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SCHEDULES

[^{F1}SCHEDULE 3A

Section 165

COURT MARTIAL SENTENCING POWERS WHERE ELECTION FOR TRIAL BY THAT COURT INSTEAD OF CO

Textual Amendments

- F1** Sch. 3A inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), ss. 14(2), 32(3), [Sch. 1](#); S.I. 2012/669, art. 4(b) (with arts. 6(3), 10-12)

PART 1

RELEVANT OFFENCES

- 1 For the purposes of this Schedule an offence is “relevant” if it falls within any of cases A to D (see paragraphs 2 to 5); and references in this Schedule to a particular case of offence are to be read accordingly.
- 2 An offence of which a person is convicted falls within case A if the charge in respect of the offence is one in respect of which the person elected Court Martial trial under section 129 (whether or not the charge was amended after election).
- 3 An offence of which a person (“the accused”) is convicted falls within case B if—
- (a) the charge in respect of the offence was substituted under section 125(2)
 - (b) for a charge in respect of which the accused elected Court Martial trial under section 129; and
 - (b) the substitution was not one for which the accused’s written consent was required by section 130A(2).
- 4 Where—
- (a) a person (“the accused”) elects Court Martial trial under section 129 in respect of a charge,
 - (b) at the time of the election, another charge brought against the accused (“the relevant charge”) is regarded for the purposes of Part 5 as allocated for summary hearing,
 - (c) the relevant charge is referred to the Director of Service Prosecutions under section 123(2)(e) without the accused having been given the opportunity to elect Court Martial trial of the charge, and
 - (d) the Court Martial convicts the accused of an offence alleged in the relevant charge,
- that offence falls within case C.
- 5 Where—
- (a) a person (“the accused”) is charged with an offence which, if the accused were convicted of it, would fall within case C,

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- (b) another charge (“the new charge”) is substituted under section 125(2)(b) for the charge,
 - (c) the substitution is not one for which the accused’s written consent is required by section 130A(2), and
 - (d) the Court Martial convicts the accused of an offence alleged in the new charge,
- that offence falls within case D.

PART 2

SENTENCING POWERS ETC

Sentencing powers: single relevant offence

- 6 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case A offence or a case B offence; and
 - (b) paragraph 8 (multiple relevant offences) does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge in respect of which the offender elected Court Martial trial; and
 - (b) had recorded a finding that the charge had been proved.
- 7 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of a case C offence or a case D offence; and
 - (b) paragraph 8 does not apply.
- (2) The sentence passed in respect of the offence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
- (a) had heard summarily the charge referred as mentioned in paragraph 4(c); and
 - (b) had recorded a finding that the charge had been proved.

Multiple relevant offences

- 8 (1) This paragraph applies where—
- (a) the Court Martial convicts a person (“the offender”) of two or more relevant offences; and
 - (b) condition 1 or 2 is met in relation to any two or more of the offences.
- (2) Condition 1, in relation to any two or more offences, is that—
- (a) each of the offences is a case A offence or a case B offence; and
 - (b) the relevant charges would have been heard summarily together if the offender had not elected Court Martial trial.
- (3) In sub-paragraph (2) “relevant charge” means—
- (a) in relation to a case A offence, the charge in respect of that offence; and

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- (b) in relation to a case B offence, the charge in respect of which the offender elected Court Martial trial and for which the charge in respect of the case B offence was substituted.
- (4) Condition 2, in relation to any two or more offences, is that—
 - (a) each of the offences is a case C offence or a case D offence; and
 - (b) the referred charges would have been heard summarily together if they had not been referred as mentioned in paragraph 4(c).
- (5) In sub-paragraph (4) “referred charge” means—
 - (a) in relation to a case C offence, the charge in respect of that offence; and
 - (b) in relation to a case D offence, the charge referred as mentioned in paragraph 4(c) for which the charge in respect of the case D offence was substituted.

Sentencing powers: multiple relevant offences

- 9 (1) This paragraph applies where paragraph 8 applies by virtue of a condition in that paragraph being met in relation to any two or more relevant offences.
- (2) The offences in relation to which the condition is met (“the joined offences”) are to be treated for the purposes of section 255 (individual sentence for each offence) as a single offence; and references in this paragraph to “the sentence” are to the sentence passed by the Court Martial in respect of the joined offences.
- (3) Where condition 1 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
 - (a) had heard the relevant charges (as defined by paragraph 8(3)) summarily together; and
 - (b) had recorded findings that the charges had been proved.
- (4) Where condition 2 in paragraph 8 is met in relation to the joined offences, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by that sentence if the commanding officer—
 - (a) had heard the referred charges (as defined by paragraph 8(5)) summarily together; and
 - (b) had recorded findings that the charges had been proved.

Further provision about sentencing

- 10 Where paragraph 9 applies, the following provisions apply in relation to the sentence as if it were a sentence being passed by an officer at a summary hearing—
 - section 242 (service detention: general restriction);
 - section 243 (length of term of service detention);
 - section 248 (forfeiture of seniority, reduction in rank or disrating).
- 11 Where the Court Martial is dealing with an offender for an offence with which a relevant offence is associated, the offences are to be treated for the purposes of Part 9 (sentencing: principles and procedures) as not being associated.

Activation of suspended sentence of detention

- 12 (1) This paragraph applies where—

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- (a) the Court Martial, on convicting a person (“the offender”) of a relevant offence, makes an order under section 191(3) in relation to a suspended sentence of service detention passed on the offender; and
 - (b) the suspended sentence was passed by an officer or the Summary Appeal Court.
- (2) The term of the suspended sentence as it takes effect by virtue of the order must not exceed 28 days unless the offender’s commanding officer would have had extended powers for the purposes of section 194 if—
- (a) where the offence is a case A offence or a case B offence, the offender had not elected Court Martial trial; or
 - (b) where the offence is a case C offence or a case D offence, the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (3) If—
- (a) the Court Martial awards a term of service detention (“the new sentence”) in respect of the offence (or, where paragraph 9 applies, in respect of the offence and one or more other relevant offences), and
 - (b) the order under section 191(3) provides for the suspended sentence to take effect from the end of the new sentence,
- the aggregate of the terms of the two sentences must not exceed 28 days or, where the extended powers condition is met, 90 days.
- (4) The extended powers condition is—
- (a) where the offence is a case A offence or a case B offence, that the offender’s commanding officer would have had extended powers for the purposes of section 194 if the offender had not elected Court Martial trial;
 - (b) where the offence is a case C offence or a case D offence, that the offender’s commanding officer would have had extended powers for the purposes of section 194 if the charge referred as mentioned in paragraph 4(c) had not been so referred.
- (5) In determining for the purposes of sub-paragraph (2) or (4) whether the offender’s commanding officer would have had extended powers for the purposes of section 194 if, as the case may be—
- (a) the offender had not elected Court Martial trial, or
 - (b) the charge referred as mentioned in paragraph 4(c) had not been so referred,
- no account is to be taken of any of the matters mentioned in sub-paragraph (6).
- (6) Those matters are—
- (a) any change in the commanding officer’s rank after the election or referral;
 - (b) in the case of sub-paragraph (2)(a) or (4)(a), any possibility that, if the offender had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of section 194; and
 - (c) in the case of sub-paragraph (2)(b) or (4)(b), any possibility that, if the charge referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for those purposes after the time when the charge was in fact referred.

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Court orders other than sentences

- 13 (1) The Court Martial may not make an order under section 229 (service restraining order) by virtue of—
- (a) convicting a person of a relevant offence; or
 - (b) acquitting a person of an offence which would be a relevant offence if the person were convicted of it.
- (2) The Court Martial may not make an order under section 232A (service sexual offences prevention order) by virtue of dealing with a person in respect of—
- (a) a relevant offence of which the person has been convicted; or
 - (b) a relevant finding in relation to an offence which, if the person were convicted of it, would be a relevant offence.
- (3) In sub-paragraph (2) “relevant finding” has the same meaning as in section 232A.

Review of unduly lenient sentences

- 14 In section 273 (review of unduly lenient sentence by Court Martial Appeal Court), the reference in subsection (1)(a) to an offence under section 42 does not include a relevant offence.

Appeals: application of Court Martial Appeals Act 1968 to multiple relevant offences

- 15 (1) This paragraph applies where, by virtue of paragraph 9(2), the Court Martial passed a single sentence in respect of two or more relevant offences (“the joined offences”); and references in this paragraph to “the 1968 Act” are to the Court Martial Appeals Act 1968.
- (2) Where—
- (a) section 13 of the 1968 Act (power to re-sentence when some but not all convictions successfully appealed) applies in relation to the sentence, but
 - (b) the appellant remains convicted of two or more of the joined offences,
- those offences are to be treated for the purposes of section 13(2) of the 1968 Act as a single offence.
- (3) Sub-paragraph (4) applies where section 14 of the 1968 Act (substitution of conviction on different charge after plea of not guilty) applies in relation to a conviction of any of the joined offences.
- (4) The reference in section 14(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of all the applicable offences.
- (5) For the purposes of sub-paragraph (4) an offence is an “applicable offence” if it is—
- (a) a joined offence of which the appellant remains convicted;
 - (b) an offence a finding of guilty of which has been substituted under section 14 of the 1968 Act for a finding of guilty of a joined offence; or
 - (c) an offence a plea of guilty of which has been substituted under section 14A of that Act for a plea of guilty of a joined offence.
- (6) Sub-paragraph (7) applies where—

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- (a) section 14A of the 1968 Act (substitution of conviction on different charge after guilty plea) applies in relation to a conviction of any of the joined offences; and
 - (b) section 14 of that Act does not so apply.
- (7) The reference in section 14A(2)(b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in section 14A(1)(b) is to be read as a reference to a sentence that the Court Martial would have had power to pass in respect of—
- (a) all the joined offences of which the appellant remains convicted; and
 - (b) the offence a plea of guilty of which has been substituted under section 14A for a plea of guilty of a joined offence.
- (8) Where sub-paragraph (4) or (7) applies and the case also falls within section 13(1) of the 1968 Act, section 13 of that Act shall not apply.
- (9) In section 16A of the 1968 Act (appeals against sentence), the reference in subsection (2)(b) to the offence is to be read as a reference to the joined offences.

PART 3

INTERPRETATION

“Commanding officer”

- 16 (1) References in this Schedule to a person’s commanding officer are to the person’s commanding officer at the time the person elected Court Martial trial.
- (2) In determining for the purposes of paragraph 6(2), 7(2) or 9(3) or (4) the punishments that a person’s commanding officer could have awarded in respect of a charge or charges, no account is to be taken of—
- (a) any change in the commanding officer’s rank after the person elected Court Martial trial or (as the case may be) after the charge or charges referred as mentioned in paragraph 4(c) were so referred;
 - (b) in the case of paragraph 6(2) or 9(3), any possibility that, if the person had declined Court Martial trial, the commanding officer might subsequently have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6; or
 - (c) in the case of paragraph 7(2) or 9(4), any possibility that, if the charge or charges referred as mentioned in paragraph 4(c) had not been so referred, the commanding officer might have been granted extended powers for the purposes of any provision of Chapter 1 of Part 6 after the time when the referral in fact took place.

Substituted charges

- 17 References in this Schedule to a charge substituted under section 125(2)(b) for another charge (“the original charge”) include—
- (a) a charge substituted for a charge that was itself substituted for the original charge,
 - (b) a charge substituted for a charge within paragraph (a),

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and so on.]

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