

Status: Point in time view as at 01/04/1997.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, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 16.

REVIEW OF FINDINGS AND SENTENCE

Commencement Information

- II** Sch. 5 in force at 1.4.1997 (subject to savings as mentioned in S.I. 1997/304, art. 3(2)) by S.I. 1997/304, arts. 2, 3

The 1955 Acts

- 1 The 1955 Acts shall be amended as follows.
- 2 Section 108 (power of accused to present petition against finding or sentence at any time after finding or sentence) shall cease to have effect.
- 3 For section 112 (approval required for death sentences) there shall be substituted the following section—

“ Review of proceedings of courts-martial

112 Approval required for death sentences.

- (1) A sentence of death passed by a court-martial shall not be carried out until it has been reviewed under section 113 of this Act and has not been quashed or replaced by another sentence on the review.
- (2) A sentence of death passed by a court-martial shall not be carried out in a colony unless it is also approved by the Governor of the colony.”
- 4 For section 113 (review of findings and sentences of courts-martial) there shall be substituted the following sections—

“113 Review of findings and sentences of courts-martial.

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review under this section shall (if it does not begin sooner) begin as soon as is practicable after—
- (a) in a case where a petition has been presented under this section, the presentation of the petition;

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- (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review under this section of the finding or sentence has been completed—
 - (a) the reviewing authority shall complete the review as soon as is practicable; but
 - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
- (5) For the purposes of this Act the reviewing authority is—
 - (a) the Defence Council; or
 - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.
- (6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.

113AA Powers of the reviewing authority.

- (1) On a review under section 113 of this Act of a finding or sentence of a court-martial the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—
 - (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
 - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to a court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
 - (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
 - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
 - (a) revoke an order made by the court under section 120A(1) of this Act;
 - (b) remit in whole or part any punishment awarded by the court;

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- (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
- (a) shall be treated for all purposes as having been made or passed by the court;
- (b) shall be promulgated and shall have effect as from the date of promulgation.”
- 5 In section 113A (power of reviewing authority to authorise retrial)—
- (a) in subsection (1), for the words “Her Majesty or the Defence Council” there shall be substituted the words “ the reviewing authority ”; and
- (b) in subsection (2), for the words “Defence Council” there shall be substituted the words “ reviewing authority ”.
- 6 For section 115 of the ^{M1}Army Act 1955 (review of summary findings and awards) there shall be substituted the following section—

“115 Review of summary findings and awards

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.
- (2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.
- (3) The finding or any punishment awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
- (a) the Defence Council;
- (b) any military, naval or air-force officer superior in command to the officer who dealt summarily with the charge;
- (c) a general officer or brigadier appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 113AA of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 113 of this Act by the reviewing authority.

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- (7) In the application of section 113AA to reviews under this section, that section shall have effect as if—
- (a) references to the court-martial were references to the officer who dealt summarily with the charge;
 - (b) references to a finding of guilt were references to a finding that the charge has been proved;
 - (c) references to a sentence passed were references to a punishment awarded; and
 - (d) subsections (5)(a) and (6) were omitted.”

Marginal Citations

M1 1955 c. 18.

- 7 For section 115 of the ^{M2}Air Force Act 1955 (review of summary findings and awards) there shall be substituted the following section—

“115 Review of summary findings and awards

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.
- (2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.
- (3) The finding or any punishment awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
 - (a) the Defence Council;
 - (b) any air-force, naval or military officer superior in command to the officer who dealt summarily with the charge;
 - (c) an air officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 113AA of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 113 of this Act by the reviewing authority.
- (7) In the application of section 113AA to reviews under this section, that section shall have effect as if—
 - (a) references to the court-martial were references to the officer who dealt summarily with the charge;
 - (b) references to a finding of guilt were references to a finding that the charge has been proved;
 - (c) references to a sentence passed were references to a punishment awarded; and
 - (d) subsections (5)(a) and (6) were omitted.”

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Marginal Citations

M2 1955 c. 19.

The 1957 Act

- 8 The 1957 Act shall be amended as follows.
- 9 For section 70 (review of findings and sentences) there shall be substituted the following section—

“70 Review of findings and sentences of courts-martial.

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
 - (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
 - (3) The review shall (if it does not begin sooner) begin as soon as is practicable after—
 - (a) in a case where a petition has been presented under this section, the presentation of the petition;
 - (b) in any other case, the end of the period within which a petition under this section may be presented.
 - (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review of the finding or sentence has been completed—
 - (a) the reviewing authority shall complete the review as soon as is practicable; but
 - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
 - (5) For the purposes of this Act the reviewing authority is—
 - (a) the Defence Council; or
 - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.
 - (6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.
 - (7) This section and section 71 of this Act apply to disciplinary courts as they apply to courts-martial.
 - (8) In this section “prescribed” means prescribed by rules under section 58 of this Act.”
- 10 For section 71 (power to quash or alter findings) there shall be substituted the following section—

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“71 Powers of the reviewing authority.

- (1) On a review under section 70 of this Act the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—
 - (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
 - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to the court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
 - (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
 - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
 - (a) revoke an order made by the court under section 89A(1) of this Act;
 - (b) remit in whole or part any punishment awarded by the court;
 - (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
 - (a) shall be treated for all purposes as having been made or passed by the court;
 - (b) shall be promulgated and shall have effect as from the date of promulgation.”.

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11 In section 71A (power to authorise retrial), for the words “Defence Council” in both places where they appear there shall be substituted the words “reviewing authority”.

12 After section 71A there shall be inserted the following section—

“71B Review of summary findings and awards.

- (1) This section applies where on a summary trial the accused has been found guilty of any offence.
- (2) The accused may at any time request a review of the finding or any sentence awarded (or both); and where he does so, the finding or sentence (or both) shall be reviewed.
- (3) The finding or any sentence awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
 - (a) the Defence Council;
 - (b) any naval officer superior in command to the officer who tried the charge summarily;
 - (c) a flag officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 71 of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 70 of this Act by the reviewing authority.
- (7) In the application of section 71 to reviews under this section, that section shall have effect as if—
 - (a) references to the court-martial were references to the officer before whom the summary trial took place; and
 - (b) subsections (5)(a) and (6) were omitted.”.

13 Section 72 (power to remit or alter sentences) shall cease to have effect.

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