

Status: Point in time view as at 31/03/2005.

Changes to legislation: Courts-Martial (Appeals) Act 1968 is up to date with all changes known to be in force on or before 19 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 20.

PROVISIONS AS TO RETRIAL

PART I

NAVY

- 1 On the retrial of any person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—
- (a) by agreement between the prosecution and the defence; or
 - (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,
- and may be so read without further proof [^{F1}if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 129C of the ^{M1}Naval Discipline Act].

Textual Amendments

F1 Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 57\(2\)](#)

Marginal Citations

M1 [1957 c. 53.](#)

- 2 Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the ^{M2}Naval Discipline Act, not being a sentence of greater severity than that passed on the original conviction.

Marginal Citations

M2 [1957 c. 53.](#)

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PART II

ARMY

- 3 On the retrial of a person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—
- (a) by agreement between the prosecution and the defence; or
 - (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,
- and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 200 of the ^{M3}Army Act.

Marginal Citations

M3 1955 c. 18.

- 4 Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the ^{M4}Army Act, not being a sentence of greater severity than that passed on the original conviction.

Marginal Citations

M4 1955 c. 18.

PART III

AIR FORCE

- 5 On the retrial of a person under section 19 of this Act, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence—
- (a) by agreement between the prosecution and the defence; or
 - (b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,
- and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 200 of the ^{M5}Air Force Act.

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Marginal Citations

M5 1955 c. 19.

- 6 Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by the ^{M6}Air Force Act, not being a sentence of greater severity than that passed on the original conviction.

Marginal Citations

M6 1955 c. 19.

PART IV

PROVISION APPLYING TO ALL THREE SERVICES

- 7 Where a person authorised under section 19 of this Act to be retried is convicted on retrial and sentenced to imprisonment or detention, there shall be taken into account in calculating the period for which he is liable to imprisonment or to be detained in pursuance of that sentence—
- (a) any time before the original conviction was quashed which would have been taken into account in calculating the period for which he would have been liable to be imprisoned or detained in pursuance of a sentence of imprisonment or detention imposed at the original trial; and
 - (b) any time after the quashing of his original conviction which he has spent under close arrest awaiting retrial.

SCHEDULE 2

Section 55.

PROCEDURAL AND OTHER MODIFICATIONS FOR CAPITAL CASES

Modifications of Part II

- 1 (1) In the case of a conviction involving sentence of death, the right of appeal [^{F2}against conviction and any right of appeal against sentence] conferred by section 8(1) of this Act on the person convicted shall be exercisable without his being required to present a petition to the Defence Council; and accordingly in such a case subsection (2) of that section shall not apply.
- (2) In the case of such a conviction, the power of the Appeal Court under section 9(3) of this Act to extend the period within which an application for leave to appeal must be lodged shall not be exercisable.

Textual Amendments

F2 Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), [Sch. 2 para. 1\(8\)\(a\)](#)

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- 2 (1) The following shall apply where a conviction by court-martial involves sentence of death.
- (2) The sentence shall not in any case be executed until the expiration of the period for appealing under Part II of this Act (that is to say the period prescribed under section 9 as the period within which an application for leave to appeal must be lodged).
- (3) Subject to the following paragraph, if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused, or it is withdrawn, or the appeal is determined or abandoned.

F3
 F3

Textual Amendments

F3 Sch. 2 para. 3 repealed (1.4.1997 with savings) by 1996 c. 46, s. 35(2), Sch. 7 Pt. II; S.I. 1996/304, art. 2 (with art. 3)

- 4 Any appeal to the Appeal Court against a conviction involving sentence of death [F4 or against such a sentence itself] and any application for leave to appeal to the Court against any such conviction [F4 or sentence] shall be heard and determined with as much expedition as practicable.

Textual Amendments

F4 Words inserted by Armed Forces Act 1971 (c. 33), Sch. 2 para. 1(8)(b)

- 5 The Appeal Court shall not have power, by virtue of section 22 of this Act, to impose sentence of death; and where apart from this paragraph a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

Modifications of Part III

- 6 In a case involving sentence of death the power of the House of Lords or the Court under section 40 of this Act to extend the time within which an application by the accused for leave to appeal may be made under that section shall not be exercisable.
- 7 (1) Where, in a case involving sentence of death, an appeal to the Appeal Court is dismissed, the sentence shall not in any case be executed until after the expiration of the time within which an application for leave to appeal to the House of Lords may be made; and, if such an application is duly made, the sentence shall not be executed while that application, and any appeal for which leave is granted thereon, is pending.
- (2) In such a case, any application for leave to appeal to the House of Lords and any appeal for which leave is granted on such an application, shall be heard and determined with as much expedition as is practicable.

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SCHEDULE 3

Section 56.

MODIFICATIONS IN RELATION TO PRISONERS OF WAR

- 1 In this Schedule “protected prisoner of war”^{F5} has the same meaning as in section 7(1) of] the ^{M7}Geneva Conventions Act 1957; and “Royal Warrant” means a Royal Warrant governing the maintenance of discipline among prisoners of war.

Textual Amendments

F5 Words in Sch. 3 para. 1 substituted (1.10.1996) by 1996 c. 46, s. 35(1), **Sch. 6 para. 13**; S.I. 1996/2474, **art. 2** (with **art. 3**)

Marginal Citations

M7 1957 c. 52.

- 2 In relation to a protected prisoner of war, this Act shall have effect as if the expression “army court-martial” included a prisoner of war court-martial constituted under a Royal Warrant.

- 3 In relation to a protected prisoner of war this Act shall have effect as if a reference to a Royal Warrant were substituted—

- (a) for any reference in section 13, 14^{F6}, 14A, 15 or 25A] to the relevant Service Act;
- ^{F7}(b)
- (c) for the reference in section 17(2)(b) to the ^{M8}Army Act; and
- (d) for the reference in section 37(2) to the enactment relating to the revision of the finding or sentence of an army court-martial.

Textual Amendments

F6 Words in Sch. 3 para. 3(a) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 60, **Sch. 3 para. 15(2)(a)** (with Sch. 12 para. 8); S.I. 2005/579, art. 3(b)

F7 Sch. 3 para. 3(b) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 60, **Sch. 3 para. 15(2)(b)**, **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, art. 3(b)(i)

Marginal Citations

M8 1955 c. 18.

- ^{F8}3A In relation to a protected prisoner of war, sections 16 and 23 of this Act shall each have effect as if the following subsection were substituted for subsection (4)—

“(4) The provisions of a Royal Warrant shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.”]

Textual Amendments

F8 Sch. 3 para. 3A inserted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 60, **Sch. 3 para. 15(3)** (with Sch. 12 para. 8); S.I. 2005/579, art. 3(b)

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- 4 Paragraph 3(1) of Schedule 2 to this Act shall not have effect in relation to a protected prisoner of war.

SCHEDULE 4

Section 58.

CONSEQUENTIAL AMENDMENT OF ENACTMENTS

Modifications etc. (not altering text)

- C1** The text of Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any repeals or amendments which may have been made prior to 1.2.1991

The Army Act 1955 (c.18)

- Section 113 In subsection (3), for the words “paragraph (b) of subsection (3) of section 4 of the words ^{M9} courts-martial (Appeals) Act 1951” there shall be substituted the words “section 9(4)(b) of the ^{M10} courts-martial (Appeals) Act 1968”.

After section 113 there shall be inserted the following section—

“ Power of reviewing authority to authorise retrial.

- 113A**) The following provisions of the courts-martial (Appeals) Act 1968, that is to say,—

section 19,
 section 20, and
 Parts II and IV of Schedule 1,

(power of courts-martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by Her Majesty or the Defence Council under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the courts-martial Appeal Court.

- (2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents”.

Marginal Citations

M9 1951 c.46
M10 1968 c.20

- Section 118 In subsection (1), for the words “subsection (7) of section 4 of the ^{M11} court-martial (Appeals) Act 1951” there shall be substituted the words “section 11(2) of the ^{M12} courts-martial (Appeals) Act 1968”.

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Marginal Citations

M11 [1951 c.46](#)

M12 [1968 c.20](#)

Section 138 In subsection (9), for the words (in paragraph(a)) “Part I of the ^{M13} courts-martial (Appeals) Act 1951” there shall be substituted the words “Part II of the ^{M14} courts-martial (Appeals) Act 1968”; and for the words (in paragraph (e)) “the said Act of 1951” there shall be substituted the words “Part II of the said Act of 1968”.

Marginal Citations

M13 [1951 c.46](#)

M14 [1968 c.20](#)

The Air Force Act 1955 (c. 19)

Section 113 In subsection (3), for the words “paragraph (b) of subsection (3) of section 4 of the ^{M15} courts-martial (Appeals) Act 1951” there shall be substituted the words “section 9(4)(b) of the ^{M16} courts-martial (Appeals) Act 1968”.

After section 113 there shall be inserted the following section—

“ Power of reviewing authority to authorise retrial.

113A) The following provisions of the courts-martial (Appeals) Act 1968, that is to say—

section 19,

section 20, and

Parts III and IV of Schedule 1,

(power of courts-martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by Her Majesty or the Defence Council under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the courts-martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.”

Marginal Citations

M15 [1951 c.46](#)

M16 [1968 c.20](#)

Section 118 In subsection (1), for the words “Subsection (7) of section 4 of the ^{M17} Courts-Martial (Appeals) Act 1951” there shall be substituted the words “section 11(2) of the ^{M18} courts-martial (Appeals) Act 1968”.

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Marginal Citations

M17 [1951 c.46](#)

M18 [1968 c.20](#)

Section 138 In subsection (9), for the words (in paragraph(a)) “Part I of the ^{M19} courts-martial (Appeals) Act 1951” there shall be substituted the words “Part II of the ^{M20} courts-martial (Appeals) Act 1968”; and for the words (in paragraph (e)) “the said Act of 1951” there shall be substituted the words “Part II of the said Act of 1968”.

Marginal Citations

M19 [1951 c.46](#)

M20 [1968 c.20](#)

The Naval Discipline Act 1957 (c.53)

section 70 In subsection (3), for the words “paragraph (b) of subsection (3) of section 4 of the ^{M21} courts-martial (Appeals) Act 1951” there shall be substituted the words “section 9(4)(b) of the ^{M22} courts-martial (Appeals) Act 1968”.

Marginal Citations

M21 [1951 c.46](#)

M22 [1968 c.20](#)

Section 71 At the end of the section there shall be inserted the following section—

“ Power to authorise retrial.

71A(1) The following provisions of the courts-martial (Appeals) Act 1968, that is to say,—

section 19,
 section 20, and
 Parts I and IV of Schedule 1,

(power of courts-martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by the Defence Council under section 70 of this Act of the findings of a court-martial as they apply in relation to an appeal to the courts-martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be.”

section 77 In subsection (1), for the words (in paragraph (a)) “Part I of the ^{M23} courts-martial (Appeals) Act 1951” there shall be substituted the words “Part II of the ^{M24} courts-martial (Appeals) Act 1968”.

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Marginal Citations

M23 [1951 c.46](#)

M24 [1968 c.20](#)

In subsection (1), for the words “the said Act of 1951” there shall be substituted the words “Part II of the said Act of 1968”.

Section 85 In subsection (1), for the words “subsection (7) of section 4 of the ^{M25} courts-martial (Appeals) Act 1951” there shall be substituted the words “section 11(2) of the ^{M26} courts-martial (Appeals) Act 1968”.

Marginal Citations

M25 [1951 c.46](#)

M26 [1968 c.20](#)

F9

Textual Amendments

F9 Entry relating to the Mental Health Act 1959 repealed by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 6](#)

Textual Amendments

F9 Entry relating to the Mental Health Act 1959 repealed by [Mental Health Act 1983 \(c. 20, SIF 85\)](#), s. 148, [Sch. 6](#)

F10

Textual Amendments

F10 Entry relating to Mental Health (Scotland) Act 1960 repealed by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(2), [Sch. 5](#)

Textual Amendments

F10 Entry relating to Mental Health (Scotland) Act 1960 repealed by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(2), [Sch. 5](#)

F11

Textual Amendments

F11 Entry relating to Mental Health Act (Northern Ireland) 1961 repealed by [S.I. 1986/596](#), [art. 6\(e\)](#)

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Textual Amendments

F11 Entry relating to Mental Health Act (Northern Ireland) 1961 repealed by [S.I. 1986/596](#), [art. 6\(e\)](#)

SCHEDULE 5

Section 59.

TRANSITIONAL PROVISIONS

- 1 (1) Any right of appeal subsisting immediately before the commencement of this Act by virtue of an enactment repealed thereby shall after that commencement be treated as subsisting by virtue of the corresponding enactment in this Act.
- (2) Any appeal or application pending before the said commencement under an enactment so repealed may be presented and disposed of in accordance with the provisions of this Act corresponding to those in force immediately before the said commencement and applicable to the appeal or application.
- 2 (1) In so far as any order, appointment, rule or regulation made, petition presented, direction given or other thing done under an enactment repealed by this Act could have been made, presented, given or done under a corresponding provision of this Act, it shall not be invalidated by the repeal of that enactment but shall have effect as if made, presented, given or done under that corresponding provision.
- (2) Any document referring to an enactment repealed by this Act shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding enactment in this Act.
- 3 The mention of particular matters in this Schedule shall not be taken to affect the general application of section 38 of the ^{M27}Interpretation Act 1889 with regard to the effect of repeal

Marginal Citations

M27 [1889 c. 63](#).

SCHEDULE 6

Section 60.

REPEALS

Modifications etc. (not altering text)

C2 The text of ss. 58, 60, Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any repeals or amendments which may have been made prior to 1.2.1991

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Chapter	Short Title	Extent of Repeal
14 & 15 Geo. 6 c. 46.	The Courts-Martial (Appeals) Act 1951.	Part I (that is to say, sections 1 to 27).
3 & 4 Eliz. 2 c. 20.	The Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955.	In Schedule 2, paragraph 15(2) to (5).
5 & 6 Eliz. 2 c. 52.	The Geneva Conventions Act 1957.	Section 4(3).
5 & 6 Eliz. 2 c. 53.	The Naval Discipline Act 1957.	In Schedule 5, the entry relating to the Courts-Martial (Appeals) Act 1951.
8 & 9 Eliz. 2 c. 65.	The Administration of Justice Act 1960.	Section 10; in section 20(2) the words from the beginning to "such appeals"; Schedule 1 and so much of Schedule 3 as amends the Courts-Martial (Appeals) Act 1951.
9 & 10 Eliz. 2 c. 52.	The Army and Air Force Act 1961.	In Schedule 2, the entry relating to the Courts-Martial (Appeals) Act 1951.
1964 c. 43.	The Criminal Appeal Act 1964.	Section 4; section 6(3) and, in section 6(5) the words "except so far as it relates to appeals from and retrials by courts-martial"; Schedule 1; and so much of Schedule 2 as amends the Courts-Martial (Appeals) Act 1951.
1964 c. 84.	The Criminal Procedure (Insanity) Act 1964.	In section 7, the references to the Courts-Martial (Appeals) Act 1951 and Part III of Schedule 2 to the Act; and Part III of that Schedule.
1966 c. 31.	The Criminal Appeal Act 1966.	Section 9(1); in section 12(2) the definition of "the 1951 Act"; section 12(4); in section 12(7) the words "appeals from, and"; and Part I of Schedule 1.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 4, paragraphs 16 to 19, 31, 32 and 40.

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