly behaviour**

- (1) Any person subject to air-force law who when before the enemy—
  - (a) leaves the post, position or other place where it is his duty to be, or
  - (b) throws away his arms, ammunition or tools, or
  - (c) does any of the acts specified in paragraphs (f) to (h) of subsection (1) of section twenty-four of this Act,
 in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence against this section.
- (2) Any person subject to air-force law who when before the enemy induces other persons subject to air-force law and before the enemy to commit an offence under the last foregoing subsection shall be guilty of an offence against this section.

- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

## **27 Offences against morale**

Any person subject to air-force law who—

- (a) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of Her Majesty's forces, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm, or
- (b) when before the enemy uses words calculated to create despondency or unnecessary alarm,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

## **28 Becoming prisoner of war through disobedience or wilful neglect; and failure to rejoin forces**

- (1) Any person subject to air-force law who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.
- (2) Any person subject to air-force law who, having been captured by the enemy, fails to take, or prevents or discourages any other such person captured by the enemy from taking, any reasonable steps to rejoin Her Majesty's service which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

## **29 Offences by or in relation to sentries, etc.**

- (1) Any person subject to air-force law who while on guard duty—
  - (a) sleeps at his post, or
  - (b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep, or
  - (c) is drunk, or
  - (d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,shall be guilty of an offence against this section.
- (2) For the purposes of this section a person shall be treated as being drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.
- (3) Any person subject to air-force law who strikes or otherwise uses force against any person on guard duty, being a member of any of Her Majesty's forces or of any forces cooperating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

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- (4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

- (5) References in this section to a person on guard duty are references to a person who—
- (a) is posted or ordered to patrol, or
  - (b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any persons, premises or place.
- (6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purpose of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

### **30 Looting**

Any person subject to air-force law who—

- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations, or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations, or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

#### *Mutiny and insubordination*

### **31 Mutiny**

- (1) Any person subject to air-force law who—
- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having 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, or
  - (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

- (2) Any person subject to air-force law who, in a case not falling within the last foregoing subsection, takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) In this Act the expression " mutiny " means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

- (a) to overthrow or resist lawful authority in Her Majesty's forces or any forces co-operating therewith or in any part of any of the said forces,
  - (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy, or
  - (c) to impede the performance of any duty or service in Her Majesty's forces or in any forces co-operating therewith or in any part of any of the said forces ;
- and in this section the expression " service law " means air-force law, the Naval Discipline Act or military law.

### **32 Failure to suppress mutiny**

Any person subject to air-force law who, knowing that a mutiny is taking place or is intended,—

- (a) fails to use his utmost endeavours to suppress or prevent it, or
  - (b) fails to report without delay that the mutiny is taking place or is intended,
- shall on conviction by court-martial,—
- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act,
  - (ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

### **33 Insubordinate behaviour**

- (1) Any person subject to air-force law who—
- (a) strikes or otherwise uses violence to, or offers violence to, his superior officer, or
  - (b) uses threatening or insubordinate language to his superior officer,
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.

- (2) In the foregoing provisions of this section the expression " superior officer ", in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular air force of superior rank, and includes an officer, warrant officer or non-commissioned officer of that force of equal rank but greater seniority while exercising authority as the said person's superior.

### **34 Disobedience to particular orders**

- (1) Any person subject to air-force law who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

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- (2) Any person subject to air-force law who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

### **35 Obstruction of provost officers**

Any person subject to air-force law who—

- (a) obstructs, or
- (b) when called on, refuses to assist,

any person known to him to be a provost officer, or to be a person (whether subject to air-force law or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **36 Disobedience to standing orders**

- (1) Any person subject to air-force law who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of the air force, or for any command or other area, garrison or place, or for any ship, train or aircraft.

*Desertion, absence without leave, etc.*

### **37 Desertion**

- (1) Any person subject to air-force law who—
- (a) deserts, or
  - (b) persuades or procures any person subject to air-force law to desert,
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that a person shall not be liable to be imprisoned for more than two years unless—

- (i) if the offence was against paragraph (a) of this subsection, he was on active service or under orders for active service at the time when it was committed,
- (ii) if the offence was an offence against paragraph (b) of this subsection, the person in relation to whom it was committed was on active service or under orders for active service at that time.

- (2) For the purposes of this Act a person deserts who—
- (a) leaves Her Majesty's service or, when it is his duty to do so, fails to join or rejoin Her Majesty's service, with (in either case) the intention, subsisting

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at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty, or

(b) being an officer enlists in or enters any of Her Majesty's forces without having resigned his commission, or being a warrant officer, non-commissioned officer or airman enlists in or enters any of Her Majesty's forces without having been discharged from his previous enlistment, or

(c) absents himself without leave with intent to avoid serving at any place overseas or to avoid service or any particular service when before the enemy,

and references in this Act to desertion shall be construed accordingly.

- (3) In addition to or in lieu of any punishment authorised by subsection (1) of this section, the court-martial by whom a warrant officer, non-commissioned officer or airman of the regular air force is convicted of desertion may direct that the whole or any part of his service previous to the period as respects which he is convicted of having been a deserter shall be forfeited:

Provided that this subsection shall not apply to a person enlisted in pursuance of the National Service Act, 1948.

### **38 Absence without leave**

Any person subject to air-force law who—

(a) absents himself without leave, or

(b) persuades or procures any person subject to air-force law to absent himself without leave,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **39 Assisting and concealing desertion and absence without leave**

Any person subject to air-force law who—

(a) knowingly assists any person subject to air-force law to desert or absent himself without leave, or

(b) knowing that any person subject to air-force law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **40 Falsely obtaining or prolonging leave**

Any person subject to air-force law who for the purpose of obtaining leave or prolonging his leave knowingly makes any false statement to any air-force authority, to a member of any police force or to any person authorised by or under instructions of the Air Council to act for the purpose of obtaining prolongation of leave shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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#### **41 Failure to perform air-force duties**

Any person subject to air-force law who without reasonable excuse fails to attend for any parade or other air-force duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### *Malingering and drunkenness*

#### **42 Malingering**

- (1) Any person subject to air-force law who—
- (a) falsely pretends to be suffering from sickness or disability, or
  - (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, or
  - (c) injures another person subject to air-force law at the instance of that person, with intent thereby to render that person unfit for service, or
  - (d) with intent to render or keep himself unfit for service, does or fails to do any thing (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,
- shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) In this section the expression " unfit " includes temporarily unfit.

#### **43 Drunkenness**

- (1) Any person subject to air-force law who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act and, in the case of a warrant officer, non-commissioned officer or airman, either in addition to or without any other punishment to pay a fine not exceeding five pounds:
- Provided that where the offence is committed by a warrant officer, non-commissioned officer or airman neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months with or without a fine.
- (2) For the purposes of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty's service.

#### *Offences relating to property*

#### **44 Offences in relation to public and service property**

- (1) Any person subject to air-force law who—



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- (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property, or
  - (b) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied, or
  - (c) wilfully damages, or is concerned in the wilful damage of, any public or service property, or
  - (d) by wilful neglect, causes damage by fire to any public or service property,
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (2) Without prejudice to the generality of the foregoing provisions of this section, any person subject to air-force law who—
- (a) wilfully damages, or is concerned in the wilful damage of, any of Her Majesty's aircraft or aircraft material, or
  - (b) by wilful neglect causes the damage or loss of any of Her Majesty's aircraft or aircraft material, or
  - (c) without lawful authority disposes of any of Her Majesty's aircraft or aircraft material,
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) Any person subject to air-force law who during a state of war wilfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of Her Majesty's aircraft shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if he has not acted wilfully or with wilful neglect he shall not be liable to imprisonment for a term exceeding two years.

#### **45 Offences in relation to property of members of forces**

Any person subject to air-force law who—

- (a) steals or fraudulently misapplies any property belonging to a person subject to air-force law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property, or
- (b) receives any such property knowing it to have been stolen or to have been fraudulently misapplied, or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to air-force law,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **46 Miscellaneous offences relating to property**

Any person subject to air-force law who—

- (a) loses, or by negligence damages, any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care, or

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- (b) by negligence loses or damages any of Her Majesty's aircraft or aircraft material, or
- (c) is guilty of any act or neglect likely to cause damage to or the loss of any of Her Majesty's aircraft or aircraft material, or
- (d) by negligence causes damage by fire to any public or service property, or
- (e) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for air-force purposes, or
- (f) fails to take proper care of any animal or bird used in the public service which is in his charge, or
- (g) makes away (whether by pawning, selling, destruction or in any other way) with any air-force, naval or military decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for air-force purposes,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section with losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

*Offences relating to billeting and requisitioning of vehicles*

**47 Billeting offences**

Any person subject to air-force law who—

- (a) knowing that no billeting requisition is in force under Part IV of this Act authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them ;
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under Part IV of this Act any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle ; or
- (c) commits any offence against the person or property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part IV of this Act or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**48 Offences in relation to requisitioning of vehicles**

(1) Any person subject to air-force law who—

- (a) knowing that no requisitioning order is in force under Part IV of this Act authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions, or

- (b) in purported exercise of powers conferred by a requisitioning order under Part IV of this Act takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under the said Part IV under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such an order, or
  - (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under Part IV of this Act,
- shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) The last foregoing subsection shall apply in relation to aircraft and stores (within the meaning of Part IV of this Act) as it applies in relation to vehicles.

*Flying etc. offences*

**49 Dangerous flying, etc.**

Any person subject to air-force law who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

**50 Inaccurate certification of aircraft, etc.**

Any person subject to air-force law who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. '

**51 Low flying**

Any person subject to air-force law who, being the pilot of one of Her Majesty's aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of the Air Council, the Admiralty, or the Army Council, except—

- (a) while taking off or alighting, or
- (b) in such other circumstances as may be so provided,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**52 Annoyance by flying**

Any person subject to air-force law who, being the pilot of one of Her Majesty's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any

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person shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences relating to, and by, persons in custody*

**53 Irregular arrest and confinement**

(1) Any person subject to air-force law who, when another person subject thereto is under arrest,—

- (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial; or
- (b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence against this section.

(2) Any person subject to air-force law who, having committed a person (hereinafter referred to as " the prisoner") to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, fails without reasonable cause to deliver—

- (a) at the time of the committal, or
- (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this section.

(3) Where any person (hereinafter referred to as " the prisoner ") is committed to the charge of a person subject to air-force law who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report—

- (a) a written statement containing, so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence, and
- (b) if he has received it, the report required by the last foregoing subsection,

he shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**54 Permitting escape, and unlawful release of prisoners**

(1) Any person subject to air-force law who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to air-force law who—

- (a) without proper authority releases any person who is committed to his charge, or
  - (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,
- shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## **55 Resistance to arrest**

- (1) Any person subject to air-force law who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.
- (2) Any person subject to air-force law who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to air-force law or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## **56 Escape from confinement**

Any person subject to air-force law who escapes from arrest, prison or other lawful custody (whether air-force or not), shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### *Offences in relation to courts-martial and civil authorities*

## **57 Offences in relation to courts-martial**

- (1) Any person subject to air-force law who—
  - (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order, or
  - (b) refuses to swear an oath when duly required by a court-martial to do so, or
  - (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce, or
  - (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or
  - (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or
  - (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

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shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) Notwithstanding anything in the last foregoing subsection, where an offence against paragraph (e) or (f) of that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a warrant officer, non-commissioned officer or airman, either to be imprisoned for such a period or to undergo detention for such a period.
- (3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955, or the law of any colony.

## **58 False evidence**

- (1) Any person subject to air-force law who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) A person shall not be liable to be convicted of an offence against this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

## **59 Obstruction of constable arresting officer or airman**

Any person subject to air-force law who at any place in Her Majesty's dominions prevents or obstructs—

- (a) the execution by a constable of a warrant for the arrest of a person subject to air-force law who has committed or is suspected of having committed an offence punishable on conviction by a civil court, or
- (b) the arrest of a person subject to air-force law by a constable acting in the exercise of his powers of arrest without warrant,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### *Miscellaneous offences*

## **60 Injurious disclosures**

- (1) Any person subject to air-force law who without authority discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) In this section the expression " information useful to an enemy " means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:—
- (a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty's forces or of any forces co-operating therewith, or any of Her Majesty's ships or aircraft or of the ships or aircraft of any such co-operating force;
  - (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid ;
  - (c) any code, cipher, call sign, password or countersign ;
  - (d) any measures for the defence or fortification of any place on behalf of Her Majesty;
  - (e) the number, description or location of any prisoners of war;
  - (f) munitions of war.

#### **61 Making of false statements on enlistment**

Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part I of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall, if he has since become and remains subject to air-force law, be liable, on conviction by court-martial, to the like imprisonment as on summary conviction of an offence against section nineteen of this Act or to any less punishment provided by this Act.

#### **62 Making of false documents**

Any person subject to air-force law who—

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular, or
- (b) alters any service report, return, pay list or certificate or other service document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce, or
- (c) with intent to defraud, fails to make an entry in any such document, or
- (d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to air-force law of an offence against this section (whether or not he knows the nature of the document in relation to which that offence will be committed),

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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**63 Offences against civilian population**

Any person subject to air-force law who, in any country or territory outside the United Kingdom, commits any offence against the person or property of any member of the civil population shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**64 Scandalous conduct of officer**

Every officer subject to air-force law who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered.

**65 Ill-treatment of officers or men of inferior rank**

If—

- (a) any officer subject to air-force law strikes or otherwise ill-treats any officer subject thereto of inferior rank or less seniority or any warrant officer, non-commissioned officer or airman subject to air-force law, or
- (b) any warrant officer or non-commissioned officer subject to air-force law strikes or otherwise ill-treats any person subject to air-force law, being a warrant officer or noncommissioned officer of inferior rank or less seniority or an airman,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**66 Disgraceful conduct**

Any person subject to air-force law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**67 False accusation, etc.**

Any person subject to air-force law who—

- (a) makes an accusation against any officer, warrant officer, non-commissioned officer or airman subject to air-force law which he knows to be false or does not believe to be true, or
- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer, warrant officer, non-commissioned officer or airman subject to air-force law which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**68 Attempts to commit air-force offences**

Any person subject to air-force law who attempts to commit an offence against any of the foregoing provisions of this Part of this Act shall, on conviction by court-martial, be liable to the like punishment as for that offence:



Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

## **69 Conduct to prejudice of air-force discipline**

Any person subject to air-force law who is guilty of any act, conduct or neglect to the prejudice of good order and air-force discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### *Civil offences*

## **70 Civil offences**

- (1) Any person subject to air-force law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section.
- (2) In this Act the expression " civil offence " means any act or omission punishable by the law of England or which, if committed in England, would be punishable by that law ; and in this Act the expression " the corresponding civil offence " means the civil offence the commission of which constitutes the offence against this section.
- (3) A person convicted by court-martial of an offence against this section shall—
  - (a) if the corresponding civil offence is treason or murder, be liable to suffer death ;
  - (b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in England, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or detention in the case of a warrant officer, non-commissioned officer or airman, as is so provided.

- (4) A person shall not be charged with an offence against this section committed in the United Kingdom if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.
- (5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of the last foregoing subsection, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.

### *Punishments*

## **71 Punishment of officers**

- (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale; and in relation to an officer

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references in this Act to punishments provided by this Act are references to those punishments.

- (2) The said scale is:—
- (a) death;
  - (b) imprisonment;
  - (c) cashiering;
  - (d) dismissal from Her Majesty's service ;
  - (e) forfeiture in the prescribed manner of seniority of rank;
  - (f) severe reprimand or reprimand;
  - (g) where the offence has occasioned any expense, loss or damage, stoppages.
- (3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.
- (4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.
- (5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.
- (6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank.
- (7) Where an officer is sentenced by a court-martial to imprisonment he shall also be sentenced to be cashiered:

Provided that if the court-martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

## **72 Punishment of W.O.S, N.C.O.S and airmen**

- (1) The punishments which may be awarded to a warrant officer, non-commissioned officer or airman by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale ; and in relation to a warrant officer, non-commissioned officer or airman references in this Act to punishments provided by this Act are references to those punishments.
- (2) The said scale is:—
- (a) death;
  - (b) imprisonment;
  - (c) discharge with ignominy from Her Majesty's service ;
  - (d) in the case of a warrant officer, dismissal from Her Majesty's service;
  - (e) detention for a term not exceeding two years ;
  - (f) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
  - (g) in the case of a warrant officer or non-commissioned officer, forfeiture in the prescribed manner of seniority of rank;
  - (h) where the offence is desertion, forfeiture of service ;

- (i) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand ;
  - (j) where the offence was committed on active service, forfeiture of pay for a period beginning with the day of the sentence and not exceeding ninety days ;
  - (k) where the offence is drunkenness, a fine;
  - (l) where the offence has occasioned any expense, loss or damage, stoppages.
- (3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:
- Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.
- (4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.
- (5) A warrant officer, non-commissioned officer or airman sentenced by a court-martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from Her Majesty's service, and a warrant officer sentenced by a court-martial to imprisonment may in addition thereto be sentenced to dismissal from Her Majesty's service.
- (6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment or detention, he shall also be sentenced to be reduced to the ranks:
- Provided that if the court-martial fail to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.
- (7) In the case of a warrant officer or non-commissioned officer a severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank.
- (8) For an offence committed on active service forfeiture of pay may be awarded by a court-martial in addition to field punishment, severe reprimand or reprimand.
- (9) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.
- (10) Where an offender has been sentenced by a court-martial (whether under this Act, the Naval Discipline Act or the Army Act, 1955) to detention, then if he is subsequently sentenced by a court-martial under this Act to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.
- (11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

## **73 Field punishment**

- (1) In relation to an offence committed by a warrant officer, non-commissioned officer or airman on active service, the scale set out in subsection (2) of the last foregoing section shall have effect as if after paragraph (e) thereof there were inserted the following paragraph:—
- “(ee) field punishment for a period not exceeding ninety days”,

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and subsection (6) of the last foregoing section shall apply to field punishment as it applies to imprisonment or detention.

- (2) Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under rules to be made by the Secretary of State, and may include confinement in such place and manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.
- (3) Rules under this section may contain such incidental and supplementary provisions as appear to the Secretary of State to be requisite for the purposes of the rules.
- (4) The power to make rules conferred by this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Arrest*

#### **74 Power to arrest offenders**

- (1) Any person subject to air-force law found committing an offence against any provision of this Act, or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section.
- (2) An officer may be arrested by an officer of the regular air force of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.
- (3) A warrant officer, non-commissioned officer or airman may be arrested by any officer, warrant officer or non-commissioned officer of the regular air force:  
  
Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.
- (4) A provost officer, or any officer, warrant officer, petty officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer or airman:  
  
Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.
- (5) The power of arrest given to any person by this section may (subject to the provisions of Queen's Regulations) be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

#### **75 Provisions for avoiding delay after arrest**

- (1) The allegations against any person subject to air-force law who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.
- (2) Wherever any person subject to air-force law, having been taken into air-force custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be

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made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of air-force operations.

- (3) For the purposes of subsection (1) of section fifty-three of this Act the question whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of the last foregoing subsection.

#### *Investigation of, and summary dealing with, charges*

### **76 Investigation of charges by commanding officer**

Before an allegation against a person subject to air-force law (hereinafter referred to as " the accused ") that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

### **77 Charges to be dealt with summarily or by court-martial**

- (1) After investigation, a charge against an officer below the rank of squadron leader or against a warrant officer may, if an authority has power under the following provisions of this Part of this Act to deal with it summarily, be so dealt with by that authority (in this Act referred to as " the appropriate superior authority ") in accordance with those provisions.
- (2) After investigation, a charge against a non-commissioned officer or airman may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.
- (3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.
- (4) Notwithstanding anything in the foregoing provisions of this section, where—
- (a) the commanding officer has investigated a charge against an officer or warrant officer, or
  - (b) the commanding officer has investigated a charge against a non-commissioned officer or airman which is not one which can be dealt with summarily,
- the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.
- (5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

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## **78 Further proceedings on charges against N.C.O.S and airmen**

- (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or airman.
- (2) If—
  - (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it, or
  - (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,
 he shall take the prescribed steps with a view to the charge being tried by court-martial.
- (3) Otherwise, the commanding officer shall proceed to deal with the charge summarily ; and if he records a finding of guilty he may award one or more of the following punishments, that is to say:—
  - (a) if the accused is an airman, detention for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;
  - (b) if the accused is a non-commissioned officer, severe reprimand or reprimand;
  - (c) if the accused is an airman and the offence was committed on active service, forfeiture of pay for a period beginning with the day of the sentence and not exceeding twenty-eight days;
  - (d) where the accused is an airman and the offence charged is drunkenness, a fine not exceeding two pounds;
  - (e) where the offence has occasioned any expense, loss or damage, stoppages;
  - (f) any minor punishment for the time being authorised by Queen's Regulations:

Provided that no forfeiture of pay or minor punishment shall be awarded for an offence for which detention is awarded.

- (4) Where the accused is an acting warrant officer or noncommissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank.
- (5) Notwithstanding anything in subsection (3) of this section, where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with Queen's Regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.
- (6) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference the three last foregoing subsections shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried (by court-martial and has not withdrawn his election.

## **79 Further proceedings on charges against officers and warrant officers**

- (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, or the case is one where he has power, and proposes, to direct trial by field general court-martial, submit it in the prescribed manner to higher authority ; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following subsections.
- (2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.
- (3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.
- (4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:  

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.
- (5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say:—
  - (a) forfeiture in the prescribed manner of seniority of rank;
  - (b) severe reprimand or reprimand ;
  - (c) where the offence has occasioned any expense, loss or damage, stoppages.
- (6) Notwithstanding anything in subsection (4) of this section, where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority or stoppages, or where a finding of guilty will involve a forfeiture of pay, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

## **80 Dismissal of charges referred to higher authority**

- (1) Notwithstanding anything in the two last foregoing sections, where a charge—
  - (a) has been referred to higher authority with a view to its being tried by court-martial, or
  - (b) has been submitted to higher authority for determination how it is to be proceeded with,that authority may, subject to the provisions of this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.
- (2) In a case falling within paragraph (a) of the last foregoing subsection, a charge shall not be referred back where the accused has elected to be tried 'by court-martial and has not withdrawn his election.
- (3) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

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**81 Confession of desertion by warrant officer, non-commissioned officer or airman**

- (1) Where in accordance with Queen's Regulations a warrant officer, non-commissioned officer or airman signs a written confession that he has been guilty of desertion, his commanding officer may, notwithstanding anything in the foregoing provisions of this Part of this Act, submit the confession for the consideration of the Air Council or such officer not below the rank of group captain as may be provided by Queen's Regulations.
- (2) After considering any such confession the Air Council or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.
- (3) A direction under the last foregoing subsection may further provide that the whole or any part of the offender's service previous to that as respects which he confesses as aforesaid shall also be forfeited.
- (4) Subsections (2) to (5) of section seventeen of this Act shall apply in relation to the forfeiture of service by virtue of this section subject to the following modifications:—
  - (a) for references to an award of forfeiture of service by the court-martial there shall be substituted references to the direction;
  - (b) for references to the date on which the offender was convicted there shall be substituted references to the date on which the direction was given.

**82 Officers who are to act as commanding officers and appropriate superior authorities**

- (1) In this Act the expression "commanding officer", in relation to a person charged with an offence, means such officer having powers of command over that person as may be determined by or under regulations of the Air Council.
- (2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say,—
  - (a) any air officer, flag officer, general officer or brigadier having power to convene general courts-martial, or
  - (b) such other air officer, flag officer, general officer or brigadier, or, where the Air Council in special circumstances so direct, group captain, as may be specified by or under regulations of the Air Council:

Provided that an officer under such rank as may be specified by regulations under this section shall not act as appropriate superior authority where the accused is above such rank as may be so specified.

- (3) Regulations under this section may confer on officers, or any class of officers, who by or under the regulations are authorised to exercise the functions of commanding officer power to delegate those functions, in such cases and to such extent as may be specified in the regulations, to officers of a class so specified.



**83 Limitation on powers of summary dealing with charges**

- (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may (be specified by regulations of the Air Council.
- (2) In such cases as may be specified in that behalf by regulations of the Air Council, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

*Courts-martial: general provisions*

**84 Trial to be by general court-martial, district court-martial or in certain cases field general court-martial**

- (1) Subject to the provisions of this section, a charge which is to be tried by court-martial shall be tried either by general court-martial or by district court-martial.
- (2) Where the officer commanding a body of the regular air force on active service—
  - (a) being an officer (whether air-force, naval or military) to whom a charge has been submitted under subsection (1) of section seventy-nine of this Act for determining how it is to be dealt with, or
  - (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with, or
  - (c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

is of opinion that it is not possible without serious detriment to the public service that the charge should be tried by a general or district court-martial, the officer may (whether or not he is authorised to convene general courts-martial) direct that the charge shall be tried by a field general court-martial.

**85 Powers of different descriptions of court-martial**

- (1) A general court-martial shall have power to try any person subject to air-force law for any offence which under this Act is triable by court-martial, and to award for any such offence any punishment authorised by this Act for that offence.
- (2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, discharge with ignominy, dismissal or detention, and shall not award the punishment of death or of imprisonment for a term exceeding two years.
- (3) A field general court-martial shall have the powers of a general court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years.

**86 Officers having power to convene courts-martial**

- (1) A general court-martial may be convened by any qualified officer authorised by Her Majesty by warrant under Her sign manual to convene general courts-martial or that court-martial, or by any qualified officer under the command of an officer

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authorised as aforesaid to whom the last-mentioned officer has, in the exercise of a power conferred by the warrant issued to him, delegated his power to convene general courts-martial.

- (2) A district court-martial may be convened by an officer authorised to convene general courts-martial, by any person, not below the rank of flight lieutenant, under the command of such an officer whom that officer has authorised to convene district courts-martial, by any air officer commanding a body of the air force or by any officer for the time being acting in the place of such an air officer.
- (3) A field general court-martial may be convened by the officer who directed that the charge should be tried by field general court-martial.
- (4) Notwithstanding anything in subsection (1) or (2) of this section, any power to convene courts-martial delegated under subsection (1) of this section shall be exercisable only for the trial of a person who at the date of the convening order is under or within the territorial limits of the convening officer's command, and an officer, other than one authorised to convene general courts-martial, shall not by virtue of subsection (2) of this section convene a district court-martial except for the trial of a person under his command.
- (5) In this section the expression " qualified officer " means any officer not below the rank of squadron leader or corresponding rank who—
  - (a) is in command of a body of the regular air force, or
  - (b) is in command of the command within which a body of the regular air force is serving.
- (6) Any warrant under this section, or any authorisation under this section to convene courts-martial—
  - (a) may be made subject to restrictions, reservations, exceptions or conditions;
  - (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors;
  - (c) may be varied or may be revoked, either wholly or in part, by a subsequent warrant of Her Majesty or, as the case may be, by the officer by whom it was given or his successor in office.
- (7) Where an officer on board ship—
  - (a) has had power to convene general courts-martial delegated to him by an officer under whose command he was before the departure of the ship, or
  - (b) has been authorised under subsection (2) of this section to convene district courts-martial by such an officer,

he may convene courts-martial to the like extent as if he had continued under the command of the officer delegating the power or granting the authorisation.

## **87 Constitution of general courts-martial**

- (1) A general court-martial shall consist of the president and not less than four other officers.
- (2) Save as hereinafter provided, an officer shall not be appointed a member of a general court-martial unless he belongs to Her Majesty's air forces, is subject to air-force law

and has held a commission in any of the armed forces of the Crown for a period of not less than three years or for periods amounting in the aggregate to not less than three years.

- (3) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (4) The president of a general court-martial shall be appointed by order of the convening officer, and shall be of the rank of squadron leader or higher rank unless in the opinion of the convening officer no such officer having suitable qualifications is, with due regard to the public service, available; and in any event the president of a general court-martial shall not be under the rank of flight lieutenant.
- (5) The members of a general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.
- (6) An officer under the rank of flight lieutenant shall not be a member of a general court-martial for the trial of an officer above that rank.

## **88 Constitution of district courts-martial**

- (1) A district court-martial shall consist of the president and not less than two other officers.
- (2) Save as hereinafter provided, an officer shall not be appointed to be a member of a district court-martial unless he belongs to Her Majesty's air forces, is subject to air-force law and has held a commission in any of the armed forces of the Crown for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (3) The president of a district court-martial shall be appointed by order of the authority convening the court, and shall be of the rank of squadron leader or higher rank unless in the opinion of the authority convening the court no such officer having suitable qualifications is, with due regard to the public service, available ; and in any event the president of a district court-martial shall not be under the rank of flight lieutenant.
- (4) The members of a district court-martial, other than the president, shall be appointed by order of the authority convening the court or in such other manner as may be prescribed.

## **89 Constitution of field general courts-martial**

- (1) A field general court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualifications are not available without serious detriment to the public service, shall consist of the president and one other officer.
- (2) Save as hereinafter provided, the members of a field general court-martial shall be persons belonging to Her Majesty's air forces and subject to air-force law.
- (3) The president of a field general court-martial shall be an officer appointed by the convening officer and shall not be under the rank of flight lieutenant.
- (4) The members of a field general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

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## **90 Supplementary provisions as to constitution of courts-martial**

- (1) The officer who convened a court-martial shall not be a member of that court-martial:

Provided that if in the case of a field general court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he may himself be president of the court-martial.

- (2) An officer who at any time between the date on which the accused was charged with the offence and the date of the trial has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a general or district court-martial, or act as judge advocate at such a court-martial.
- (3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of air-force officers having suitable qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with the consent of the proper naval or military authority, appoint any naval or military officer as president in lieu of an air-force officer or as any other member of the court in lieu of or in addition to an air-force officer or air-force officers:

Provided that no naval or military officer shall be qualified to act in relation to a court-martial unless he is of corresponding rank to that which would have been required in the case of an air-force officer and has held a commission in any of the armed forces of the Crown for the like period or periods as would have been so required.

- (4) Where—
- (a) the officer convening a general or district court-martial appoints a flight lieutenant to be president, being of opinion that no officer of higher rank having suitable qualifications is, with due regard to the public service, available;
  - (b) an officer directs that an offender shall be tried by a field general court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by a general or district court-martial, or the officer convening a field general court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious detriment to the public service available, or appoints himself to be president, being of opinion that it is not practicable to appoint another officer as president, or
  - (c) the officer convening any court-martial appoints an officer not being an air-force officer as president or any other member of the court, being of opinion that the necessary number of air-force officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service,

the order convening the court-martial shall contain a statement of the said opinion, and that statement shall be conclusive.

- (5) In this section the expression " air-force officer " means an officer belonging to Her Majesty's air forces and subject to air-force law.

## **91 Place for sitting of courts-martial and adjournment to other places**

- (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without Her Majesty's dominions) as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the limits of his command.
- (2) A court-martial sitting at any place shall if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

*Courts-martial: provisions relating to trial*

## **92 Challenges by accused**

- (1) An accused about to be tried by any court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.
- (2) For the purpose of enabling the accused to avail himself of the right conferred by the last foregoing subsection, the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers.
- (3) Every objection made by an accused to any officer shall be considered by the other officers appointed members of the court.
- (4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.
- (5) If objection is made to a member of the court other than the president and not less than one half of the members entitled to vote allow it, the member Objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

## **93 Administration of oaths**

- (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter.
- (2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

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- (3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

#### **94 Courts-martial to sit in open court**

- (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.
- (2) Nothing in the last foregoing subsection shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.
- (3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.
- (4) A court-martial may sit in closed court on any other deliberation amongst the members.
- (5) Where a court-martial sits in closed court, no person shall be present except the members of the court and such other persons as may be prescribed.

#### **95 Dissolution of courts-martial**

- (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.
- (2) Without prejudice to the generality of the last foregoing subsection, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.
- (3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then—
- (a) if the senior member of the court is of the rank of flight lieutenant or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but
  - (b) if he is not, the court shall be dissolved.
- (4) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.
- (5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court.

## **96 Decisions of courts-martial**

- (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court.
- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.
- (3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.
- (4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.
- (5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

## **97 Finding and sentence**

- (1) Without prejudice to the provisions of section ninety-four of this Act, the finding of a court-martial on each charge shall be announced in open court.
- (2) Any finding of guilty shall be, and be announced as being, subject to confirmation.
- (3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

## **98 Power to convict of offence other than that charged**

- (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.
- (2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.
- (3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.
- (4) Where an accused is charged (before a court-martial under section seventy of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.
- (5) Where an accused is charged before a court-martial with an offence against section seventy of this Act, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in England, he might have been found guilty of another civil offence, then if the court finds that

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he has committed that other civil offence he may be convicted of an offence against section seventy of this Act in respect of the commission of that other civil offence.

- (6) An accused charged before a court-martial with an offence specified in the first column of the Third Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

## **99 Rules of evidence**

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in England, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in England.
- (2) Notwithstanding anything in the last foregoing subsection, a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence—

- (a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused ;
  - (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused;
  - (c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused, serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration;
  - (d) in any case, if the court-martial is of opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.
- (3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in England.

## **100 Privilege of witnesses and others at courts-martial**

A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England.

## **101 Offences by civilians in relation to courts-martial**

Where in the United Kingdom or in any colony any person not subject to air-force law—

- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons, or



- (b) refuses to swear an oath when duly required by a court-martial to do so, or
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce, or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof, or wilfully insults any such person as aforesaid while that person is so attending or is going to or returning from the proceedings of the court, or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court, or
- (g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in the part of the United Kingdom or in the colony, as the case may be, where the offence is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified:

Provided that where the offence is alleged to have been committed in the United Kingdom and the court-martial was held outside the United Kingdom, the certifying of the offence may be done by the Air Council or any officer authorised by them.

## **102 Affirmations**

If—

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

*Offences: procedure*

## **103 Rules of Procedure**

- (1) Subject to the provisions of this section, the Secretary of State may make rules (hereinafter referred to as Rules of Procedure) with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.

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- (2) Without prejudice to the generality of the last foregoing subsection, Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—
- (a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
  - (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of section ninety-three of this Act in any case where the accused requires that evidence shall be taken on oath ;
  - (c) the addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation, and the treating of the investigation as the investigation of the new charge;
  - (d) the convening and constitution of courts-martial;
  - (e) the sittings, adjournment and dissolution of courts-martial ;
  - (f) the procedure to be observed in trials by court-martial;
  - (g) the representation of the accused at such trials;
  - (h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (b) of this subsection;
  - (i) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of the four last foregoing sections;
  - (j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
  - (k) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence ;
  - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or the Rules relating to the investigation or trial of, or award of punishment for, offences cognizable by courts-martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial; and
  - (m) any matter which by this Part of this Act is required or authorised to be prescribed.
- (3) Rules made by virtue of paragraph (j) of the last foregoing subsection shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

- (4) Rules of Procedure shall not make provision with respect to the carrying out of sentences passed by courts-martial or of other punishments awarded under this Part of this Act.
- (5) A Rule of Procedure which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

#### **104 Rules as to exercise of functions of judge advocate**

- (1) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial.
- (2) Without prejudice to the generality of the foregoing provisions of this section, Rules of Procedure may make provision—
  - (a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law ;
  - (b) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.
- (3) In the last foregoing subsection references to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

#### **105 Taking of offences into consideration**

- (1) Rules of Procedure may be made for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.
- (2) Where Rules of Procedure make such provision as aforesaid, they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

#### **106 Rules of Procedure to be subject to annulment**

The power to make Rules of Procedure shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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*Confirmation, Revision and Review of Proceedings of Courts-Martial*

**107 Confirmation of proceedings of courts-martial**

- (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.
- (2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of the two next following sections or the provisions of this Act as to confirmation or approval.

**108 Petitions against finding or sentence**

At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

**109 Revision of findings of courts-martial**

- (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—
  - (a) that the finding was against the weight of evidence, or
  - (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.
- (2) Any such direction shall be accompanied by the necessary directions for the re-assembly of the court, and shall contain a statement of the reasons for the direction.
- (3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.
- (4) On any such revision the court shall not have power to receive further evidence.
- (5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

- (6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any

substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

## **110 Powers of confirming officers**

- (1) Subject to the provisions of the last foregoing section and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming officer.
- (2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer may, if—
  - (a) some other finding of guilty could have been validly made by the court-martial on the charge before it, and
  - (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) of this section shall be exercised.
- (3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may in lieu of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.
- (4) In confirming the sentence of a court-martial, a confirming officer may—
  - (a) remit in whole or in part any punishment awarded by the court; or
  - (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.
- (5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.
- (6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.
- (8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

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## 111 Confirming officers

- (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say:—
  - (a) the officer who convened the court-martial or any officer superior in command to that officer;
  - (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;
  - (c) failing any such officer as aforesaid, any officer appointed by the Air Council to act as confirming officer, whether for the particular case or for a specified class of cases.
  
- (2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:—
  - (a) any officer who was a member of the court-martial, or
  - (b) any person who as commanding officer of the accused investigated the allegations against him or who is for the time being the commanding officer of the accused, or
  - (c) any person who as appropriate superior authority investigated the allegations against the accused:

Provided that a person excluded by the foregoing provisions of this subsection may act as confirming officer for a field general court-martial, if otherwise having power to do so, where he is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming officer.
  
- (3) A warrant or authorisation empowering the convening of a general or district court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the warrant or authorisation, and the powers conferred by subsection (1) of this section shall be exercisable subject to any such reservation.
  
- (4) Where a person is found guilty by a court-martial held on board any ship and is disembarked before the finding or sentence has been confirmed it may be confirmed by any officer under, or in the area of, whose command he is for the time being, being an officer having power to confirm courts-martial of the like description as that held on board the ship.

## 112 Approval as well as confirmation required for certain death sentences

- (1) A sentence of death confirmed by an officer below the rank of air vice-marshal shall not be carried into effect unless approved by an officer not below the rank of air vice-marshal or by a naval or military officer of corresponding rank, being a naval or military officer commanding the command in which the person under sentence was serving at the date of the sentence.
  
- (2) Without prejudice to the provisions of the last foregoing subsection, a sentence of death passed by a court-martial shall not be carried into effect in a colony unless approved by the Governor of the colony.
  
- (3) Notwithstanding anything in the foregoing provisions of this section, sentence of death passed on a person on active service may be carried out without such approval as is mentioned in subsection (1) or subsection (2) of this section where in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose

of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

### **113 Review of findings and sentences of courts-martial**

- (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section one hundred and eight of this Act against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.
- (2) The reviewing authorities for the purposes of this Act are the following:—
  - (a) Her Majesty,
  - (b) the Air Council, or (so far as the delegation extends) any officer to whom the powers of the Air Council as reviewing authority, or any of those powers, may be delegated by, or by regulations of, the Air Council,
  - (c) any officer superior in command to the confirming officer.
- (3) If an application for leave to appeal is received by the registrar of the Courts-Martial Appeal Court or the said registrar receives particulars of such an application furnished in pursuance of paragraph (b) of subsection (3) of section four of the Courts-Martial (Appeals) Act, 1951, so much of subsection (1) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.
- (4) Notwithstanding anything in subsection (1) of this section, a sentence of death passed on a person on active service and the finding of guilty in consequence of which it was passed shall not be required to be reviewed if in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.
- (5) On a review under this section the reviewing authority may—
  - (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;
  - (b) in so far as the review is of a sentence, quash the sentence;
  - (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2) to (4) of section one hundred and ten of this Act;and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (6) Where a reviewing authority exercises any of the powers conferred by the last foregoing subsection, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

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#### **114 Reconsideration of sentences of imprisonment and detention**

- (1) Sentences of imprisonment and detention may be reconsidered by such officers (not below the rank of air commodore or corresponding naval or military rank) as may be specified by regulations of the Air Council; and if on any such reconsideration it appears to the authority that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.
- (2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after the review of a sentence it is effective it shall be reconsidered not less frequently than at such intervals as shall be specified by regulations of the Air Council:

Provided that delay in complying with this subsection shall not invalidate the sentence.

#### *Review of summary findings and awards*

#### **115 Review of summary findings and awards**

- (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.
- (2) The said authority is—
  - (a) the Air Council, or
  - (b) any air-force, naval or military officer superior in command to the officer who dealt summarily with the charge, or
  - (c) any other officer being—
    - (i) an air officer appointed by the Air Council to act for the purposes of this section in any particular case, or
    - (ii) an air officer, or air officer of a class, so appointed for any class of cases.
- (3) Where on a review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding ; and if the finding is quashed the authority shall also quash the award.
- (4) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

#### *Findings of insanity*

#### **116 Provisions where accused found insane**

- (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding



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is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations of the Air Council until the directions of Her Majesty are known or until any earlier time at which the accused is fit to stand his trial.

- (2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations of the Air Council until the directions of Her Majesty are known.
- (3) In the case of any such finding as aforesaid Her Majesty may give orders for the safe custody of the accused during Her pleasure in such place and in such manner as Her Majesty thinks fit.
- (4) A finding under subsection (1) of this section shall not have effect unless and until the finding has been confirmed by an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.
- (5) Where the court or the confirming officer comes to or substitutes a finding of guilty but insane the confirming officer or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty ; but save as aforesaid the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (2) of this section as those provisions apply in relation to other findings of guilty.

*Saving for functions of Judge Advocate General*

## **117 Saving for functions of Judge Advocate General**

Nothing in the foregoing provisions of this Part of this Act shall prejudice the exercise of the functions conferred (whether by Queen's Regulations or otherwise) on the Judge Advocate General of considering and reporting on the proceedings of courts-martial or any other functions so conferred on him in relation to such courts.

*Commencement, suspension and duration of sentences*

## **118 Commencement of sentences**

- (1) An air-force sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of this section and of subsection (7) of section four of the Courts-Martial (Appeals) Act, 1951 (which empowers the Court in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.
- (2) A sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or airman which is suspended in pursuance of section one

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hundred and twenty of this Act before he has been committed to prison or an air-force establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the confirming officer (and the reviewing Authority determines the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the reviewing authority may specify.

## 119 Duration of sentences of imprisonment and detention

- (1) Where a warrant officer, non-commissioned officer or airman has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of the next following section after he has been committed to prison or an air-force establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of the next following section until the beginning of the day on which the suspension is determined.
- (2) Where any person serving an air-force sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into air-force, naval or military custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was—

- (a) in the custody of a civil authority, or
- (b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any air-force, naval or military authority of any country or territory outside the United Kingdom as respects which arrangements have been made under section one hundred and twenty-six of this Act,

the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the air-force sentence.

- (3) In the last foregoing subsection the expression " civil authority " means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable.
- (4) Without prejudice to subsection (2) of this section, where any person serving an air-force sentence of imprisonment or detention has in accordance with Imprisonment and Detention Rules been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.
- (5) A person who for any period is released as mentioned in the last foregoing subsection or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out

of any air-force establishment or otherwise out of air-force custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) of this section as being unlawfully at large.

- (6) A person serving an air-force sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.
- (7) References in the last foregoing subsection to release or recall under civil law are references to release or recall in pursuance of rules made under subsection (5) of section forty-seven of the Prison Act, 1952, subsection (6) of section thirty-five of the Prisons (Scotland) Act, 1952, or paragraph (c) of subsection (1) of section thirteen of the Prisons Act (Northern Ireland) 1953, or (in the case of a person serving his sentence outside the United Kingdom) in pursuance of any corresponding provision of the law of the country or territory in which he is serving his sentence.

## **120 Suspension of sentences**

- (1) The following provisions of this section shall have effect as respects the suspension of a sentence of imprisonment or detention passed by a court-martial on a warrant officer, noncommissioned officer or airman.
- (2) Without prejudice to subsection (5) of section one hundred and ten of this Act, in confirming such a sentence the confirming officer may order that the sentence shall be suspended.
- (3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.
- (4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review or reconsideration of the sentence by an order of the said authority committing the person sentenced to imprisonment or detention, as the case may be.
- (5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence then (unless the balance of the earlier sentence is remitted by virtue of subsection (10) of section seventy-two of this Act)—
  - (a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively ;
  - (b) if the court does not exercise the powers conferred by the last foregoing paragraph, the confirming officer may exercise those powers on the confirmation of the later sentence;
  - (c) if neither the court nor the confirming officer exercises the said powers, a reviewing authority may exercise those powers on the review of the later sentence;

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- (d) where the said powers are exercised (whether by the court, the confirming officer or a reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect subject to the provisions of subsection (11) of section seventy-two of this Act.

- (6) Without prejudice to the further suspension of the earlier sentence, an order under the last foregoing subsection directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.
- (7) Where the sentence of a person in custody is suspended, he shall thereupon be released.
- (8) The maximum intervals for the reconsideration, under subsection (2) of section one hundred and fourteen of this Act, of a sentence of imprisonment or detention which is suspended shall be three months, and not those specified under the said subsection.

*Execution of sentences of death, imprisonment and detention*

**121 Execution of sentences of death**

- (1) The Secretary of State may make regulations with respect to the execution of sentences of death under this Act, whether passed in the United Kingdom or elsewhere.
- (2) Without prejudice to the generality of the last foregoing subsection regulations under this section may make provision with respect to all or any of the following matters, that is to say—
- (a) the manner in which, the person by whom and the country or territory, place and kind of establishment (whether air-force or not) where any such sentence is to be executed; and
  - (b) the custody and treatment of the person under sentence and his removal from one place or establishment to another between the passing and execution of the sentence,
- or may authorise such persons as may be specified in or determined by or under the regulations to give directions with respect to all or any of those matters.
- (3) Such provost marshal or other provost officer not below the rank of squadron leader as may be specified in or determined under regulations under this section shall be responsible for the due execution of any sentence of death passed under this Act.

**122 Imprisonment and detention rules**

- (1) Subject to the provisions of this Act, the Secretary of State may make rules (in this Part of this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters, that is to say—
- (a) the places in which and the establishments or forms of custody (whether air-force or not) in which persons may be required to serve the whole or any part of air-force sentences of imprisonment and detention passed on them;
  - (b) the committal of persons under air-force sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of

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- custody to another and their release on the coming to an end of any term of imprisonment or detention;
- (c) the provision, classification, regulation and management of air-force establishments;
  - (d) the classification, treatment, employment, discipline and control of persons serving air-force sentences of imprisonment or detention in air-force establishments or otherwise in air-force custody ;
  - (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;
  - (f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of air-force establishments.
- (2) Imprisonment and Detention Rules shall not authorise the infliction of corporal punishment.
- (3) Imprisonment and Detention Rules may apply with the necessary modifications all or any of the provisions of sections thirty-nine to forty-two of the Prison Act, 1952 (which relate to offences by persons other than prisoners).
- (4) Imprisonment and Detention Rules may, to such extent as may be provided by the Rules, be made so as to apply to persons detained in air-force establishments while serving sentences of imprisonment or detention awarded under the Naval Discipline Act or the Army Act, 1955, notwithstanding that such persons are not for the time being subject to air-force law.
- (5) The Secretary of State may as respects any area in which persons subject to air-force law are on active service delegate his power to make Imprisonment and Detention Rules to the officer commanding the command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Secretary of State may think fit.

### **123 Supplementary provisions relating to regulations and rules under ss. 121 and 122**

- (1) Regulations made under section one hundred and twenty-one of this Act or Imprisonment and Detention Rules may contain such incidental and supplementary provisions as appear to the Secretary of State to be requisite for the purposes of the regulations or rules.
- (2) Any such regulations or rules as aforesaid made by the Secretary of State shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **124 Restrictions on serving of sentences of detention in prisons**

A person shall not be required to serve any part of an air-force sentence of detention in an air-force or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Rules a person serving such a sentence may be

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temporarily detained in an air-force or civil prison for any period not exceeding seven days.

### **125 Special provisions as to civil prisons in the United Kingdom**

- (1) A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations under section one hundred and twenty-one of this Act or of Imprisonment and Detention Rules shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.
- (2) The Capital Punishment Amendment Act, 1868 and any rules made under section seven of that Act shall apply in relation to the execution in a civil prison of a sentence of death passed by a court-martial for any offence, but with the substitution in that Act for references to the sheriff of references to the provost marshal or other provost officer responsible for the due execution of the sentence.

### **126 Special provisions as to carrying out or serving of sentences outside the United Kingdom otherwise than in air-force establishments**

- (1) A Secretary of State may from time to time make arrangements with the authorities of any country or territory outside the United Kingdom whereby sentences of death passed by courts-martial may in accordance with regulations under section one hundred and twenty-one of this Act be carried out in establishments under the control of those authorities and air-force sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in such establishments.
- (2) The powers conferred on the Secretary of State by sections one hundred and twenty-one and one hundred and twenty-two of this Act shall extend to the making of such provision as appears to the Secretary of State necessary or expedient for giving effect to any arrangements made under the last foregoing subsection.
- (3) The said powers shall be so exercised as to secure that no sentence of death passed by a court-martial shall be executed, and no air-force sentence of imprisonment or detention shall be served, in an establishment in any country or territory outside the United Kingdom not being an air-force establishment, except in accordance with arrangements made as respects that country or territory.

### **127 Country in which sentence of imprisonment or detention to be served**

- (1) A person who is serving an air-force sentence of imprisonment or detention in the United Kingdom may (in so far as may be specified by or under Imprisonment and Detention Rules) be removed out of the United Kingdom—
  - (a) to any colony in which he was enlisted; or
  - (b) to any place out of the United Kingdom where the corps or unit to which for the time being he belongs is serving or is under orders to serve,but not to any other place.
- (2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to the United Kingdom.

- (3) The last foregoing subsection shall not apply in relation to any person belonging to a class of persons specified by or under Imprisonment and Detention Rules as persons whose removal to the United Kingdom would for reasons of climate, place of birth or place of enlistment or any other reason not be beneficial.
- (4) Where a person has been sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months, the confirming officer or reviewing authority may notwithstanding anything in subsection (2) of this section direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding, (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection a confirming officer or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.
- (5) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or by a reviewing authority, or superseded by any direction of the confirming officer or a reviewing authority which the officer or authority could have given under the last foregoing subsection ; and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.
- (6) Any direction given under this section, and the revocation of any such direction, shall be promulgated.
- (7) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

## **128 Application of enactments relating to coroners**

- (1) Section five of the Capital Punishment Amendment Act, 1868 (which makes special provision for the holding of inquests on the bodies of persons on whom judgment of death has been executed within the jurisdiction of a coroner) shall apply in relation to the execution in any premises in the United Kingdom under the control of the Secretary of State within such jurisdiction of a sentence of death passed under this Act by a court-martial as it applies to the execution of a judgment of death passed by a civil court, but with the substitution for the reference to the sheriff of a reference to the provost marshal or other provost officer responsible for the due execution of the sentence.
- (2) The Coroners Acts, 1887 to 1926 shall apply in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as those Acts apply in relation to a prison.

## **129 Duties of governors of prisons and others to receive prisoners**

- (1) It shall be the duty of the governor of a civil prison, or, in so far as regulations under section one hundred and twenty-one of this Act or Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being an air-force prison) in a colony, to receive any person duly sent to that prison in pursuance of the regulations or rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

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- (2) Where a person is in air-force custody in pursuance of an air-force sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such governor, superintendent or other person as aforesaid, of the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined (whether the station or place is in the United Kingdom or in a colony), to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

**130 Application to military establishments and custody**

- (1) In section one hundred and eighteen of this Act, the reference in subsection (2) to an air-force establishment shall include a reference to a military establishment (within the meaning of the Army Act, 1955).
- (2) In section one hundred and nineteen of this Act references to an air-force establishment and to Imprisonment and Detention Rules shall include respectively references to such a military establishment as aforesaid and to Imprisonment and Detention Rules made under the Army Act, 1955, and the reference in subsection (5) to air-force custody shall include a reference to military custody.
- (3) In section one hundred and twenty-four of this Act the reference to an air-force prison shall include a reference to a military prison (within the meaning of the Army Act, 1955).
- (4) In subsection (3) of section one hundred and twenty-six of this Act the reference to an air-force establishment shall include a reference to a military establishment (within the meaning of the Army Act, 1955).

*Trial of persons ceasing to be subject to air-force law and time limits for trials*

**131 Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject to air-force law**

- (1) Subject to the provisions of the next following section, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to air-force law, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation, review, reconsideration and suspension) and execution of sentences as continuing subject to air-force law notwithstanding his ceasing at any time to be subject thereto.
- (2) Where, while a person is in air-force or military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to air-force law would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in the last foregoing subsection and the provisions thereof as to the summary dealing with charges, as having been subject to air-force law when the offence was committed or is suspected of having been committed and as continuing subject to air-force law thereafter.



- (3) Where by virtue of either of the two last foregoing subsections a person is treated as being at any time subject to air-force law for the purpose of any provision of this Act, that provision shall apply to him—
- (a) if he holds any air-force rank, as to a person having that rank;
  - (b) if he holds any naval or military rank or rating, as to a person having the corresponding air-force rank;
  - (c) otherwise as to a person having the rank which he had when last actually subject to air-force law :

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to an airman.

- (4) Where apart from this subsection any provision of this Act would under the last foregoing subsection apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

### **132 Limitation of time for trial of offences under this Act**

- (1) No person shall be tried by court-martial for any offence, other than one against section thirty-one or thirty-two of this Act or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Provided that—

- (a) in the case of an offence against section seventy of this Act where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section seventy in substitution for the foregoing provisions of this subsection",
  - (b) subject to any such limit of time as is mentioned in the last foregoing paragraph, a person may be tried by court-martial for a civil offence committed outside the United Kingdom notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney General consents to the trial.
- (2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular air force continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.
- (3) A person shall not be triable by virtue of subsection (1) of the last foregoing section unless his trial is begun within three months after he ceases to be subject to air-force law, or the trial is for a civil offence committed outside the United Kingdom and the Attorney General consents to the trial:

Provided that this subsection shall not apply to an offence against section thirty-one or thirty-two of this Act or desertion.

- (4) A person shall not be arrested or kept in custody by virtue of subsection (1) of the last foregoing section for an offence at any time after he has ceased to be triable for the offence.

*Relations between air-force law and civil courts and finality of trials*

**133 Powers of civil courts**

- (1) Nothing in this Act restricts the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to air-force law for any offence.
- (2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial to punishment for any act or omission constituting (whether wholly or in part) that offence, or in pursuance of this Act he has been punished for any such act or omission by his commanding officer or the appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

**134 Persons not to be tried under this Act for offences already disposed of**

- (1) Where a person subject to air-force law—
  - (a) has been tried for an offence by a competent civil court or a court-martial (whether held under this Act, the Naval Discipline Act or the Army Act, 1955), or has had an offence committed by him taken into consideration by any such court in sentencing him, or
  - (b) has been charged with an offence under this Act, the Naval Discipline Act or the Army Act, 1955, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority, or
  - (c) has had an offence condoned by his commanding officer (whether air-force, naval or military),he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.
- (2) For the purposes of this section—
  - (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;
  - (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed ;
  - (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;
  - (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;
  - (e) a person ordered under subsection (2) of section fifty-seven of this Act or the corresponding provision of the Army Act, 1955 to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

- (3) Where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.
- (4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

### *Inquiries*

#### **135 Boards of inquiry**

- (1) Subject to and in accordance with the provisions of rules made under this section (hereinafter referred to as " board of inquiry rules "), the Air Council or any air-force, naval or military officer empowered by or under such rules so to do may convene a board of inquiry to investigate and report on the facts relating to—
  - (a) the absence of any person subject to air-force law;
  - (b) the capture of any such person by the enemy;
  - (c) the death of any person in an air-force establishment, being an establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority ;
  - (d) any other matter of a class specified in such rules or referred to such a board by the Air Council or any such officer as aforesaid ;and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matter referred to the board.
- (2) A board of inquiry shall consist of not less than three members, who shall be persons subject to air-force law, the Naval Discipline Act or military law, and the president of a board of inquiry shall be an officer not below the rank of flight lieutenant or corresponding rank.
- (3) Subject to the provisions of this section, board of inquiry rules may make provision with respect to the convening, constitution and procedure of boards of inquiry and, without prejudice to the generality of the foregoing, may make provision with respect to all or any of the following matters, that is to say:—
  - (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;
  - (b) without prejudice to the provisions of the next following section, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules ;
  - (c) such incidental and supplementary matters as appear requisite for the purposes of the rules.
- (4) Board of inquiry rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the rules.

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- (5) Evidence given before a board of inquiry 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 fifty-eight of this Act or for an offence against section seventy of this Act where the corresponding civil offence is perjury.
- (6) The power to make board of inquiry rules shall be exercisable by the Secretary of State by statutory instrument which shall be laid before Parliament.

### **136 Inquiries into absence**

- (1) Where a board of inquiry inquiring into the absence of an officer, warrant officer, non-commissioned officer or airman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with Queen's Regulations be entered in the service books.
- (2) A record entered in pursuance of the last foregoing subsection shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Air Council or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

### **137 Unit inquiries**

- (1) An officer of any of Her Majesty's air forces authorised in that behalf by or under regulations of the Air Council may cause an inquiry to be held, in such manner and by such person or persons subject to air-force law, the Naval Discipline Act or military law as may be specified by or determined under such regulations, into any matter so specified or determined:

Provided that an inquiry shall not be held in pursuance of this section into—

- (a) the absence of a person subject to air-force law, or
  - (b) the capture of any such person by the enemy.
- (2) Regulations of the Air Council made for the purposes of this section may make provision as to the rules of evidence to be observed at inquiries held in pursuance of this section and the taking of evidence at such inquiries, and may authorise the taking of evidence on oath or affirmation, and the administration of oaths, in such cases as may be specified by or under the regulations.
  - (3) Subsections (4) and (5) of section one hundred and thirty-five of this Act shall apply in relation to inquiries held in pursuance of this section with the substitution of references to regulations of the Air Council for references to board of inquiry rules and of references to an inquiry held in pursuance of this section for references to a board of inquiry.

*Miscellaneous provisions*

**138 Restitution or compensation for theft, etc.**

- (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise.
- (2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.
- (3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.
- (4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.
- (5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.
- (6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.
- (7) An order under this section may be made by the court-martial by whom the offender is convicted, by the confirming officer or by any reviewing authority; and in this section the expression " appearing " means appearing to the court, officer or authority making the order.
- (8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part of this Act as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.
- (9) The operation of any order under this section shall be suspended—
  - (a) in any case, until the expiration of the period prescribed under Part I of the Courts-Martial (Appeals) Act, 1951, as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against the conviction must be lodged ; and
  - (b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned ;

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and where the operation of such an order as aforesaid is suspended under this section—

- (c) it shall not take effect if the conviction is quashed on appeal;
  - (d) the Courts-Martial Appeal Court may by order annul or vary the order although the conviction is not quashed;
  - (e) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under the said Act of 1951.
- (10) Notwithstanding anything in the last foregoing subsection, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.
- (11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

### **139 Appointment of judge advocates**

Without prejudice to the powers conferred by Her Majesty on the Judge Advocate General, the appointment of a judge advocate to act at any court-martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer.

### **140 Promulgation**

Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by Queen's Regulations or as the confirming officer or reviewing authority, as the case may be, may direct.

### **141 Custody of proceedings of courts-martial and right of accused to a copy thereof**

- (1) The record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by the two next following subsections shall be capable of being exercised.
- (2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate as may be prescribed a copy of the record of the proceedings of the court.
- (3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rate a copy of the record of the proceedings of the court.

- (4) If, on an application in pursuance of either of the two last foregoing subsections for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.
- (5) In this section the expression " the relevant period ", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

- (6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

#### **142 Indemnity for prison officers, etc.**

No action shall lie in respect of anything done by any person in pursuance of an air-force sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

#### *Interpretation*

#### **143 Interpretation of Part II**

- (1) In this Part of this Act :—

" air-force establishment " means an air-force prison or any other establishment under the control of the Secretary of State where persons may be required to serve air-force sentences of imprisonment or detention ;

" air-force prison " means separate premises under the control of the Secretary of State and primarily allocated for persons serving air-force sentences of imprisonment;

references to an air-force sentence of imprisonment are references to a sentence of imprisonment passed by court-martial;

references to an air-force sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer;

" civil prison " means a prison in the United Kingdom in which a person sentenced by a civil court to imprisonment can for the time being be confined ;

" convening officer in relation to a court-martial ", means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions ;

" prescribed " means prescribed by Rules of Procedure.

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- (2) For the purposes of subsection (2) of section eighty-seven and subsection (2) of section eighty-eight of this Act, and of the proviso to subsection (3) of section ninety thereof, any period of service on a commission in the Home Guard shall be disregarded.
- (3) References in this Part of this Act to warrant officers do not include references to acting warrant officers.
- (4) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.