

Status: Point in time view as at 01/04/1997.

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 1996, Part III. (See end of Document for details)

SCHEDULES

SCHEDULE 1

PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

Commencement Information

II Sch. 1 in force at 1.4.1997 (subject to savings) by [S.I. 1997/304](#), [art. 2](#) (with [art. 3](#))

PART III

TRIAL OF OFFENCES BY COURT-MARTIAL

Army Act 1955 (c. 18)

- 17 The Army Act 1955 shall be amended as follows.
- 18 Section 84 shall cease to have effect.
- 19 After section 84 there shall be inserted the following sections—

“84A Court administration officers.

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

84B Judge advocates.

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
- a person who has a five year general qualification within the meaning of section 71 of the ^{M1}Courts and Legal Services Act 1990;
 - an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or

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- (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

84C Convening of general and district courts-martial.

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies, and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
 - (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer 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.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

84D Constitution of general and district courts-martial.

- (1) A general court-martial shall consist of the president, not less than four other military officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other military officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty's naval, military or air

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forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.

- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of captain.
- (6) A general court-martial for the trial of an officer above the rank of captain shall not include any member below the rank of captain.
- (7) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.
- (8) If, in the opinion of the court administration officer, the necessary number of military officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.
- (9) In this section—
 - “air-force officer” means an officer belonging to Her Majesty's air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty's military forces and subject to military law; and
 - “naval officer” means an officer belonging to Her Majesty's naval forces and subject to the ^{M2}Naval Discipline Act 1957.”

Marginal Citations

- M1** 1990 c. 41.
M2 1957 c. 53.

- 20 Section 85(3) shall cease to have effect.
- 21 Sections 86 to 90 shall cease to have effect.
- 22 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.
- (2) In subsection (1)—
 - (a) for the words “Her Majesty's dominions” there shall be substituted the words “the United Kingdom”; and
 - (b) the words from “and the convening officer” to the end shall cease to have effect.
 - (3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “may”.

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- 23 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1), for the word “officer” there shall be substituted the word “ member ”.
- (3) In subsection (2)—
- (a) for the word “they” there shall be substituted the words “ the officers appointed members ”; and
 - (b) for the words “those officers” there shall be substituted the words “ the members ”.
- (4) In subsection (3)—
- (a) for the word “officer” there shall be substituted the word “ member ”; and
 - (b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.
- (5) In subsection (4)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to the president is allowed ”; and
 - (b) for the word “convening” there shall be substituted the words “ court administration ”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to any other officer appointed a member of the court is allowed ”;
 - (b) for the word “member” in the second place it appears there shall be substituted the word “ officer ”; and
 - (c) for the word “members” in the second place it appears there shall be substituted the word “ officers ”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 24 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “ officer appointed a ”; and
 - (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 25 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- “(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.

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- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 26 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and
- (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may by order dissolve the court-martial.”
- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “judge advocate”.
- (5) Subsection (4) shall cease to have effect.
- 27 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 28 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.
- 29 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “trials on indictment”; and
- (b) for the words “before a civil court” there shall be substituted the words “in a trial on indictment”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “trial on indictment”.
- 30 For section 103 there shall be substituted the following section—

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“103 Rules.

- (1) The Secretary of State may make rules with respect to—
 - (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
 - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
 - (a) proceedings preliminary to trials by general or district courts-martial;
 - (b) the appointment of a judge advocate for any preliminary proceedings;
 - (c) the delegation by court administration officers of any of their functions;
 - (d) the convening and constitution of general and district courts-martial;
 - (e) the sittings, adjournment and dissolution of general and district courts-martial;
 - (f) the procedure to be followed in trials by general and district courts-martial;
 - (g) the representation of the accused at such trials and any preliminary proceedings;
 - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (j) enabling a general or district 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;
 - (k) directing that the powers conferred by section 7 of the ^{M3}Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a general or district court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
 - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
 - (n) the recording of the proceedings of a general or district court-martial;
 - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.

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- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not 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.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Marginal Citations

M3 1879 c. 11.

31 After section 103 there shall be inserted the following sections—

“ Field General Courts-Martial

103A Field general courts-martial.

- (1) Where an officer to whom this subsection applies—
 - (a) is commanding a body of the regular forces on active service; and
 - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
 - (a) the commanding officer who has investigated the charge;
 - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
 - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.
- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under

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section 103C of this Act, amend or withdraw the order convening the court-martial.

- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

103B Constitution of field general courts-martial.

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other military officers.
- (2) If the officer who convened the field general court-martial is of opinion that three military officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other military officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the ^{M4}Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of captain.
- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of military officers having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—
 - “air force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

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

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the ^{M5}Naval Discipline Act 1957.

103C Field General Court-Martial Rules.

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
 - (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;
 - (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

Marginal Citations

- M4** 1990 c. 41.
M5 1957 c. 53.

32 Sections 104 to 106 shall cease to have effect.

Air Force Act 1955 (c. 19)

33 The Air Force Act 1955 shall be amended as follows.

34 Section 84 shall cease to have effect.

35 After section 84 there shall be inserted the following sections—

“84A Court administration officers.

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

84B Judge advocates.

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—

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- (a) a person who has a five year general qualification within the meaning of section 71 of the ^{M6}Courts and Legal Services Act 1990;
 - (b) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
 - (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

84C Convening of general and district courts-martial.

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
- (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies,
- and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
- (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer 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.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

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84D Constitution of general and district courts-martial.

- (1) A general court-martial shall consist of the president, not less than four other air-force officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other air-force officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (6) A general court-martial for the trial of an officer above the rank of flight lieutenant shall not include any member below the rank of flight lieutenant.
- (7) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.
- (8) If, in the opinion of the court administration officer, the necessary number of air-force officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.
- (9) In this section—
 - “air-force officer” means an officer belonging to Her Majesty's air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty's military forces and subject to military law; and
 - “naval officer” means an officer belonging to Her Majesty's naval forces and subject to the ^{M7}Naval Discipline Act 1957.”

Marginal Citations

M6 1990 c. 41.

M7 1957 c. 53.

36 Section 85(3) shall cease to have effect.

37 Sections 86 to 90 shall cease to have effect.

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- 38 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “Her Majesty’s dominions” there shall be substituted the words “ the United Kingdom ”; and
 - (b) the words from “and the convening officer” to the end shall cease to have effect.
- (3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “ may ”.
- 39 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1), for the word “officer” there shall be substituted the word “ member ”.
- (3) In subsection (2)—
- (a) for the word “they” there shall be substituted the words “ the officers appointed members ”; and
 - (b) for the words “those officers” there shall be substituted the words “ the members ”.
- (4) In subsection (3)—
- (a) for the word “officer” there shall be substituted the word “ member ”; and
 - (b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.
- (5) In subsection (4)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to the president is allowed ”; and
 - (b) for the word “convening” there shall be substituted the words “ court administration ”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “ an objection to any other officer appointed a member of the court is allowed ”;
 - (b) for the word “member” in the second place it appears there shall be substituted the word “ officer ”; and
 - (c) for the word “members” in the second place it appears there shall be substituted the word “ officers ”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 40 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “ officer appointed a ”; and

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- (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 41 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- “(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 42 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and
- (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may by order dissolve the court-martial.”
- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “judge advocate”.
- (5) Subsection (4) shall cease to have effect.
- 43 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 44 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.

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- 45 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “ trials on indictment ”; and
 - (b) for the words “before a civil court” there shall be substituted the words “ in a trial on indictment ”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “ trial on indictment ”.
- 46 For section 103 there shall be substituted the following section—

“103 Rules.

- (1) The Secretary of State may make rules with respect to—
 - (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
 - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
 - (a) proceedings preliminary to trials by general or district courts-martial;
 - (b) the appointment of a judge advocate for any preliminary proceedings;
 - (c) the delegation by court administration officers of any of their functions;
 - (d) the convening and constitution of general and district courts-martial;
 - (e) the sittings, adjournment and dissolution of general and district courts-martial;
 - (f) the procedure to be followed in trials by general and district courts-martial;
 - (g) the representation of the accused at such trials and any preliminary proceedings;
 - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (j) enabling a general or district 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;
 - (k) directing that the powers conferred by section 7 of the ^{M8}Bankers’ Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers’ books for the purposes of legal proceedings) may be exercised for the purposes of a general or district court-martial (whether within or without the United Kingdom) by the

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- commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
 - (n) the recording of the proceedings of a general or district court-martial;
 - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not 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.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Marginal Citations

M8 1879 c. 11.

47 After section 103 there shall be inserted the following sections—

“ Field General Courts-Martial

103A Field general courts-martial.

- (1) Where an officer to whom this subsection applies—
 - (a) is commanding a body of the regular air force on active service; and
 - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
 - (a) the commanding officer who has investigated the charge;
 - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
 - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.

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- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.
- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

103B Constitution of field general courts-martial.

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other air-force officers.
- (2) If the officer who convened the field general court-martial is of opinion that three air-force officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other air-force officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the ^{M9}Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of flight lieutenant.
- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of air-force officers having suitable qualifications is not available to form the court, and cannot

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be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.

(8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.

(9) In this section—

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

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

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the ^{M10}Naval Discipline Act 1957.

103C Field General Court-Martial Rules.

(1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.

(2) Rules under this section may in particular—

(a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;

(b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

Marginal Citations

M9 1990 c. 41.

M10 1957 c. 53.

48 Sections 104 to 106 shall cease to have effect.

Naval Discipline Act 1957 (c. 53)

49 The Naval Discipline Act 1957 shall be amended as follows.

50 Section 53 shall cease to have effect.

51 After section 53 there shall be inserted the following sections—

“53A Court administration officers.

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to order courts-martial and perform such other functions as may be prescribed by rules under section 58 of this Act; and

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“the court administration officer”, in relation to a court-martial, means the court administration officer who ordered the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

53B Judge advocates.

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Chief Naval Judge Advocate to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
 - (a) a person who has a five year general qualification within the meaning of section 71 of the ^{M11}Courts and Legal Services Act 1990;
 - (b) an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
 - (c) a member of the Bar of Northern Ireland of at least five years’ standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

53C Ordering of courts-martial.

- (1) On being notified by the prosecuting authority of the charge preferred, a court administration officer shall order a court-martial.
- (2) The order assembling the court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies,
 and shall state that a judge advocate appointed by or on behalf of the Chief Naval Judge Advocate is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 58 of this Act, amend or withdraw the order assembling the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
 - (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;

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- (e) any other officer 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.

- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.”

Marginal Citations

M11 1990 c. 41.

52 For section 54 there shall be substituted the following section—

“54 Composition of courts-martial.

- (1) A court-martial shall consist of the president, not less than four nor more than eight other naval officers and the judge advocate.
- (2) An officer shall not be appointed a member of a court-martial unless he is of or above the rank of lieutenant and he has been an officer of any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (3) The officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (4) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (5) A court-martial for the trial of an officer of flag rank shall not include any member below the rank of captain.
- (6) A court-martial for the trial of a commodore or captain shall not include any member below the rank of commander.
- (7) A court-martial for the trial of a commander shall include at least two members, in addition to the president, who are not below the rank of commander.
- (8) If, in the opinion of the court administration officer, the necessary number of naval officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any military or air-force officer of corresponding rank to that required for a naval officer.
- (9) In this section—
 - “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
 - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act.”

53 Section 55 shall cease to have effect.

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- 54 (1) Section 56 (place and time of sittings of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “appointed” to the end there shall be substituted the words “ specified in the order assembling the court ”.
- (3) In subsection (2), the words from “and shall” to the end shall cease to have effect.
- (4) In subsection (3), for the word “prosecutor” there shall be substituted the words “ prosecuting authority ”.

55 After section 56 there shall be inserted the following section—

“56A Dissolution of courts-martial.

- (1) Where, before the commencement of the trial, it appears to the court administration officer necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.
- (2) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.
- (3) If after the commencement of the trial the president dies or is otherwise unable to attend, the court-martial shall be dissolved.
- (4) Where a court-martial is dissolved the accused may be tried by another court.”

- 56 (1) Section 57 (quorum) shall be amended as follows.
- (2) Subsections (1) and (3) shall cease to have effect.
- (3) In subsection (2)—
- (a) for the word “members” in both places it appears there shall be substituted the word “ officers ”; and
- (b) after the word “that” there shall be inserted the words “ an officer appointed ”.

57 For section 58 there shall be substituted the following section—

“58 Rules.

- (1) The Secretary of State may make rules with respect to—
- (a) the investigation, prosecution and trial of, and the awarding of punishment for, offences cognizable by courts-martial;
- (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by courts-martial;
- (b) the appointment of a judge advocate for any preliminary proceedings;
- (c) the delegation by court administration officers of any of their functions;
- (d) the ordering and composition of courts-martial;
- (e) the sittings, adjournment and dissolution of courts-martial;

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- (f) the procedure to be followed in trials by courts-martial;
 - (g) the functions of the clerk of the court and the exercise by him of those functions;
 - (h) the representation of the accused at trials by courts-martial and any preliminary proceedings;
 - (i) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (j) enabling a court-martial, in such cases and to such extent as may be prescribed by the rules, to amend a charge which is being tried by the court;
 - (k) enabling 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) directing that the powers conferred by section 7 of the ^{M12}Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate, as well as by the court or a judge within the meaning of that Act;
 - (m) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (n) the cases in which, and extent to which, offences may be taken into consideration by a court-martial and the powers of the court in relation to any offences taken into consideration;
 - (o) the recording of the proceedings of a court-martial;
 - (p) the procedure to be followed on review of findings and sentences of courts-martial.
- (3) Rules made by virtue of paragraph (j) of subsection (2) above shall secure that the power to amend charges is not 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.
- (4) Rules under this section which are inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Marginal Citations

M12 1879 c. 11.

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- 58 (1) Section 59 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the words “Before the” there shall be inserted the words “ officers appointed ”;
 - (b) for the words “officers constituting” there shall be substituted the words “ members of ”; and
 - (c) for the words from “being” to the end there shall be substituted the words “ any of those members ”.
- (3) In subsection (2)—
- (a) for the word “officer” there shall be substituted the word “ member ”; and
 - (b) for the words from “considered” to the end there shall be substituted the words “ determined by the judge advocate ”.
- (4) For subsection (3) there shall be substituted the following subsection—
- “(3) If an objection to the president is allowed, the court shall be dissolved.”
- (5) In subsection (4)—
- (a) for the words from “objection” to “the member” there shall be substituted the words “ an objection to any other officer appointed a member of the court is allowed ”;
 - (b) for the word “nominated” there shall be substituted the word “ appointed ”; and
 - (c) for the words “section fifty-four” there shall be substituted the words “ section 53C ”.
- (6) After subsection (4) there shall be inserted the following subsection—
- “(4A) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Chief Naval Judge Advocate.”
- (7) Subsection (5) shall cease to have effect.
- (8) In subsection (6)—
- (a) after the words “After the” there shall be inserted the words “ officers appointed ”; and
 - (b) for the words “Defence Council” there shall be substituted the words “ reviewing authority ”.
- 59 (1) Section 60 (administration of oaths) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) An oath shall be administered separately to each member of a court-martial, to the clerk of the court and any officer or other person in attendance for instruction, and to any person appointed to attend as interpreter.”
- (3) In subsection (5), for the words “General Orders” there shall be substituted the word “ rules ”.
- 60 (1) In section 61 (courts-martial to sit in open court), after subsection (2) there shall be added the following subsections—

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- “(3) A court-martial shall sit in closed court while deliberating on their finding and 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 by rules under section 58 of this Act.
- (6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court.”
- 61 (1) Section 62 (findings and sentences of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “ the finding of a court-martial and any sentence awarded ”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3), after the word “mercy” there shall be inserted the words “ and any reasons for the sentence ”.
- (5) In subsection (4)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “ entitled to vote on the finding ”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “ those members ”.
- 62 In section 64(1) (summoning of witnesses), for the words “clerk of the court” there shall be substituted the words “ court administration officer ”.
- 63 After section 64 there shall be inserted the following sections—

“64A Rules of evidence

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall, subject to Schedule 13 to the ^{M13}Criminal Justice Act 1988 (evidence before courts-martial etc) and to service modifications, be the same as those observed in trials on indictment 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 in a trial on indictment in England.
- (2) In this section “service modifications” means such modifications as the Secretary of State may by regulations made by statutory instrument prescribe, being modifications which appear to him to be necessary or proper

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for the purposes of proceedings before a court-martial; and it is hereby declared that in this section—

“rules” includes rules contained in or made by virtue of an enactment; and

“enactment” includes an enactment contained in an Act passed after this Act.

- (3) Regulations under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) 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 trial on indictment in England.

64B Proofs at courts-martial by written statement

- (1) Without prejudice to section 64A above, section 9 of the ^{M14}Criminal Justice Act 1967 (proof by written statement) shall apply subject to subsection (2) below and to service modifications, for the purposes of proceedings before courts-martial (whether held in the United Kingdom or not) as it applies to proceedings on indictment.
- (2) The statements rendered admissible by this section are statements made—
 - (a) in the United Kingdom by any person, and
 - (b) outside the United Kingdom by any person who at the time of making the statement was—
 - (i) a person subject to service law, or
 - (ii) a person to whom Parts I and II of this Act are applied by section 117 or section 118 of this Act, or to whom Part II of the ^{M15}Army Act 1955 or Part II of the ^{M16}Air Force Act 1955 is applied by section 208A or section 209 of the Army Act 1955 or the Air Force Act 1955 respectively,
 and the persons mentioned in this paragraph include persons to whom section 119 of this Act, section 131 of the Army Act 1955 or section 131 of the Air Force Act 1955 apply.
- (3) In subsection (1) above “service modifications” means—
 - (a) modifications made by any regulations under section 12 of the ^{M17}Criminal Justice Act 1967 in force on the coming into force of this section, and
 - (b) such modifications in the said section 9, as applied by subsection (1) above, as the Secretary of State may by regulations made by statutory instrument prescribe thereafter, being modifications which appear to him to be necessary or proper for the purpose of the operation of that section in relation to proceedings before a court-martial.
- (4) Regulations under subsection (3)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) Section 89 of the said Act of 1967 (punishment of making false statements tendered under section 9) shall apply to any statement rendered admissible by this section.

64C Proof of service facts and records.

- (1) This section applies with respect to proceedings before a court-martial.
- (2) A letter, return or other document stating that any person—
- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces;
 - (b) was discharged from any part of those forces at or before any specified time;
 - (c) held or did not hold at any specified time any specified rank or appointment in any of those forces;
 - (d) had at or before any specified time been attached, posted or transferred to any part of those forces;
 - (e) at any specified time or during any specified time was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
 - (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem;
- shall if purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matter stated in the document.
- (3) A record—
- (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval duty; and
 - (b) purporting to be signed by the commanding officer or by any person whose duty it was to make or keep the records,
- may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (4) A copy of a record (including the signature thereto) such as is mentioned in subsection (3) above, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the record, may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (5) A document purporting to be issued by order of the Defence Council and to contain instructions given or regulations made by the Defence Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.
- (6) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, and stating—
- (a) that a decoration of a description specified in, or as annexed to, the certificate is a military, naval or air force decoration; or
 - (b) that a badge or emblem of a description specified in, or as annexed to, the certificate is one supplied or authorised by the Defence Council;

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shall be evidence of the matters stated in the certificate.

- (7) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any ship, train or aircraft;
- (b) any formation or unit or body of Her Majesty's forces; or
- (c) any command or other area, or place;

shall in proceedings against that person be evidence of the matters stated in the certificate.

- (8) Any document which would be evidence in any proceedings under the ^{M18}Army Act 1955 or the ^{M19}Air Force Act 1955 shall in like manner, subject to the like conditions, and for the like purposes, be evidence in a court-martial under this Act.

64D 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.”

Marginal Citations

- M13** 1988 c. 33.
- M14** 1967 c. 80.
- M15** 1955 c. 18.
- M16** 1955 c. 19.
- M17** 1967 c. 80.
- M18** 1955 c. 18.
- M19** 1955 c. 19.

Status:

Point in time view as at 01/04/1997.

Changes to legislation:

There are currently no known outstanding effects for the Armed Forces Act 1996, Part III.