

SCHEDULES

SCHEDULE 1

PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

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) a person who has a five year general qualification within the meaning of section 71 of the 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.

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- (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 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

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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 Naval Discipline Act 1957.”

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”.

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”.

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- (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”; and
 - (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.
 - (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

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- (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—

“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—

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- (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 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.
- (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.

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- (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.”

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 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.

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- (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 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;
 - “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 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.”

32 Sections 104 to 106 shall cease to have effect.