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*Changes to legislation:* There are currently no known outstanding effects for the Armed Forces Act 2011, Cross Heading: Right to elect Court Martial trial. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 3

#### MINOR AMENDMENTS OF SERVICE LEGISLATION

##### *Right to elect Court Martial trial*

- 7 In section 129 of AFA 2006 (right to elect Court Martial trial), for subsection (4) substitute—
- “(4) Subsection (5) applies if an opportunity to elect Court Martial trial of a charge (“the original charge”) has been given under subsection (1) and subsequently—
- (a) the charge is amended;
  - (b) another charge is substituted for it; or
  - (c) an additional charge is brought.
- (5) Subsection (1) applies in relation to the amended, substituted or additional charge; and if the amendment, substitution or addition takes place after the start of the summary hearing, that subsection has effect in relation to the charge as if the reference to hearing a charge summarily were to proceeding with the hearing.
- (6) In subsection (4)—
- (a) “amended” means amended under section 123(2)(a) or, in the case of a charge referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, amended under section 125(2)(a) and referred to the commanding officer under section 125(2)(e);
  - (b) “substituted” means substituted under section 123(2)(b) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, substituted under section 125(2)(b) and referred to the commanding officer under section 125(2)(e);
  - (c) “brought”, in relation to an additional charge, means brought under section 123(2)(c) or, where the original charge was referred to the Director of Service Prosecutions otherwise than on election for Court Martial trial, brought under section 125(2)(c) and referred to the commanding officer under section 125(2)(e).
- (7) Subsection (8) applies where—
- (a) an opportunity to elect Court Martial trial of a charge has been given under this section;
  - (b) the accused has not elected Court Martial trial; and
  - (c) at a time after the giving of the opportunity to elect, the commanding officer obtains extended powers for the purposes of any provision of section 133, 134, 135 or 194.

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- (8) The provisions of this section requiring the giving of an opportunity to elect Court Martial trial of the charge shall apply again.”

**Commencement Information**

**II** Sch. 3 para. 7 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 8 In section 130(3) of AFA 2006 (consequences of election for Court Martial trial), for “if the charge is amended after referral.” substitute “—
- (a) where the charge is amended after referral;
  - (b) to any charge substituted for or added to the charge after referral; or
  - (c) where extended powers for the purposes of any provision of section 133, 134, 135 or 194 are obtained after referral.”

**Commencement Information**

**I2** Sch. 3 para. 8 in force at 2.4.2012 by S.I. 2012/669, art. 4(d)

- 9 After section 130 of AFA 2006 insert—

**“130A Restrictions on DSP's powers to substitute or add charges after election**

- (1) This section applies where—
  - (a) a charge is for the time being regarded for the purposes of Part 5 as allocated for Court Martial trial; and
  - (b) the charge is in respect of an offence which would be a relevant offence for the purposes of Schedule 3A (sentencing powers of Court Martial where election for trial by that court) if the accused were convicted of it.
- (2) The Director of Service Prosecutions (“the Director”) may not without the written consent of the accused substitute under section 125(2)(b)—
  - (a) a charge in respect of an offence which is not one that may be dealt with at a summary hearing (see section 53); or
  - (b) a charge in respect of an offence within section 54(2) (offences that may be dealt with summarily only with permission or by senior officer), except where the relevant charge was in respect of such an offence.
- (3) In subsection (2)(b) “relevant charge” means—
  - (a) in relation to a case A offence or a case B offence (within the meaning of Schedule 3A), the charge in respect of which the accused elected Court Martial trial; and
  - (b) in relation to a case C offence or a case D offence (within the meaning of Schedule 3A), the charge referred as mentioned in paragraph 4(c) of that Schedule.
- (4) The Director may not without the written consent of the accused bring under section 125(2)(c) a charge in addition to the charge.

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(5) In construing Part 1 of Schedule 3A (relevant offences) for the purposes of this section, paragraphs 3(b) and 5(c) of that Schedule are to be disregarded.”

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**Commencement Information**

**I3** Sch. 3 para. 9 in force at 2.4.2012 by S.I. 2012/669, art. 4(d) (with art. 9)

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