Air Force Act 1955

1955 CHAPTER 19 3 and 4 Eliz 2

F1

An Act to make provision with respect to the air force [6th May 1955]

Textual Amendments

F1 Act: the provisions of the 1955 Acts providing for findings of courts-martial to be subject to confirmation and to revision at the direction of the confirming officer cease to have effect (1.4.1997 subject to art. 3 of the commencing S.I.) by virtue of 1996 c. 46, **s. 15**; S.I. 1997/304, arts. 2, 3, **Sch. 2**

Modifications etc. (not altering text)

C1 Act continued in force until 31.8.1982 by Armed Forces Act 1981 (c. 55), **s. 1(1)**

C2 Act amended (women's services) by Armed Forces Act 1981 (c. 55), **Sch. 3 Pt. I para. 1**; excluded by Reserve Forces Act 1980 (c. 9), **s. 32(5)**; restricted by Acts listed in Chronological Table of the Statutes, Belize Act 1981 (c. 52), **Sch. 2 para. 1** and S.I. 1981/1105, **Sch. para. 2(a)**

C3 Power to continue Act conferred by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 1(2)**

C4 Power to amend Act conferred by Criminal Justice Act 1988 (c. 33, SIF 39:1), **s. 50(3)(a)(b)(ii)**

C5 By Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 123, Sch. 8 Pt. I paras. 1, **2**, it is provided that in certain enactments including this Act for a reference to a detention centre or to a youth custody centre or to both there shall be substituted a reference to a young offender institution and for a reference (however expressed) to a detention centre order or to a sentence of youth custody or to both there shall be substituted a reference to a sentence of detention in a young offender institution

C6 Act continued in force for twelve months beyond 31.8.1990 by S.I. 1990/1501, **art. 1**

C7 Act continued in force until 31.12.1991 by S.I. 1991/1696, **art.1(b)**

C8 Act continued in force until 31.8.1992 by Armed Forces Act 1991 (c. 62, SIF 7:1), **ss. 1(1)**, 27(2)
Power to continue Act conferred by Armed Forces Act 1991 (c. 62, SIF 7:1), **ss. 1(2)-(4)**
Power to continue Act conferred (24.7.1996) by 1996 c. 46, **ss. 1(2)-(4)**, 36

C9 Act applied (1.6.1996) by Armed Forces Act 1991 (c. 62, SIF 7:1), **ss. 18(8)**, 20(9); S.I. 1996/1173, **art. 2**

C10 By Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), **Sch. 12 para. 23**; S.I. 1991/2208, art. 2(1), **Sch.1** it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), **Sch. 2**) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.

C11 Act continued in force until 31.8.1993 by S.I. 1992/1712, **art. 1**

C12 Act continued in force until 31.8.1994 by S.I. 1993/1804, **art. 1**
C13 Act continued in force until 31.8.1995 by S.I. 1994/1903, **art. 1**
Act continued in force until 31.8.1996 by S.I. 1995/1964, **art. 1**
Act continued in force until 31.8.1997 by 1996 c. 46, **ss. 1(1)**, 36
Act continued in force until 31.8.1998 by S.I. 1997/1745, **art. 2**
Act continued in force until 31.8.1999 by S.I. 1998/1499, **art. 2**
Act continued in force until 31.8.2000 by S.I. 1999/1734, **art. 2**
Act continued in force (until 31.8.2001) by S.I. 2001/1814, **art. 2**
Act continued in force (until 31.8.2003) by S.I. 2002/1820, **art. 2**
C14 Act amended (N.I.) (22.8.1996) by 1996 c. 22, **ss. 54(7)(a)**, 62(1)(2); amendment continued until 16.6.1998 by S.I. 1997/1114, **art. 3**; amendment continued until 15.6.1999 by 1998 c. 9, **s. 1(1)(2)**
C15 Act extended (1.4.1997) by 1996 c. 14, **s. 103** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**
C16 Act amended (9.11.1998) by 1998 c. 42, **ss. 21(5)**, 22(2)(7) (with ss. 7(8), 22(2))
Act continued in force (until 31.8.2002) by 2001 c. 19, **s. 1(1)**, 39(3)
Act: power to continue conferred (11.5.2001) by 2001 c. 19, **ss. 1(2)-(4)**, 39(3)
C17 Act continued in force (until 31.8.2004) by The Army, Air Force and Naval Discipline Acts (Continuation) Order 2003 (S.I. 2003/1869), **art. 2**
C18 Act continued in force (until 31.8.2005) by The Army, Air Force and Naval Discipline Acts (Continuation) Order 2004 (S.I. 2004/1496), **art. 2**

PART I

ENLISTMENT AND TERMS OF SERVICE

Enlistment

1 Recruiting officers.

The following persons may enlist recruits in the regular air force and are in this Act referred to as recruiting officers, that is to say,—

(a) whether within or without Her Majesty's dominions, any officer authorised under regulations of **[**[F2]the Defence Council**]**,

(b) in a colony, any person authorised by the Governor of the colony,

(c) outside Her Majesty's dominions, any British consul-general, consul or vice-consul, and any person duly exercising the authority of a British consul.

Textual Amendments
F2 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

2 Enlistment.

(1) A person offering to enlist in the regular air force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him; and a recruiting officer shall not enlist any person in the regular air force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) The procedure for enlisting a person in the regular air force shall be that set out in the First Schedule to this Act.

(3) A recruiting officer shall not enlist a person under the **[**[F3]appropriate minimum age**]** unless consent to the enlistment has been given in writing—

(a) if the person offering to enlist is living with both or one of his parents, by the parents or parent;

(b) if he is not living with both or one of his parents, but any person (whether a parent or not) whose whereabouts are known or can after reasonable enquiry be ascertained has parental rights and powers in respect of him, by that person;

(c) if there is no such person as is mentioned in paragraph (b) of this subsection or if after reasonable enquiry it cannot be ascertained whether there is any such person, by any person in whose care (whether in law or in fact) the person offering to enlist may be.

(4) Where the recruiting officer is satisfied, by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist has or has not attained the **[**[F3]appropriate minimum age**]**, that person shall be deemed for the purposes of this Act to have attained, or as the case may be, not to have attained, that age.

A document purporting to be a certificate signed by the recruiting officer, stating that he is satisfied as aforesaid, shall be sufficient evidence, until the contrary is proved, that he is so satisfied.

[[F4](5) In this Part of this Act the expression "appropriate minimum age" means the age of eighteen or, in a case falling within any class for which a lower age is for the time being prescribed, that lower age.**]**

Textual Amendments

F3 Words substituted by Armed Forces Act 1966 (c. 45), **Sch. 4**

F4 S. 2(5) substituted by Armed Forces Act 1971 (c. 33), **s. 63(1)**

Enlistment for general or corps service

[[F5]**3 Enlistment for general service.**

Recruits shall be enlisted for general service.**]**

Textual Amendments

F5 S. 3 substituted (1.10.1996) by 1996 c. 46, s. 35(1), **Sch. 6 para. 3**; S.I. 1996/2474, **art. 2**

4—7 . . . . . [F6]

Textual Amendments

F6 Ss. 4–8 repealed by Army and Air Force Act 1961 (c. 52), **s. 14(1)**

Extension of service

8 . . . . . [F7]

Textual Amendments

F7 Ss. 4–8 repealed by Army and Air Force Act 1961 (c. 52), **s. 14(1)**

9 Postponement in certain cases of discharge or transfer to the reserve.

[[F8F8](1) This section applies to an airman of the regular air force if, on the relevant date, a call-out order under section 52, 54 or 56 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve.

For the purposes of this section, "the relevant date", in relation to an airman, means the date on which he would, apart from this section, fall to be transferred to the reserve or he would be entitled to be discharged, as the case may be.

[F8](1A) An airman to whom this section applies may be retained in air-force service after the relevant date in accordance with this section for such period as the competent air-force authority may order, and his service may be prolonged accordingly.

[F8](1B) The period for which an airman may be retained in service after the relevant date by virtue of this section shall be limited as follows, that is to say—

(a) an airman who would otherwise have fallen to be transferred to the reserve may not be retained for longer than the period for which, if the assumptions mentioned in subsection (1C) below are made in relation to him, he could have been required to serve on being called out under Part VI of the Reserve Forces Act 1996; or

(b) an airman who would otherwise have been discharged may not be retained for longer than twelve months;

and an airman who is retained in service is (if not transferred or discharged sooner) entitled to be transferred to the reserve or discharged, as the case may require, at the end of whichever of the above periods applies to him.

[F8](1C) The assumptions to be made in relation to an airman for the purposes of subsection (1B)(a) above are that—

(a) he was transferred to the reserve in time to be called out for permanent service starting on the relevant date; and

(b) he was so called out on the authority of the call-out order which justified his retention in service.**]**

(5) If while an airman is being retained in air-force service by virtue of this section it appears to the competent air-force authority that his services can be dispensed with, he shall be entitled to be discharged or transferred to the reserve as the case may require.

(6) Where, at the time at which under the foregoing provisions of this section an airman is entitled to be discharged or transferred to the reserve, a state of war exists between Her Majesty and any foreign power, he may, by declaration made in the prescribed form before his commanding officer, agree to continue in air-force service while such a state of war exists; and if the competent air-force authority approve he may continue accordingly as if the period for which his term of service could be prolonged under

the foregoing provisions of this section were a period continuing so long as a state of war exists:

Provided that if it is so specified in the declaration he shall be entitled to be discharged or transferred to the reserve, as the case may require, at the expiration of three months' notice given by him to his commanding officer.

[[F9](6A) Where an airman is retained in service by virtue of this section but would otherwise have fallen to be transferred to the reserve—

(a) any period for which he is liable to serve in the reserve after the completion of his air-force service shall be reduced by the period for which he is so retained; and

(b) the period for which he is so retained shall be treated as a period of relevant service for the purposes of any provision of Part IV, V, VI or VII of the Reserve Forces Act 1996.**]**

(7) In relation to airmen serving outside the United Kingdom, references in this section to being entitled to be transferred to the reserve shall be construed as references to being entitled to be sent to the United Kingdom with all convenient speed for the purpose of being transferred to the reserve.

Textual Amendments

F8 S. 9(1)-(1C) substituted (1.4.1997) for s. 9(1)-(4) by 1996 c. 14, s. 126, **Sch. 7 para. 5(2)** (with s. 72(5), Sch. 7 para. 6); S.I. 1997/305, **art. 2(1)**

F9 S. 9(6A) inserted (1.4.1997) by 1996 c. 14, s. 126, **Sch. 7 para. 5(3)** (with s. 72(5), Sch. 7 para. 6); S.I. 1997/305, art. (1)2

Modifications etc. (not altering text)

C19 S. 9 modified by Reserve Forces Act 1980 (c. 9), **s. 83(1)(b)(2)**

C20 S. 9 modified (1.1.1999) by S.I. 1998/3086, reg. 11, **Sch. para. 2**

[[F10]10 Continuation of air-force service in imminent national danger.

(1) If it appears to Her Majesty that national danger is imminent or that a great emergency has arisen, She may by order, signified under the hand of the Secretary of State, provide that airmen who would otherwise fall to be transferred to the reserve shall continue in air force service; and thereupon the last foregoing section shall apply to such airmen as it applies while **[**[F11]a call-out order under section 52 of the Reserve Forces Act 1996 authorising the call out of members of the reserve is in force**]**.

(2) Where an order has been made under subsection (1) above, the occasion thereof shall forthwith be communicated to Parliament.

(3) An order in force under subsection (1) above may be revoked by order of Her Majesty signified as therein mentioned.**]**

Textual Amendments

F10 S. 10 substituted by Armed Forces Act 1966 (c. 45), **s. 12(2)**

F11 Words in s. 10(1) substituted (1.4.1997) by 1996 c. 14, s. 126, **Sch. 7 para. 5(4)** (with s. 72(5), Sch. 7 para. 6); S.I. 1995/305, **art. 2(1)**

Discharge and transfer to reserve

11 Discharge.

(1) Save as hereinafter provided every airman of the regular air force, upon becoming entitled to be discharged, shall be discharged with all convenient speed but until discharged shall remain subject to air-force law.

(2) Where an airman of the regular air force enlisted in the United Kingdom is, when entitled to be discharged, serving out of the United Kingdom then—

(a) if he requires to be discharged in the United Kingdom, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months from his arrival; but

(b) if at his request he is discharged at the place where he is serving he shall have no claim to be sent to the United Kingdom or elsewhere.

(3) Except in pursuance of the sentence of a court-martial (whether under this Act, **[**[F12]the [M1]Naval Discipline Act 1957**]** or the [M2]Army Act 1955), an airman of the regular air force shall not be discharged unless his discharge has been authorised by order of the competent air-force authority or by authority direct from Her Majesty; and in any case the discharge of an airman of the regular air force shall be carried out in accordance with Queen's Regulations.

(4) Every airman of the regular air force shall on his discharge be given a certificate of discharge containing **[**[F13]the following particulars, namely—

(a) his name, rank and service number;

(b) his reserve liability (if applicable); and

(c) the reason for his discharge and the date of discharge,

together with any other particulars which are required to be included in the certificate by directions of the Defence Council or an officer authorised by them.**]**

(5) An airman of the regular air force who is discharged in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.

Textual Amendments

F12 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F13 Words in s. 11(4) substituted (1.5.2001) by 1996 c. 46, **s. 3(1)**; S.I. 2001/1519, **art. 2(1)(a)**

Marginal Citations

M1 1957 c. 53.

M2 1955 c. 18.

12 Transfer to the reserve.

(1) Every airman of the regular air force upon falling to be transferred to the reserve shall be transferred to the reserve but until so transferred shall remain subject to air-force law.

(2) Where an airman of the regular air force, when falling to be transferred to the reserve, is serving out of the United Kingdom, he shall be sent to the United Kingdom free of cost with all convenient speed and shall be transferred to the reserve on his arrival there, or if he consents to his transfer being delayed, within six months from his arrival:

Provided that if he so requests he may be transferred to the reserve without being required to return to the United Kingdom.

(3) An airman who is transferred to the reserve in the United Kingdom shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost:

Provided that he shall not be entitled to be conveyed to any place outside the United Kingdom.

13 Postponement of discharge or transfer pending proceedings for offences.

(1) Notwithstanding anything in this Part of this Act, an airman of the regular air force shall not be entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to air-force law, **[**[F14]the [M3]Naval Discipline Act 1957**]** or military law, to be proceeded against for an offence against any of the provisions of this Act, **[**[F14]the Naval Discipline Act 1957**]** or the [M4]Army Act 1955:

Provided that if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

(2) Notwithstanding anything in this Part of this Act, an airman of the regular air force who is outside the United Kingdom and serving a sentence of imprisonment or detention awarded by a court-martial under this Act, **[**[F14]the [M5]Naval Discipline Act 1957**]** or the [M6]Army Act 1955, shall not be entitled to be discharged or transferred to the reserve during the currency of the sentence.

Textual Amendments

F14 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

Marginal Citations

M3 1957 c. 53.
M4 1955 c. 18.
M5 1957 c. 53.
M6 1955 c. 18.

14 . . . . . [F15]

Textual Amendments

F15 S. 14 repealed by S.I. 1972/1922, **Sch. 1 Pt. I**

15 Right of warrant officer to discharge on reduction to ranks.

A warrant officer of the regular air force who is reduced to the ranks may thereupon claim to be discharged unless a state of war exists between Her Majesty and any foreign power or **[**[F16]a call-out order under section 52 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve**]**.

Textual Amendments

F16 Words in s. 15 substituted (1.1.1999) by S.I. 1998/3086, **reg. 9(3)**

16 . . . . . [F17]

Textual Amendments

F17 S. 16 repealed by Mental Health (Scotland) Act 1960 (c. 61), **Sch. 5**

Miscellaneous and supplementary provisions

17 Forfeiture of service for desertion and restoration of forfeited service.

(1) Where an airman of the regular air force is convicted of desertion by court-martial, the period of his service as respects which he is convicted of having been a deserter shall be forfeited.

(2) Where any of an airman's service is forfeited the provisions of this Part of this Act . . . [F18] shall apply to him, and he shall be liable to serve, in like manner as if the appropriate date were the date of his attestation and he had, on the appropriate date, been duly enlisted to serve for the like term (both as respects duration and as respects liability to air-force service and any liability to serve in the reserve) as that for which he was in fact serving at the date of his conviction:

Provided that where at the date of his conviction the airman was serving a term ending with the expiration of a period beginning with the date of his attaining the age of eighteen years and he had attained that age when he was convicted (whether or not he had attained it when the offence was committed) the duration of the term for which he is liable to serve shall be equal to that period and the time for which he is required to serve in air-force service shall be reduced accordingly.

[[F19](3) In subsection (2) above "the appropriate date" means in relation to any person a date earlier than the date of his conviction for desertion by the length of his service which is not forfeited.**]**

(4) **[**[F20]The Defence Council**]** may by regulations make provision for the restoration in whole or in part of any forfeited service to an airman in consideration of good service or on other grounds justifying the restoration; and any service restored to an airman under this subsection shall be credited to him for the purpose of determining for the purposes of this Act the amount of service, air-force service, or service in the reserve, as the case may require, which he has served or is liable to serve.

(5) Nothing in this section shall require a person who has been re-engaged under section seven of this Act for a period ending on the date on which he attains a specified age to serve for any period after that date.

Textual Amendments

F18 Words repealed by armed Forces Act 1976 (c. 52), **Sch. 10**

F19 S. 17(3) substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(2)**

F20 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

Modifications etc. (not altering text)

C21 S. 17 modified by Army and Air Force Act 1961 (c. 52), **s. 13**; restricted ibid., Sch. 2

18 Validity of attestation and enlistment.

(1) Where a person has signed the declaration required by the First Schedule to this Act, and has thereafter received pay as an airman of the regular air force,—

(a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

(b) if within three months from the date on which he signed the said declaration he claims that his enlistment is invalid by reason of any non-compliance with the requirements of this Act as to enlistment or attestation, or any other ground whatsoever (not being an error or omission in his attestation paper) on which apart from this subsection the validity of his enlistment could have been called in question, the claim shall be submitted as soon as may be to **[**[F21]the Defence Council**]** and if the claim is well founded **[**[F21]the Defence Council**]** shall cause him to be discharged with all convenient speed;

(c) subject to the provisions of the last foregoing paragraph, he shall be deemed as from the expiration of the said three months to have been validly enlisted notwithstanding any such non-compliance or other grounds as aforesaid;

(d) notwithstanding any such non-compliance or other grounds as aforesaid, or the making of a claim in pursuance of paragraph (b) of this subsection, he shall be deemed to be an airman of the regular air force until his discharge.

In the case of a person who when he signed the said declaration had not attained the **[**[F22]appropriate minimum age**]**, paragraph (b) of this subsection shall have effect as if for the words "he claims" there were substituted the words "he, or any person whose consent to the enlistment was required under subsection (3) of section two of this Act but who did not duly consent, claims".

(2) Where a person has received pay as an airman of the regular air force without having previously signed the declaration required by the First Schedule to this Act, then—

(a) he shall be deemed to be an airman of the regular air force until discharged;

(b) he may claim his discharge at any time, and if he does so the claim shall be submitted as soon as may be to **[**[F21]the Defence Council**]**, who shall cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

Textual Amendments

F21 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F22 Words substituted by Armed Forces Act 1966 (c. 45), **Sch. 4**

19 False answers in attestation paper.

(1) If a person appearing before a recruiting officer for the purpose of being attested knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding **[**[F23]level 1 on the standard scale**]**.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to air-force law.

Textual Amendments

F23 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

20 . . . . . [F24]

Textual Amendments

F24 Ss. 20, 213(11), Sch. 2 repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

21 Service of aliens in regular air force.

(1) Subject to the provisions of the two next following subsections the number of aliens who at any one time are serving (whether as officers or airmen) in the regular air force shall not exceed one-fiftieth of the aggregate number at that time of that force.

(2) In reckoning the number of aliens serving as aforesaid there shall be excluded persons enlisted outside the United Kingdom and serving in such units (if any) as may be prescribed, and officers serving in such units.

(3) **[**[F25]The Defence Council**]** may by regulations provide that at any time at which a state of war exists between Her Majesty and any foreign power or while **[**[F26]a call-out order under section 52 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve**]** subsection (1) of this section shall have effect with the substitution for one-fiftieth of such other fraction as may be specified in the regulations.

(4) Nothing in section three of the [M7]Act of Settlement (which provides among other things that aliens are incapable of holding certain offices or places of trust) shall apply to an office or place of trust in the regular air force so long as the limit having effect under the foregoing provisions of this section is not exceeded.

(5) **[**[F25]The Defence Council**]** may by regulations provide that in such cases as may be prescribed by the regulations it shall not be necessary to administer the oath of allegiance to an alien on his enlistment; and in relation to cases so prescribed this Act shall have effect with the omission of references to the administration and taking of the oath of allegiance.

Textual Amendments

F25 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F26 Words in s. 21(3) substituted (1.1.1999) by S.I. 1998/3086, **reg. 9(4)**

Marginal Citations

M7 1700 c. 2.

22 Regulations as to enlistment.

[[F27](1)**]** **[**[F28]The Defence Council**]** may make such regulations as appear to them necessary or expedient for the purposes of, or in connection with, the enlistment of recruits for the regular air force and generally for carrying this Part of this Act into effect.

[[F29](2) Any power conferred by this Part of this Act to make regulations (including the power under paragraph 5 of Schedule 1 to this Act) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F27 S. 22 renumbered as s. 22(1) (1.5.2001) by 1996 c. 46, **s. 4(1)(4)**; S.I. 2001/1519, **art. 2(1)(a)**

F28 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F29 S. 22(2) inserted (1.5.2001) by 1996 c. 46, **s. 4(1)(4)**; S.I. 2001/1519, **art. 2(1)(a)**

23 Interpretation of Part I.

(1) In this Part of this Act:—

"competent air-force authority" means **[**[F30]the Defence Council**]** or any prescribed officer;

"date of attestation", in relation to any person, means the date on which he signs the declaration and takes the oath mentioned in paragraph 3 of the First Schedule to this Act;

[[F31]"appropriate minimum age" **]** has the meaning assigned to it by subsection (5) of section two of this Act;

"prescribed" means prescribed by regulations made under this Part of this Act;

"recruiting officer" has the meaning assigned to it by section one of this Act;

"reserve" means the air force reserve.

(2) References in this Part of this Act to airmen shall include references to warrant officers and to non-commissioned officers.

Textual Amendments

F30 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F31 Words substituted by Armed Forces Act 1966 (c. 45), **Sch. 4**

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

Modifications etc. (not altering text)

C22 Pt. II (ss. 24-143) applied (1.6.1996) by Armed Force Act 1991 (c. 62, SIF 7:1), **ss. 18(9)(b)**, 20(10)(b); S.I. 1996/1173, **art. 2**

Misconduct in action and other offences arising out of air-force service

[F32 24 Misconduct in action.

(1) A person subject to air-force law shall be guilty of an offence against this section if, without lawful excuse, he—

(a) surrenders any place or thing to the enemy,

or

(b) abandons any place or thing which it is his duty to defend against the enemy or to prevent from falling into the hands of the enemy.

(2) A person subject to air-force law shall be guilty of an offence against this section if, being in the presence or vicinity of the enemy, or being engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy, he—

(a) fails to use his utmost exertions to carry the lawful orders of his superior officers into execution, or

(b) while on guard duty and posted or ordered to patrol, or while on watch, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be, or

(c) behaves in such a manner as to show cowardice, or induces any other person so to behave at a time when that other person, being a member of Her Majesty's forces or of a force co-operating with Her Majesty's forces, is in the presence or vicinity of the enemy, or is engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy, or

(d) uses words likely to cause despondency or unnecessary alarm.

(3) A person guilty of an offence against this section shall, on conviction by court-martial, be **[**F33liable to imprisonment or any less punishment provided by this Act**]**.

(4) The reference in subsection (2)(a) above to superior officers shall be construed in accordance with section 33(2) of this Act.**]**

Textual Amendments

F32 Ss. 24—26 substituted for ss. 24-28 by Armed Forces Act 1971 (c. 33), **ss. 21(1)(2)**, 78(4)

F33 Words in s. 24(3) substituted (11.5.2001) by 2001 c. 19, ss. 34, 39(3)(f), **Sch. 6 Pt. 4 para. 14**

25 Assisting the enemy.

(1) A person subject to air-force law shall be guilty of an offence against this section if, knowingly and without lawful excuse, he—

(a) communicates with, or gives intelligence to, the enemy, or

(b) fails to make known to the proper authorities any information received by him from the enemy, or

(c) furnishes the enemy with supplies of any description, or

(d) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities or of measures likely to influence morale, or in any other manner whatsoever not authorised by international usage, or

(e) having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking, any reasonable steps to rejoin Her Majesty's service which are available to him or, as the case may be, to that other person, or

(f) harbours or protects an enemy not being a prisoner of war.

(2) A person guilty of an offence against this section shall, on conviction by court-martial, be **[**[F34]liable to imprisonment or any less punishment provided by this Act**]**.

Textual Amendments

F34 Words in s. 25(2) substituted (11.5.2001) by 2001 c. 19, ss. 39(3)(f), 34, **Sch. 6 Pt. 4 para. 15**

26 Obstructing operations, giving false air signals, etc.

(1) A person subject to air-force law shall be guilty of an offence against this section if he does any act likely to imperil the success of any action or operation on the part of any of Her Majesty's forces, or wilfully delays or discourages upon any pretext whatsoever any such action or operation.

(2) A person subject to air-force law shall be guilty of an offence against this section if, knowingly and without lawful excuse, he gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal.

(3) A person guilty of an offence against this section shall, on conviction by court-martial, be **[**[F35]liable to imprisonment or any less punishment provided by this Act**]**.

Textual Amendments

F35 Words in s. 26(3) substituted (11.5.2001) by 2001 c. 19, ss. 34, 39(3)(f), **Sch. 6 Pt. 4 para. 16**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

[[F36]27 Prize offences by commanding officers.

(1) Any person subject to air-force law who, being in command of any of Her Majesty's ships or aircraft—

(a) having taken any ship or aircraft as prize, fails to send to the High Court, or to some other prize court having jurisdiction in the case, all the ship papers or aircraft papers, as the case may be, found on board, or

(b) unlawfully makes any agreement for the ransoming of any ship, aircraft or goods taken as prize, or

(c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, aircraft or goods taken as prize,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section "prize court" means a prize court within the meaning of the [M8]Naval Prize Act 1864, and "ship papers" and "aircraft papers" have the same meanings as in that Act.**]**

Textual Amendments

F36 Ss. 27, 28 inserted by Armed Forces Act 1971 (c. 33), **ss. 3(1)(2)**, 78(4)

Marginal Citations

M8 1864 c. 25.

28 Other prize offences.

Any person subject to air-force law who—

(a) . . . [F37] ill-treats any person who is on board a ship or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession, or

(b) removes out of any ship or aircraft taken as prize (otherwise than for safe keeping or for the necessary use and service of any of Her Majesty's forces or any forces co-operating therewith) any goods not previously adjudged by a prize court within the meaning of the [M9]Naval Prize Act 1864 to be lawful prize, or

(c) breaks bulk on board any ship or aircraft taken as prize, or detained in exercise of any belligerent right or under any enactment, with intent to steal anything therein,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Textual Amendments

F37 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**

Marginal Citations

M9 1864 c. 25.

[F38 29 Offences by or in relation to sentries, persons on watch etc.

Any person subject to air-force law who—

(a) while on guard duty and posted or ordered to patrol, or on watch, or under orders to regulate traffic by land, water or air, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be, or

(b) . . . F39 uses force against a member of Her Majesty's forces, or of any forces co-operating therewith, who is on guard duty and posted or ordered to patrol, or on watch, or under orders to regulate traffic by land, water or air, or

(c) by the threat of force compels any such person as is mentioned in paragraph (b) above to let him or any other person pass,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F38 S. 29 substituted by Armed Forces Act 1971 (c. 33), **ss. 4(1)(2)**, 78(4)

F39 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**

[F40 29A Failure to attend for duty, neglect of duty etc.

Any person subject to air-force law who—

(a) without reasonable excuse fails to attend for any duty of any description, or leaves any such duty before he is permitted to do so, or

(b) neglects to perform, or negligently performs, any duty of any description,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F40 S. 29A inserted by Armed Forces Act 1971 (c. 33), **ss. 5(1)(2)**, 78(4)

30 Looting.

Any person subject to air-force law who—

(a) steals from, or with intent to steal searches, the person of anyone **[**F41 killed, wounded or captured in the course of warlike operations, or killed, injured or detained in the course of operations undertaken by Her Majesty's forces for the preservation of law and order or otherwise in aid of the civil authorities**]**, or

(b) steals any property which has been left exposed or unprotected in consequence of **[**F41 any such operations as are mentioned in paragraph (a) above**]**, or

(c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

Textual Amendments

F41 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 6(1)**, 78(4)

Modifications etc. (not altering text)

C23 S. 30 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

Mutiny and insubordination

31 Mutiny.

[F42](1) . . . . . .

(2) Any person subject to air-force law who [F43]. . ., takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act the expression "mutiny" means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

(a) to overthrow or resist lawful authority in Her Majesty's forces or any forces co-operating therewith or in any part of any of the said forces,

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against the enemy, or

(c) to impede the performance of any duty or service in her Majesty's forces or in any forces co-operating therewith or in any part of any of the said forces;

[F44] . . . . . .

Textual Amendments

F42 S. 31(1) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

F43 Words in s. 31(2) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

F44 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

32 Failure to suppress mutiny.

Any person subject to air-force law who, knowing that a mutiny is taking place or is intended,—

(a) fails to use his utmost endeavours to suppress or prevent it, or

(b) fails to report without delay that the mutiny is taking place or is intended,

shall on conviction by **[**[F45]court-martial be liable to imprisonment or any less punishment provided by this Act**]**.

Textual Amendments

F45 Words in s. 32 substituted (11.5.2001) by 2001 c. 19, ss. 34, 39(3)(f), **Sch. 6 Pt. 4 para. 17**

33 Insubordinate behaviour.

(1) Any person subject to air-force law who—

(a) [F46]uses violence to, or offers violence to, his superior officer, or

(b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

[[F47] Provided that it shall be a defence for any person charged under this subsection to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was his superior officer.**]**

(2) In the foregoing provisions of this section the expression "superior officer", in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular air force of superior rank, and includes an officer, warrant officer or non-commissioned officer of that force of equal rank but greater seniority while exercising authority as the said person's superior.

Textual Amendments

F46 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**

F47 S. 33(1) proviso substituted by Armed Forces Act 1971 (c. 33), **ss. 8(1)**, 78(4)

[[F48]34 Disobedience to lawful commands.

Any person subject to air-force law who, whether wilfully or through neglect, disobeys any lawful command (by whatever means communicated to him) shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.**]**

Textual Amendments

F48 S. 34 substituted by Armed Forces Act 1971 (c. 33), **ss. 8(2)**, 78(4)

[[F49]34A Failure to provide a sample for drug testing.

(1) Any person subject to military law who, when requested to do so by a drug testing officer, fails to provide a sample of his urine for **[**[F50]the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body**]** shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.

[F51]**[** (1A) A drug testing officer may not request a person to provide a sample under subsection (1) above if—

(a) he is that person's commanding officer, or

(b) the commanding officer of that person is also his commanding officer.

(1B) A request under subsection (1) above may not be made if the sample is sought in connection with—

(a) an investigation under this Act of an offence, or

(b) an investigation of such an incident as is referred to in section 32(1)(a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).

(1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—

(a) that person, or

(b) any other person,

in proceedings before a court-martial, commanding officer or appropriate superior authority.

(1D) Nothing in this section—

(a) limits the powers conferred by—

[[F52](i) any provision of the Road Traffic Act 1988 (c. 52),**]**

(ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or

(b) affects the admissibility in any proceedings of evidence obtained under those powers.**]**

(2) For the purposes of this section—

"drug" means any drug which is a controlled drug for the purposes of the [M10]Misuse of Drugs Act 1971; and

"drug testing officer" means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with Queen's Regulations for the purpose of supervising the conduct of tests for the presence of drugs.**]**

Textual Amendments

F49 S. 34A inserted (1.10.1996) by 1996 c. 46, **s. 32(2)**; S.I. 1996/2474, **art. 2**

F50 Words in s. 34A(1) substituted (28.2.2002) by 2001 c. 19, ss. 32(9), 39(2), **Sch. 5 para. 1(2)**, S.I. 2002/345, arts. 2,3

F51 S. 34A(1A)-(1D) inserted (28.2.2002) by 2001 c. 19, ss. 32(9), 39(2), **Sch. 5 para. 1(3)**, S.I. 2002/345, arts. 2,3

F52 S. 34A(1D)(a)(i) substituted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), s. 120(1), **Sch. 7 para. 10**; S.I. 2004/827, art. 3(ii)

Marginal Citations

M10 1971 c. 38.

[F53]34B Failure to provide sample after serious incident

Any person subject to air-force law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.**]**

Textual Amendments

F53 S. 34B inserted (28.2.2002) by 2001 c. 19, ss. 32(9), 39(2), **Sch. 5 para. 3**, S.i. 2002/345, arts. 2,3

35 Obstruction of provost officers.

Any person subject to air-force law who—

(a) obstructs, or

(b) when called on, refuses to assist,

[[F54]any provost officer, or any person**]** (whether subject to air-force law or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

[[F55]Provided that it shall be a defence for any person charged under this section to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was a provost officer or, as the case may be, a person legally exercising authority under or on behalf of a provost officer.**]**

Textual Amendments

F54 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 9(1)(a)**, 78(4)

F55 S. 35 proviso inserted by Armed Forces Act 1971 (c. 33), **ss. 9(1)(b)**, 78(4)

36 Disobedience to standing orders.

(1) Any person subject to air-force law who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably by expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or **[**[F56]body of Her Majesty's forces**]**, or for any command or other area, garrison or place, or for any ship, train or aircraft.

Textual Amendments

F56 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 10(2)**, 78(4)

Desertion, absence without leave, etc.

[[F57]37 Desertion.

(1) Any person subject to air-force law who deserts shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) For the purposes of this Act a person deserts who—

(a) leaves or fails to attend at his unit, ship or place of duty with the intention of remaining permanently absent from duty without lawful authority, or, having left or failed to attend at his unit, ship or place of duty, thereafter forms the like intention, or

(b) absents himself without leave with intent to avoid serving at any place overseas, or to avoid service or any particular service when before the enemy,

and references in this Act to desertion shall be construed accordingly.**]**

Textual Amendments

F57 S. 37 substituted by Armed Forces Act 1971 (c. 33), **ss. 11(1)(2)**, 78(4)

[F58 38 Absence without leave.

Any person subject to air-force law who—

(a) absents himself without leave, or

(b) improperly leaves his ship,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F58 S. 38 substituted by Armed Forces Act 1971 (c. 33), **ss. 12(1)(2)**, 78(4)

[F59 39 Failure to report or apprehend deserters or absentees.

Any person subject to air-force law who, knowing that any other person so subject has committed an offence, or is attempting to commit an offence, under section 37(1) or section 38 of this Act—

(a) fails to report the fact without delay, or

(b) fails to take any steps within his power to cause that other person to be apprehended,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F59 S. 39 substituted by Armed Forces Act 1971 (c. 33), **ss. 13(1)(2)**, 78(4)

F60 40, 41. . . . . .

Textual Amendments

F60 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

Malingering and drunkenness

42 Malingering.

(1) Any person subject to air-force law who—

(a) falsely pretends to be suffering from sickness or disability, or

(b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, or

(c) injures another person subject to **[**[F61]service law**]** at the instance of that person, with intent thereby to render that person unfit for service, or

(d) with intent to render or keep himself unfit for service, does or fails to do any thing (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section the expression "unfit" includes temporarily unfit.

Textual Amendments

F61 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 14(a)**, 78(4)

43 Drunkenness.

(1) Any person subject to air-force law who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act [F62].

. . . [F63]

(2) For the purposes of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which **[**[F64]he might reasonably expect to be called upon to perform**]**, or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty's service.

Textual Amendments

F62 Words repealed by Armed Forces Act 1966 (c. 45), s. 37(3), **Sch. 5**

F63 Proviso repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F64 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 15(1)**, 78(4)

Disorderly conduct

[[F65]43A Fighting, threatening words etc.

Any person subject to air-force law who, without reasonable excuse—

(a) fights with any other person, whether subject to military law or not, or

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F65 S. 43A inserted by Armed Forces Act 1971 (c. 33), **ss. 16(1)(2)**, 78(4)

Offences relating to property

[F66 44 Damage to, and loss of, public or service property etc.

(1) Any person subject to air-force law who—

(a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any public or service property, or any property belonging to another person so subject, or

(b) by wilful neglect causes or allows damage to, or the loss of, any public or service property or property so belonging,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to air-force law who—

(a) by any negligent act or omission causes or allows damage to, or the loss of, any public or service property, or

(b) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any such property,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F66 Ss. 44, 44A—46 substituted for ss. 44—46 by Armed Forces Act 1971 (c. 33), **ss. 17(1)(2)**, 78(4)

44A Damage to, and loss of, Her Majesty's aircraft or aircraft material.

(1) Without prejudice to the generality of section 44 above, a person subject to air-force law shall be guilty of an offence against this section if he—

(a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any of Her Majesty's aircraft or aircraft material, or

(b) by wilful neglect causes or allows damage to, or the loss of, any of Her Majesty's aircraft or aircraft material, or

(c) without lawful authority disposes of any of Her Majesty's aircraft or aircraft material, or

(d) by any negligent act or omission causes or allows damage to, or the loss of, any of Her Majesty's aircraft or aircraft material,

(e) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any of Her Majesty's aircraft or aircraft material, or

(f) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration by or under the authority of a neutral state, or the destruction in a neutral state, of any of Her Majesty's aircraft.

(2) A person guilty of an offence against this section shall, on conviction by court-martial, be liable—

(a) if his offence consisted in an act or omission falling within paragraph (a), (b) or (c) of subsection (1), or if it consisted in an act or omission falling within paragraph (f) of that subsection and it is proved that he acted wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act;

(b) in any other case, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

[[F67]44B Interference etc. with equipment, messages or signals.

(1) Any person subject to air-force law who by any conduct of his—

(a) intentionally impairs the efficiency or effectiveness of any equipment which is public or service property; or

(b) intentionally interferes with or modifies any message or other signal which is being transmitted, by means of **[**[F68]an electronic communications network**]**, directly or indirectly to or from any such equipment,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to air-force law who is guilty of any conduct which is likely to have the effect—

(a) of impairing the efficiency or effectiveness of any such equipment; or

(b) of interfering with or modifying any such message or signal,

shall (whether or not that conduct has that effect) be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(3) It shall be a defence for a person charged with an offence under subsection (2) of this section in respect of any conduct likely to have a particular effect that, in the circumstances, his conduct was in all respects consistent with the exercise of reasonable care to avoid producing that effect.

(4) For the purposes of this section the efficiency or effectiveness of any equipment is impaired if, whether or not it is damaged, the equipment is made temporarily or permanently less efficient or effective either for all purposes or for a particular purpose for which it has been designed, adapted, adjusted or programmed.

(5) In this section—

"conduct" includes any act or omission;

"equipment" includes any apparatus, any computer and any vessel, aircraft or vehicle; [F69]...

[F69]...**]**

Textual Amendments

F67 S. 44B inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 2(1)(2)**

F68 Words in s. 44B(1)(b) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 24** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F69 Words in s. 44B(5) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

45 Misapplication and waste of public or service property.

Any person subject to air-force law who misapplies or wastefully expends any public or service property shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Modifications etc. (not altering text)

C24 S. 45 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

46 Offences relating to issues and decorations.

(1) Any person subject to air-force law who makes away with (whether by pawning, selling, destroying or in any other way), or loses, or by negligence damages or allows to be damaged—

(a) any clothing, arms, ammunition or other equipment issued to him for his use for air-force purposes, or

(b) any air-force or naval decoration granted to him,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) It shall be a defence for a person charged under this section with losing any property that he took reasonable steps for its care and preservation.

Modifications etc. (not altering text)

C25 S. 46 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

Offences relating to billeting and requisitioning of vehicles

47 Billeting offences.

Any person subject to air-force law who—

(a) knowing that no billeting requisition is in force under Part IV of this Act authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;

(b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under Part IV of this Act any money or thing as consideration for

not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or

[[F70](c) wilfully or by wilful neglect damages, or causes or allows to be damaged, any premises in which he is billeted in pursuance of such a requisition, or any property being in such premises,**]**

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Textual Amendments

F70 S. 47(c) substituted by Armed Forces Act 1971 (c. 33), **ss. 18**, 78(4)

48 Offences in relation to requisitioning of vehicles.

(1) Any person subject to air-force law who—

(a) knowing that no requisitioning order is in force under Part IV of this Act authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions, or

(b) in purported exercise of powers conferred by a requisitioning order under Part IV of this Act takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under the said Part IV under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such an order, or

(c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under Part IV of this Act,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) The last foregoing subsection shall apply in relation to aircraft and stores (within the meaning of Part IV of this Act) as it applies in relation to vehicles.

Flying etc. offences

[[F71]48A Loss or hazarding of ship.

Any person subject to air-force law who, either wilfully or by negligence, causes or allows to be lost, stranded or hazarded any of Her Majesty's ships shall, on conviction by court-martial, be liable—

(a) if he acts wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act,

(b) in any other case, to imprisonment for a term not exceeding two years or any less punishment so provided.**]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F71 S. 48A inserted by Armed Forces Act 1971 (c. 33), **ss. 19(1)(2)**, 78(4)

49 Dangerous flying, etc.

Any person subject to air-force law who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

[F72 50 Inaccurate certification.

Any person subject to air-force law who makes or signs, without having ensured its accuracy,—

(a) a certificate relating to any matter affecting the seagoing or fighting efficiency of any of Her Majesty's ships, or

(b) any certificate relating to any of Her Majesty's aircraft or aircraft material,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F72 S. 50 substituted by Armed Forces Act 1971 (c. 33), **ss. 20(1)(2)**, 78(4)

51 Low flying.

Any person subject to air-force law who, being the pilot of one of Her Majesty's aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of **[**F73the Defence Council**]**, . . . F74, except—

(a) while taking off or alighting, or

(b) in such other circumstances as may be so provided,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

[F75Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.**]**

Textual Amendments

F73 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F74 Words repealed by S.I. 1964/488, **Sch. 1 Pt. I**

F75 Proviso inserted by Armed Forces Act 1971 (c. 33), **ss. 21(1)**, 78(4)

52 Annoyance by flying.

Any person subject to air-force law who, being the pilot of one of Her Majesty's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to **[**[F76]dismissal from Her Majesty's service**]** or any less punishment provided by this Act.

[[F77]Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.**]**

Textual Amendments

F76 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 21(2)**, 78(4)

F77 Proviso inserted by Armed Forces Act 1971 (c. 33), **ss. 21(1)**, 78(4)

Offences relating to, and by, persons in custody

[F78]53 . . . . . .

Textual Amendments

F78 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

54 Permitting escape, and unlawful release of prisoners.

(1) Any person subject to air-force law who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to air-force law who—

(a) without proper authority releases any person who is committed to his charge, or

(b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

55 Resistance to arrest.

(1) Any person subject to air-force law who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or [F79]uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

(2) Any person subject to air-force law who [F79]uses violence to, or offers violence to, any person, whether subject to air-force law or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Textual Amendments

F79 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**

56 Escape from confinement.

Any person subject to air-force law who escapes from arrest, prison or other lawful custody (whether air-force or not), shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences in relation to courts-martial and civil authorities

57 Offences in relation to courts-martial.

(1) Any person subject to air-force law who—

(a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order, or

(b) refuses to swear an oath when duly required by a court-martial to do so, or

(c) refuses to produce any **[**[F80]document or other thing which is in his custody or under his control and**]** which a court-martial has lawfully required him to produce, or

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything in the last foregoing subsection, where an offence against [F81]that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president **[**[F82]sentence the offender—

(a) if he is an officer, to imprisonment for a term not exceeding twenty-one days, or to a fine not exceeding the amount of his pay for twenty-eight days [F83]. . .,

(b) in any other case, to imprisonment or detention for such a term as aforesaid, or to such a fine as aforesaid.**]**

[[F84](2A) If the offender has attained seventeen years of age but is under twenty-one years of age, subsection (2) above shall have effect in relation to him as if the power to impose a sentence of imprisonment were a power to make an order under section 71AA below.**]**

[[F85F85](2B) For the purposes of subsection (2) above, a day's pay shall be taken to be–

(a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the order is made;

(b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

[F85](2C) In subsection (2B)(b) above "special member" and "ordinary member" have the same meaning as in the Reserve Forces Act 1996.**]**

(3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial **[**[F86]or disciplinary court**]** held in pursuance of **[**[F87]the [M11]Naval Discipline Act 1957**][**[F88]and to a court-martial held in pursuance of**]** the [M12]Army Act 1955, or the law of any colony.

[[F89](4) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial or to a member of a court-martial include references to a judicial officer or a person appointed under section 75L of the Army Act 1955 or section 47M of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to a judicial officer or a person so appointed, that subsection shall have effect as if the words "other than the court in relation to which the offence was committed" were omitted.

(5) In relation to an offence committed in relation to a judicial officer, subsection (2) of this section shall have effect as if—

(a) the references to a court-martial held in pursuance of this Act were references to the judicial officer,

(b) for "another court-martial" there were substituted "a court-martial", and

(c) the words "under the hand of the president" were omitted.**]**

[[F90](6) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial include references to the summary appeal court, the court established by section 83ZA of the Army Act 1955 or the court established by section 52FF of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to any of those courts that subsection shall have effect as if the words "other than the court in relation to which the offence was committed" were omitted.

(7) In relation to an offence committed in relation to the summary appeal court, subsection (2) of this section shall have effect as if—

(a) the reference to a court-martial held in pursuance of this Act were a reference to the summary appeal court,

(b) for "another court-martial" there were substituted "a court-martial", and

(c) for "the president" there were substituted "the judge advocate".**]**

Textual Amendments

F80 Words in s. 57(1)(c) substituted (28.2.2002) by 2001 c. 19, **ss. 39(2)**, 24(1)(2)(c, S.I. 2002/345, **arts. 2**,3

F81 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F82 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 23(1)(2)**, 78(4)
F83 Words in s. 57(2)(a) omitted (1.1.1999) by virtue of S.I. 1998/3086, **reg. 4(1)(a)**
F84 S. 57(2A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1),s. 58, Sch. 8 para. 1(1)
F85 S. 57(2B)(2C) inserted (1.1.1999) by S.I. 1998/3086, **reg. 4(2)**
F86 Words in s. 57(3) repealed (28.2.2002) by 2001 c. 19, ss. 38, 39(2), **Sch. 7 Pt. 1**, S.i. 2002/345, arts. 2, 3
F87 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**
F88 Words inserted by Naval Discipline Act 1957 (c. 53), **Sch. 5**
F89 S. 57(4)(5) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)
F90 S. 57(6)(7) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 2**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)
C26 S. 57(1) extended by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), **15(1)**

Marginal Citations
M11 1957 c. 53.
M12 1955 c. 18.

[F91 58 . . . . . .

Textual Amendments
F91 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

[F92 59 . . . . . .

Textual Amendments
F92 Ss. 59, 217 repealed by Armed Forces Act 1966 (c. 45), s. 37(3), **Sch. 5**

Miscellaneous offences

[F93 60 Unauthorised disclosure of information.

(1) Any person subject to air-force law who without lawful authority discloses or purports to disclose, whether orally, in writing, by signal or by any other means whatsoever, information relating to any matter upon which information would or might be useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) It shall be a defence for a person charged with an offence under this section that he did not know and had no reasonable cause to believe that the information disclosed related to a matter upon which information would or might be directly or indirectly useful to an enemy.**]**

Textual Amendments

F93 S. 60 substituted by Armed Forces Act 1971 (c. 33), **ss. 24(1)(2)**, 78(4)

61 Making of false statements on enlistment.

Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part I of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall, if he has since become and remains subject to air-force law, be liable, on conviction by court-martial, to the like imprisonment as on summary conviction of an offence against section nineteen of this Act or to any less punishment provided by this Act.

Modifications etc. (not altering text)

C27 S. 61 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

[F94 62 Making of false documents.

(1) A person subject to air-force law who—

(a) makes an official document which is to his knowledge false in a material particular, or

(b) makes in any official document an entry which is to his knowledge false in a material particular, or

(c) tampers with the whole or any part of an official document (whether by altering it, destroying it, suppressing it, removing it or otherwise), or

(d) with intent to deceive, fails to make an entry in an official document,

is liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) For the purposes of this section—

(a) a document is official if it is or is likely to be made use of, in connection with the performance of his functions as such, by a person who holds office under, or is in the service of, the Crown; and

(b) a person who has signed or otherwise adopted as his own a document made by another shall be treated, as well as that other, as the maker of the document.

(3) In this section "document" means anything in which information of any description is recorded.]

Textual Amendments

F94 S. 62 substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 2**; S.I. 1996/3217, **art. 2**

63 Offences against civilian population.

Any person subject to air-force law who, in any country or territory outside the United Kingdom, commits any offence against the person or property of any member of the

civil population shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

[F95 63A Offences against morale.

Any person subject to air-force law who spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of Her Majesty's forces, of any forces co-operating therewith, or of any part of any of those forces, being reports likely to create despondency or unnecessary alarm, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

Textual Amendments

F95 S. 63A inserted by Armed Forces Act 1971 (c. 33), **ss. 28(1)(2)**, 78(4)

[F96 64 Scandalous conduct by officers.

Every officer subject to air-force law who behaves in a scandalous manner unbecoming the character of an officer shall, on conviction by court-martial, be liable to dismissal from Her Majesty's service with or without disgrace.]

Textual Amendments

F96 S. 64 substituted by Armed Forces Act 1971 (c. 33), **ss. 29(2)**, 78(4)

Modifications etc. (not altering text)

C28 S. 64 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

65 Ill-treatment of officers or men of inferior rank.

If—

(a) any officer subject to air-force law . . . [F97] ill-treats any officer subject thereto of inferior rank or less seniority or any warrant officer, non-commissioned officer or airman subject to air-force law, or

(b) any warrant officer or non-commissioned officer subject to air-force law . . . [F97] ill-treats any person subject to air-force law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or an airman,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Textual Amendments

F97 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**

66 Disgraceful conduct.

Any person subject to air-force law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to

imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Modifications etc. (not altering text)
C29 S. 66 extended (E.W.) (S.) by Rehabilitation of Offenders Act 1974 (c. 53), **s. 2(3)(a)**

[F98]67 . . . . . .

Textual Amendments
F98 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

68 Attempts to commit air-force offences.

Any person subject to air-force law who attempts to commit an offence against any of the foregoing provisions of this Part of this Act **[**[F99]or against section 69 below**]** shall, on conviction by court-martial, be liable to the like punishment as for that offence:

[F100] . . ..

Textual Amendments
F99 Words inserted by Armed Forces Act 1971 (c. 33), **ss. 32(1)**, 78(4)
F100 S. 68 proviso repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

[[F101]68A Aiding and abetting etc., and inciting.

(1) Any person subject to air-force law who aids, abets, counsels or procures the commission by another person of an offence against any of the foregoing provisions of this Part of this Act, or against section 69 below, or who incites another person to commit any such offence, shall himself be guilty of the offence in question, and shall be liable to be charged, tried and punished accordingly.

(2) A person may be guilty by virtue of subsection (1) above of an offence against section 62 of this Act whether or not he knows the nature of the document in question.**]**

Textual Amendments
F101 S. 68A inserted by Armed Forces Act 1971 (c. 33), **ss. 32(2)(3)**, 78(4)

69 Conduct to prejudice of air-force discipline.

Any person subject to air-force law who is guilty **[**[F102], whether by any act or omission or otherwise, of conduct**]** to the prejudice of good order and air-force discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F102 Words substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 4(2)**

Civil offences

70 Civil offences.

(1) Any person subject to air-force law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section.

(2) In this Act the expression "civil offence" means any act or omission punishable by the law of England or which, if committed in England, would be punishable by that law; and in this Act the expression "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

[[F103](2A) For the purpose of determining under this section whether an attempt to commit an offence is a civil offence, subsection (4) of section 1 of the [M13]Criminal Attempts Act 1981 (which relates to the offence of attempt) shall have effect as if for the words "offence which, if it were completed, would be triable in England and Wales as an indictable offence" there were substituted the words "civil offence consisting of an act punishable by the law of England and Wales as an indictable offence or an act which, if committed in England or Wales, would be so punishable by that law".**]**

(3) **[**[F104]Subject to s. 71A below,**]** A person convicted by court-martial of an offence against this section shall—

[F105](a) . . . . . .

[[F106](aa) if the corresponding civil offence is one for which the sentence is fixed by law as life imprisonment, be sentenced to imprisonment for life;**]**

(b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in England, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

[F107] . . . . . .

[[F108](3A) Where the corresponding civil offence is one to which **[**[F109]section 109, 110 or 111 of the Powers of Criminal Courts (Sentencing) Act 2000**]** would apply, the court-martial shall impose the sentence required by subsection (2) of that section unless it is of the opinion that there are exceptional circumstances which justify its not doing so.**]**

(4) A person shall not be charged with an offence against this section committed in the United Kingdom if the corresponding civil offence is treason, murder, manslaughter, treason-felony [F110]... **[**[F111]or an offence under section 1 of the Geneva Conventions Act 1957 **]**... **[**[F112]or an offence under section 1 of the [M14]Biological Weapons Act 1974**][**[F113]or an offence under section 2 or 11 of the Chemical Weapons Act 1996**][**[F114]or an offence under section 51 or 52 of the International Criminal Court Act 2001**][**[F115]or an offence under section 1 of the Sexual Offences Act 2003 (rape)**]**.

[[F116]In this and the following subsection the references to murder shall apply also to aiding, abetting, counselling or procuring suicide.**]**

(5) Where the corresponding civil offence is murder or manslaughter **[**[F117], or an offence under section 1 of the Geneva Conventions Act 1957 or section 51 of the International Criminal Court Act 2001 consisting of the killing of a person,**]**. . ., an offence against this section shall be deemed, for the purposes of the last foregoing subsection, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.

[[F118](6) A person subject to air-force law may be charged with an offence against this section notwithstanding that he could on the same facts be charged with an offence against any other provision of this Part of this Act.**]**

Textual Amendments

F103 S. 70(2A) inserted by Criminal Attempts Act 1981 (c. 47), **s. 7(1)**

F104 Words inserted by Armed Forces Act 1976 (c. 52), **s. 10(3)(a)**

F105 S. 70(3)(a) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F106 S. 70(3)(aa) substituted (1.10.2001) for s. 70(3)(aa)(ab) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 33(2)**; S.I. 2001/3234, **art. 2**

F107 Proviso repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F108 S. 70(3A) inserted (E.W.) (1.10.1997 for specified purposes) by 1997 c. 43, ss. 55(1), 57(2), **Sch. 4 para. 2(1)**; S.I. 1997/2200, **art. 2(1)(l)(2)(a)**

F109 Words in s. 70(3A) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 13**

F110 Words in s. 70(4) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, Sch. 6 para. 10(a), **Sch. 7**; S.I. 2004/874, art. 2

F111 Words in s. 70(4) inserted (1.9.2001) by 2001 c. 17, **s. 74(2)(a)** (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**

F112 Words inserted by Biological Weapons Act 1974 (c. 6), **s. 5(1)**

F113 Words in s. 70(4) inserted (16.9.1996) by 1996 c. 6, **s. 35(b)**; S.I. 1996/2054, **art. 2**

F114 Words in s. 70(4)(5) inserted (13.6.2001 for certain purposes and 1.9.2001 otherwise) by 2001 c. 17, **ss. 74(2)(3)**; S.I. 2001/2161, **arts. 2**, 3 (as amended by S.I. 2001/2304, **art. 2**)

F115 Words in s. 70(4) inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 6 para. 10(b)**; S.I. 2004/874, art. 2

F116 Words added by Suicide Act 1961 (c. 60), **Sch. 1 Pt. II**

F117 Words in s. 70(5) inserted (1.9.2001) by 2001 c. 17, **s. 74(3)** (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**

F118 S. 70(6) added by Armed Forces Act 1971 (c. 33), **ss. 34(1)(2)**, 78(4)

Modifications etc. (not altering text)

C30 S. 70 amended by Armed Forces Act 1976 (c. 52), **s. 7(4)**

C31 S. 70 modified (E.W.) (1.10.1997) by 1997 c. 43, **s. 7(1)**; S.I. 1997/2200, **art. 2(1)(f)**
S. 70 amended (1.10.1997 for specified purposes) by 1997 c. 43, ss. 55(2), 57(2), **Sch. 4 para. 2(1)**; S.I. 1997/2200, **art. 2(1)(m)**

Marginal Citations

M13 1981 c. 47.

M14 1974 c. 6.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Punishments available to courts-martial

[F119 71 Scale of punishments, and supplementary provisions.

(1) The punishments which may be awarded by sentence of a court-martial under this Act are, subject to the following provisions of this section **[**F120and section 71A below**]** and to the limitations hereinafter provided on the powers of certain courts-martial, as follows—

F121(a) . . . . . .

(b) imprisonment,

[F122(bb) detention by virtue of a custodial order made under section 71 AA of this Act;**]**

[F123(bc) order that the convicted person be disqualified from working with children**]**

(c) dismissal with disgrace from Her Majesty's service,

(d) dismissal from Her Majesty's service,

(e) detention for a term not exceeding two years,

(f) forfeiture of seniority for a specified term or otherwise,

(g) reduction to the ranks or any less reduction in rank,

(h) fine,

(i) severe reprimand,

(j) reprimand,

(k) in the case of an offence which has occasioned any expense, **[**F124personal injury**]** loss or damage, stoppages, and

(l) such minor punishments as may from time to time be authorised by the Defence Council;

and references in this Act to any punishment provided by this Act are, subject to the limitation imposed in any particular case by the addition of the word "less", references to any one or more of the said punishments.

For the purposes of this Part of this Act a punishment specified in any of the above paragraphs shall be treated as less than the punishments specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it:

[F125Provided that a punishment such as is mentioned in paragraph (e) of this subsection shall not be treated as a less punishment than a punishment such as is mentioned in paragraph (b) or (bb) if the term of detention is longer than the term of imprisonment or, as the case may be, than the term of detention by virtue of the custodial order.**]**

(2) Subsection (1) above shall have effect—

(a) in relation to a convicted person who is an officer, with the omission of paragraphs (e), (g) and (l),

(b) in relation to a convicted person who is a warrant officer, with the omission of paragraphs (f) and (l),

(c) in relation to a convicted person who is a non-commissioned officer, with the omission of paragraph (f), and

(d) in relation to a convicted person who is an airman, with the omission of paragraphs (f), (g), (i), and (j).

(3) A person **[**[F126]who, otherwise than under section 57(2) of this Act, is**]** sentenced by a court-martial to imprisonment shall also be sentenced either to dismissal with disgrace from Her Majesty's service or to dismissal from Her Majesty's service:

Provided that, if the court-martial fail to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of dismissal from Her Majesty's service.

(4) A warrant officer or non-commissioned officer **[**[F126]who, otherwise than under section 57(2) of this Act, is**]** sentenced by a court-martial to imprisonment, to dismissal from Her Majesty's service (whether or not with disgrace), or to detention, shall also be sentenced to be reduced to the ranks:

Provided that, if the court-martial fail to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of reduction to the ranks.

(5) The amount of a fine that may be awarded by a court-martial—

(a) except in the case of an offence against section 70 of this Act, shall not exceed the amount of the offender's pay for twenty-eight days or, where the offence was committed on active service, fifty-six days, and

(b) in the said excepted case—

(i) where the civil offence constituting an offence against that section is punishable by a civil court in England only on summary conviction, and is so punishable by a fine, shall not exceed the maximum amount of that fine, and

(ii) where the said civil offence is punishable by a civil court in England on indictment (whether or not it is also punishable on summary conviction) by a fine, shall not exceed the maximum amount of that fine;

[F127]. . ..**]**

[[F128F128](5A) For the purposes of subsection (5) above, a day's pay shall be taken to be–

(a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;

(b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

[F128](5B) In subsection (5A)(b) above "special member" and "ordinary member" have the same meaning as in the Reserve Forces Act 1996.**]**

[[F129](6) Unless the Secretary of State by order provides that this subsection shall no longer apply, the stoppages awarded by a court-martial in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F119 S. 71 substituted for ss. 71-73 by Armed Forces Act 1971 (c. 33), **ss. 36**, 78(4)
F120 Words inserted by Armed Forces Act 1976 (c. 52) s. 10(3)(b)
F121 S. 71(1)(a) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**
F122 S. 71(1)(bb) inserted by Armed Forces Act 1981 (c. 55), **s. 2(3)(a)**
F123 S. 71(1)(bc) inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 21**; S.I. 2000/3302, **art. 2(b)**
F124 Words in s. 71 inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 7(1)(a)**; S.I. 1991/2719, **art. 2**
F125 Proviso substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 4**
F126 Words inserted (*retrospectively* by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 1(1)**(*a*)
F127 Words in s. 71(5) omitted (1.1.1999) by virtue of S.I. 1998/3086, **reg. 3(1)**
F128 S. 71(5A)(5B) inserted (1.1.1999) by S.I. 1998/3086, **art. 3(2)**
F129 S. 71(6)(7) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 7(1)(b)**; S.I. 1991/2719, **art. 2**

[F130 71A Juveniles

(1) A person under **[F131** 21**]** years of age shall not be sentenced to imprisonment.

F132 **[** Where—

(1A) (a) a person under 21 years of age is convicted of murder or any other civil offence the sentence for which is fixed by law as imprisonment for life; or

(b) a person under that age is convicted of any civil offence to which **[F133** section 109 of the Powers of Criminal Courts (Sentencing) Act 2000**]]** would apply and the court is not of the opinion mentioned in subsection (2) of that section,

the court shall sentence him to custody for life unless he is liable to be detained under subsection (3) below.

F134 **[** Where a person aged **[F135** 18 years**]]** or over but under 21 years of age is convicted

(1B) of any other offence for which a person aged 21 years or over would be liable to imprisonment for life **[F136** then, subject to subsection (1E) below**]**, the court shall sentence him to custody for life if—

F137 (a) . . . . . .

(b) it considers that a custodial sentence for life would be appropriate.

(1C) For the purpose of determining whether any method of dealing with a person to whom subsection (1B) of this section applies, other than sentencing him to custody for life, is appropriate, the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.

F138 **[** Subject to subsections (3) and (4) below, the only custodial sentences that a court may

(1D) award where a person under 21 years of age is convicted or found guilty of an offence are—

(a) a custodial order under section 71AA of this Act or under paragraph 10 of Schedule 5A to this Act; and

(b) a sentence of custody for life under subsection (1A) or (1B) above.

(1E) A court may not—

(a) make a custodial order under section 71AA of this Act; or

(b) pass a sentence of custody for life under subsection (1B) above;

unless it is satisfied—

(i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and

(ii) that he qualifies for a custodial sentence.

(1F) An offender qualifies for a custodial sentence if—

(a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or

(b) only a custodial sentence would be adequate to protect the public from serious harm from him; or

(c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.**]**

(2)

[F139](3) A person convicted of murder **[**[F140]or any other offence the sentence for which is fixed by law as life imprisonment**]** who was under 18 years of age when the offence was committed shall not be sentenced to imprisonment for life [F141]. . .; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.

(4) **[**[F142]In any case where—

(a) a person aged 14 or over but under **[**[F135]18 years**]** of age is**]**

found guilty of a civil offence (other than one the sentence for which is fixed) which is punishable by a civil court in England or Wales on indictment by, in the case of an adult, a term of imprisonment for 14 years or more, **[**[F143]or

(b) a person under 14 years of age is found guilty of manslaughter,

and, in either case, the court**]** is of opinion that none of the other methods in which the case may be legally dealt with is suitable, **[**[F144]the court may sentence that person**]** to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable by such a civil court in the case of an adult, as may be specified in the sentence; and where such a sentence has been passed, the person on whom it is passed shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

(5) A sentence of **[**[F145]custody for life or**]**detention under subsection (3) or (4) above shall be treated for the purposes of this Part of this Act as a punishment provided by this Act involving the same degree of punishment as a sentence of imprisonment; and section 71(3) and (4) above shall apply to such a sentence of detention **[**[F145]and to a sentence of custody for life**]**as they apply to a sentence of imprisonment.

(6) A person detained pursuant to the directions of the Secretary of State under this section shall, while so detained, be deemed to be in legal custody.**]**

[[F146](7) A sentence of detention under section 71(1)(e) of this Act shall be treated for the purposes of this section as a non-custodial sentence and references in this section to a custodial sentence shall be construed accordingly.**]**

Textual Amendments

F130 S. 71A inserted by Armed Forces Act 1976 (c. 52), **s. 10(1)**

F131 Figure substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 2**(*a*)

F132 S. 71A(1A) substituted (1.10.1997) by 1997 c. 43, s. 55(1), **Sch. 4 para. 2(2)**; S.I. 1997/2200, **art. 2(1)(l)(2)(a)**

F133 Words in s. 71A(1A)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 14**

F134 S. 71A(1A)–(1C) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 2**(*b*)

F135 Words in s. 71A(1B)(4)(a) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 71, **Sch. 9 para. 1**; S.I. 1992/333, art. 2(2), **Sch. 2**

F136 Words in s. 71A(1B) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(2)(a)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F137 S. 71A(1B)(a) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 2(2)(b), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1))

F138 S. 71A(1D)(1E)(1F) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(3)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F139 S. 71A(2) repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 78, **Sch. 16**

F140 Words in s. 71A(3) inserted (30.11.2000 with effect as mentioned in Sch. 7 para. 22(2)) by 2000 c. 43, s. 74, **Sch. 7 para. 22(1)(e)**

F141 Words in s. 71A(3) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

F142 Words in s. 71A(4) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(4)(a)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F143 Words in s. 71A(4) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(4)(b)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F144 Words in s. 71A(4) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(4)(c)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F145 Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 2**(*d*)

F146 S. 71A(7) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 2(5)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

Modifications etc. (not altering text)

C32 S. 71A amended (1.10.1997) by 1997 c. 43, ss. 55(2), 57(2), **Sch. 4 para. 2(2)**; S.I. 1997/2200, **art. 2(1)(m)(2)(a)**

[F147 71AA Young service offenders: custodial orders.

(1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial of an offence punishable under this Act with imprisonment, the court shall have power, F148. . ., to make an order (in this section referred to as a "custodial order") committing him to be detained in accordance with the provisions of this section for a **[**F149 period to be specified in the order F150. . . **[**F151 which—

(a) shall be not less than the appropriate minimum period, that is to say—

(i) in the case of an offender who has attained eighteen years of age, the period of 21 days; or

(ii) in the case of an offender who is under that age, the period of two months; and

(b) shall not exceed**]**

the maximum period for which he could have been sentenced to imprisonment if he had attained the age of twenty-one years.**]**

F152F153(1A) **[** . . . . . .

F154(1AA) **[** The court shall not make a custodial order committing an offender aged 17 to be detained for a period exceeding twelve months or for a period such that the continuous period for which he is committed to be detained under that order and any one or more other custodial orders exceeds twelve months.**]]**

F153(1B) For the purposes of determining whether **[**F155it is satisfied as mentioned in sub-paragraphs (i) and (ii) of subsection (1E) of section 71A of this Act with respect to any person**]** the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.

(2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable F156 . . . be removed to the United Kingdom.

(3) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this section.

(4) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction.

F157(5) **[** The following provisions of this Act shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of imprisonment, that is to say—

(a) sections 71(3) and (4), 118(1), 118A(1) and (3), 119A(3) and 145; and

(b) for the period before a person sentenced under a custodial order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received), sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B;

and, accordingly, references in those provisions to a sentence of imprisonment shall include for the purposes of this subsection references to a sentence under a custodial order.**]**

(6) In this section "appropriate institution" means—

F158(a) **[** where the offender is in or removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, **[**F159section 98 of the Powers of Criminal Courts (Sentencing) Act 2000**]** having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;**]**

F160(b) **[** where the offender is in or removed to Scotland, a young offenders institution;**]**

(c) where the offender is in or removed to Northern Ireland, a young offenders centre.

F161(6A) **[[**F162Sections 16 and 17 of the Crime (Sentences) Act 1997 (as modified by section 19 of that Act)**]** (release of young offenders) shall apply to persons released from a term of detention under a custodial order as it applies to persons released from a term of detention under a detention centre order or a term of youth custody.**]**

[F163](6B) . . . . . .

(7) This section does not apply to offenders who are civilians (as regards whom similar provision is made by paragraph 10 of Schedule 5A to this Act)**]**

Textual Amendments

F147 S. 71AA inserted by Armed Forces Act 1981 (c. 55), **s. 2(1)**

F148 Words in s. 71AA(1) repealed (1.1.1992) by virtue of Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 3(1), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1)) and expressed to be repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 71, 101(2), Sch. 9 para. 2(b), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**

F149 Words in s. 71AA(1) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 3**(*a*)

F150 Words in s. 71AA(1) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 3(1)**; S.I. 1991/2719, **art. 2** (with art. 3(1)) and repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch.**

F151 Words in s. 71AA(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 9 para. 2(a)**; S.I. 1992/333, art. 2(2), **Sch. 2**

F152 S. 71AA(1A) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 3(2), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1)) and expressed to be repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 71, 101(2), Sch. 9 para. 2(b), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**

F153 S. 71AA(1A)(1B) inserted by Criminal Justice Act 1982 (c. 8, SIF 39:1), s. 58, **Sch. 8 para. 3(b)**

F154 S. 71AA(1AA) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 71, **Sch. 9 para. 2(c)**; S.I. 1992/333, art. 2(2), **Sch. 2**

F155 Words in s. 71AA(1B) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 3(3)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F156 Words in s. 71AA(2) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1)(2), Sch. 2 para. 1, **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1))

F157 S. 71AA(5) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 5(2)**

F158 S. 71AA(6)(*a*) substituted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 123(6), **Sch. 8 para. 4(a)**

F159 Words in s. 71AA(6)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 15**

F160 S. 71AA(6)(*b*) substituted (S.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(4), **Sch. 9 para. 2(a)**

F161 S. 71AA(6A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 3**(*d*)

F162 Words in s. 71AA(6A) substituted (1.10.1997) by 1997 c. 43, s. 55(1), **Sch. 4 para. 2(3)**; S.I. 1997/2200, **art. 2(1)(l)(2)(a)**

F163 S. 71AA(6B) (which was inserted (S.) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **s. 46(1)**) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I**; S.I. 1993/2050, **art. 3(4)**.

Modifications etc. (not altering text)

C33 S. 71AA amended (1.10.1997 for specified purposes) by 1997 c. 43, ss. 55(2), 57(2), **Sch. 4 para. 2(3)**; S.I. 1997/2200. art. 2(1)(m)

[F164 71AB Reasons to be given where custodial sentence awarded to young offender.

(1) This section applies where a court—

(a) makes a custodial order under section 71AA of this Act, or

(b) passes a sentence of custody for life under section 71A(1B) of this Act.

(2) It shall be the duty of the court—

(a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 71A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and

(b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.**]**

Textual Amendments

F164 S. 71AB inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 4(1)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

[F165 71B Power to impose imprisonment for default in payment of fines.

(1) Subject to the provisions of this section, if a court-martial imposes a fine on a person found guilty of any offence—

(a) who is sentenced to imprisonment on the same occasion for the same or another offence or.

(b) who is already serving or otherwise liable to serve a term of imprisonment, **[F166 or]**

[F167 (c) in respect of whom the court makes an order under section 71AA above on the same occasion for the same or another offence, or

(d) who is already serving or otherwise liable to serve a period of detention under such an order,**]**

it may make an order fixing a further consecutive term of imprisonment **[F168 or** detention**]** which the said person is to undergo if any part of the fine is not duly paid or recovered on or before the date on which he could otherwise be released.

[F169 (2) Subject to subsections (4) and (5) below, the Table in **[F170** section 139(4) of the Powers of Criminal Courts (Sentencing) Act 2000**]** (maximum periods of imprisonment for default in payment of fines etc.), as **[F171** for the time being in force**]**, shall have effect for the purpose of determining the maximum periods of further imprisonment or detention that may be specified under subsection (1) above for fines of the amounts set out in that Table.**]**

(3) Where the whole amount of the said fine is paid or recovered in the prescribed manner the order under subsection (1) above shall cease to have effect, and the person subject to it shall be released unless he is in custody for some other cause.

(4) Where part of the said amount is paid or recovered in the prescribed manner, the period of the further term of imprisonment **[F172** or detention**]** specified under subsection (1) above shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid or recovered bears to the amount of the said fine.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(5) In calculating the reduction required under the last preceding subsection any fraction of a day shall be left out of account.

[F173](5A) **[** An order imposing a term of detention under this section shall be given effect as if it were a custodial order under section 71AA above.**]**

(6) In this section, references to the due recovery of any amount include references to deductions from pay under Part III of this Act, but do not include references to amounts forfeited under the said Part III.**]**

Textual Amendments

F165 S. 71B inserted by Armed Forces Act 1976 (c. 52), s. 13, **Sch. 6 para. 1**
F166 Word inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 4(1)**(*a*)
F167 S. 71B(1)(*c*)(*d*) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 4(1)**(*a*)
F168 Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 4(1)**(*b*)
F169 S. 71B(2) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 5**
F170 Words in s. 71B(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 16**
F171 Words in s. 71B(2) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 2**; S.I. 1991/2719, **art. 2**
F172 Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 4(1)**(*b*)
F173 S. 71B(5A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 4(1)**(*c*)

Arrest

74 Power to arrest offenders.

(1) Any person subject to air-force law found committing an offence against any provision of this Act, or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section.

(2) An officer may be arrested by an officer of the regular air force of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.

(3) A warrant officer, non-commissioned officer or airman may be arrested by any officer, warrant officer or non-commissioned officer of the regular air force:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer [F174]. . . non-commissioned officer **[**[F175]or rating**]** legally exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer or airman:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may (subject to the provisions of Queen's Regulations) be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Textual Amendments

F174 Words repealed by Naval Discipline Act 1957 (c. 53), **Sch. 5**

F175 Words inserted by Naval Discipline Act 1957 (c. 53), **Sch. 5**

[F176 Custody

Textual Amendments

F176 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F177 75 Limitations on custody without charge.

(1) A person arrested under section 74 of this Act shall not be kept in air-force custody without being charged except in accordance with sections 75A to 75C of this Act.

(2) If at any time the commanding officer of a person who is kept in air-force custody without being charged—

(a) becomes aware that the grounds for keeping that person in air-force custody have ceased to apply; and

(b) is not aware of any other grounds on which continuing to keep that person in air-force custody could be justified under the provisions of this Act,

it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from air-force custody.

(3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.

(4) For the purposes of this section and sections 75A to 75K of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 76(1) of this Act.

Textual Amendments

F177 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F178 75A Authorisation of custody without charge.

(1) Where a person is arrested under section 74 of this Act—

(a) the arrest, and

(b) any grounds on which he is being kept in air-force custody without being charged,

shall be reported as soon as practicable to his commanding officer.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(2) Until such a report is made, the person may be kept in air-force custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in air-force custody without charge is necessary—
  (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  (b) to obtain such evidence by questioning him.

(3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  (a) whether the requirements of subsection (4) below are satisfied, and
  (b) if so, whether to exercise his powers under that subsection;

  and the person to whom the report relates may be kept in air-force custody for such period as is necessary to enable the commanding officer to make that determination.

(4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  (a) that keeping him in air-force custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  (b) that the investigation is being conducted diligently and expeditiously,

  he may authorise the keeping of that person in air-force custody.

(5) An authorisation under subsection (4) above—
  (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.

(6) A person shall not be kept in air-force custody later than 48 hours after the relevant time without being charged except in accordance with section 75C of this Act.

(7) In this Act "the relevant time" in relation to a person arrested under section 74 of this Act means the time of the arrest.

Textual Amendments

F178 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisons in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C34 S. 75A(1)(3)(5)(6) modified (*temp.*)(4.9.2000) by S.I. 2000/2366, art. 3, **Sch. para. 3**

F179 75B Review of custody by commanding officer.

(1) The commanding officer of a person kept in air-force custody in accordance with section 75A of this Act shall, subject to subsection (3) below, review the keeping of that person in air-force custody not later than the end of the period for which it is authorised.

(2) Subsections (4) and (5) of section 75A of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.

(3) A review may be postponed—

(a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 75A(4) of this Act, it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a) above—

(i) if at that time the person in air-force custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time the commanding officer is not readily available.

(4) If a review is postponed under subsection (3) above—

(a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 75A(4) of this Act, and

(b) the keeping in air-force custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

Textual Amendments

F179 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366 art. 2 (with transitional provisions in art. 3, Sch. para. 14)

[F180]75C Extension of custody without charge.

(1) If, on an application by the commanding officer of a person arrested under section 74 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in air-force custody is justified, the judicial officer may by order authorise the keeping of that person in air-force custody.

(2) A judicial officer may not hear an application under this section unless the person to whom it relates—

(a) has been informed in writing of the grounds for the application, and

(b) has been brought before him for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—

(a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and

(b) he may be kept in air-force custody during the adjournment.

(4) For the purposes of this section, the continued keeping of a person in air-force custody is justified only if—

(a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and

(b) the investigation is being conducted diligently and expeditiously.

(5) Subject to subsection (7) below, an application under this section may be made—
- (a) at any time before the end of 48 hours after the relevant time; or
- (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.

(6) Where subsection (5)(b) above applies, an authorisation on a review under section 75B of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
- (a) for a period of more than six hours, or
- (b) for a period ending more than 96 hours after the relevant time.

(7) If—
- (a) an application under this section is made more than 48 hours after the relevant time, and
- (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,

the judicial officer shall refuse the application.

(8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in air-force custody is justified, he shall—
- (a) refuse the application, or
- (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.

(9) The person to whom the application relates may be kept in air-force custody during the adjournment.

(10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in air-force custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.

(11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from air-force custody.

(12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from air-force custody.

Textual Amendments

F180 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F181]75D Custody without charge: other cases.

(1) Sections 75 to 75C of this Act apply—

(a) where a person is delivered into air-force custody under section 187(2) or (3), 188(2) or 190A(3) of this Act or under Schedule 2 to the [M15]Reserve Forces Act 1996, and

(b) in any other case where a person arrested by a constable is delivered into air-force custody,

as they apply where a person is arrested under section 74 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.

(2) In those cases references to the relevant time are—

(a) in relation to a person delivered into air-force custody following arrest under section 186 or 190A of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;

(b) in relation to a person delivered into air-force custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.

(3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F181 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Marginal Citations

M15 1996 c. 14.

[F182]75E Custody without charge: supplementary.

(1) The Defence Council may by regulations make provision with respect to—

(a) the delegation by the commanding officer of a person in air-force custody of any of the commanding officer's functions under sections 75 to 75C of this Act;

(b) circumstances in which a person kept in air-force custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;

(c) the keeping of written records relating to compliance with any requirement of sections 75 to 75C of this Act or of regulations under paragraph (b) above.

(2) Any reference in sections 75A to 75C of this Act to a period of time is to be treated as approximate only.**]**

Textual Amendments

F182 Ss. 75-75E and cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, **s. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

[F183 75F Custody after charge.

(1) Where a person subject to air-force law ("the accused") is kept in air-force custody after being charged with an offence against any provision of this Part of this Act, he shall be brought before a judicial officer as soon as practicable.

(2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in air-force custody, but only if—
- (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from air-force custody, would—
  - (i) fail to attend any hearing in the proceedings against him,
  - (ii) commit an offence while released, or
  - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) the judicial officer is satisfied that the accused should be kept in air-force custody for his own protection or, if he is under 17 years of age, for his own welfare;
- (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
- (d) the accused, having been released from air-force custody after being charged with the offence, has deserted or absented himself without leave.

(3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
- (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
- (b) the character, antecedents, associations and social ties of the accused,
- (c) the accused's behaviour on previous occasions while charged with an offence and released from air-force custody or while on bail in criminal proceedings,
- (d) the strength of the evidence that the accused committed the offence,

as well as to any others which appear to be relevant.

(4) If—
- (a) the accused is charged with an offence to which this subsection applies;
- (b) representations are made as to any of the matters mentioned in subsection (2)(a) above; and
- (c) the judicial officer decides not to authorise the keeping of the accused in air-force custody,

the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.

(5) Subsection (4) above applies to any offence under section 70 of this Act where the corresponding civil offence is—
- (a) murder;
- (b) manslaughter;
- (c) rape;
- (d) attempted murder; or
- (e) attempted rape.

(6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in air-force custody shall be such period, ending (subject to section 75G(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.

(7) An order under subsection (2) above does not authorise the keeping of the accused in air-force custody—

(a) if the accused is subsequently released from air-force custody, at any time after his release; or

(b) at any time after the award of punishment on summary dealing with the charge or any amended or substituted charge.

(8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in air-force custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.**]**

Textual Amendments

F183 S. 75F inserted (2.10.2000) by 2000 c. 4, **s. 2(2)**; S.I. 2000/2366, **art. 2** (with transitional provisons in art. 3, Sch. para. 14)

[F184 75G Review of custody after charge.

(1) Where the keeping of the accused in air-force custody is authorised by an order under section 75F(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.

(2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he shall—

(a) release the accused from air-force custody, or

(b) request a review.

(3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.

(4) Subsections (2) to (6) of section 75F of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.

(5) At the first review the accused may support an application for release from air-force custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

(6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.

(7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in air-force custody for a period of not more than 28 clear days.

(8) In this section "review" means a review under subsection (1) above.**]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F184 S. 75G inserted (2.10.2000) by 2000 c. 4, **s. 3(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F185 75H Custody during court-martial proceedings.

(1) Where the accused is kept in air-force custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by court-martial, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.

(2) In relation to a review before the announcement of the court-martial's finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.

(3) In section 75F(2), after paragraph (d) there shall be inserted— "; or

(e) the accused's case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in air-force custody."

(4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.

(5) An order under section 75F(2) does not authorise the keeping of the accused in air-force custody after he is sentenced by the court-martial.

(6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.**]**

Textual Amendments

F185 S. 75H inserted (2.10.2000) by 2000 c. 4, **s. 4(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F186 75J Release from custody after charge or during proceedings.

(1) This section applies where, at a hearing under section 75F(1) of this Act or on a review under section 75G(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in air-force custody.

(2) Where this section applies, the accused—

(a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but

(b) if he is subject to air-force law only by virtue of section 131 or 205(1)(ff), (h) or (i) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.

(3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.

(4) A person guilty of an offence under this section shall be liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.**]**

Textual Amendments

F186 S. 75J inserted (2.10.2000) by 2000 c. 4, **s. 5(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C35 S. 75J(2)(b) restricted (2.10.2000) by S.I. 2000/2369, **rule 14(3)**

[F187 75K Arrest during proceedings.

(1) Except where subsection (3) below applies, the commanding officer of a person subject to air-force law ("the accused") who—

(a) has been charged with, or is awaiting sentence for, an offence against any provision of this Part of this Act, and

(b) is not in air-force custody,

may, if satisfied that taking the accused into air-force custody is justified, give orders for his arrest.

(2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial's finding on the charge or every charge against the accused.

(3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into air-force custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.

(4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.

(5) For the purposes of this section, taking the accused into air-force custody is justified if there are substantial grounds for believing that, if not taken into air-force custody, he would—

(a) fail to attend any hearing in the proceedings against him,

(b) commit an offence,

(c) injure himself, or

(d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(6) Taking the accused into air-force custody is also justified for the purposes of this section if—

(a) the accused is subject to air-force law only by virtue of section 131 of this Act, and

(b) he has failed to attend any hearing in the proceedings against him.

(7) A person arrested under subsection (1) above, if kept in air-force custody—

(a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and

(b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 75G(1) of this Act.

(8) A person arrested under subsection (3) above—

(a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and

(b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him), and shall be dealt with by him as on a review under section 75G(1) of this Act.**]**

Textual Amendments

F187 S. 75K inserted (2.10.2000) by 2000 c. 4, **s. 6(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C36 S. 75K(1)(7) modified (4.9.2000) by S.I. 2000/2366, art. 3, **Sch. para. 6**

[[F188]75L Judicial officers.

(1) Judicial officers shall be appointed for the purposes of this Act by the Judge Advocate General.

(2) No person shall be appointed under this section unless—

(a) he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial, [F189]. . .

(b) he has, and has had for at least five years, in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.**][**[F190]or

(c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Judge Advocate General to be appropriate.**]**

[[F191](3) In subsection (2)(c), "relevant judicial appointment", in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates' Courts).**]**

Textual Amendments

F188 S. 75L inserted (2.10.2000) by 2000 c. 4, **s. 7(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F189 Word in s. 75L(2)(a) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 35(2), **Sch. 7 Pt. 7**; S.I. 2001/3234, **art. 2**

F190 S. 75L(2)(c) and the preceding word "or" inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 35(2)**; S.I. 2001/3234, **art. 2**

F191 S. 75L(3) inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 35(3)**; S.I. 2001/3234, **art. 2**

[F192 75M Custody rules.

(1) The Secretary of State may make rules with respect to proceedings—
- (a) on an application under section 75C of this Act;
- (b) under section 75F(1) of this Act;
- (c) on a review under section 75G(1) of this Act.

(2) Rules under this section may in particular make provision with respect to—
- (a) arrangements preliminary to the proceedings;
- (b) the representation of the person to whom the proceedings relate;
- (c) the admissibility of evidence;
- (d) procuring the attendance of witnesses;
- (e) the immunities and privileges of witnesses;
- (f) the administration of oaths;
- (g) circumstances in which a review under section 75G(1) of this Act may be carried out without a hearing;
- (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 75C(2)(b), 75F(1) or 75K(7)(b) or (8)(b) of this Act for a person to be brought before a judicial officer or judge advocate;
- (i) the appointment of persons to discharge administrative functions under the rules.

(3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F192 S. 75M inserted (2.10.2000) by 2000 c. 4, **s. 8(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C37 S. 75M modified (4.9.2000) by S.I. 2000/2366, art. 3, **Sch. para. 6**

Investigation of, and summary dealing with, charges

[F193 76 Investigation of charges by commanding officer

(1) An allegation that a person subject to air-force law ("the accused") has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.

(2) A commanding officer shall investigate a charge reported to him under subsection (1) above.

(3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and

treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.

(4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.

(5) After investigating a charge the commanding officer may, subject to subsection (6) below—
  (a) dismiss the charge;
  (b) refer the charge to higher authority; or
  (c) deal summarily with the charge.

(6) The commanding officer may not deal summarily with a charge if—
  (a) the accused is an officer or warrant officer; or
  (b) the charge is not capable of being dealt with summarily.

(7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.**]**

Textual Amendments

F193 Ss. 76-76C substituted for s. 76 (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 7**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F194]76A Powers of higher authority.

(1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.

(2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.

(3) If the charge is against a non-commissioned officer or airman and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.

(4) If the charge is against an officer below the rank of **[**[F195]group captain**]** or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.

(5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.

(6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

Textual Amendments

F194 Ss. 76-76C substituted for s. 76 (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 7**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F195 Words in s. 76A(4) substituted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 5**; S.I. 2002/345, **arts. 2**, 3

[F196 76AA Right to elect for court-martial trial.

(1) Before dealing summarily with a charge, the commanding officer or appropriate superior authority shall afford the accused the opportunity of electing court-martial trial in relation to that charge.

(2) Where in accordance with regulations under section 83 of this Act two or more charges are together to be dealt with summarily, any election for court-martial trial must relate to all the charges concerned.

(3) If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority shall refer to higher authority the charge to which the election relates, with a view to the trial of the accused by court-martial.

(4) If a charge has been referred to higher authority as a result of an election for court-martial trial and that election is withdrawn with leave, the higher authority shall—

(a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;

(b) if the accused is a non-commissioned officer or soldier, refer the charge back to the commanding officer of the accused,

for the appropriate superior authority or commanding officer to deal summarily with the charge.

(5) Subsection (1) above does not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the appropriate superior authority or commanding officer under subsection (4) above.

(6) Where under section 76B(3) of this Act a charge is amended or one charge is substituted for another, subsection (1) above applies in relation to the amended or substituted charge.]

Textual Amendments

F196 S. 76AA inserted (2.10.2000) by 2000 c. 4, **s. 11(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C38 S. 76AA(1) modified (4.9.2000) by S.I. 2000/2366, art. 3, **Sch. para. 9(1)(b)**
S. 76AA(1) amended (4.9.2000) by S.I. 2000/2366, art. 3, **Sch. para. 9(2)**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

[F197]76B Summary dealings.

(1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.

(2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.

(3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.

(4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.

[F198](5) . . . . . .

[F198](6) . . . . . .

(7) **[**[F199]If the commanding officer or appropriate superior authority determines that the charge has been proved, he**]** shall record a finding that the charge has been proved and award punishment accordingly.

[F198](8) . . . . . .

(9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

(10) Nothing in this section or section 76A **[**[F200]or 76AA**]** above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

Textual Amendments

F197 Ss. 76-76C substituted for s. 76 (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 7**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F198 S. 76B(5)(6)(8) repealed (2.10.2000) by 2000 c. 4, ss. 11(3)(a), 27, **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F199 Words in s. 76B(7) substituted (2.10.2000) by 2000 c. 4, **s. 11(3)(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F200 Words in s. 76B(10) inserted (2.10.2000) by 2000 c. 4, **s. 11(3)(c)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F201]76C Punishments available on summary dealings.

(1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.

(2) The commanding officer may award one or more of the following punishments—

(a) if the offender is an airman, detention for a period not exceeding 60 days;

(b) fine;
(c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
(d) where the offence has occasioned any expense, loss or damage, stoppages;
(e) any minor punishment for the time being authorised by the Defence Council.

(3) The appropriate superior authority may award one or more of the following punishments—
(a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
(b) fine;
(c) severe reprimand or reprimand;
(d) where the offence has occasioned any expense, loss or damage, stoppages.

(4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.

(5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.

(6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.

(7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
(a) the amount of the offender's pay for twenty-eight days; or
(b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.

(8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
(a) the amount of the offender's pay for twenty-eight days; or
(b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.

[[F202](9) For the purposes of subsections (6) to (8) above, a day's pay shall be taken to be–
(a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
(b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(9A) In subsection (9)(b) above "special member" and "ordinary member" have the same meaning as in the Reserve Forces Act 1996.**]**

(10) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
(a) to revert to his permanent rank; or
(b) to assume an acting rank lower than that held by him but higher than his permanent rank.

Textual Amendments

F201 S. 76C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 7**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F202 S. 76(9)(9A) substituted for s. 76(9) (1.1.1999) by S.I. 1998/3086, **reg. 3(4)**

[F203]77 . . . . . .

Textual Amendments

F203 S. 77 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F204]77A . . . . . .

Textual Amendments

F204 S. 77A repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F205]78 . . . . . .

Textual Amendments

F205 S. 78 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F206]79 . . . . . .

Textual Amendments

F206 S. 79 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F207]80 . . . . . .

Textual Amendments

F207 S. 80 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

81 Confession of desertion by warrant officer, non-commissioned officer or airman.

(1) Where in accordance with Queen's Regulations a warrant officer, non-commissioned officer or airman signs a written confession that he has been guilty of desertion, his commanding officer may, notwithstanding anything in the foregoing provisions of this Part of this Act, submit the confession for the consideration of **[**[F208]the Defence Council**]** or such officer not below the rank of group captain as may be provided by Queen's Regulations.

(2) After considering any such confession **[**[F208]the Defence Council**]** or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.

[F209](3) . . . . . .

(4) Subsections (2) to (5) of section seventeen of this Act shall apply in relation to the forfeiture of service by virtue of this section subject to the following modifications:—

[F210](a) . . . . . .

(b) for references to the date on which the offender was convicted there shall be substituted references to the date on which the direction was given.

Textual Amendments

F208 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F209 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F210 S. 81(4)(a) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

Modifications etc. (not altering text)

C39 S. 81 extended by Army and Air Force Act 1961 (c. 52), **s. 13(4)**

82 Officers who are to act as commanding officers and appropriate superior authorities.

(1) In this Act the expression "commanding officer", in relation to a person charged with **[**[F211], or in custody in connection with,**]** an offence, means such officer having powers of command over that person as may be determined by or under regulations of **[**[F212]the Defence Council**]**.

[[F213](2) A person may act as appropriate superior authority in relation to a person charged with an offence if—

(a) he is an air officer, flag officer, general officer **[**[F214], commodore**]]** or brigadier, or

(b) where the Defence Council so direct, he is a group captain or a naval or military officer of corresponding rank.

[F215](3) . . . . . .

Textual Amendments

F211 Words in s. 82(1) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 2**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F212 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F213 S. 82(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 9(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F214 Word in s. 82(2)(a) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 6**; S.I. 2002/345, **arts. 2**, 3

F215 S. 82(3) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 9(3), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F216 83 Regulations as to summary dealings etc.

(1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.

(2) Regulations under this section may in particular make provision with respect to—

(a) the reporting of a charge to a commanding officer;

(b) the procedure to be followed by a commanding officer investigating a charge;

(c) the delegation by the commanding officer of any of his functions;

(d) the charges which are capable of being dealt with summarily;

(e) the amendment or substitution of charges;

(f) the procedure on summary dealings;

(g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;

F217 **[**(gg) the procedure for making elections under section 118ZA(2) of this Act and withdrawing such elections;**]]**

(h) the information to be provided to a person afforded an opportunity of electing court-martial trial;

(i) the procedure for electing court-martial trial, including any period within which any such election may be made;

(j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;

(k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;

(l) who is to act as the higher authority and the appropriate superior authority in any particular case.

(3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Textual Amendments

F216 S. 83 substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 10**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F217 S. 83(2)(gg) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F218 The summary appeal court

Textual Amendments

F218 S. 83ZA and cross-heading inserted (2.10.2000) by 2000 c. 4, **s. 14(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F219 83ZA The summary appeal court.

(1) There shall be a court (in this Act referred to as "the summary appeal court") for the purpose of hearing appeals against findings recorded and punishments awarded by commanding officers and appropriate superior authorities on dealing summarily with charges.

(2) The court shall consist of—
  (a) judge advocates appointed under section 83ZB of this Act, and
  (b) officers qualified under section 83ZC of this Act to be members of the court.

(3) The court—
  (a) may sit in two or more divisions, and
  (b) may sit in any place, whether within or outside the United Kingdom.

(4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.

(5) The court shall sit at such times and in such places as may be determined by the court administration officer.

(6) The court administration officer shall perform such other functions as may be prescribed by rules under section 83ZJ of this Act.**]**

Textual Amendments

F219 S. 83ZA and cross-heading inserted (2.10.2000) by 2000 c. 4, **s. 14(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F220 83ZB Judge advocates.

(1) Judge advocates in relation to the summary appeal court shall be appointed by the Judge Advocate General.

(2) No person shall be appointed under this section unless he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial.**]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F220 S. 83ZB inserted (2.10.2000) by 2000 c. 4, **s. 15(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 2, Sch. para. 14)

[F221 83ZC Officers qualified for membership of summary appeal court.

(1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is an air-force officer who 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 periods amounting in the aggregate to not less than two years.

(2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other air-force officer or a naval or military officer is qualified under this section for membership of the court.

(3) The following are not qualified under this section for membership of the court—

(a) the court administration officer,

(b) an officer under the command of the court administration officer,

(c) the prosecuting authority,

(d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,

(e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,

(f) a member of the Bar of Northern Ireland,

(g) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules, or

(h) any person who is, or has at any time during the preceding five years been, a provost officer.

(4) 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 [M16] Naval Discipline Act 1957.]

Textual Amendments

F221 S. 83ZC inserted (2.10.2000) by 2000 c. 4, **s. 16(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Marginal Citations

M16 1957 c. 53.

[F222 83ZD Constitution of summary appeal court for appeals.

(1) For the purpose of hearing an appeal, the summary appeal court shall consist of—

(a) one of the judge advocates appointed under section 83ZB of this Act, and
(b) two officers qualified under section 83ZC of this Act for membership of the court.

(2) Subsection (1) above has effect subject to any provision made by virtue of section 83ZJ of this Act.

(3) The judge advocate for any appeal shall be specified by or on behalf of the Judge Advocate General.

(4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.**]**

Textual Amendments

F222 S. 83ZD inserted (2.10.2000) by 2000 c. 4, **s. 17(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F223 83ZE Right of appeal.

(1) Any person in respect of whom—
(a) a charge has been dealt with summarily, and
(b) a finding that the charge has been proved has been recorded,
may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).

(2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded ("the initial period") or within such longer period as the court may (before the end of the initial period) allow.

(3) The court may at any later time give leave for an appeal to be brought.

(4) On any appeal under this section, the respondent shall be the prosecuting authority.**]**

Textual Amendments

F223 S. 83ZE inserted (2.10.2000) by 2000 c. 4, **s. 18(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F224 83ZF Hearing of appeals.

(1) An appeal under section 83ZE of this Act against a finding shall be by way of a rehearing of the charge.

(2) An appeal under section 83ZE of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.

(3) Except in such cases as may be prescribed by rules under section 83ZJ of this Act, appeals shall be heard in open court.

(4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.

(5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.

(6) Any directions given by the judge advocate shall be binding on the court.**]**

Textual Amendments

F224 S. 83ZF inserted (2.10.2000) by 2000 c. 4, **s. 19(1)**; S.I. 2000/2366, **art. 2** (with transitional provisons in art. 3, Sch. para. 14)

[F225 83ZG Powers of summary appeal court.

(1) On an appeal against a finding that a charge has been proved, the summary appeal court—
  (a) may confirm or quash the finding, or
  (b) in a case where the commanding officer or appropriate superior authority could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.

(2) Where the court quashes a finding—
  (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
  (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
    (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    (ii) in the opinion of the court, is no more severe than the punishment originally awarded.

(3) Where, on an appeal against a finding that a charge has been proved, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded by the commanding officer or appropriate superior authority so as to award any punishment which—
  (a) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
  (b) in the opinion of the court, is no more severe than that originally awarded.

(4) On an appeal against the punishment awarded, the court—
  (a) may confirm the punishment awarded by the commanding officer or appropriate superior authority, or
  (b) may substitute any other punishment which—
    (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    (ii) in the opinion of the court, is no more severe than that originally awarded.

(5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on dealing with the charge summarily.

(6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been made or awarded by the officer who dealt summarily with the charge.**]**

Textual Amendments

F225 S. 83ZG inserted (2.10.2000) by 2000 c. 4, **s. 20(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C40 S. 83ZG(1)(b) restricted (2.10.2000) by S.I. 2000/2372, **rule 46(4)**

[F226 83ZH Making of, and appeals from, decisions of court.

(1) Subject to section 83ZF(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 83ZD(1) of this Act shall be determined by a majority of the votes of the members of the court.

(2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.**]**

Textual Amendments

F226 S. 83ZH inserted (2.10.2000) by 2000 c. 4, **s. 21(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F227 83ZJ Rules of summary appeal court.

(1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.

(2) Rules under this section may, in particular, make provision—

(a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 83ZE of this Act;

(b) as to the bringing and abandonment of appeals;

(c) as to the procedure for applying for leave under section 83ZE(2) or (3) of this Act;

(d) as to the procedure for applying for leave, or making a reference, under section 115(5A) or (5B) of this Act;

(e) as to consultation by the court administration officer with the Judge Advocate General before specifying where the court is to sit;

(f) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 83ZB of this Act sitting alone;

(g) enabling an uncontested appeal to be determined without a hearing;

(h) as to the convening and constitution of the court to hear any appeal;

(i) as to circumstances in which officers otherwise qualified under section 83ZC of this Act are ineligible to hear particular appeals;

(j) enabling the appellant to object to members of the court;

(k) as to the representation of the appellant on the hearing of appeals under section 83ZE of this Act and at any preliminary proceedings;

(l) as to the admissibility of evidence;

(m) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;

(n) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;

(o) as to the administration of oaths;

(p) as to the recording of the proceedings of the court and custody of records of the proceedings;

(q) as to making copies of the records of proceedings available and as to the fees payable for such copies;

(r) as to the procedure for applying to have a case stated under section 83ZH(2) of this Act.

(3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.

(4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F227 S. 83ZJ inserted (2.10.2000) by 2000 c. 4, **s. 22(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[[F228]83ZK Administration of oaths to members of summary appeal court.

(1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.

(2) In subsection (1) above "prescribed" means prescribed by the Secretary of State by order made by statutory instrument.

(3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F228 S. 83ZK inserted (2.10.2000) by 2000 c. 4, **s. 23(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F229 83ZL Privileges of witnesses and others.

A witness before the summary appeal court 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 and Wales.]

Textual Amendments

F229 S. 83ZL inserted (2.10.2000) by 2000 c. 4, **s. 24(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F230 The prosecuting authority

Textual Amendments

F230 Ss. 83A-83C and crossheading inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 15**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F231 83A The prosecuting authority.

(1) Her Majesty may appoint a qualified officer belonging to Her air forces to be the prosecuting authority for the Royal Air Force; and in this Act "the prosecuting authority" means the officer so appointed.

(2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—

(a) a person who has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(b) an advocate or solicitor in Scotland of at least ten years' standing; or

(c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years' standing.

Textual Amendments

F231 Ss. 83A-83C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 15**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F232 83B Functions of the prosecuting authority.

(1) This section applies where a case has been referred to the prosecuting authority.

(2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—

(a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;

(b) if the accused is a non-commissioned officer or airman, refer the case to the commanding officer of the accused,

for the appropriate superior authority or commanding officer [F233 to deal summarily with the preliminary charge].

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(3) In subsection (2) above "the preliminary charge" means the charge **[**[F234]which would have been dealt with summarily had the accused not elected court-martial trial**]**

(4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—

(a) determine any charge to be preferred and (subject to **[**[F235]subsection (5) below and section 83BB of this Act)**]** whether any such charge is to be tried by general court-martial or district court-martial; and

(b) **[**[F236](subject to section 83BB of this Act)**]**prefer any charge so determined by him.

(5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.

(6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.

(7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.

(8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—

(a) amend, or substitute another charge or charges for, any charge preferred;

(b) prefer an additional charge, or additional charges, against the accused;

(c) discontinue proceedings on any charge.

(9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.

[F237](9A) **[** If the case has been referred to the prosecuting authority as a result of an election for court-martial trial, the prosecuting authority may not—

(a) determine under subsection (4)(a) above that a charge different from that in respect of which the election was made is to be preferred, or

(b) exercise any power mentioned in subsection (8)(a) or (b) above in relation to any charge against the accused before the commencement of the trial,

unless the accused has given his written consent or the charge is being referred under section 83BB of this Act.**]**

(10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.

(11) If, before the commencement of the trial of a charge against the accused ("the original charge"), the prosecuting authority exercises the power mentioned in subsection (8)(b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.

(12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.

F238 **[** (13) If the prosecuting authority—

(a) decides not to prefer any charge referred to him, or

(b) before the commencement of the trial of any charge preferred by him, discontinues proceedings on that charge,

he may direct that, for the purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.**]**

(14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

Textual Amendments

F232 Ss. 83A-83C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 15**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F233 Words in s. 83B(2) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F234 Words in s. 83B(3) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F235 Words in s. 83B(4)(a) substituted (2.10.2000) by virtue of 2000 c. 4, s. 13, **Sch. 2 para. 1(3)(a)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 2, Sch. para. 14)

F236 Words in s. 83B(4)(b) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(3)(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F237 S. 83B(9A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(4)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F238 S. 83B(13) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(5)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C41 S. 83B(2) modified (2.10.2000) by S.I. 1997/171, **rule 4A** (as inserted (2.10.2000) by S.I. 2000/2375, **rule 2(4)**)

[F239 **83BB Cases where charge may be referred back to commanding officer.**

(1) Where—

(a) a case has been referred to the prosecuting authority as a result of an election for court-martial trial, and

(b) the prosecuting authority considers that a charge different from, or additional to, the preliminary charge should be preferred,

the prosecuting authority may refer back to the commanding officer of the accused the charge or charges which the prosecuting authority considers should be preferred.

(2) In subsection (1) above—

(a) "the preliminary charge" means the charge which would have been dealt with summarily had the accused not elected court-martial trial, and

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(b) the reference to preferring a charge different from, or additional to, the preliminary charge includes a reference to amending, or substituting another charge for, a charge already preferred.

[F240(2A) Where—

(a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,

(b) the prosecuting authority—

(i) in respect of the case or part of the case, does not determine any charge to be preferred, or

(ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and

(c) the accused is below the rank of group captain,

the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.**]**

(3) Where a charge is referred to a commanding officer under subsection (1) **[**F241or (2A)**]**above, the commanding officer shall deal with the charge as if it had been reported to him under section 76(1) of this Act.**]**

Textual Amendments

F239 S. 83BB inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 3**; S.I. 2000/2366, **art. 2** (with transitional provsions in art. 3, Sch. para. 14)

F240 S. 83BB(2A) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 7(2)**; S.I. 2002/345, **arts. 2**, 3

F241 Words in s. 83BB(3) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 7(3)**; S.I. 2002/345, **arts. 2**, 3

[

F242**83BC** Power of prosecuting authority to advise police forces

(1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).

(2) In this section "police force" means any of the following—

(a) the Royal Air Force Police;

(b) the Royal Military Police;

(c) the Royal Navy Regulating Branch;

(d) the Ministry of Defence Police;

(e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);

(f) the metropolitan police force;

(g) the City of London police force;

(h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;

(i) the Police Service of Northern Ireland;

(j) the British Transport Police;

(k) the National Crime Squad.**]**

Textual Amendments

F242 S. 83BC inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 8**; S.I. 2002/345, **arts. 2**, 3

[F243]83C Prosecuting officers.

(1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.

(2) An officer shall not be appointed as a prosecuting officer unless he is—

(a) a person who has a general qualification within the meaning of section 71 of the [M17]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.**]**

Textual Amendments

F243 Ss. 83A-83C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 15**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Marginal Citations

M17 1990 c. 41.

Courts-martial: general provisions

[F244]84 . . . . . .

Textual Amendments

F244 S. 84 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 34, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[[F245]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.**]**

Textual Amendments

F245 Ss. 84A-84D inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 35**; S.I. 1997/304, **art. 2** (art. 3, Sch. 2)

[F246]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 [M18]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.

Textual Amendments

F246 Ss. 84A-84D inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 35**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Marginal Citations

M18 1990 c. 41.

[F247]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;

[[F248](cc) any warrant officers who are to be members of the court-martial;**]**

(d) any other officers **[**[F249]or warrant 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 **[**[F250]or warrant 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.

Textual Amendments

F247 Ss. 84A-84D inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 35**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F248 S. 84C(2)(cc) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(2)(a)**; S.I. 2002/345, **arts. 2**, 3

F249 Words in s. 84C(2)(d) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(2)(b)**; S.I. 2002/345, **arts. 2**, 3

F250 Words in s. 84C(4)(e) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(3)**; S.I. 2002/345, **arts. 2**, 3

84D [F251] Constitution of general and district courts-martial

(1) A general court-martial shall consist of—

(a) the president, who shall be an air-force officer,

(b) the judge advocate, and

(c) at least four other persons, of whom—

(i) two shall each be either an air-force officer or an air-force warrant officer, and

(ii) the rest shall be air-force officers.

(2) A district court-martial shall consist of—

(a) the president, who shall be an air-force officer,

(b) the judge advocate, and

(c) at least two other persons, of whom—

(i) one shall be either an air-force officer or an air-force warrant officer, and

(ii) the rest shall be air-force officers.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(3) An officer shall not be appointed as the president of a general or 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 the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.

(4) 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.

(5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless—

(a) he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or

(b) immediately before receiving his commission, he was a warrant officer in any of those forces.

(6) In subsections (3) and (5) above "the qualifying period" means—

(a) in relation to a general court-martial, three years, and

(b) in relation to a district court-martial, two years.

(7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of warrant officer.

(8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.

(9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of flight lieutenant; and, in the case of a general court-martial for the trial of an officer above the rank of flight lieutenant, all the members so appointed shall be of or above the rank of flight lieutenant.

(10) If, in the opinion of the court administration officer, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—

(a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or

(b) where an air-force warrant officer could be appointed, a naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.

(11) In this section—

"air-force officer" means an officer belonging to Her Majesty's air forces and subject to air-force law;

"air-force warrant officer" means a warrant 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;

"military warrant officer" means a warrant officer belonging to Her Majesty's military forces and subject to military law;

"naval officer" means an officer belonging to Her Majesty's naval forces and subject to the Naval Discipline Act 1957;

"naval warrant officer" means a warrant officer belonging to Her Majesty's naval forces and subject to the Naval Discipline Act 1957.

Textual Amendments

F251 S. 84D substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 9**; S.I. 2002/345, **arts. 2**, 3

85 Powers of different descriptions of court-martial.

(1) A general court-martial shall have power to try any person subject to air-force law for any offence which under this Act is triable by court-martial, **[**[F252]and, subject to section 85A below, to award**]** for any such offence any punishment authorised by this Act for that offence.

(2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, discharge with ignominy, dismissal or detention, and shall not award the punishment [F253]. . . of imprisonment for a term exceeding two years **[**[F254]or make an order committing a person to be detained under section 71AA of this Act for a period exceeding two years**]**.

[F255](3) . . . . . .

Textual Amendments

F252 Words in s. 85(1) substituted (2.10.2000) by 2000 c. 4, **s. 12(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F253 Words in s. 85(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F254 Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1),s. 58, Sch. 8 para. 5(*a*)

F255 S. 85(3) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 36, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[[F256]85A Powers of court-martial where accused elected court-martial trial.

(1) Where a court-martial tries a person in pursuance of an election for court-martial trial, the court shall not award any punishment which could not have been awarded by the commanding officer or appropriate superior authority who would have dealt summarily with the preliminary charge if the election had not been made.

(2) In subsection (1) above "the preliminary charge" means the charge which would have been dealt with summarily had the accused not elected court-martial trial.

(3) For the purposes of this section a court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the prosecuting authority has referred the charge back to the commanding officer under section 83BB of this Act.**]**

Textual Amendments

F256 S. 85A inserted (2.10.2000) by 2000 c. 4, **s. 12(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F257 86 . . . . . .

Textual Amendments

F257 S. 86 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F258 87 . . . . . .

Textual Amendments

F258 S. 87 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F259 88 . . . . . .

Textual Amendments

F259 S. 88 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, **Sch. 7 Pt. I**; S.I.1997/304, **art. 2** (with art. 3, Sch. 2)

F260 89 . . . . . .

Textual Amendments

F260 S. 89 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F261 90 . . . . . .

Textual Amendments

F261 S. 90 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

91 Place for sitting of courts-martial and adjournment to other places.

(1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without **[**[F262]the United Kingdom**]**) as may be specified in the order convening the court; **[**[F263]. . .**]**.

(2) A court-martial sitting at any place **[**[F264]may**]** if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Textual Amendments

F262 Words in s. 91(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 38(2)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F263 Words in s. 91(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 38(2)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F264 Words in s. 91(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 38(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Courts-martial: provisions relating to trial

92 Challenges by accused.

(1) An accused about to be tried by any court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another **[**[F265]member**]**.

(2) For the purpose of enabling the accused to avail himself of the right conferred by the last foregoing subsection, the names of the members of the court shall be read over in the presence of the accused before **[**[F266]the officers appointed members**]**[F267], and any officers so appointed,**]** are sworn, and he shall be asked whether he objects to any of **[**[F268]the members**]**.

(3) Every objection made by an accused to any **[**[F269]member**]** shall be **[**[F270]determined by the judge advocate**]**.

(4) If **[**[F271]an objection to the president is allowed**]**, the court shall adjourn and the **[**[F272]court administration**]** officer shall appoint another president.

(5) If **[**[F273]an objection to any other officer appointed a member of the court **[**[F274]or to any warrant officer so appointed**]**is allowed**]**, the **[**[F275]officer **[**[F276]or warrant officer**]]** objected to shall retire and the vacancy may, and if otherwise the number of **[**[F277]members who are officers or warrant officers**]** would be reduced below the legal minimum shall, be filled in the prescribed manner by **[**[F278]another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)**]**.

[[F279](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.]

Textual Amendments

F265 Word in s. 92(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F266 Words in s. 92(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(3)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F267 Words in s. 92(2) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(2)**; S.I. 2002/345, **arts. 2**, 3

F268 Words in s. 92(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(3)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F269 Word in s. 92(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(4)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F270 Words in s. 92(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(4)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F271 Words in s. 92(4) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(5)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F272 Words in s. 92(4) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(5)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F273 Words in s. 92(5) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(6)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F274 Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(a)**; S.I. 2002/345, **arts. 2**, 3

F275 Word in s. 92(5) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(6)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F276 Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(b)**; S.I. 2002/345, **arts. 2**, 3

F277 Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(c)**; S.I. 2002/345, **arts. 2**, 3

F278 Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(d)**; S.I. 2002/345, **arts. 2**, 3

F279 S. 92(6) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(7)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[93 Administration of oaths.

(1) An oath shall be administered to every [[F280]officer [[F281]or warrant officer]] appointed a] member of a court-martial and to any person, [F282]. . ., in attendance on a court-martial as [F282]. . ., officer [[F283]or other person] under instruction, [F284] or interpreter.

[F285](1A) . . . . . .

[[F286](1B) A witness before a court-martial—

(a) shall be examined on oath if he has attained the age of fourteen; and

(b) shall give evidence unsworn if he is under that age.

(2) Unsworn evidence admitted by virtue of subsection (1B)(b) above may corroborate evidence (sworn or unsworn) given by any other person.]

[F287](2A) . . . . . .

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

Textual Amendments

F280 Words in s. 93(1) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 40(2)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F281 Words in s. 93(1) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 11**; S.I. 2002/345, **arts. 2**, 3

F282 Words in s. 93(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 4(2)(b), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F283 Words inserted by Armed Forces Act 1981 (c. 55), **Sch. 2 para. 5(1)**

F284 Words repealed by Armed Forces Act 1976 (c. 52), **Sch. 10**

F285 S. 93(1A) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 40(3), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F286 S. 93(1B)(2) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 71, **Sch. 9 para. 3**; S.I. 1992/333, art 2(2), **Sch. 2**

F287 S. 93(2A) (which was inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 3(1)(b)**; S.I. 1991/2719, **art. 2**) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**

94 Courts-martial to sit in open court.

(1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in the last foregoing subsection shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or 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.

[[F288](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.**]**

Textual Amendments

F288 S. 94(6)-(8) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 41**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

95 Dissolution of courts-martial.

(1) Where, **[**[F289]before**]** the commencement of the trial, it appears to the **[**[F290]court administration**]** officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the **[**[F290]court administration**]** officer may by order dissolve the court-martial.

[[F291](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.**]**

(2) Without prejudice to the generality of the last foregoing subsection, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then—

(a) if the senior member of the court is of the rank of flight lieutenant or corresponding rank or is of higher rank, the **[**[F292]judge advocate**]** may appoint him president and the trial shall proceed accordingly; but

(b) if he is not, the court shall be dissolved.

[F293](4) . . . . . .

(5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court.

Textual Amendments

F289 Words in s. 95(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(2)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F290 Words in s. 95(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(2)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F291 S. 95(1A) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F292 Words in s. 95(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(4)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F293 S. 95(4) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 42(5), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

96 Decisions of courts-martial.

(1) Subject to the provisions of this section, **[**[F294]the finding of a court-martial and any sentence awarded**]** shall be determined by a majority of the votes of the members of the court.

[[F295](1A) The judge advocate shall not be entitled to vote on the finding.**]**

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

[F296](3) . . . . . .

[F296](4) . . . . . .

(5) In the case of an equality of votes on the sentence, [F297]. . ., the president shall have a second or casting vote.

Textual Amendments

F294 Words in s. 96(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 43(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F295 S. 96(1A) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 43(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F296 S. 96(3)(4) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F297 Words in s. 96(5) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 43(5), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

97 Finding and sentence.

(1) Without prejudice to the provisions of section ninety-four of this Act, the finding of a court-martial on each charge shall be announced in open court.

[F298](2) . . . . . .

(3) Any sentence of a court-martial, together with any recommendation to mercy **[**[F299]and any reasons for the sentence**]**, shall be announced in open court, [F300]. . ..

Textual Amendments

F298 S. 97(2) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F299 Words in s. 97(3) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 44**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F300 Words in s. 97(3) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C42 S. 97 applied (with modifications) (1.4.1997) by S.I. 1997/172, **art. 86**

98 Power to convict of offence other than that charged.

(1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a

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higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

(4) Where an accused is charged before a court-martial under section seventy of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section seventy of this Act, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in England, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section seventy of this Act in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the Third Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

99 Rules of evidence.

(1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall **[**[F301],subject to section 99A below **[**[F302]to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.)**][**[F303]and to service modifications**],]** be the same as those observed in **[**[F304]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 **[**[F305]in a trial on indictment**]** in England.

[[F306](1A) 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 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.

(1B) Regulations under subsection (1A) above may not modify section 99A below.

(1C) Regulations under subsection (1A) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

[F307](2) . . . . . .

(3) 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 **[**[F308]trial on indictment**]** in England.

Textual Amendments

F301 Words inserted by Armed Forces Act 1976 (c. 52), s. 11, **Sch. 5 para. 3(a)**

F302 Words in s. 99(1) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 4(1)**; S.I. 1991/2719, **art. 2**

F303 Words inserted by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119(1), **Sch. 6 Pt. II para. 29(2)**(*a*)

F304 Words in s. 99(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 45(2)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F305 Words in s. 99(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 45(2)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F306 S. 99(1A)–(1C) inserted by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119(1), **Sch. 6 Pt. II para. 29(2)**(*b*)

F307 S. 99(2) repealed by Criminal Justice Act 1967 (c. 80), **Sch. 7 Pt. I** and Armed Forces Act 1981 (c. 55), **Sch. 5 Pt. II**

F308 Words in s. 99(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 45(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C43 S. 99(1)(3) applied (with modifications) (2.10.2000) by S.I. 2000/2372, **rule 27(1)(a)(2)(a)**

[[F309]99A Proof at courts-martial by written statement.

(1) **[**[F310]Without prejudice to section 99 above, section**]** 9 of the [M19]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 Part II of this Act or Part II of the [M20]Army Act 1955 is applied by section 208A or section 209 of this Act or that Act respectively, or to whom Parts I and II of the [M21]Naval Discipline Act 1957 are applied by section 117 or section 118 of that Act;

and the persons mentioned in this paragraph include persons to whom section 131 of this Act, section 131 of the [M22]Army Act 1955 or section 119 of the [M23]Naval Discipline Act 1957 apply.

(3) In subsection (1) above "service modifications" means—

(a) modifications made by any regulations under section 12 of the [M24]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.

(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.**]**

Textual Amendments

F309 S. 99A inserted by Armed Forces Act 1976 (c. 52), s. 11, Sch. 5 paras. 1, **2**

F310 Words substituted by Police and Criminal Evidence Act 1984 (c. 60, SIF 95),s. 119(1), Sch. 6 Pt. II para. 29(3)

Modifications etc. (not altering text)

C44 S. 99A(1)(2)(5) applied (with modifications) (2.10.2000) by S.I. 2000/2372, **rule 27(1)(b)(2)(b)**

Marginal Citations

M19 1967 c. 80.
M20 1955 c. 18.
M21 1957 c. 53.
M22 1955 c. 18.
M23 1957 c. 53.
M24 1967 c. 80.

100 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.

101 Offences by civilians in relation to courts-martial.

[[F311][F312](1)**]** Where in the United Kingdom or in any colony any person not subject to air-force law—

(a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons, or

(b) refuses to swear an oath when duly required by a court-martial to do so, or

(c) refuses to produce any **[**[F313]document or other thing which is in his custody or under his control and**]**which a court-martial has lawfully required him to produce, or

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof **[**[F314]or is so attending**]**, or wilfully insults any such person as aforesaid while that person [F315]. . . is going to or returning from the proceedings of the court, or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court, or

(g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in the part of the United Kingdom or in the colony, as the case may be, where the offence is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified:

Provided that where the offence is alleged to have been committed in the United Kingdom and the court-martial was held outside the United Kingdom, the certifying of the offence may be done by **[**[F316]the Defence Council**]** or any officer authorised by them.

[[F311](2) In subsection (1) of this section references in paragraphs (a) to (g) to a court-martial or to a member of a court-martial include references to a judicial officer and, in relation to an offence committed in relation to a judicial officer—

(a) the reference to the president of the court-martial is a reference to the judicial officer, and

(b) the reference to a court-martial held outside the United Kingdom is a reference to the judicial officer sitting outside the United Kingdom.**]**

[[F317](3) In subsection (1) of this section references in paragraphs (a) to (g) to a court-martial include references to the summary appeal court and, in relation to an offence committed in relation to that court—

(a) the reference to the president of the court-martial is a reference to the judge advocate in relation to the summary appeal court, and

(b) the reference to a court-martial held outside the United Kingdom is a reference to the summary appeal court sitting outside the United Kingdom.**]**

Textual Amendments

F311 S. 101(2) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 3**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F312 S. 101: s. 101 is renumbered as s. 101(1) (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 3**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F313 Words in s. 101(1)(c) substituted (28.2.2002) by 2001 c. 19, **ss. 24(2)(d)**, 39(2); S.I. 2002/345, **arts. 2**, 3

F314 Words inserted by Army and Air Force Act 1961 (c. 52), **Sch. 2**

F315 Words repealed by Army and Air Force Act 1961 (c. 52), **Sch. 2**

F316 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F317 S. 101(3) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 6**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

102 Affirmations.

(1) If—

(a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, [F318]. . . , or

(b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

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he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

[[F319](2) A person who may be permitted under this section to make his solemn affirmation may also be required to do so, and for the purposes of this section "reasonably practicable" means reasonably practicable without inconvenience or delay.**]**

Textual Amendments

F318 Words repealed by Administration of Justice Act 1977 (c. 38), **Sch. 5 Pt. III**

F319 S. 102(2) added by Oaths Act 1961 (c. 21), **s. 1**; saved by Oaths Act 1978 (c. 19), **s. 7(4)(5)**

Offences: procedure

[[F320]**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 [M25]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.

[F321](3A) **[** Rules under this section may make provision as to the application of sections 83B and 83BB of this Act in relation to cases where an election for court-martial trial relates to two or more charges.**]]**

(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.

Textual Amendments

F320 S. 103 substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 46**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F321 S. 103(3A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 5**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Marginal Citations

M25 1879 c. 11.

[F322 Field General Courts-Martial

Textual Amendments

F322 Ss. 103A-103C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 47**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F323] 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;

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Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(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.

[[F324](d) any warrant officer who is to be a member of the court-martial.**]]**

[[F325](4A) Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening 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.

Textual Amendments

F323 Ss. 103A-103C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 47**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F324 S. 103A(4)(d) inserted (28.2.2002) by 2001 c. 19, ss. 19, **Sch. 2 para. 12(2)**; S.I. 2002/345, **arts. 2**, 3

F325 S. 103(4A) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 12(3)**; S.I. 2002/345, **arts. 2**, 3

[F326]103B Constitution of field general courts-martial.

(1) Subject to subsections (2) and (3) below, a field general court-martial shall **[**[F327]consist of—

(a) the president, who shall be an air-force officer, and

(b) at least two persons appointed under this paragraph, of whom—

(i) one shall be either an air-force officer or an air-force warrant officer, and

(ii) the rest shall be air-force officers.**]**

(2) If the officer who convened the field general court-martial is of opinion that **[**[F328]three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above**]** 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 [M26]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.

[[F329](6A) A field general court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.**]**

[[F330](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 or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(b) above, he may appoint under that provision—

(a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or

(b) where an air-force warrant officer could be appointed, any naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.**]**

(8) A field general court-martial shall have the powers of a general court-martial except that where **[**[F331]only two persons, apart from any judge advocate (as defined by subsection (4) above),**]** 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;

[[F332]"air-force warrant officer" means a warrant 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

["military warrant officer" means a warrant officer belonging to Her Majesty's military forces and subject to military law;**]**

"naval officer" means an officer belonging to Her Majesty's naval forces and subject to the [M27]Naval Discipline Act 1957.

[[F332]"naval warrant officer" means a warrant officer belonging to Her Majesty's naval forces and subject to the Naval Discipline Act 1957.**]**

Textual Amendments

F326 Ss. 103A-103C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 47**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F327 Words and sub-paragraphs (a)(b) substituted (28.2.2002) for words in s. 103B(1) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(2)**; S.I. 2002/345, **arts. 2**, 3

F328 Words in s. 103B(2) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(3)**; S.I. 2002/345, **arts. 2**, 3

F329 S. 103B(6A) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(4)**; S.I. 2002/345, **arts. 2**, 3

F330 S. 103B(7) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(5)**; S.I. 2002/345, **arts. 2**, 3

F331 Words in s. 103B(8) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(6)**; S.I. 2002/345, **arts. 2**, 3

F332 Definitions in s. 103B(9) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 13(7)**; S.I. 2002/345, **arts. 2**, 3

Marginal Citations

M26 1990 c. 41.

M27 1957 c. 53.

[F333]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.

Textual Amendments

F333 Ss. 103A-103C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 47**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F334]104 . . . . . .

Textual Amendments

F334 S. 104 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 48, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F335]105 . . . . . .

Textual Amendments

F335 S. 105 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 48, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F336]106 . . . . . .

Textual Amendments

F336 S. 106 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 48, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Confirmation, Revision and Review of Proceedings of Courts-Martial

[F337]107 . . . . . .

Textual Amendments

F337 S. 107 repealed (1.4.1997) by 1996 c. 46, ss. 15, 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F338]108 . . . . . .

Textual Amendments

F338 S. 108 repealed (1.4.1997) by 1996 c. 46, ss. 16, 35(2), Sch. 5 para. 2, **Sch. 7 Pt. III**; S.I. 1997/304, art. 2, **Sch. 1** (with art. 3, Sch. 2)

[F339]109 . . . . . .

Textual Amendments

F339 S. 109 repealed (1.4.1997) by 1996 c. 46, ss. 15, 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F340 110 . . . . . .

Textual Amendments

F340 S. 110 repealed (1.4.1997) by 1996 c. 46, ss. 15, 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F341 111 . . . . . .

Textual Amendments

F341 S. 111 repealed (1.4.1997) by 1996 c. 46, ss. 15, 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F342 Review of proceedings of courts-martial]

Textual Amendments

F342 Cross-heading and s. 112 substituted for s. 112 (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 3**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F343 112 . . . . . .

Textual Amendments

F343 S. 112 repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

[F344 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;

(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.

[F345](6) . . . . . .]

Textual Amendments

F344 Ss. 113, 113AA substituted for s. 113 (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F345 S. 113(6) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

[F346]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;
(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.

Textual Amendments

F346 Ss. 113, 113AA substituted for s. 113 (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1996/304, **art. 2** (with art. 3, Sch. 2)

[F347 113A Power of reviewing authority to authorise retrial.

—(1) The following provisions of the M28 Courts-Martial (Appeals) Act 1968, that is to say,—

section 19,

section 20, and

Parts III and IV of Schedule 1,

(power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by **[**F348 the reviewing authority**]** under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the Courts-Martial Appeal Court.

(2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the **[**F349 reviewing authority**]** shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.**]**

Textual Amendments

F347 S. 113A inserted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

F348 Words in s. 113A(1) substituted (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 5(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F349 Words in s. 113A(2) substituted (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 5(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C45 S. 113A excluded (1.4.1997) by S.I. 1997/172, **art. 86**

Marginal Citations

M28 1968 c. 20.

F350 **114** . . . . . .

Textual Amendments

F350 S. 114 repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**

Review of summary findings and awards

[F351 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.

F352(2) . . . . . .

(3) The finding or any punishment awarded (or both) may be reviewed at any F353. . . 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.

F354(5A) **[** Where—

(a) the period of fourteen days referred to in subsection (2) of section 83ZE of this Act has expired, and

(b) no appeal has been brought under that section,

the authority carrying out a review under this section may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both) to that court to be considered by it as on an appeal.

(5B) Where an appeal has been brought under section 83ZE of this Act and it appears to the authority carrying out a review under this section, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both), including any finding or punishment substituted or awarded by the summary appeal court, to that court to be co sidered or reconsidered by that court as on an appeal.

(5C) A reference to the summary appeal court under subsection (5A) or (5B) of this section shall for the purposes of this Act be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.

(5D) In a case where exceptionally the authority carrying out a review under this section of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment relates only to that finding, quash the punishment awarded in consequence of that finding.

(5E) The powers conferred by subsection (5D) of this section are exercisable whether or not the conditions in subsection (5A)(a) and (b) are satisfied.**]]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

[F355](6) . . . . . .

[F355](7) . . . . . .

Textual Amendments

F351 S. 115 substituted (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 7**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F352 S. 115(2) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, Sch. 3 para. 19(2), **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F353 Word in s. 115(3) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, Sch. 3 para. 19(3), **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F354 S. 115(5A)-(5E) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 19(4)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F355 S. 115(6)(7) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, Sch. 3 para. 19(5), **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C46 S. 115(5A)(5B) modified (2.10.2000) by S.I. 2000/2372, **Rule 13(7)**

Findings of insanity

116 Provisions where accused found insane.

(1) Where, on the trial of a person by court-martial, it appears to the court that the accused is [F356]unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations of **[**[F357]the Defence Council**]** until the directions of Her Majesty are known or until any earlier time at which the accused is fit to stand his trial.

[[F358]For purposes of this subsection "unfit to stand his trial" means under any disability such as apart from the [M29]Criminal Procedure (Insanity) Act 1964 would constitute a bar to trial on indictment in England or Wales**]**

(2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused **[**[F359]was not guilty of that offence by reason of insanity**]**, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations of **[**[F357]the Defence Council**]** until the directions of Her Majesty are known.

(3) In the case of any such finding as aforesaid Her Majesty may give orders for the safe custody of the accused during Her pleasure in such place and in such manner as Her Majesty thinks fit.

(4) A finding under subsection (1)

of this section shall not have effect unless and until the finding has been confirmed by an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.

[[F360](4A) Where on the trial of a person by court-martial the question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect:—

(a) the court, if having regard to the nature of the supposed disability the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the question falls to be determined the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;

(b) subject to paragraph (a) above, the question shall be determined as soon as it arises;

(c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed, but if the question is determined at a time later than on arraignment, the confirming officer or reviewing authority may substitute a finding of not guilty (other than a finding of not guilty by reason of insanity), if of opinion that the court should before that time have come to such a finding.**]**

(5) [F356] the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (2) of this section as those provisions apply in relation to [F356]findings of guilty.

[[F361](6) Where the confirming officer or reviewing authority substitutes for a finding of not guilty by reason of insanity a finding of guilty of an offence, the confirming officer or reviewing authority shall have the like powers of sentencing the accused and other powers as the court-martial would have had on the like finding of guilty, and any sentence imposed shall be promulgated and have effect as would a sentence duly substituted by the confirming officer or reviewing authority for a sentence of the court-martial:

Provided that the confirming officer or reviewing authority shall not have power by virtue of this subsection to impose a sentence of death, and where apart from this proviso a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(7) Where in pursuance of a finding of not guilty by reason of insanity a person is detained under **[**[F362]section 46 of the Mental Health Act 1983**]**, **[**[F363]section 69 of the Mental Health (Scotland) Act 1984**]** or **[**[F364]Article 52 of the Mental Health (Northern Ireland) Order 1986**]**, and the reviewing authority quashes the finding (without substituting another finding), then if the reviewing authority is of opinion—

(a) that the person in question is suffering from mental disorder (**[**[F362]within the meaning of the Mental Health Act 1983**]**) of a nature or degree which warrants his **[**[F365]detention in a hospital for assessment (or for assessment followed by medical treatment)**]** for at least a limited period; and

(b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,

the reviewing authority shall make an order for his continued detention under the Act **[**[F366]or Order**]**, and the order shall be sufficient authority for him to be detained, and the Act **[**[F366]or Order**]** shall apply, as if on the date of the order he had been admitted to the hospital in pursuance of an application duly made under the Act **[**[F366]or Order**]** (being in England or Wales an application for **[**[F365]admission for assessment**]**).

In this subsection any reference to the Mental Health **[**[F364](Northern Ireland) Order 1986**]** or any provision thereof includes any corresponding Act or provision for the time being in force in Northern Ireland.**]**

Textual Amendments

F356 Words repealed by Criminal Procedure (Insanity) Act 1964 (c. 84), **s. 8(3)** proviso (c), Sch. 2 Pt. I
F357 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**
F358 Words added by Criminal Procedure (Insanity) Act 1964 (c. 84), **s. 8(3)** proviso (c), Sch. 2 Pt. I
F359 Words substituted by Criminal Procedure (Insanity) Act 1964 (c. 84), **s. 8(3)** proviso (c), Sch. 2 Pt. I
F360 S. 116(4A) inserted by Criminal Procedure (Insanity) Act 1964 (c. 84), **s. 8(3)** proviso (c), Sch. 2 Pt. I
F361 S. 116(6)(7) added by Criminal Procedure (Insanity) Act 1964 (c. 84), **s. 8(3)** proviso (c), Sch. 2 Pt. I
F362 Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 10**
F363 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 6**
F364 Words substituted by S.I. 1986/596, **art. 4**
F365 Words substituted by Mental Health (Amendment) Act 1982 (c. 51, SIF 85),ss. 65(1), 69(6), Sch. 3 para. 28, Sch. 5 para. 1
F366 Words inserted by S.I. 1986/596, **art. 4**

Modifications etc. (not altering text)

C47 S. 116 extended by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 16(2)(3)**

Marginal Citations

M29 1964 c. 84.

Saving for functions of Judge Advocate General

117 Saving for functions of Judge Advocate General.

Nothing in the foregoing provisions of this Part of this Act shall prejudice the exercise of the functions conferred (whether by Queen's Regulations or otherwise) on the Judge Advocate General of considering and reporting on the proceedings of courts-martial or any other functions so conferred on him in relation to such courts.

Commencement, suspension and duration of sentences

118 Commencement of sentences.

(1) An air-force sentence of imprisonment or detention **[**[F367]awarded by a court-martial**]**shall, subject to the **[**[F368]following provisions of this Part of this Act and to**][**[F369]section 11(2) of the [M30]Courts-Martial (Appeals) Act 1968**]** (which empowers the Court in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender [F370]. . .

(2) A sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or airman which is suspended in pursuance of section one hundred and twenty of this Act before he has been committed to prison or an air-

force establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by **[**[F371]a court-martial**]** and the reviewing authority determines the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the reviewing authority may specify.

Textual Amendments

F367 Words in s. 118(1) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 8(a)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F368 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(4)**

F369 Words substituted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

F370 Words in s. 118(1) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, Sch. 3 para. 8(b), **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F371 Words in the proviso to s. 118(2) substituted (1.4.1997) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C48 S. 118 excluded by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), **18(7)**

Marginal Citations

M30 1968 c. 20.

[[F372]**118ZC Commencement of sentence of detention awarded by commanding officer.**

(1) Subject to the following provisions of this Part of this Act, subsections (2) to (4) below apply to a sentence of detention awarded by the offender's commanding officer.

(2) If the offender so elects at the time of the award, his sentence shall begin to run from the day on which it is awarded.

(3) If the offender does not make an election under subsection (2) above or, having made such an election, withdraws it during the appeal period, his sentence or, in the case of withdrawal, the remainder of his sentence shall be suspended by virtue of this subsection—

(a) until the end of the appeal period, or

(b) where an appeal is brought within the appeal period, until the determination of the appeal.

(4) Where an appeal is brought—

(a) within the appeal period, by an offender who has made an election under subsection (2) above which has not been withdrawn, or

(b) after the end of the appeal period, by any offender,

the remainder of his sentence shall be suspended by virtue of this subsection until the determination of the appeal.

(5) In this section "the appeal period" means the period within which an appeal may be brought under section 83ZE(2) of this Act.**]**

Textual Amendments

F372 S. 118ZA inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 9**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

[F373 118A Consecutive terms of imprisonment and detention.

(1) Where any person who is serving a sentence of imprisonment, whether passed under this Act or otherwise, is awarded an air-force sentence of imprisonment, or where a person who is awarded an air-force sentence of imprisonment is further sentenced to imprisonment under section 57(2) of this Act, the court-martial by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiry of the first-mentioned sentence.

(2) Where any person who is serving an air-force sentence of detention, or a sentence of detention passed on him under the [M31]Army Act 1955 or the [M32]Naval Discipline Act 1957, is found guilty under this Act of another offence for which he is awarded an air-force sentence of detention, or where a person who is awarded an air-force sentence of detention is further sentenced to detention under section 57(2) of this Act, the court-martial or officer by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiry of the first-mentioned sentence.

F374 **[** (2A) Where on awarding a sentence of detention ("the subsequent sentence") the offender's commanding officer orders under subsection (2) of this section that the subsequent sentence is to begin to run from the expiry of another sentence ("the current sentence") —

(a) section 118ZA of this Act shall have effect in relation to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were a reference to the expiry of the current sentence, and

(b) where the suspension of a sentence by virtue of subsection (3) or (4) of that section would end before the expiry of the current sentence, the sentence shall run from the expiry of the current sentence.**]**

(3) Where a person is convicted by a general court-martial or a field general court-martial of two or more offences against section 70 of this Act consisting in the commission of a civil offence for which a civil court in England could award imprisonment, the court-martial may by its sentence award, for any of the said offences, a term of imprisonment which is to run from the expiry of a term awarded by that sentence for any other of those offences.**]**

Textual Amendments

F373 S. 118A inserted by Armed Forces Act 1971 (c. 33), **ss. 39(1)(2)**, 78(4)

F374 S. 118A(2A) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 12**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Marginal Citations

M31 1955 c. 18.

M32 1957 c. 53.

119 Duration of sentences of imprisonment and detention.

(1) Where a warrant officer, non-commissioned officer or airman has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended **[**[F375]in pursuance of section 120 of this Act**]** after he has been committed to prison or an air-force establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with **[**[F375]the provisions of the said section 120**]** until the beginning of the day on which the suspension is determined.

(2) Where any person serving an air-force sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into air-force, naval or military custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was—

(a) in the custody of a civil authority, or

(b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any air-force, naval or military authority of any country or territory outside the United Kingdom as respects which arrangements have been made under section one hundred and twenty-six of this Act,

the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the air-force sentence.

(3) In the last foregoing subsection the expression "civil authority" means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable.

(4) Without prejudice to subsection (2) of this section, where any person serving an air-force sentence of imprisonment or detention has in accordance with Imprisonment and Detention Rules been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(5) A person who for any period is released as mentioned in the last foregoing subsection or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out of any air-force establishment or otherwise out of air-force custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) of this section as being unlawfully at large.

(6) A person serving an air-force sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(7) References in the last foregoing subsection to release or recall under civil law are references to release or recall in pursuance of rules made under subsection (5) of section forty-seven of the [M33]Prison Act 1952, subsection (6) of section thirty-five of the [M34]Prisons (Scotland) Act 1952, or paragraph (c) of subsection (1) of section thirteen of the [M35]Prison Act (Northern Ireland) 1953, or (in the case of a person serving his sentence outside the United Kingdom) in pursuance of any corresponding provision of the law of the country or territory in which he is serving his sentence.

Textual Amendments

F375 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(5)**

Marginal Citations

M33 1952 c. 52.
M34 1952 c. 61.
M35 1953 c. 18 (N.I.)

[[F376]119A Limitation of total period of sentences of detention.

—(1) Notwithstanding anything in this Part of this Act, no offender shall be kept continuously in detention for a period exceeding two years in pursuance of two or more sentences of detention.

(2) Subsection (1) above shall not affect the validity of any order or direction under this Part of this Act that a sentence of detention shall begin to run from the expiry of another such sentence; but so much of any term of detention to which any such order or direction relates as would prolong the total term of detention beyond two years shall be remitted by virtue of the order or direction.

[F377](2A) **[** Where the whole or part of a sentence of detention is suspended by virtue of section 118ZA(3) or (4) of this Act, any period of detention ending with the beginning of the suspension shall be taken for the purposes of subsection (1) above to be continuous with any period of detention beginning with the end of the suspension.**]**

(3) Where any person who has been sentenced by a court-martial (whether under this Act, the [M36]Army Act 1955 or the [M37]Naval Discipline Act 1957) to detention is subsequently sentenced by a court-martial under this Act to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.**]**

Textual Amendments

F376 S. 119A inserted by Armed Forces Act 1971 (c. 33), **ss. 40**, 78(4)
F377 S. 119A(2A) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 14**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Marginal Citations

M36 1955 c. 18.
M37 1957 c. 53.

120 Suspension of sentences.

(1) The following provisions of this section shall have effect as respects the suspension of a sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or airman.

(2) **[**[F378]On passing such a sentence, the court**]** may order that the sentence shall be suspended.

[[F379](3) On the review of a sentence which is not for the time being suspended, the reviewing authority may order that the balance of the sentence be suspended.**]**

(4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review [F380]of the sentence by an order of the said authority committing the person sentenced to imprisonment or detention, as the case may be.

(5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence then (unless the balance of the earlier sentence is remitted by virtue of **[**[F381]section 119A (3)**]** of this Act)—

(a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;

[F382](b) . . . . . .

(c) if **[**[F383]the court does not exercise the powers conferred by paragraph (a) above**]**, a reviewing authority may exercise those powers on the review of the later sentence;

(d) where the said powers are exercised (whether by the court, [F384]. . . or a reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

[F385] . . . . . .

(6) Without prejudice to the further suspension of the earlier sentence, an order under the last foregoing subsection directing that the suspension of that sentence shall be determined shall not be affected by the later sentence [F386]. . . being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released **[**[F387]and a sentence which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect**]**.

[F388](8) . . . . . .

Textual Amendments

F378 Words in s. 120(2) substituted (1.4.1997) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(1)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F379 S. 120(3) substituted (1.4.1997) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(1)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F380 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**

F381 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(6)**

F382 S. 120(5)(b) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F383 Words in s. 120(5)(c) substituted (1.4.1997) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(1)(c)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F384 Words in s. 120(5)(d) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F385 Proviso repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**
F386 Words in s. 120(6) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F387 Words added by Armed Forces Act 1971 (c. 33), **s. 54(2)**
F388 Ss. 120(8), 152(3), 153(2) repealed by Armed Forces Act 1971 (c. 33), **Sch. 4 Pt. II**

[F389 120A Postponement of sentences.

(1) On passing any sentence a court-martial may order that the sentence shall not have effect until the end of the period specified in the order.

(2) On reviewing a sentence under section 113 of this Act, the reviewing authority may—
  (a) if the sentence has not had effect, order that the sentence shall not have effect until the end of the period specified in the order;
  (b) if the sentence has had effect, order that the sentence shall cease to have effect on the making of the order until the end of the period specified in the order.

(3) On exercising any power under section 113AA of this Act to pass or substitute a sentence, the reviewing authority may order that the sentence shall not have effect until the end of the period specified in the order.

(4) The Defence Council or any officer authorised by them may terminate the period specified in an order under this section or extend such a period for a further period specified by them.

(5) On the termination of such a period the sentence in respect of which the order in question was made shall have effect or (in the case of an order under subsection (2)(b) above) resume effect.

(6) Nothing in this section shall be taken to prevent section 118(1) of this Act from applying in relation to an air-force sentence of imprisonment or detention.**]**

Textual Amendments
F389 S. 120A inserted (1.4.1997) by 1996 c. 46, **s. 9(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Execution of sentences of death, imprisonment and detention

F390 121 . . . . . .

Textual Amendments
F390 S. 121 repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

122 Imprisonment and detention rules.

(1) Subject to the provisions of this Act, the Secretary of State may make rules (in [F391] . . . this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters, that is to say—

(a) the places in which and the establishments or forms of custody (whether air-force or not) in which persons may be required to serve the whole or any part of air-force sentences of imprisonment and detention passed on them;

(b) the committal of persons under air-force sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

(c) the provision, classification, regulation and management of air-force establishments;

(d) the classification, treatment, employment, discipline and control of persons serving air-force sentences of imprisonment or detention in air-force establishments or otherwise in air-force custody;

(e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence [F392]. . .;

(f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of air-force establishments.

(2) Imprisonment and Detention Rules shall not authorise the infliction of corporal punishment.

(3) Imprisonment and Detention Rules may apply with the necessary modifications all or any of the provisions of sections thirty-nine to forty-two of the [M38]Prison Act 1952 (which relate to offences by persons other than prisoners).

(4) Imprisonment and Detention Rules may, to such extent as may be provided by the Rules, be made so as to apply to persons detained in air-force establishments while serving sentences of imprisonment or detention awarded under **[**[F393]the [M39]Naval Discipline Act 1957**]** or the [M40]Army Act 1955, notwithstanding that such persons are not for the time being subject to air-force law.

(5) The Secretary of State may as respects any area in which persons subject to air-force law are on active service delegate his power to make Imprisonment and Detention Rules to the officer commanding the command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Secretary of State may think fit.

Textual Amendments

F391 Words in s. 122(1) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F392 Words in s. 122(1)(e) repealed (1.10.1996) by 1996 c. 46, s. 35(1)(2), Sch. 6 para. 5, **Sch. 7 Pt. III**; S.I. 1996/2474, art. 2, **Sch.**

F393 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

Modifications etc. (not altering text)

C49 S. 122 amended by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 52**

C50 S. 122(3) amended (E.W.) by Criminal Justice Act 1961 (c. 39), **s. 22(3)**

Marginal Citations

M38 1952 c. 52.

M39 1957 c. 53.

M40 1955 c. 18.

123 Supplementary provisions relating to regulations and rules under ss. 121 & 122.

(1) [F394]. . . Imprisonment and Detention Rules may contain such incidental and supplementary provisions as appear to the Secretary of State to be requisite for the purposes of the [F394]. . . rules.

(2) Any such [F395]. . .rules as aforesaid made by the Secretary of State shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F394 S. 123(1): "Regulations under section one hundred and twenty-one of this Act or" repealed (11.5.2001) by virtue of 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F395 Words in s. 123(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

124 Restrictions on serving of sentences of detention in prisons.

A person shall not be required to serve any part of an air-force sentence of detention in an air-force or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Rules a person serving such a sentence may be temporarily detained in an air-force or civil prison for any period not exceeding seven days.

125 Special provisions as to civil prisons in the United Kingdom.

(1) A person sentenced to [F396]. . .imprisonment and committed or transferred to a civil prison in pursuance of [F396]. . . Imprisonment and Detention Rules shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

(2) . . . . . .

Textual Amendments

F396 Words in s. 125(1) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

Modifications etc. (not altering text)

C51 S. 125(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

126 Special provisions as to carrying out or serving of sentences outside the United Kingdom otherwise than in air-force establishments.

(1) A Secretary of State may from time to time make arrangements with the authorities of any country or territory outside the United Kingdom whereby [F397]. . . air-force sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in **[**[F398]establishments under the control of those authorities**]**

(2) The powers conferred on the Secretary of State by **[**[F399]section one hundred and twenty-two of this Act**]** shall extend to the making of such provision as appears to the Secretary of State necessary or expedient for giving effect to any arrangements made under the last foregoing subsection.

(3) The said powers shall be so exercised as to secure that [F400]. . .no air-force sentence of imprisonment or detention shall be served, in an establishment in any country or territory outside the United Kingdom not being an air-force establishment, except in accordance with arrangements made as respects that country or territory.

Textual Amendments

F397 Words in s. 126(1) repealed (11.5.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 4 para. 18(2)(a), **Sch. 7 Pt. 4**

F398 Words in s. 126(1) substituted (11.5.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 4 para. 18(2)(b)**

F399 Words in s. 126(2) substituted (11.5.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 4 para. 18(3)**

F400 Words in s. 126(3) repealed (11.5.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 4 para. 18(4), **Sch. 7 Pt. 4**

127 Country in which sentence of imprisonment or detention to be served.

(1) A person who is serving an air-force sentence of imprisonment or detention in the United Kingdom may (in so far as may be specified by or under Imprisonment and Detention Rules) be removed out of the United Kingdom—

(a) to any colony in which he was enlisted; or

(b) to any place out of the United Kingdom where the corps or unit to which for the time being he belongs is serving or is under orders to serve,

but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months shall as soon as practicable [F401] . . . be removed to the United Kingdom.

(3) The last foregoing subsection shall not apply in relation to any person belonging to a class of persons specified by or under Imprisonment and Detention Rules as persons whose removal to the United Kingdom would for reasons of climate, place of birth or place of enlistment or any other reason not be beneficial.

(4) Where a person has been sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months, the [F402]. . . reviewing authority may notwithstanding anything in subsection (2) of this section direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction;

and in determining whether or not to exercise the powers conferred by this subsection a [F402]. . . reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

[F403](5) . . . . . .

(6) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(7) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

Textual Amendments

F401 Words in s. 127(2) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1)(2), Sch. 2 para. 1, **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F402 Words in s. 127(4) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F403 S. 127(5) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

128 Application of enactments relating to coroners. E+W

[F404](1) . . . . . .

(2) **[**[F405]The Coroners Act 1888**]** shall apply in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as those Acts apply in relation to a prison.

Textual Amendments

F404 S. 128(1) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. IV**

F405 Words in s. 128(2) substituted (E.W.) by Coroners Act 1988 (c. 13, SIF33), s. 36(1), **Sch. 3 para. 9**

128 Application of enactments relating to coroners. S+N.I.

[F807](1) . . . . . .

(2) The Coroners Acts 1887 to 1926 shall apply in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as those Acts apply in relation to a prison.

Textual Amendments

F807 S. 128(1) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. IV**

129 Duties of governors of prisons and others to receive prisoners.

(1) It shall be the duty of the governor of a civil prison, or, in so far as [F406]. . . Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being an air-force prison) in a colony, to receive any person duly sent to that prison in pursuance of the [F406]. . . rules and to confine him until [F406]. . . the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in air-force custody in pursuance of an air-force sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such governor, superintendent or other person as aforesaid, of the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined (whether the station or place is in the United Kingdom or in a colony), to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

Textual Amendments

F406 Words in s. 129(1) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

Modifications etc. (not altering text)

C52 S. 129 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

130 Application to military establishments and custody.

(1) In section one hundred and eighteen of this Act, the reference in subsection (2) to an air-force establishment shall include a reference to a military establishment (within the meaning of the [M41]Army Act 1955).

(2) In section one hundred and nineteen of this Act references to an air-force establishment and to Imprisonment and Detention Rules shall include respectively references to such a military establishment as aforesaid and to Imprisonment and Detention Rules made under the [M42]Army Act 1955, and the reference in subsection (5) to air-force custody shall include a reference to military custody.

(3) In section one hundred and twenty-four of this Act the reference to an air-force prison shall include a reference to a military prison (within the meaning of the [M43]Army Act 1955).

(4) In subsection (3) of section one hundred and twenty-six of this Act the reference to an air-force establishment shall include a reference to a military establishment (within the meaning of the [M44]Army Act 1955).

Marginal Citations

M41 1955 c. 18.
M42 1955 c. 18.
M43 1955 c. 18.
M44 1955 c. 18.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Trial of persons ceasing to be subject to air-force law and time limits for trials

131 Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject to this Act.

(1) Subject to the provisions of the next following section, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to air-force law, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, **[**[F407]summary dealing with charges**][**[F408](including appeals against findings recorded, or punishments awarded, on summary dealing)**]**trial and punishment by court-martial (including [F409]. . ., review, [F410] . . . and suspension) and execution of sentences as continuing subject to air-force law notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in air-force or military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to air-force law would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in the last foregoing subsection [F411], as having been subject to air-force law when the offence was committed or is suspected of having been committed and as continuing subject to air-force law thereafter.

(3) Where by virtue of either of the two last foregoing subsections a person is treated as being at any time subject to air-force law for the purpose of any provision of this Act, that provision shall apply to him—

(a) if he holds any air-force rank, as to a person having that rank;

(b) if he holds any naval or military rank or rating, as to a person having the corresponding air-force rank;

(c) otherwise as to a person having the rank which he had when last actually subject to air-force law:

Provided that as respects any time after he has been sentenced for the offence in question [F409]. . .the said provision shall apply to him (in any case) as to an airman.

(4) Where apart from this subsection any provision of this Act would under the last foregoing subsection apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

Textual Amendments

F407 Words inserted by Armed Forces Act 1981 (c. 55), **s. 6(2)(4)**

F408 Words in s. 131(1) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 16**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F409 Words in s. 131(1) and the proviso to s. 131(3) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F410 Word in s. 131(1) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1)(2), Sch. 2 para. 11(1), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F411 Word repealed by Armed Forces Act 1981 (c. 55), **Sch. 5 Pt. II**

132 Limitation of time for trial of offences under this Act.

[[F412](1) Where by virtue of any enactment proceedings on indictment for any civil offence must be brought within a limited period, no proceedings shall be taken against any person for an offence against section 70 of this Act corresponding to that civil offence unless the trial or proceedings on a summary dealing with the charge is or are begun before the end of that period.**]**

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular air force continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

[[F413](3) Except in relation to the offences specified in subsection (3A) below, no proceedings shall be taken against a person by virtue of subsection (1) of section 131 of this Act unless—

(a) in a case where the charge is one which may be dealt with summarily, the proceedings on the summary dealing with the charge are begun within three months or the trial by court-martial is begun within six months after he ceases to be subject to air-force law;

(b) in a case where the charge is one which cannot be dealt with summarily, the trial is begun within six months after he ceases to be subject to air-force law.

(3A) Subsection (3) above does not apply to an offence against section 31 or 32 of this Act or desertion or to an offence against section 70 where the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the proceedings.**]**

(4) A person shall not be arrested or kept in custody by virtue of subsection (1) of the last foregoing section for an offence at any time after he has ceased to be triable for the offence.

Textual Amendments

F412 S. 132(1) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 7(1)(6)**

F413 S. 132(3)(3A) substituted for s. 132(3) by Armed Forces Act 1981 (c. 55), **s. 6(3)(c)(4)**

Modifications etc. (not altering text)

C53 S. 132 excluded by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 20(1)**

C54 S. 132 excluded (1.4.1997) by S.I. 1997/172, **art. 86**

Relations between air-force law and civil courts and finality of trials

[F414133 Jurisdiction of civil courts.

(1) Where a person subject to air-force law—

(a) has been tried for an offence by a court-martial or has had an offence committed by him taken into consideration by a court-martial in sentencing him, or

(b) has been charged with an offence under this Act and has had the charge dealt with summarily by his commanding officer or the appropriate superior authority,

a civil court shall be debarred from trying him subsequently for **[**[F415]the same, or substantially the same offence**]**; but except as aforesaid nothing in this Act shall be construed as restricting the jurisdiction of any civil court to try a person subject to this Act for an offence.

(2) For the purposes of this section—

[F416](a) . . . . . .

(b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if [F417]. . . the sentence is quashed **[**[F418](as well as in a case where the taking into consideration of the offence has been annulled by the [F417]. . . reviewing authority)**]**;

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding **[**[F419]or award**]** of that officer or authority has been quashed, **[**[F420]on review or quashed or varied by the summary appeal court.**]]**

Textual Amendments

F414 S. 133 substituted by Armed Forces Act 1966 (c. 45), **s. 25(2)**

F415 Words in s. 133(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 5(2)**; S.I. 1991/2719, **art. 2**

F416 S. 133(2)(a) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F417 Words in s. 133(2)(b) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F418 Words added by Armed Forces Act 1981 (c. 55), **s. 5(4)(a)**

F419 Words in s. 133(2)(c) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 21(a)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 2, Sch. para. 14)

F420 Words in s. 133(2)(c) substituted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 21(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

Modifications etc. (not altering text)

C55 S. 133 extended with modifications by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), **16**

[[F421]**133A Financial penalty enforcement orders.**

(1) If—

(a) a financial penalty has been awarded against any person under this Act, and

[F422]**[**(b) the penalty was—

(i) a fine awarded in respect of a qualifying offence (or in respect of such an offence together with other offences) on the conviction of a qualifying offence either of that person or of the person as whose parent or guardian that person is to pay the penalty; or

(ii) stoppages or a compensation order awarded in respect of a qualifying offence, (whether on the conviction of any person of the offence or on a request by any person for the offence to be taken into consideration); and**]**

(c) no term of imprisonment was imposed in default of payment, and

(d) no appeal is outstanding and the time provided for the giving of notice of appeal against the award has expired, and

(e) the whole or any part of the penalty remains unpaid or unrecovered, and

(f) the person against whom the award was made is a person to whom this section applies,

the Defence Council or an officer authorised by them may make an order (in this section referred to as a "financial penalty enforcement order") for the registration of the penalty by the relevant court.

(2) This section applies to a person who

[F423(a)] is, or would be but for section 131 above, neither subject to service law nor a civilian to whom Part II of this Act is applied by section 209 below, Part II of the [M45]Army Act 1955 is applied by section 209 of that Act or Parts I and II of the [M46]Naval Discipline Act 1957 are applied by section 118 of that Act [[F424]; or.

(b) is subject to service law because he is a special member of a reserve force within the meaning of the Reserve Forces Act 1996.]

(3) In this section "qualifying offence" means

(a) an offence under section 36 above committed outside the United Kingdom and consisting of or including acts or omissions that would constitute a comparable foreign offence or a local road traffic offence;

(b) an offence under section 70 above;

(c) an offence under any provision of this Act other than section 70 above consisting of or including acts or omissions which would also constitute an offence under section 70 above;

and for the purposes of this definition—

"comparable foreign offence" means an offence under the civil law of any place outside the United Kingdom which is comparable to an offence under the law of England and Wales; and

"local road traffic offence" means an offence under the civil law of any place outside the United Kingdom relating to road traffic.

(4) A financial penalty enforcement order shall contain a certificate issued on behalf of the Defence Council or by an officer authorised by them and stating—

(a) that a financial penalty has been awarded against the person named in the order;

(b) that the conditions specified in paragraphs (b) to (f) of subsection (1) above are satisfied;

(c) the nature and amount of the penalty;

(d) the date on which and the [[F425]offence or offences]in respect of which it was awarded;

(e) if it was awarded against the person named in the order as the parent or guardian of some other person, the fact that it was so awarded and the name of that other person;

(f) sufficient particulars of the case (including particulars of any offences taken into consideration at the trial);

(g) the date of any payment or recovery of a sum on account of the penalty;

(h) the sum outstanding; and

(j) the authority to whom and address to which any stoppages or compensation included in the penalty will fall, on recovery, to be remitted under subsection (7) below.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(5) A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by an officer authorised by them shall be deemed to be such an order unless the contrary is proved, and a certificate under subsection (4) above shall be evidence of the matters stated.

(6) Subject to subsection (7) below, upon registration of a financial penalty enforcement order—

(a) service enforcement procedures shall cease to be available for the recovery of the sum certified as outstanding, and

(b) that sum shall be treated for all purposes as if it had been a fine imposed upon a conviction by the relevant court.

(7) Stoppages or compensation recovered under this section shall be remitted to the authority at the address specified in the certificate under subsection (4) above.

(8) Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one offence, it shall be deemed for the purposes of enforcement to be a single penalty only.

(9) Where—

(a) a financial penalty enforcement order has been made against any person, and

(b) he ceases to be a person to whom this section applies at a time when the whole or any part of the certified sum is still outstanding,

service enforcement procedures shall apply to the amount outstanding as if it were a sum payable by way of a fine imposed by a civil court.

(10) In this section—

"financial penalty" means—

(a) a fine, including a fine imposed by virtue of paragraph 13 of Schedule 5A below;

(b) stoppages;

(c) a compensation order imposed by virtue of paragraph 11 or 13 of Schedule 5A below; [F426]

(d)

[F427]"the relevant court" means—

(a) the magistrates' court in England or Wales,

(b) the sheriff court in Scotland, or

(c) the court of summary jurisdiction in Northern Ireland,

within whose jurisdiction the person against whom a financial penalty enforcement order is made appears to the Defence Council or an officer authorised by them to reside or to be likely to reside;

"service enforcement procedures" means any procedure available by virtue of any of the following enactments, namely—

(a) sections 144, 146 and 209(4) and (4A) below and sections 144, 146 and 209(4) and (4A) of the [M47]Army Act 1955, and

(b) sections 128A and 128B of the [M48]Naval Discipline Act 1957; and

"stoppages" does not include sums swarded by virtue of section 147 or 148 below.**]**

[F428(11) Where a fine has been awarded together with stoppages or a compensation order, this section shall have effect in relation to the fine and to the stoppages or compensation order as if they were separate penalties.]

Textual Amendments

F421 S. 133A inserted by Armed Forces Act 1976 (c. 52), s. 16, Sch. 8 paras. 1, **2**
F422 S. 133A(1)(*b*) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 7(2)**
F423 Words in s. 133A(2) renumbered as s. 133A(2)(a) (1.1.1999) by S.I. 1998/3086, **reg. 5(1)**
F424 S. 133A(2)(b) and word "or" immediately preceding it inserted (1.1.1999) by S.I. 1998/3086, **reg. 5(1)**
F425 Words substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 7(3)**
F426 Word repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**
F427 S. 133A(10)(*d*) repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**
F428 S. 133A(11) inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 7(4)**

Marginal Citations

M45 1955 c. 18.
M46 1957 c. 53.
M47 1955 c. 18.
M48 1957 c. 53.

134 Persons not to be tried under this Act for offences already disposed of.

(1) Where a person subject to air-force law—

[F429(a) has been tried for an offence by a competent civil court, wherever situated, or a court-martial (whether held under this Act, the M49Army Act 1955 or the M50Naval Discipline Act 1957), or

(aa) has had an offence committed by him taken into consideration when being sentenced by a competent civil court in the United Kingdom or any such court-martial as if referred to in the foregoing paragraph; or]

(b) has been charged with an offence under this Act, [F430the M51Naval Discipline Act 1957] or the M52Army Act 1955, and has had the charge dismissed, or has [F431had a finding that the charge has been proved recorded against him], by his commanding officer or the appropriate superior authority, or

(c) has had an offence condoned by his commanding officer (whether air-force, naval or military),

he shall not be liable in respect of [F432the same, or substantially the same offence] to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section—

F433(a) . . . . . .

(b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if F434. . . the sentence is quashed [F435(as well as in a case where the taking into consideration of the offence has been annulled by the F434. . . reviewing authority)];

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding [F436or award] of that officer or authority has been quashed, [F437on review or quashed or varied by the summary appeal court;]

(d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

(e) a person ordered under subsection (2) of section fifty-seven of this Act or the corresponding provision of the [M53]Army Act 1955 to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

[F438](3) . . . . . .

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

Textual Amendments

F429 S. 134(1)(a)(aa) substituted for s. 134(1)(a) by Armed Forces Act 1966 (c. 45), **s. 26**

F430 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F431 Words in s. 134(1)(b) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 77**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F432 Words in s. 134(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 5(3)**; S.I. 1991/2719, **art. 2**

F433 S. 134(2)(a) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F434 Words in s. 134(2)(b) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F435 Words added by Armed Forces Act 1981 (c. 55), **s. 5(4)(a)**

F436 Words in s. 134(2)(c) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 22(a)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F437 Words in s. 134(2)(c) substituted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 22(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F438 S. 134(3) repealed (1.4.1997) by 1996 c. 46, .s 35(2), Sch. 7 Pt. II; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C56 S. 134 excluded by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 19(2)**

C57 S. 134 modified (1.4.1997) by S.I. 1997/172, **art. 86**

C58 S. 134(1)(2) extended with modifications by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), **16**

Marginal Citations

M49 1955 c. 18.

M50 1957 c. 53.

M51 1957 c. 53.

M52 1955 c. 18.

M53 1955 c. 18.

Inquiries

135 Boards of inquiry.

(1) Subject to and in accordance with the provisions of rules made under this section (hereinafter referred to as "board of inquiry rules"), **[**[F439]the Defence Council**]** or any air-force, naval or military officer empowered by or under such rules so to do may convene a board of inquiry to investigate and report on the facts relating to—

(a) the absence of any person subject to air-force law;

(b) the capture of any such person by the enemy;

(c) the death of any person in an air-force establishment, being an establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority;

(d) any other matter of a class specified in such rules or referred to such a board by **[**[F439]the Defence Council**]** or any such officer as aforesaid;

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matter referred to the board.

[[F440](2) A board of inquiry shall consist of a president, who shall be an officer not below the rank of flight-lieutenant or corresponding rank and be subject to air-force law, the [M54]Naval Discipline Act 1957, or military law, and not less than two other members each of whom shall either be a person so subject or be a person not so subject who is in the service of the Crown.**]**

(3) Subject to the provisions of this section, board of inquiry rules may make provision with respect to the convening, constitution and procedure of boards of inquiry and, without prejudice to the generality of the foregoing, may make provision with respect to all or any of the following matters, that is to say:—

(a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;

(b) without prejudice to the provisions of the next following section, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules;

(c) such incidental and supplementary matters as appear requisite for the purposes of the rules.

(4) Board of inquiry rules shall contain provision for securing that any witness or other person **[**[F441]to whom this subsection applies**]** who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the rules.

[[F442]This subsection, so far as it applies to persons other than witnesses who may be affected by the findings, applies to persons of the following descriptions only, that is to say—

(a) persons who are subject to military law, air-force law or the [M55]Naval Discipline Act 1957;

(b) persons who, though not so subject, are in the service of the Crown and may be so affected in character or professional reputation; and

(c) persons who, though not so subject, are employed by the Civil Aviation Authority in or in connection with the provision by the Authority of air navigation services and may be so affected in character or professional reputation.**]**

[[F443](5) Evidence given before a board of inquiry convened—

(a) under this section,

(b) under section 135 of the Army Act 1955, or

(c) under the Queen's Regulations for the Royal Navy,

shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 70 of this Act where the corresponding civil offence is perjury.**]**

(6) The power to make board of inquiry rules shall be exercisable by the Secretary of State by statutory instrument which shall be laid before Parliament.

Textual Amendments

F439 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F440 S. 135(2) substituted by Army and Air Force Act 1961 (c. 52), **s. 26(1)**

F441 Words inserted by Armed Forces Act 1981 (c. 55), **s. 23(1)**

F442 Words added by Armed Forces Act 1981 (c. 55), **s. 23(1)**

F443 S. 135(5) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 38**; S.I. 2001/3234, **art. 2**

Modifications etc. (not altering text)

C59 S. 135 modified (1.4.1997) by 1996 c. 14, **s. 102(1)(a)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

Marginal Citations

M54 1957 c. 53.

M55 1957 c. 53.

136 Inquiries into absence.

(1) Where a board of inquiry inquiring into the absence of an officer, warrant officer, non-commissioned officer or airman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with Queen's Regulations be entered in the service books.

(2) A record entered in pursuance of the last foregoing subsection shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by **[**[F444]the Defence Council**]** or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

Textual Amendments

F444 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

Modifications etc. (not altering text)

C60 S. 136 modified (1.4.1997) by 1996 c. 14, **s. 102(1)(b)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

137 Unit inquiries.

(1) An officer of any of Her Majesty's air forces authorised in that behalf by or under regulations of **[**[F445]the Defence Council**]** may cause an inquiry to be held, in such manner and **[**[F446]by such person or persons as may be specified by or determined under such regulations (being, as the case may be, a person who is subject to air-force law, the [M56]Naval Discipline Act 1957, or military law or, not being so subject, is in the service of the Crown, or persons each of whom is so subject or, not being so subject, is in that service)**]**, into any matter so specified or determined:

Provided that an inquiry shall not be held in pursuance of this section into—

(a) the absence of a person subject to air-force law, or

(b) the capture of any such person by the enemy.

(2) Regulations of **[**[F445]the Defence Council**]** made for the purposes of this section may make provision as to the rules of evidence to be observed at inquiries held in pursuance of this section and the taking of evidence at such inquiries, and may authorise the taking of evidence on oath or affirmation, and the administration of oaths, in such cases as may be specified by or under the regulations.

(3) Subsections (4) and (5) of section one hundred and thirty-five of this Act shall apply in relation to inquiries held in pursuance of this section with the substitution of references to regulations of **[**[F445]the Defence Council**]** for references to board of inquiry rules and of references to an inquiry held in pursuance of this section for references to a board of inquiry.

Textual Amendments

F445 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F446 Words substituted by Army and Air Force Act 1961 (c. 52), **s. 26(2)**

Marginal Citations

M56 1957 c. 53.

Miscellaneous provisions

138 Restitution or compensation for theft, etc.

(1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, **[**[F447]handling it**]**, [F448], or otherwise **[**[F449]or where a person has been convicted of any offence by a court-martial and the court has taken such an offence of unlawfully obtaining property into consideration in sentencing him.**]**

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted, [F450]. . . or by any reviewing authority; and in this section the expression "appearing" means appearing to the court, [F450]. . . or authority making the order.

(8) [F451]. . . The provisions of this Part of this Act as to the [F451]. . . review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended—

(a) in any case, until the expiration of the period prescribed under **[**[F452]Part II of the [M57]Courts-Martial (Appeals) Act 1968**]**, as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against **[**[F453]a relevant conviction**]** must be lodged; and

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of such an order as aforesaid is suspended under this section—

(c) it shall not take effect if the conviction is quashed on appeal;

(d) the Courts-Martial Appeal Court may by order annul or vary the order although the conviction is not quashed;

(e) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under **[**[F452]Part II of the said Act of 1968**]**.

(10) Notwithstanding anything in the last foregoing subsection, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, [F454]. . . or authority making the order directs to the contrary in any case in which, in the opinion of the court, [F454]. . . or authority, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

[[F455](12) In this section "relevant conviction" means—

(a) where an order under this section was made as a result of a conviction of such an offence of unlawfully obtaining property as is mentioned in subsection (1) above, that conviction; or

(b) where an order under this section was made as a result of such an offence of unlawfully obtaining property having been taken into consideration in determining sentence, the conviction or, if more than one, each conviction in respect of which the sentence fell to be determined.**]**

Textual Amendments

F447 Words substituted by Theft Act 1968 (c. 60), **Sch. 2 Pt. II**

F448 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F449 Words added by Armed Forces Act 1976 (c. 52), s. 14, **Sch. 7 para. 1(1)**

F450 Words in s. 138(7) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F451 Words in s. 138(8) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F452 Words substituted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

F453 Words substituted by Armed Forces Act 1976 (c. 52), s. 14, **Sch. 7 para. 1(2)**

F454 Words in s. 138(10) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F455 S. 138(12) added by Armed Forces Act 1976 (c. 52), s. 14, **Sch. 7 para.1(3)**

Modifications etc. (not altering text)

C61 S. 138 extended with modifications by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), **17**

C62 S. 138(9) modified by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 46(1)**

Marginal Citations

M57 1968 c. 20.

[F456]139 Appointment of judge advocates.

. . . . . .

Textual Amendments

F456 S. 139 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 78, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

140 Promulgation.

Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by Queen's Regulations or as the [F457]. . . reviewing authority, [F457]. . ., may direct.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F457 Words in s. 140 repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 1)

141 Custody of proceedings of courts-martial and right of accused to a copy thereof.

(1) The record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by the two next following subsections **[**[F458]and by section 141A below**]** shall be capable of being exercised.

(2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate **[**[F459]as the Judge Advocate General may determine**]** a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at **[**[F459]the rate determined under subsection (2) above**]** a copy of the record of the proceedings of the court.

[[F460](3A) The right of a person or his representatives to obtain a copy of the record under this section does not extend to so much of the record as relates only to a charge of which he was found not guilty.**]**

(4) If, on an application in pursuance of **[**[F461]this section**]** for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section the expression "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence [F462]. . .:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon [F463]. . ..

[F464](6) . . . . . .

Textual Amendments

F458 Words inserted by Armed Forces Act 1981 (c. 55), **s. 8(2)**

F459 Words substituted by Armed Forces Act 1971 (c. 33), **s. 58**

F460 S. 141(3A) inserted by Armed Forces Act 1981 (c. 55), **s. 7(2)(a)(4)** except in relation to a record of proceedings commenced before 1.5.1982

F461 Words substituted by Armed Forces Act 1981 (c. 55), **s. 7(2)(b)(4)** except in relation to a record of proceedings commenced before 1.5.1982

F462 Words in s. 141(5) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F463 Words in the proviso to s. 141(5) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F464 S. 141(6) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[F465 141A Right of penalised parent or guardian to copy of record of court-martial proceedings.

(1) Subject to the provisions of this section, where a court-martial imposes a fine on or makes a compensation order against a parent or guardian under paragraph 13 of Schedule 5A to this Act, the parent or guardian shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate as the Judge Advocate General may determine a copy of the relevant part of the record of the proceedings of the court.

(2) Where the parent or guardian dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the rate determined under subsection (1) above a copy of the relevant part of the record of the proceedings of the court.

(3) In a case where this section applies, any entitlement conferred by subsection (1) or (2) above is in addition to any entitlement conferred by section 141(2) or (3) of this Act.

(4) If, on an application in pursuance of this section for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section "the relevant period" means the period of five years beginning with the date of the promulgation of the findings and sentence.

(6) In this section "the relevant part of the record" means so much of the record as relates to compliance with the requirements of the said paragraph 13 or to any matters taken into account by the court in deciding to impose the fine or make the compensation order.

(7) Subsection (6) of section 141 of this Act applies for the purposes of this section as it applies for the purposes of that section.]

Textual Amendments

F465 S. 141A inserted by Armed Forces Act 1981 (c. 55), **s. 8(1)**

142 Indemnity for prison officers, etc.

No action shall lie in respect of anything done by any person in pursuance of an air-force sentence of imprisonment or detention if the doing thereof would have been

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lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

Interpretation

143 Interpretation of Part II.

(1) In this Part of this Act:—

"air-force establishment" means an air-force prison or any other establishment under the control of the Secretary of State where persons may be required to serve air-force sentences of imprisonment or detention;

"air-force prison" means separate premises under the control of the Secretary of State and primarily allocated for persons serving air-force sentences of imprisonment;

references to an air-force sentence of imprisonment are references to a sentence of imprisonment passed by court-martial;

references to an air-force sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer;

"civil prison" means a prison in the United Kingdom in which a person sentenced by a civil court to imprisonment can for the time being be confined;

[F466] . . .

"prescribed" means prescribed by **[**[F467]rules under section 103 of this Act**]**.

(2) For the purposes of subsection (2) of section eighty-seven and subsection (2) of section eighty-eight of this Act, and of the proviso to subsection (3) of section ninety thereof, any period of service on a commission in the Home Guard shall be disregarded.

(3) References in this Part of this Act to warrant officers do not include references to acting warrant officers.

(4) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

Textual Amendments

F466 Definition of "convening officer" in s. 143(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 79(a), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F467 Words in the definition of "prescribed" in s. 143(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 79(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

PART III

FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

144 Forfeitures and deductions: general provisions.

(1) No forfeiture of the pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force shall be imposed unless authorised by this or some other

Act, and no deduction from such pay shall be made unless so authorised or authorised by an order under section two of the [M58]Air Force (Constitution) Act 1917.

(2) An order under section two of the [M59]Air Force (Constitution) Act 1917, shall not authorise the making of any penal deduction **[**[F468]from such pay**]**, that is to say a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The foregoing provisions of this section shall not prevent the making, by such an order or by any regulation, order or instruction of **[**[F469]the Defence Council**]** of provision for the imposition of any forfeiture authorised by Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of provision for the determination of questions relating to forfeitures or deductions.

(4) Subsection (2) of this section shall not prevent the making by an order under section two of the [M60]Air Force (Constitution) Act 1917, of provision for the deduction from a person's pay as an officer, warrant officer, non-commissioned officer or airman of the regular air force of any sum which has become recoverable from him (whether by deduction from pay or otherwise) under the enactments relating to any of the reserve or auxiliary forces.

(5) Notwithstanding any deduction from the pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed by order of **[**[F469]the Defence Council**]**.

(6) Notwithstanding that forfeiture of a person's pay for any period has been ordered in pursuance of this Act, he may remain in receipt of pay at such minimum rate as aforesaid; but the amount received for that period may be recovered from him by deduction from pay.

(7) Any amount authorised to be deducted from the pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force may be deducted from any balance (whether or not representing pay) which may be due to him, and references in this Act to the making of deductions from pay shall be construed accordingly . . . [F470]

Textual Amendments

F468 Words inserted by Armed Forces Act 1976 (c. 52), **s. 19**

F469 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F470 Words repealed by Armed Forces Act 1966 c. 45, **Sch. 5**

Modifications etc. (not altering text)

C63 S. 144(2) excluded by Armed Forces Act 1976 (c. 52). s. 19

Marginal Citations

M58 1917 c. 51.

M59 1917 c. 51.

M60 1917 c. 51.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

145 Forfeiture of pay for absence from duty.

(1) The pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force may be forfeited:—

(a) for any day of absence in such circumstances as to constitute an offence under section thirty-seven or thirty-eight of this Act or, if **[**[F471]the Defence Council**]** or an officer authorised by them so direct, of other absence without leave;

(b) for any day of imprisonment, **[**[F472]or detention**]** awarded under this Act, **[**[F473]the [M61]Naval Discipline Act 1957**]** or the [M62]Army Act 1955, by a court-martial or commanding officer, or of imprisonment, [F474] . . . detention in a **[**[F475]youth custody centre**]** or detention of any other description to which he is liable in consequence of

[[F476](i) an order or sentence of a civil court;

(ii) a revocation of a licence under section 62 of the Criminal Justice Act 1967; or

(iii) an order of recall under section 23 of the Prison Act (Northern Ireland) 1953.**]**

(c) where he is found guilty (whether by court-martial, the appropriate superior authority or his commanding officer) of an offence under this Act, **[**[F473]the [M63]Naval Discipline Act 1957**]** or the [M64]Army Act 1955, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force may be forfeited for any day of absence by reason of his having been made a prisoner of war if **[**[F471]the Defence Council**]** or an officer authorised by them are satisfied—

(a) that he was made a prisoner of war through . . . [F477]wilful neglect of his duty; or

(b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty's service; or

(c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage,

and nothing in paragraph (a) of the last foregoing subsection shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations or orders of **[**[F471]the Defence Council**]** may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

Textual Amendments

F471 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F472 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(7)**

F473 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F474 Words in s. 145(1)(b) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1)(2), Sch. 2 para. 11(2)(a), **Sch. 3**; S.I. 1991/2719, **art. 2**,Sch.

F475 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 6**

F476 Words in s. 145(1)(b) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 11(2)(b)**; S.I. 1991/2719, **art. 2**

F477 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

Modifications etc. (not altering text)

C64 Certain functions of Ministry of Home Affairs for Northern Ireland now exercisable by Department of Finance for Northern Ireland; S.R. & O. (N.I.) 1973/504, art. 5(d)

Marginal Citations

M61 1957 c. 53.
M62 1955 c. 18.
M63 1957 c. 53.
M64 1955 c. 18.

[[F478]146 Deduction for payment of civil penalties.

Where a person sentenced or ordered by a civil court (whether within or without Her Majesty's dominions) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, a member of the regular air force, then if the whole or any part of that sum is met by a payment made by or on behalf of any air-force authority, the amount of the payment may be deducted from his pay**]**.

Textual Amendments

F478 S. 146 substituted by Army and Air Force Act 1961 (c. 52), **s. 27**

147 Compensation for loss occasioned by wrongful act or negligence.

(1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations of **[**[F479]the Defence Council**]**, it appears to **[**[F479]the Defence Council**]** or an officer authorised by them that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer, warrant officer, non-commissioned officer or airman of the regular air force (hereinafter referred to as "the person responsible").

(2) **[**[F479]The Defence Council**]** or authorised officer, as the case may be, **[**[F480]may, at a time when the person responsible is a member of the regular forces, order him**]** to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the last foregoing subsection if, in proceedings (whether under this Act, **[**[F481]the [M65]Naval Discipline Act 1957**]** or the [M66]Army Act 1955) before a court-martial, the appropriate superior authority or the commanding officer of the person responsible, that person—

(a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question, or

(b) has been awarded stoppages in respect of the same loss or damage;

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under the last foregoing subsection.

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Textual Amendments

F479 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F480 Words in s. 147(2) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 39**; S.I. 2001/3234, **art. 2**

F481 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

Marginal Citations

M65 1957 c. 53.

M66 1955 c. 18.

148 Deductions for barrack damage.

(1) Where damage occurs to any premises in which one or more units of the regular air force or parts of such units are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with the provisions of Queen's Regulations, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of the said units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with Queen's Regulations be determined to be just, and the amount may be deducted from his pay.

(2) The last foregoing subsection shall extend to ships, trains and aircraft in which units or parts of units of the regular air force are being transported, and references to premises, quartering and occupation shall be construed accordingly.

Modifications etc. (not altering text)

C65 S. 148(2) extended by S.I. 1972/971, art. 4, **Sch.1**

149 Remission of forfeitures and deductions.

Any forfeiture or deduction imposed under the four last foregoing sections or under an order under section two of the [M67]Air Force (Constitution) Act 1917, may be remitted by **[**[F482]the Defence Council**]** or in such manner and by such authority as may be provided by the order.

Textual Amendments

F482 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

Marginal Citations

M67 1917 c. 51.

150 Enforcement of maintenance and affiliation orders by deduction from pay.

(1) Where any court in the United Kingdom has made an order against any person (hereinafter referred to as "the defendant") for the payment of any periodical or other sum specified in the order for or in respect of—

(a) the maintenance of his wife [F483] . . . . . [F484]; or

[[F485](aa) the maintenance of any child of his or his wife or of any other child who has been treated by them both as a child of their family; or]

(b) any costs incurred in obtaining the order; or

(c) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order,

(d) . . . . . [F486]

and the defendant is an officer, warrant officer, non-commissioned officer or airman of the regular air force, then (whether or not he was a member of that force when the said order was made) [[F487]the Defence Council] or an officer authorised by them may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as [[F487]the Defence Council] or officer think fit.

[[F488](1A) Without prejudice to any enactment or rule of law relating to adoption or legitimation, in subsection (1)(aa) above any reference to a child of the defendant or his wife shall be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time.]

(2) Where to the knowledge of the court making any such order as aforesaid, or an order varying, revoking or reviving any such order, the defendant is an officer, warrant officer, non-commissioned officer or airman of the regular air force, the court shall send a copy of the order to [[F487]the Defence Council] or an officer authorised by them.

(3) Where such an order as is mentioned in subsection (1) of this section has been made by a court in Her Majesty's dominions outside the United Kingdom, and [[F487]the Defence Council] or an officer authorised by them are satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, [[F487]the Defence Council] or officer shall have the like power under subsection (1) of this section as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to [[F489]an order adjudging a man to be the father of an illegitimate child, and ordering him to pay a sum of money for or in respect of the maintenance of that child or any order varying or reviving such an order, or any order] for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) [[F487]The Defence Council] or an officer authorised by them may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and forty-five of this Act.

(5) In this section— references to an order made by a court in the United Kingdom include references to an order registered in or confirmed by such a court under the provisions of the [M68]Maintenance Orders (Facilities for Enforcement) Act 1920 [[F490]and to an order registered in such a court under Part I of the [M69]Maintenance

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Orders (Reciprocal Enforcement) Act 1972**][**[F491]or Part I of the Civil Jurisdiction and Judgments Act 1982**][**[F492]or Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**]**; references to a wife [F493] . . . include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife [F493] . . . of the defendant if the marriage had subsisted;[F494] . . .[F495][F496] . . ..

Textual Amendments

F483 Words in s. 150(1)(a) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 14(2)(6), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F484 Words repealed by Army and Air Force Act 1961 (c. 52), **s. 29(2)(a)**

F485 S. 150(1)(aa) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 14(2)(6)**; S.I. 1991/2719, **art. 2**

F486 S. 150(1)(d) repealed by Armed Forces Act 1971 (c. 33), **Sch. 4 Pt. II**

F487 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F488 S. 150(1A) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 14(3)(6)**; S.I. 1991/2719, **art. 2**

F489 Words substituted by Army and Air Force Act 1961 (c. 52), **s. 29(2)(a)**

F490 Words inserted by Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), **Sch. para. 2**

F491 Words inserted by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 15(4), 23(2), 36(6), **Sch. 12 Pt. I para. 1**

F492 Words in s. 150(5) inserted (1.3.2002) by S.I. 2001/3929, arts. 1(b), 5, **Sch. 3 para. 3**

F493 Words in s. 150(5) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 14(4)(a)(6), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch**

F494 Paragraph in s. 150(5) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 14(4)(b), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F495 Words in s. 150(5) repealed (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(2), **Sch. 10**; S.R. 1996/297, **art. 2(2)**

F496 Words repealed (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(4), **Sch. 4**

Modifications etc. (not altering text)

C66 Reference to enactment of the Parliament of Northern Ireland includes reference to Measure of Northern Ireland Assembly: Northern Ireland Constitution Act 1973 (c. 36), **Sch. 5 para. 1**

Marginal Citations

M68 1920 c. 33.

M69 1972 c. 18.

[F497]150A Enforcement of maintenance assessment by deductions from pay.

(1) Subsection (2) applies where any officer, warrant officer, non-commissioned officer or airman of the regular air force ("the liable person") is required to make periodical payments in respect of any child in accordance with a **[**[F498]maintenance assessment**][**[F498]maintenance calculation**]** made under the Child Support Act 1991.

(2) The Defence Council or an officer authorised by them may order such sum to be deducted from the pay of the liable person and appropriated in or towards satisfaction of any obligation of his—

(a) to make periodical payments in accordance with the **[**[F499]maintenance assessment**][**[F499]maintenance calculation**]**; **[**[F500]or**]**

(b) [[F500]to pay interest (by virtue of regulations made under section 41(3) of the Act of 1991) with respect of arrears of child support maintenance payable in accordance with the assessment,]

as they, or the authorised officer, thinks fit.

(3) Where [[F501]the Secretary of State]]—

(a) makes [[F502]or cancels] a [[F503]maintenance assessment][[F503]maintenance calculation] or a fresh [[F503]maintenance assessment][[F503]maintenance calculation]; and

(b) has reason to believe that the person against whom [[F504]the assessment][[F504]the calculation] is, or was, made is an officer, warrant officer, non-commissioned officer or airman of the regular air force,

the Secretary of State shall inform the Defence Council or an officer authorised by them of the terms of [[F504]the assessment][[F504]the calculation][[F502]or (as the case may be) that it has been cancelled].

(4) This section applies whether or not the liable person was a member of the regular air force when the [[F505]maintenance assessment][[F505]maintenance calculation] was made.

Textual Amendments

F497 S. 150A inserted (E.W.S.) (12.4.1993) by S.I. 1993/785, **art. 3(1)**

F498 Words in s. 150A(1) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 2(2)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F499 Words in s. 150A(2)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 2(2)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F500 S. 150A(2)(b) and word repealed (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(e)(2), **Sch. 9 Pt. I** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F501 Words in s. 150A(3) substituted (1.6.1999) by 1998 c. 14, ss. 86(1), 87(2), **Sch. 7 para. 2**; S.I. 1999/1510, **art. 2(g)**

F502 Words in s. 150A(3) repealed (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(e)(2), **Sch. 9 Pt. I** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F503 Words in s. 150A(3)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 2(2)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F504 Words in s. 150A(3) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 2(3)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

F505 Words in s. 150A(4) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(a)(2), **Sch. 3 para. 2(2)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

[[F506]150AEnforcement of maintenance assessment by deductions from pay.

(1) Subsection (2) applies where any officer, warrant officer, non-commissioned officer or airman of the regular air force ("the liable person") is required to make periodical payments in respect of any child in accordance with a [[F507]maintenance assessment][[F507]maintenance calculation] made under the Child Support (Northern Ireland) Order 1991.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(2) The Defence Council or an officer authorised by them may order such sum to be deducted from the pay of the liable person and appropriated in or towards satisfaction of any obligation of his—

(a) to make periodical payments in accordance with the **[**[F508]maintenance assessment**][**[F508]maintenance calculation**]**; **[**[F509]or**]**

(b) **[**[F509]to pay interest (by virtue of regulations made under Article 38(3) of the Order of 1991) with respect to arrears of child support maintenance payable in accordance with the assessment,**]**

as they, or the authorised officer, thinks fit.

(3) Where **[**[F510]the Department of Health and Social Services for Northern Ireland**]]**—

(a) makes **[**[F511]or cancels**]** a **[**[F512]maintenance assessment**][**[F512]maintenance calculation**]** or a fresh **[**[F512]maintenance assessment**][**[F512]maintenance calculation**]**; and

(b) has reason to believe that the person against whom **[**[F513]the assessment**][**[F513]the calculation**]** is, or was, made is an officer, warrant officer, non-commissioned officer or airman of the regular air force,

[[F514]that Department**]** shall inform the Defence Council or an officer authorised by them of the terms of **[**[F513]the assessment**][**[F513]the calculation**][**[F511]or (as the case may be) that it has been cancelled**]**.

(4) This section applies whether or not the liable person was a member of the regular air force when the **[**[F515]maintenance assessment**][**[F515]maintenance calculation**]** was made.

Textual Amendments

F506 S. 150AA inserted (N.I.) (12.4.1993) by S.R. 1993/157, **art. 2(2)**

F507 Words in s. 150AA(1) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 3 para. 2(2)** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F508 Words in s. 150AA(2)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 3 para. 2(2)** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F509 S. 150AA(2)(b) and word repealed (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 9 Pt. 1** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F510 Words in s. 150AA(3) substituted (1.6.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 2(a)**; S.R. 1999/246, art. 2, **Sch. 1**

F511 Words in s. 150AA(3) repealed (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 9 Pt. 1** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F512 Words in s. 150AA(3)(a) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 3 para. 2(2)** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F513 Words in s. 150AA(3) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 3 para. 2(3)** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

F514 Words in s. 150AA(3) substituted (1.6.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 2(b)**; S.R. 1999/246, art. 2, **Sch. 1**

F515 Words in s. 150AA(4) substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), s. 68(1)(2), **Sch. 3 para. 2(2)** (with s. 66(6)); S.R. 2003/53, art. 3, Sch.

151 Deductions from pay for maintenance of wife or child.

(1) Where **[**[F516]the Defence Council**]** or an officer authorised by them are satisfied that an officer, warrant officer, non-commissioned officer or airman of the regular air force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of **[**[F517]seventeen**]**[F518]or that such a child of his is in care**]**[F516]the Defence Council**]** or officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as **[**[F516]the Defence Council**]** or officer think fit.

[[F519](1A) A child is in care for the purposes of this section at any time when by virtue of any enactment (including an enactment of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly)—

(a) he is **[**[F520]being looked after by a local authority in England or Wales (within the meaning of the Children Act 1989)**]**; or

(b) he is subject to a supervision requirement to which Part VI of the [M70]Social Work (Scotland) Act 1968 applies; or

[[F521](c) he is being looked after by an authority (within the meaning of the Children (Northern Ireland) Order 1995).**]]**

(2) On an application made to **[**[F516]the Defence Council**]** or an officer authorised by them for an order under **[**[F522]subsection (1) of this section**]**[F516]the Defence Council**]** or officer, if satisfied that a prima facie case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in **[**[F523]subsection (1) of this section**]** to take effect pending the further examination of the case.

(3) Where an order is in force under subsection (1) or subsection (3) of the last foregoing section for the making of deductions in favour of any person from the pay of an officer, warrant officer, non-commissioned officer or airman of the regular air force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer, warrant officer, non-commissioned officer or airman is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under the last foregoing section was made.

[[F524](3A) Where an order is in force under section 150A of this Act for deductions to be made from the pay of any member of the regular air force with respect to the maintenance of a child of his, no order may be made under this section for the deduction of any sums from the pay of that person with respect to the maintenance of that child.**]**

[[F525](3AA) Where an order is in force under section 150AA of this Act for deductions to be made from the pay of any member of the regular air force with respect to the maintenance of a child of his, no order may be made under this section for the deductions of any sums from the pay of that person with respect to the maintenance of that child.**]**

(4) **[**[F516]The Defence Council**]** or an officer authorised by them may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and forty-five of this Act.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(5) The power to make an order under this section for the deduction of any sum and its appropriation towards the maintenance of a child shall include power—

(a) subject to the provisions of subsection (3) of this section, to make such an order after the child has attained the age of **[**[F517]seventeen**]**, if an order in favour of the child is in force under subsection (1) or subsection (3) of the last foregoing section; or

(b) to make such an order after the child has attained the age of **[**[F517]seventeen**]** if—

(i) such an order of the court as is mentioned in subsection (1) of the last foregoing section was in force in favour of the child at the time when the child attained that age, and

(ii) the person from whose pay the deductions are ordered is in such a place as is mentioned in subsection (3) of this section, and

(iii) the child is for the time being engaged in a course of education or training; or

(c) to continue such an order from time to time after the child has attained the age of **[**[F517]seventeen**]**, if the child is for the time being engaged in a course of education or training;

but no order so made or continued shall remain in force after the child attains the age of twenty-one or shall, unless continued under paragraph (c) of this subsection, remain in force for more than two years.

[[F526](6) Without prejudice to any enactment or rule of law relating to adoption or legitimation, references in this section to a child of any person shall be construed without regard to whether the father and mother of the child have or had been married to each other at any time.**]**

Textual Amendments

F516 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**
F517 Words substituted by Armed Forces Act 1976 (c. 52), **s. 18(1)**
F518 Words inserted by Armed Forces Act 1976 (c. 52), **s. 18(2)**
F519 S. 151(1A) added by Armed Forces Act 1976 (c. 52), **s. 18(3)**
F520 Words in s. 151(1A)(a) substituted (*14.10.1991*) by Children Act 1989 (c. 41, SIF 20), s. 108(4), **Sch. 12 para. 9**; S.I. 1991/828, **art. 3(2)**
F521 S. 151(1A)(c) substituted (4.11.1996) by S.I. 1995/756, **art. 4** (with art. 16); S.R. 1996/297, **art. 3**
F522 Words substituted by Armed Forces Act 1981 (c. 55), **Sch. 2 para. 8**
F523 Words substituted by Armed Forces Act 1981 (c. 55, SIF 7:1), s. 11, **Sch. 2 para. 8**
F524 S. 151(3A) inserted (E.W.S.) (12.4.1993) by S.I. 1993/785, **art. 3(2)**
F525 S. 151(3AA) inserted (N.I.) (12.4.1993) by S.R. 1993/157, **art. 3(3)**
F526 S. 151(6) inserted (retrospectively) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 14(5)(6)**; S.I. 1991/2179, **art. 2**

Marginal Citations

M70 1968 c. 49.

[[F527]151A Deductions from pay in respect of judgment debts etc.

(1) Where by any judgment or order enforceable by a court in the United Kingdom any sum is required to be paid by a person who is a member of the regular air force, the

Defence Council or an officer authorised by them may, whether or not that person was a member of the regular air force at the time when the judgment or order was given or made, order such amount or amounts as the Council or officer think fit to be deducted from the pay of that person, and appropriated in or towards satisfaction of that sum:

Provided that this subsection shall not apply to any such sum as is mentioned in section 146 of this Act, to any sum in respect of which deductions may be ordered under section 150 of this Act, or to any sum in respect of which deductions may be made by virtue of section 32(2)(b) of the [M71]Courts-Martial (Appeals) Act 1968.

(2) The Defence Council or an officer authorised by them may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 145(1)(a) of this Act.**]**

Textual Amendments

F527 S. 151A inserted by Armed Forces Act 1971 (c. 33), **ss. 59(1)**, 78(5)

Marginal Citations

M71 1968 c. 20.

152 Limit of deductions under ss. 150 and 151 and effect on forfeiture.

[[F528](1) The sums deducted from a person's pay under sections 150 **[**[F529],150A**]**[F530] , 150AA**]**, 151 and 151A above shall not together exceed such proportion of his pay as the Defence Council may determine.**]**

(2) Where any deductions have been ordered **[**[F531]under section 150 **[**[F529],150A**]**[F530], 150AA**]**, 151 or 151A above**]** from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay . . . [F532]in consequence of the finding or sentence of a court-martial or the finding or award of the appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

(3) . . . . . [F533]

Textual Amendments

F528 S. 152(1) substituted by Armed Forces Act 1971 (c. 33), **ss. 59(2)**, 78(5)
F529 Words in s. 152 inserted (E.W.S.) (12.4.1993) by S.I. 1993/785, **art. 3(3)**
F530 Words in s. 152 inserted (N.I.) (12.4.1993) by S.R. 1993/157, **art. 3(4)**
F531 Words substituted by Armed Forces Act 1971 (c. 33), **ss. 59(2)**, 78(5)
F532 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**
F533 Ss. 120(8), 152(3), 153(2) repealed by Armed Forces Act 1971 (c. 33), **Sch. 4 Pt. II**

153 Service of process in maintenance proceedings.

(1) Any process to be served on an officer, warrant officer, non-commissioned officer or airman of the regular air force (hereinafter referred to as "the defendant") in connection with proceedings for any such order of a court in the United Kingdom as is mentioned in subsection (1) of section one hundred and fifty of this Act, or for the variation,

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

revocation or revival of such an order, shall be deemed to be duly served on him if served **[**[F534]on**]** his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) . . . . . [F535]

(3) Where any such process as is mentioned in subsection (1) of this section is served in the United Kingdom and the defendant will be required to appear in person at the hearing, **[**[F536]the service of the process shall be of no effect**]** if his commanding officer certifies to the court by which the process was issued that the defendant is under orders for active service out of the United Kingdom and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, . . . [F537]

[[F538](3A) Where any such process as is mentioned in subsection (1) of this section is to be served in the United Kingdom or elsewhere and the defendant will be required to appear in person at the hearing, the service of the process shall be of no effect if his commanding officer certifies to the court by which the process was issued that the defendant is absent without leave or has deserted and remains in desertion.**]**

[[F539](4) Nothing in this section shall be construed as enabling process to be served in connection with proceedings in a court of summary jurisdiction unless the defendant is within the United Kingdom.**]**

Textual Amendments

F534 Word substituted by Armed Forces Act 1981 (c. 55), **s. 18(2)(a)**
F535 Ss. 120(8), 152(3), 153(2) repealed by Armed Forces Act 1971 (c. 33), **Sch. 4 Pt. II**
F536 Words substituted by Armed Forces Act 1981 (c. 55), **s. 18(2)(b)**
F537 Word repealed by Armed Forces Act 1981 (c. 55), **Sch. 5 Pt. II**
F538 S. 153(3A) inserted by Armed Forces Act 1981 (c. 55), **s. 18(2)(c)**
F539 S. 153(4) added by Armed Forces Act 1971 (c. 33), **s. 62(1)(b)**

PART IV

BILLETING AND REQUISITIONING OF VEHICLES

Billeting

154 Billeting requisitions.

At any time when this section is in operation any officer not below the rank of squadron leader commanding any part of the regular air force in the United Kingdom may issue a billeting requisition requiring the chief officer of police for any area in the United Kingdom specified in the requisition to provide billets at such places in that area, for such numbers of members of Her Majesty's forces and, if the requisition so provides, for such number of vehicles in use for the purpose of Her Majesty's forces, being vehicles of any class specified in the requisition, as may be so specified.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

155 Premises in which billets may be provided.

(1) Billets, other than for vehicles, may be provided in pursuance of a billeting requisition—

(a) in any inn or hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;

(b) in any building not falling within the last foregoing paragraph, being a building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates;

(c) in any dwelling, outhouse, warehouse, barn or stables;

but not in any other premises.

(2) Billets for vehicles may be provided as aforesaid in any building or on any land.

156 Provision of billets.

(1) Where a billeting requisition has been produced to the chief officer of police for the area specified in the requisition he shall, on the demand of the officer commanding any portion of the regular air force, or on the demand of an officer or airman authorised in writing by such an officer commanding, billet on the occupiers of premises falling within the last foregoing section, being premises at such place in that area as may be specified by the officer or airman by whom the demand is made, such number of persons or vehicles as may be required by that officer or airman, not exceeding the number specified in the requisition.

(2) Without prejudice to the provisions of the next following section, a chief officer of police shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom billeting may take place.

(3) A chief officer of police may to such extent and subject to such restrictions as he thinks proper authorise any constable, or constables of any class, to exercise his said functions on his behalf, and the foregoing provisions of this section shall apply accordingly.

157 Billeting schemes.

(1) A local authority may make a scheme for the provision of billets in their area in pursuance of billeting requisitions; and where such a scheme is in force the chief officer of police shall so far as the scheme extends exercise his functions under the last foregoing section in accordance with the scheme.

(2) Any scheme under this section may be revoked by the local authority by whom it was made, or may be varied by that authority by a subsequent scheme under this section.

(3) Where a local authority make a scheme under this section they shall furnish the chief officer of police for the area to which the scheme relates with a copy of the scheme.

(4) A scheme under this section shall not come into force until approved by the Minister of Housing and Local Government; and that Minister may require the local authority to revoke any scheme in force under this section and in substitution therefor to submit for his approval a further scheme under this section.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Modifications etc. (not altering text)

C67 Functions of Minister of Housing and Local Government now exercisable by Secretary of State: S.I. 1970/1681, **art. 2(1)**

158 Accommodation to be provided and payment therefor.

(1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or airman demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations of **[**[F540]the Defence Council**]** made with the consent of the Treasury.

(2) Where vehicles are billeted as aforesaid, the occupier of the premises shall furnish standing room for the vehicles.

(3) Where persons or vehicles have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as section one hundred and fifty-four of this Act continues in operation, for such period as may be required, and the allotment of billets among the persons or vehicles in question may be varied from time to time.

(4) The occupier on whose premises any person or vehicle is billeted as aforesaid shall be entitled to receive for the billeting such payment as may be prescribed by regulations of **[**[F540]the Defence Council**]** made with the consent of the Treasury:

Provided that no payment shall be required in respect of vehicles billeted otherwise than in a building unless the land on which they are billeted—

(a) has its surface made up for the passage or parking of vehicles, and

(b) is not land where vehicles are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.

(5) Subject to the provisions of the next following subsection, payment for billeting—

(a) shall be made before the persons billeted finally leave, or the vehicles are finally removed from, the premises where they are billeted; and

(b) where the billeting continues for more than seven days, shall be made at least once in every seven days.

(6) If for any reason payment for billeting cannot be made, or fully made, as required by paragraph (a) of the last foregoing subsection, there shall be made up with the occupier an account in such form as may be prescribed by **[**[F540]the Defence Council**]** of the amount due to him; and—

(a) on presentation of the account the local authority for the area in which the premises are situated shall pay to the occupier the amount stated in the account to be due,

(b) any sums paid by a local authority under the last foregoing paragraph shall be recoverable by them from **[**[F540]the Defence Council**]**,

(7) In relation to premises of which there is no occupier the foregoing provisions of this section shall apply as if the person entitled to possession thereof were the occupier thereof.

Textual Amendments

F540 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

159 Appeals against billeting.

(1) Any person who—

(a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or

(b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

may apply to a person or persons appointed on behalf of the local authority in accordance with arrangements made by the Minister of Housing and Local Government.

(2) On any application on the grounds mentioned in paragraph (a) of the last foregoing subsection the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.

(3) On any application on the grounds mentioned in paragraph (b) of subsection (1) of this section the person or persons to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect billeting pending the determination of the application.

Modifications etc. (not altering text)

C68 Functions of Minister of Housing and Local Government now exercisable by Secretary of State: S.I. 1970/1681, **art. 2(1)**

160 Compensation for damage.

(1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting requisition, the occupier of the premises, or if there is no occupier the person entitled to possession thereof, may recover from **[**[F541]the Defence Council**]** compensation of an amount equal to the depreciation caused by the damage in the value of the premises.

(2) Where any person other than the recipient of compensation under the last foregoing subsection has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

(3) A county court shall have jurisdiction to deal with any claim arising under subsection (1) or (2) of this section irrespective of the amount of the claim.

Textual Amendments

F541 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

161 Refusal to receive persons billeted, etc.

Any person who—

(a) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him, or

(b) gives or agrees to give to any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicle or of furnishing accommodation properly required for him, or

(c) obstructs the billeting in his building or on his land of any vehicle,

shall be liable on summary conviction to a fine not exceeding **[**[F542]level 3 on the standard scale**]**, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

Textual Amendments

F542 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

162 Application to civilians employed with air force.

In relation to persons employed with any body of the regular air force and not entitled under the foregoing provisions of this Part of this Act to be billeted, being persons of such descriptions as may be prescribed by regulations of **[**[F543]the Defence Council**]**, those provisions shall apply as they apply in relation to members of Her Majesty's forces.

Textual Amendments

F543 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

163 Local authority.

For the purposes of this Part of this Act the local authority shall be the council of a . . . [F544]district or . . . [F544]borough or the Common Council of the City of London.

Textual Amendments

F544 Words repealed by Statute Law (Repeals) Act 1976 (c. 16), **Sch. 1 Pt. XII**

164 Suspension of laws against billeting.

While section one hundred and fifty-four of this Act is in operation, so much of any law as prohibits, restricts or regulates quartering or billeting on any inhabitant of the United Kingdom shall not apply to such billeting in pursuance of a billeting requisition.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Requisitioning of vehicles

165 Requisitioning orders.

(1) At any time when this section is in operation any officer not below the rank of squadron leader commanding any part of the regular air force in the United Kingdom may issue a requisitioning order authorising the requisitioning, from among vehicles in any area in the United Kingdom specified in the order, of such vehicles, or such number of vehicles of such description, as may be specified in the order.

(2) The purposes for which an order under this section may authorise vehicles to be requisitioned shall be such purposes for meeting the needs of any of Her Majesty's forces as may be specified in the order.

166 Provision of vehicles.

(1) A requisitioning order may be issued to the officer commanding any portion of the regular air force, and that officer, or any officer or airman authorised by him in writing, may give directions for the provision—
   (a) in so far as the requisitioning order authorises the requisitioning of particular vehicles, of all or any of those vehicles.
   (b) in so far as the order authorises the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.

(2) A direction under the last foregoing subsection given as respects any vehicle shall be either—
   (a) a direction given to the person having possession thereof to furnish it immediately at the place where it is, or
   (b) a direction given to the said person to furnish it at such place within one hundred miles from the premises of the said person and at such time as may be specified by the officer or airman by whom the direction is given:

   Provided that no direction shall be given under paragraph (b) of this subsection as respects a vehicle which is neither mechanically propelled nor a trailer normally drawn by a mechanically-propelled vehicle.

(3) If the officer to whom the requisitioning order was issued, or any officer or airman authorised by him in writing, is satisfied that the said person has refused or neglected to furnish a vehicle in accordance with a direction under any of the provisions of the last foregoing subsection, or has reasonable ground for believing that it is not practicable without undue delay to give a direction to the said person, he may take, or authorise any officer or airman to take, possession of the vehicle; and where possession is taken of a vehicle in pursuance of this subsection this Part of this Act shall with the necessary modifications apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

(4) The chief officer of police for any area specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as practicable constables will be available,

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

if required, for accompanying officers or airmen requisitioning vehicles in pursuance of the order.

167 Period for which vehicles to be furnished.

(1) Subject to the provisions of this section, where a vehicle has been furnished in pursuance of a requisitioning order it may be retained, so long as section one hundred and sixty-five of this Act is in operation, for any period for which it is required for the purpose specified in the order or for any other purpose connected with the needs of any of Her Majesty's forces.

(2) While **[**[F545]a call-out order under section 52 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the air force reserve**]**, then in so far as a requisitioning order so provides the person by whom any vehicle is to be furnished may be required to furnish it for the purpose of its being purchased on behalf of the Crown.

Textual Amendments

F545 Words in s. 167(2) substituted (1.1.1999) by S.I. 1998/3086, **reg. 9(6)**

168 Payment for vehicles furnished.

(1) The person by whom a vehicle is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—

(a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognised or generally prevailing in the district at the time at which the vehicle is furnished, or, in default of such a rate, at such rate as may be just,

(b) a sum equal to the cost of making good any damage to the vehicle, not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by a person acting on behalf of Her Majesty,

(c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss.

In paragraph (b) of this subsection and in the Fourth Schedule to this Act references to fair wear and tear shall be construed as references to such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(2) The person by whom a vehicle is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(3) Where a vehicle is furnished in pursuance of a direction under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act, then—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if that subsection applies) the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and

for the purposes of subsection (2) of this section (if that subsection applies) the vehicle shall be deemed to have been furnished at that time;

(b) in addition to the payments provided for by subsection (1) or (2) of this section, the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle is given under the said paragraph (b), and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in a total loss thereof), then if the damage prevents the furnishing of the vehicle in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle had been furnished, and (notwithstanding that it may have been required to be furnished for the purpose of being purchased) had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say—

(a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage,

(b) paragraph (b) of the last foregoing subsection shall have effect as if for the words "in complying with" there were substituted the words "by reason of anything done for the purpose of complying with".

(5) Where any person (hereinafter referred to as a person interested) other than the person by whom a vehicle is required to be furnished has an interest in the vehicle,—

(a) the person by whom the vehicle is required to be furnished shall notify any person known to him to be a person interested that the vehicle has been requisitioned.

(b) any person interested shall be entitled to recover from the person by whom the vehicle was required to be furnished such part (if any) of the payment received by him for the vehicle as may be just.

(6) The Fourth Schedule to this Act shall have effect as to the time for the making of payments under this section and as to the determination of disputes arising thereunder.

(7) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section and of the Fourth Schedule to this Act the said period shall be deemed to have come to an end immediately after the occurrence of the loss, and

(b) no claim shall be made for the return of the vehicle (if it still exists) or for payment in respect thereof other than such as is provided for by subsection (1) of this section.

169 Avoidance of hardship in requisitioning of vehicles.

In deciding which, of alternative vehicles, is to be specified in an order under section one hundred and sixty-five of this Act, or is to be the subject of a direction under paragraph (b) of subsection (1) of section one hundred and sixty-six thereof, the officer or airman by whom the order is issued or direction given shall act in such manner as in his opinion will cause least hardship.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

170 Record and inspection of mechanically propelled vehicles.

[[F546]The Defence Council**]** may by regulations require persons having in their possession in the United Kingdom mechanically-propelled vehicles, or trailers normally drawn by mechanically-propelled vehicles, if required so to do by such authority or person as may be specified in the regulations,—

(a) to furnish to such authority or person as may be so specified a return containing such particulars as to the vehicles as may be required by or under the regulations, and

(b) to afford all reasonable facilities for enabling any such vehicles in his possession to be inspected and examined, at such times as may be specified by or under the regulations, by such authority or person as may be so specified.

Textual Amendments

F546 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

171 Enforcement of provisions as to requisitioning.

(1) If any person—

(a) fails to furnish any vehicle which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle at the time and place at which he is directed to furnish it, or

(b) fails to comply with any regulations of **[**[F547]the Defence Council**]** under the last foregoing section, or

(c) obstructs any officer or other person in the exercise of his functions under this Part of this Act in relation to the inspection or requisitioning of vehicles,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding **[**[F548]level 3 on the standard scale**]**, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

(2) Without prejudice to any penalty under the last foregoing subsection, if any person is obstructed in the exercise of powers of inspection conferred on him by regulations under the last foregoing section, a justice of the peace may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorising a constable named therein, accompanied by the said person, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening and to inspect any vehicles which may be found therein.

Textual Amendments

F547 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F548 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

172 Application to aircraft and stores.

(1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act and the provisions of the Fourth Schedule thereto, shall apply to aircraft and stores as they apply to vehicles except that such of those provisions as relate only to mechanically-propelled vehicles and trailers normally drawn thereby shall not apply to stores.

(2) Where stores are required for, and can be conveyed with, a vehicle or aircraft with respect to which a direction is given under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act, such a direction may be given as well in relation to the stores as in relation to the vehicle or aircraft, and the said foregoing provisions and Schedule shall apply accordingly:

Provided that subsection (4) of section one hundred and sixty-eight of this Act shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle or aircraft such payment (if any) shall be made in respect of the stores as may be just in all the circumstances.

(3) Notwithstanding anything in section one hundred and sixty-seven of this Act, stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase on behalf of the Crown.

(4) In this section the expression "stores" means any chattel other than a vehicle or aircraft being a chattel required for, or for use in connection with,—
   (a) persons or vehicles or aircraft billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated, or
   (b) vehicles or aircraft furnished or to be furnished in pursuance of a requisitioning order.

173 Liability of Crown for damage by vehicles being delivered for requisitioning.

The person using a vehicle for the purpose of its being furnished in pursuance of a direction under paragraph (b) of subsection (2) of section one hundred and sixty-six of this Act shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle as a servant of the Crown, ***[****[F549]and section thirty-five of the [M72]Road Traffic Act 1930 (which relates to insurance against third party risks) shall not apply to the use of a vehicle for the said purpose****]***.

Textual Amendments

F549 Words repealed (E.W.)(S.) by Road Traffic Act 1960 (c. 16), **Sch. 18 Pt. I**

Marginal Citations

M72 1930 c. 43.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

General

174 Bringing into operation of ss. 154 and 165.

(1) Whenever it appears to the Secretary of State that the public interest so requires, he may by order direct that section one hundred and fifty-four or one hundred and sixty-five of this Act, or both those sections, shall come into operation either generally or as respects such area in the United Kingdom as may be specified in the order; and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.

(2) As soon as may be after either of the said sections has been brought into operation on any occasion, the Secretary of State shall report that fact to Parliament.

(3) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the foregoing provisions of this subsection or of this proviso), it is resolved by each House of Parliament that the public interest requires that the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

175 Regulations and orders.

(1) Any power to make regulations conferred by this Part of this Act shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) The power to make orders conferred on the Secretary of State by the last foregoing section shall be exercisable by statutory instrument.

176 Interpretation of Part IV.

References in this Part of this Act to airmen shall include references to warrant officers and to non-commissioned officers.

PART V

GENERAL PROVISIONS

Powers of command

177 Powers of command.

(1) It is hereby declared for the avoidance of doubt that Her Majesty may make regulations as to the persons, being members of Her Majesty's forces, in whom command over Her Majesty's air forces, or any part or member thereof, is to be vested and as to the circumstances in which such command as aforesaid is to be exercised.

(2) In relation to members of Her Majesty's air forces when in aircraft, the last foregoing subsection shall have effect as if references to members of Her Majesty's forces included references to any person in command of an aircraft.

(3) Nothing in this section shall affect any power vested in Her Majesty apart from this section.

178 Powers of command of members of co-operating naval or military forces.

In so far as powers of command depend on rank, a member of any of Her Majesty's naval or military forces who—

(a) is acting with, or

(b) is a member of a body of any of those forces which is acting with,

any body of the regular air force shall have the like such powers as a member of the regular air force of corresponding rank; and for the purposes of sections thirty-three and seventy-four of this Act any such member of the said naval or military forces shall be treated as if he were a member of the regular air force of corresponding rank.

Attachment to naval or military forces

179 Attachment of members of air forces to naval or military forces.

(1) An officer, warrant officer, non-commissioned officer or airman of the regular air force may be attached temporarily to any of Her Majesty's naval or military forces.

(2) Regulations made by the **[**[F550]Defence Council**]** may prescribe circumstances in which officers, warrant officers, non-commissioned officers and airmen of the regular air force shall be deemed to be attached to any of Her Majesty's naval or military forces, as the case may be, under the last foregoing subsection.

(3) . . . . . [F551]

(4) A person shall not cease to be subject to air-force law by reason only of attachment in pursuance of this section.

Textual Amendments

F550 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F551 S. 179(3), Sch. 6 paras. 3, 4 repealed by S.I. 1964/488, **Sch. 1 Pt. I**

Modifications etc. (not altering text)

C69 S. 179 extended by Naval Discipline Act 1957 (c. 53), **s. 113(1)**

Redress of complaints

[[F552]**180 Redress of complaints.**

(1) If a person subject to air-force law thinks himself wronged in any matter relating to his service he may make a complaint with respect to that matter to such officer as may be prescribed.

[[F553](2) A person ("the person aggrieved") may not make a complaint under this section with respect to—

(a) any decision of a judicial officer or judge advocate under section 75C, 75F, 75G, 75H, 75J or 75K of this Act,

(b) any decision of a judicial officer under Part 2 of the Armed Forces Act 2001,

(c) any matter against which the person aggrieved may present a petition under section 113 of this Act, or

(d) any matter against which the person aggrieved may bring an appeal under section 83ZE of this Act or under the Courts-Martial (Appeals) Act 1968.**]**

(3) The procedure for making and dealing with a complaint under this section shall be laid down in Queen's Regulations, which may, in particular, provide—

(a) for a complaint not to be made after the end of such period as may be prescribed;

(b) for any such period to be extended, in the case of a complaint made after the end of the period, in such circumstances as may be prescribed;

(c) for a complaint to be referred, for its first consideration, by the officer to whom it was made to a superior officer; and

(d) if the complainant does not obtain the redress to which he thinks he is entitled (whether from the officer who first considered the complaint or from a superior officer by virtue of provision made as mentioned in this paragraph), for the complaint to be referred to, and considered by, a superior officer.

(4) Any period prescribed for the purposes mentioned in subsection (3)(a) above shall not be less than three months beginning with the day on which the matter complained of occurred.

(5) An officer to whom a complaint is made or referred under provision made by virtue of subsection (3) above shall grant any redress which appears to him necessary.

(6) If the complainant does not obtain the redress to which he thinks he is entitled by the procedure referred to in subsection (3) above, he may submit his complaint to the Defence Council in accordance with the procedure laid down in Queen's Regulations.

(7) The Defence Council shall have any complaint submitted to them investigated and shall grant any redress which appears to them necessary.

(8) Where a complaint by an officer has been submitted to the Defence Council and he does not obtain the redress to which he thinks he is entitled, the Defence Council shall, at his request, make a report on the complaint through the Secretary of State to Her Majesty in order to receive the directions of Her Majesty thereon.

(9) This section applies to a person who is not subject to air-force law, in relation to any matter which took place while he was so subject, as it applies to a person who is subject to air-force law.

(10) In this section "prescribed" means prescribed by Queen's Regulations.**]**

Textual Amendments

F552 S. 180 substituted (1.10.1997) by 1996 c. 46, **s. 20(2)**; S.I. 1997/2164, **art. 2** (with Sch.)

F553 S. 180(2) substituted (30.9.2003) by Armed Forces Act 2001 (c. 19), s. 39(2), **Sch. 6 para. 41**; S.I. 2003/2268, art. 2 (with art. 3)

Modifications etc. (not altering text)
C70 S. 180: power to modify conferred (24.9.1996) by S.I. 1996/1919 (N.I. 16), **art. 237**

[F554]181 . . . . . .

Textual Amendments
F554 S. 181 repealed (1.5.2001) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. III**; S.I. 2001/1519, **art. 2(1)(b)**

Exemptions for members of regular air force

182 Officers on active list not to be sheriffs.

An officer of the regular air force on the active list (as defined by order under section two of the [M73]Air Force (Constitution) Act 1917) shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place.

Marginal Citations
M73 1917 c. 51.

183 . . . . . .[F555]

Textual Amendments
F555 S. 183 repealed by (E.W.) Criminal Justice Act 1972 (c. 71), **Sch. 6 Pt. I**, (N.I.) S.I. 1974/2143 (N.I.6), **Sch. 5** and (S.) Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), **Sch. 3**

184 Exemptions from tolls, etc.

(1) Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place in the United Kingdom or any colony, or for passing over any road or bridge in the United Kingdom or any colony, shall not be payable in respect of—
   (a) members of the regular air force on duty;
   (b) vehicles in air-force service, being vehicles belonging to the Crown or other vehicles driven by persons (whether members of Her Majesty's forces or not) in the service of the Crown;
   (c) goods carried in such vehicles;
   (d) horses or other animals in air-force service.

(2) In the last foregoing subsection the expression "in air-force service" means employed under proper air-force authority for the purposes of any body of the regular air force or accompanying any body of the regular air force.

(3) Members of the regular air force on duty when using ferries in Scotland shall be entitled to be carried at half rate.

Modifications etc. (not altering text)

C71 S. 184 extended by Reserve Forces Act 1980 (c. 9), **ss. 84(b)**, 119(b)

C72 S. 184 modified (1.4.1997) by 1996 c. 14, **s. 124(2)** (with 72(5)); S.I. 1997/305, **art. 2**

185 Exemption from taking in execution of property used for air-force purposes.

No judgment or order given or made against a member of any of Her Majesty's air forces by any court in the United Kingdom or a colony shall be enforced by the levying of execution on any property of the person against whom it is given or made, being arms, ammunition, equipment, instruments or clothing used by him for air-force purposes.

Provisions relating to deserters and absentees without leave

186 Arrest of deserters and absentees without leave.

(1) A constable may arrest any person whom he has reasonable cause to suspect of being an officer, warrant officer, non-commissioned officer or airman of the regular air force who has deserted or is absent without leave.

(2) Where no constable is available, any officer, warrant officer, non-commissioned officer or airman of the regular air force, or any other person, may arrest any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer, warrant officer, non-commissioned officer or airman of the regular air force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a court of summary jurisdiction.

[[F556](4A) A person shall also be brought before a court of summary jurisdiction if, having been brought before such a court by virtue of subsection (4) above and discharged by that court by virtue of section 187(3) below—

(a) he is subsequently arrested as an alleged or suspected deserter or absentee without leave under section 74 of this Act, or under a warrant issued under section 190A thereof, and

(b) the question whether he is in fact in desertion or absent without leave raises any issue which was investigated by the court discharging him, and

(c) he does not admit that he is in desertion or absent without leave to the person arresting him under the said section 74 or, as the case may be, to the person into whose custody he is delivered pursuant to the said section 190A.**]**

(5) This section shall have effect in the United Kingdom and in any colony.

Textual Amendments

F556 S. 186(4A) inserted by Armed Forces Act 1971 (c. 33), **s. 56(1)**

Modifications etc. (not altering text)
C73 S. 186 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

187 Proceedings before a civil court where persons suspected of illegal absence.

(1) Where a person who is brought before a court of summary jurisdiction is alleged to be an officer, warrant officer, non-commissioned officer or airman of the regular air force who has deserted or is absent without leave, the following provisions shall have effect.

(2) If he admits that he is illegally absent from the regular air force and the court is satisfied of the truth of the admission, then—

(a) unless he is in custody for some other cause the court shall, and

(b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into air-force custody in such manner as the court may think fit or **[**[F557], where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into air-force custody.**]**

Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to air-force law and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the court shall cause him to be delivered into air-force custody or **[**[F557], where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into air-force custody.**]**, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

(4) The following provisions of **[**[F558]the [M74]Magistrates' Courts Act 1980**]** or any corresponding enactment in force as respects the court in question, that is to say the provisions relating to the constitution and procedure of courts of summary jurisdiction acting as examining justices and conferring powers of adjournment and remand on such courts so acting, and the provisions as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to any proceedings under this section.

[[F559](4A) For the purposes of any proceedings under this section, a certificate which states that a person is a member of, and illegally absent from, the regular air force, and purports to be signed by an officer who, if that person were charged with an offence, would be either his commanding officer or authorised to act as his appropriate superior authority, shall be evidence of the matters so stated.**]**

(5) This section shall have effect in the United Kingdom and in any colony.

Textual Amendments

F557 Words in s. 187(2)(3) substituted (2.10.2000) by 2000 c. 4, **s. 9(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F558 Words substituted by Magistrates' Courts Act 1980 (c. 43), **Sch. 7 para. 13**

F559 S. 187(4A) inserted by Armed Forces Act 1971 (c. 33), **s. 56(2)**

Modifications etc. (not altering text)

C74 S. 187 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

Marginal Citations

M74 1980 c. 43.

188 Deserters and absentees without leave surrendering to police.

(1) Where in the United Kingdom or any colony a person surrenders himself to a constable as being illegally absent from the regular air force, the constable shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The officer of police in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into air-force custody without bringing him before a court of summary jurisdiction or may bring him before such a court.

Modifications etc. (not altering text)

C75 S. 188 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

189 Certificates of arrest or surrender of deserters and absentees.

(1) Where a court of summary jurisdiction in pursuance of section one hundred and eighty-seven of this Act deals with a person as illegally absent, then when that person is delivered into air-force custody there shall be handed over with him a certificate in the prescribed form, signed by a justice of the peace, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court; and for any such certificate there shall be payable to the **[**[F560]proper officer**]** of the court, by such person as **[**[F561]the Defence Council**]** may direct, such fee (if any) as may be prescribed.

(2) Where under the last foregoing section a person is delivered into air-force custody without being brought before a court, there shall be handed over with him a certificate in the prescribed form, signed by the officer of police who causes him to be delivered into air-force custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section thirty-seven or thirty-eight of this Act—

(a) a document purporting to be a certificate under either of the two last foregoing subsections, and to be signed as thereby required, shall be evidence of the matters stated in the document;

[F562(aa) where the proceedings are against a person who has surrendered himself to a consular officer, a certificate purporting to be signed by that officer and stating the fact, date, time and place of surrender shall be evidence of the matters stated in the certificate;]

(b) where the proceedings are against a person who has been taken into air-force, naval or military custody on arrest or surrender, a certificate purporting to be signed by a provost officer, or any corresponding officer of a Commonwealth force or a force raised under the law of a colony, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

[F563(3A) In subsection (1) of this section "proper officer" means—

(a) in relation to a court of summary jurisdiction in England and Wales, the justices' chief executive for the court; and

(b) in relation to a court of summary jurisdiction elsewhere, the clerk of the court.]

(4) In this section the expression "prescribed" means prescribed by regulations made by a Secretary of State by statutory instrument.

Textual Amendments

F560 Words in s. 189 substituted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 para. 19, **20(2)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

F561 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F562 S. 189(3)(aa) inserted by Armed Forces Act 1971 (c. 33), **s. 56(3)**

F563 S. 189(3A) inserted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 para. 19, **20(3)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

Modifications etc. (not altering text)

C76 S. 189 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

C77 S. 189(1) amended by Army and Air Force Act 1961 (c. 52), **s. 30**

190 Duties of governors of prisons and others to receive deserters and absentees.

(1) It shall be the duty of the governor of a civil prison in the United Kingdom or of the superintendent or other person in charge of a civil prison in a colony to receive any person duly committed to that prison by a court of summary jurisdiction as illegally absent from the regular air force and to detain him until in accordance with the directions of the court he is delivered into air-force custody.

(2) The last foregoing subsection shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, whether in the United Kingdom or in a colony, as it applies to the governor or superintendent of a prison.

Modifications etc. (not altering text)

C78 S. 190 extended by Guyana Independence Act 1966 (c. 14), **s. 5(2)**

Further powers of arrest of civil authorities

[F564 190A Arrest under warrants of commanding officers.

(1) A warrant for the arrest of a person suspected of any offence under Part II of this Act may be issued by his commanding officer (determined for the purposes of this subsection as if that person had been charged with the offence).

(2) A warrant issued under this section shall be addressed to an officer or officers of police, and shall specify the name of the person for whose arrest it is issued and the offences which he is alleged to have committed; and any such warrant may be issued in respect of two or more persons alleged to have committed the same offence, or offences of the same class.

(3) A person arrested under a warrant issued under this section shall as soon as practicable be delivered into air-force custody; and there shall be handed over with him a certificate signed by the officer of police who causes him to be delivered into air-force custody stating the fact, date, time and place of arrest, and whether or not the person arrested was at the time of arrest wearing the uniform of any of Her Majesty's air forces.

(4) A certificate under subsection (3) above shall be in such form as may be prescribed by regulations made by a Secretary of State by statutory instrument and shall for the purposes of this Act be evidence of the matters stated therein.**]**

Textual Amendments

F564 Ss. 190A, 190B inserted by Armed Forces Act 1971 (c. 33), **s. 44(2)**

190B Arrest of persons unlawfully at large.

(1) A constable may arrest without warrant any person who, having been sentenced under Part II of this Act to imprisonment or detention, is unlawfully at large during the currency of the sentence, and may take him to any place in which he may be required in accordance with law to be detained.

(2) The provisions of subsections (5) to (7) of section 119 of this Act shall have effect for the purposes of subsection (1) above as they have effect for the purposes of the said section 119.

Offences relating to air-force matters punishable by civil courts

191 Punishment for pretending to be a deserter.

Any person who in the United Kingdom or any colony falsely represents himself to any air-force, naval, military or civil authority to be a deserter from the regular air force shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

192 Punishment for procuring and assisting desertion.

(1) Any person who, whether within or without Her Majesty's dominions,—

(a) procures or persuades any officer, warrant officer, non-commissioned officer or airman of the regular air force to desert or to absent himself without leave; or

(b) knowing that any such officer, warrant officer, non-commissioned officer or airman is about to desert or absent himself without leave, assists him in so doing; or

[[F565](c) knowing any person to be a deserter or absentee without leave from the regular air force, procures or persuades or assists him to remain such a deserter or absentee, or assists in his rescue from custody**]**,

shall be guilty of an offence against this section.

(2) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

Textual Amendments

F565 S. 192(1)(c) substituted by Armed Forces Act 1966 (c. 45), **s. 18(1)**

193 Punishment for obstructing members of regular air force in execution of duty.

Any person who, in the United Kingdom or any colony, wilfully obstructs or otherwise interferes with any officer, warrant officer, non-commissioned officer or airman of the regular air force acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding **[**[F566]level 3 on the standard scale**]** or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

Textual Amendments

F566 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

194 Punishment for aiding malingering.

Any person who, whether within or without Her Majesty's dominions,—

(a) produces in an officer, warrant officer, non-commissioned officer or airman of the regular air force any sickness or disability; or

(b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid air-force service, whether permanently or temporarily, shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding

five hundred pounds or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

195 Unlawful purchase, etc., of air-force stores.

(1) Any person who, whether within or without Her Majesty's dominions, acquires any air-force stores or solicits or procures any person to dispose of any air-force stores, or acts for any person in the disposing of any air-force stores, shall be guilty of an offence against this section unless he proves either—

(a) 2 that he did not know, and could not reasonably be expected to know, that the chattels in question were air-force stores, or

(b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of **[**[F567]the Defence Council**]** or of some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent, or

(c) that those chattels had become the property of an officer who had retired or ceased to be an officer, or of a warrant officer, non-commissioned officer or airman who had been discharged, or of the personal representatives of a person who had died.

(2) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding five hundred pounds or imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

[[F568](3) A constable may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.**]**

[[F568](3) A constable may seize any property which he has reasonable grounds for suspecting of having been the subject of an offence against this section.**]**

(4) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a court of summary jurisdiction.

(5) In this section—

the expression "acquire" means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

the expression "dispose" means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

the expression "air-force stores" means any chattel of any description belonging to Her Majesty, which has been issued for use for air-force purposes or is held in store for the purpose of being so issued when required, and

includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

(6) For the purposes of subsection (4) of this section property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

Textual Amendments

F567 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F568 S. 195(3) commencing "A constable may seize" substituted (E.W.NI.) for s. 195(3) commencing "A constable may arrest" by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119(1), **Sch. 6 Pt. I para. 8** (E.W.) and by S.I. 1989/1341 (N.I.12), art. 90(1), **Sch. 6 para.4**

196 Illegal dealings in documents relating to pay, pensions, mobilisation, etc.

(1) Any person who—

(a) as a pledge or a security for a debt, or

(b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's air-force service shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid, or any official document issued in connection with the mobilisation or demobilisation of any of Her Majesty's air forces or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding **[**[F569]level 3 on the standard scale**]** or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

(5) This section shall have effect in the United Kingdom and in any colony.

Textual Amendments

F569 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

197 Unauthorised use of and dealing in decorations, etc.

(1) Any person who, in the United Kingdom or in any colony,—

(a) without authority uses or wears any air-force decoration, or any badge, wound stripe or emblem supplied or authorised by **[**[F570]the Defence Council**]**, or

(b) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any air-force decoration, or any such badge, stripe or emblem as aforesaid, as to be calculated to deceive, or

(c) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (a) of this subsection,

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall prohibit the use or wearing of ordinary regimental badges or of brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any air-force, naval or military decoration awarded to any member of Her Majesty's air forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding **[**[F571]level 3 on the standard scale**]** or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

Textual Amendments

F570 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F571 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F**, 289G and (N.I.) S.I. 1984/703 (N.I.3), **arts. 5**, 6

Provisions as to evidence

198 General provisions as to evidence.

(1) The following provisions . . . [F572] shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) 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 or was discharged from any part of those forces at or before any specified time, or

(b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or

during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place, or

(c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of **[**[F573]the Defence Council**]**, . . . [F574], or by a person authorised by . . . [F574] them, be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by Queen's Regulations for the purposes of this subsection, being a record made in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of air-force duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in **[**[F575]any such book or other document as aforesaid**]**, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book **[**[F576]or other document**]**, shall be evidence of the record.

(6) A document purporting to be issued by order of **[**[F573]the Defence Council**]** and to contain instructions or regulations given or made by **[**[F573]the Defence Council**]** shall be evidence of the giving of the instructions or making of the regulations and of their contents.

(7) A certificate purporting to be issued by or on behalf of **[**[F573]the Defence Council**]**, . . . [F574] or by a person authorised by . . . [F574] them, and stating—

(a) that a decoration of a description specified in or annexed to the certificate is an air-force, naval or military decoration, or

(b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by **[**[F573]the Defence Council**]**,

shall be evidence of the matters stated in the certificate.

(8) 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 formation or unit *or***[**[F577]body of Her Majesty's forces**]**, or

(b) any command or other area, garrison or place, or

(c) any ship, train or aircraft,

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

(9) Any document which would be evidence in any proceedings under the [M75]Army Act 1955, by virtue of section one hundred and ninety-eight of that Act **[**[F578], or in any proceedings under the [M76]Naval Discipline Act 1957, by virtue of section 64C of that Act,**]** shall in like manner, subject to the like conditions, and for the like purpose be evidence in the like proceedings under this Act.

Textual Amendments

F572 Words repealed by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119(2), **Sch. 7 Pt. III**

F573 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F574 Words repealed by S.I. 1964/488, **Sch. 1 Pt. I**

F575 Words substituted by Army and Air Force Act 1961 (c. 52), **Sch. 2**

F576 Words inserted by Army and Air Force Act 1961 (c. 52), **Sch. 2**

F577 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(8)**
F578 Words in s. 198(9) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 80**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Marginal Citations
M75 1955. c. 18.
M76 1957 c. 53.

198A, 198B . . . . . [F579]

Textual Amendments
F579 Ss. 198A, 198B repealed by Police and Criminal Evidence Act 1984 (c. 60, SIF 95),s. 119(2), Sch. 7 Pt. III

[[F580][F580]198C]] Provision as to age.

Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court-martial, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.

Textual Amendments
F580 S. 198C: s. 198A inserted by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 4**; renumbered as s. 198C by Armed Forces Act 1981 (c. 55), **s.9(2)**

199 Proof of outcome of civil trial.

(1) Where a person subject to air-force law has been tried before a civil court (whether at the time of the trial he was subject to air-force law or not), a certificate signed by the **[**[F581]proper officer**]**of the court and stating all or any of the following matters,—
   (a) that the said person has been tried before the court for an offence specified in the certificate,
   (b) the result of the trial,
   (c) what judgment or order was given or made by the court,
   (d) that other offences specified in the certificate were taken into consideration at the trial,

   shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) The **[**[F581]proper officer**]** of the court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this section and shall be paid such fee as may be prescribed by regulations made by a Secretary of State.

(3) A document purporting to be a certificate under this section and to be signed by the **[**[F581]proper officer**]** of the court shall, unless the contrary is shown, be deemed to be such a certificate.

[[F582](4) In this section "proper officer" means—

(a) in relation to a court of summary jurisdiction in England and Wales, the justices' chief executive for the court; and

(b) in relation to any other court, the clerk of the court, his deputy or any other person having the custody of the records of the court.**]**

Textual Amendments

F581 Words in s. 199(1)(2)(3) substituted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 para. 19, **21(2)** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

F582 S. 199(4) substituted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 para. 19, **21(3)** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

200 Evidence of proceedings of courts martial.

(1) The original proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Judge Advocate General or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the orginal proceedings of a court-martial or any part thereof and to be certified by the Judge Advocate General or any person authorised by him, or by any other person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be

(3) This section applies to evidence given in any court, whether civil or criminal and whether in the United Kingdom or in any colony.

[F583]200A . . . . . .

Textual Amendments

F583 S. 200A repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 5**

Miscellaneous provisions

201 Restrictions on reduction in rank of warrant officers and non-commissioned officers.

(1) A warrant officer or non-commissioned officer of the regular air force shall not be reduced in rank except by sentence of a court-martial (whether under this Act, **[**[F584]the [M77]Naval Discipline Act 1957**]** or the [M78]Army Act 1955) or by order of **[**[F585]the Defence Council**]**, or of an officer, not below the rank of **[**[F586]group captain, of captain in the Royal Navy or of colonel**]**, authorised by **[**[F585]the Defence Council**]** to act for the purposes of this section.

(2) An authorisation under the last foregoing subsection may be given generally or subject to such limitations as may be specified by **[**[F585]the Defence Council**]**.

(3) For the purposes of subsection (1) of this section reduction in rank does not include reversion from acting rank.

Textual Amendments

F584 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F585 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F586 Words substituted by Armed Forces Act 1971 (c. 33), **s. 68**

Modifications etc. (not altering text)

C79 S. 201 excluded by Naval Discipline Act 1957 (c. 53), s. 113(2), **Sch. 2 para. 6**

Marginal Citations

M77 1957 c. 53.

M78 1955 c. 18.

202 Temporary reception in civil custody of persons under escort.

(1) Where a person is in air-force custody when charged with, or with a view to his being charged with, an offence against Part II of this Act, it shall be the duty of the governor, superintendent or other person in charge of a prison (not being an air-force prison), or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

(2) This section shall have effect in the United Kingdom and in any colony.

203 Avoidance of assignment of or charge on air-force pay, pensions, etc.

(1) Every assignment of or charge on, and every agreement to assign or charge, any pay, air-force award, grant, pension or allowance payable to any person in respect of his or any other person's service in Her Majesty's air forces shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any enactment providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

(4) This section shall have effect in the United Kingdom and in any colony.

Modifications etc. (not altering text)

C80 S. 203(1)(2) excluded (1.8.1996) by 1995 c. 26 ss. 166(4)(5)(a), 167(4); S.I. 1996/1675, **art. 3(b)**
S. 203(1)(2) excluded (1.8.1996) by S.I. 1995/3213 (N.I.22), **art. 162(4)(5)(a)**; S.R. 1996/284, **art. 3(1)(b)**
S. 203(1)(2) excluded (11.11.1999 for the purpose of the exercise of any power to make regulations, otherwise 1.12.2000) by 1999 c. 30, **ss. 44(1)**; S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

204 Power of certain officers to take affidavits and declarations.

(1) An officer of the regular air force **[**[F587]who is of or above the rank of squadron leader or is of the rank of flight lieutenant and is a member of the legal branch of that force**]** (hereinafter referred to as an "authorised officer") may, at a place outside the United Kingdom, take affidavits and declarations from any of the following persons, that is to say, persons subject to air-force law and persons not so subject who are of any description specified in the Fifth Schedule to this Act.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of an affidavit or declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the affidavit or declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

[[F588](3) The power conferred by subsection (1) above may also be exercised by any officer empowered to take affidavits or declarations by section 204(1) of the [M79]Army Act 1955 or section 10(1) of the [M80]Emergency Laws (Miscellaneous Provisions) Act 1953.**]**

Textual Amendments

F587 Words substituted by Armed Forces Act 1981 (c. 55), **s. 19(4)**

F588 S. 204(3) added by Armed Forces Act 1971 (c. 33), **s. 70(3)**

Marginal Citations

M79 1955 c. 18.

M80 1953 c. 47.

[F589]204A Exclusion of enactments requiring fiat of Attorney General etc. in connection with proceedings.

With the exception of **[**[F590]subsection (3A)**]** of section 132 of this Act, no enactment requiring the fiat or consent of the Attorney General or the Director of Public Prosecutions in connection with any proceedings shall have effect in relation to proceedings under this Act.**]**

Textual Amendments

F589 S. 204A inserted by Armed Forces Act 1971 (c. 33), **s. 45(1)**

F590 Words in s. 204A substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 6(1)**; S.I. 1991/2719, **art. 2**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

PART VI

APPLICATION OF ACT AND SUPPLEMENTAL PROVISIONS

Persons subject to air-force law

205 Persons subject to air-force law: general provisions.

(1) The following persons are subject to air-force law:—

(a) every officer holding an air forces commission (as defined in subsection (3) of this section) and for the time being employed, or recalled for employment, in Her Majesty's service in any capacity in which he can be required to be employed as the holder of his commission;

(b) every officer holding an air forces commission (as defined as aforesaid) who for the time being is not employed, or not employed as mentioned in paragraph (a) of this subsection, but is liable (otherwise than in specified circumstances only) to be recalled to air-force service under Her Majesty;

[F591](c) . . . . . .

(d) every officer, not subject to air-force law under the foregoing provisions of this section, who being the holder of an air forces commission (as defined as aforesaid) is employed in Her Majesty's service in employment of which it is an express condition that while employed therein he is to be subject to air-force law;

(e) every officer, not subject to air-force law under the foregoing provisions of this section, who, with the approval of **[**[F592]the Defence Council**]** given subject to an express condition that while in that employment he is to be subject to air-force law, is employed otherwise than in Her Majesty's service;

[[F593F593](f) every officer of the air force reserve or Royal Auxiliary Air Force who is not a special member;

[F593](ff) every officer of the air force reserve or Royal Auxiliary Air Force who is a special member, when in permanent service, in full-time service or undertaking any training or duty (whether in pursuance of an obligation or not);**]**

(g) every warrant officer, non-commissioned officer and airman of the regular air force;

(h) every warrant officer, non-commissioned officer and man of the air force reserve when **[**[F594]in permanent service, in full-time service or undertaking any training or duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the air force reserve;**]**

(i) every warrant officer, non-commissioned officer and man of the Royal Auxiliary Air Force when **[**[F595]in permanent service, in full-time service, called out for home defence service or undertaking any training or duty**]** (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Royal Auxiliary Air Force;

(j) every person in receipt of a pension in respect of service in the regular air force, or of such service and other service, who is employed in Her Majesty's service as mentioned in paragraph (d) of this subsection;

(k) every person not otherwise subject to air-force law who is serving in any force raised by order of Her Majesty outside the United Kingdom and is under

the command of an officer holding an air forces commission (as defined as aforesaid).

(2) For the purposes of paragraph (e) of the last foregoing subsection a certificate of **[**[F592]the Defence Council**]** that approval to a person's employment was given subject to the condition mentioned in that paragraph shall be conclusive evidence of the facts stated in the certificate.

[[F596](3) In this section—

"air forces commission" means a commission in the Royal Air Force, the air force reserve or the Royal Auxiliary Air Force;

"full-time service" means service under a commitment entered into under section 24 of the Reserve Forces Act 1996;

"permanent service" means permanent service on call out under any provision of the Reserve Forces Act 1980 , the Reserve Forces Act 1996 or any other call-out obligations of an officer;

"special member" has the same meaning as in the Reserve Forces Act 1996.**]**

[F597](4) . . . . . .

Textual Amendments

F591 S. 205(1)(c) repealed (1.4.1997) by 1996 c. 14, s. 131(1)(2), Sch. 10 para. 9(2), **Sch. 11** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F592 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F593 S. 205(1)(f)(ff) substituted for s. 205(1)(f) (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 9(3)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F594 Words in s. 205(1)(h) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 9(4)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F595 Words in s. 205(1)(i) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 9(5)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F596 S. 205(3) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 10** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F597 S. 205(4) repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**

206 Persons subject to air-force law: Commonwealth forces.

Members of a naval, military or air force being a Commonwealth force are subject to air-force law to such extent, and subject to such adaptations and modifications, as may be provided by or under any enactment relating to the attachment of members of such forces.

207 Persons subject to air-force law: Colonial forces.

(1) Subject to the provisions of this section, where any air force is raised under the law of a colony, any such law—

(a) may make provision in relation to that force and the officers, warrant officers, non-commissioned officers and airmen thereof so as to have effect as well when they are outside as when they are within the limits of the colony;

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(b) may apply in relation to the force and the officers, warrant officers, non-commissioned officers and airmen thereof all or any of the provisions of this Act, either with or without adaptations, modifications or exceptions.

(2) Where any air force raised under the law of a colony is serving with part of the regular air force, the air force reserve, or the Royal Auxiliary Air Force, then in so far as the law of the colony does not provide for the government and discipline of the force and the members thereof this Act shall apply—

(a) to the officers thereof as it applies to officers holding air forces commissions (within the meaning of section two hundred and five of this Act) and

(b) to the warrant officers, non-commissioned officers and airmen thereof as it applies to warrant officers, non-commissioned officers and airmen of the regular air force,

but subject to such adaptations, modifications or exceptions as may be specified in the general orders of the officer, whether air-force, naval or military, but not below the rank of group captain or corresponding rank, commanding the forces with which the force raised in the colony is serving.

(3) While any officer, warrant officer, non-commissioned officer or airman belonging to a force raised under the law of a colony is attached to, doing duty with, or otherwise acting as part of or with any portion of the regular air force, the air force reserve or the Royal Auxiliary Air Force **[**[F598]outside that colony**]**, the foregoing provisions of this section shall not apply in relation to him, but he shall be subject to air-force law by virtue of this subsection and this Act shall apply to him as if he were a member of the regular air force.

Textual Amendments

F598 Words substituted by Army and Air Force Act 1961 (c. 52), **s. 35**

208 Persons subject to air-force law: attached members of naval and military forces.

Where a member of any of Her Majesty's naval or military forces is attached to any part of the regular air force, the air force reserve or the Royal Auxiliary Air Force he shall while so attached be subject to air-force law; and the provisions of the Sixth Schedule to this Act shall have effect as respects persons subject to air-force law by virtue of this section.

[[F599]208A Application of Act to passengers in H.M. ships and aircraft.

Part II of this Act shall, to such extent and subject to such modifications as may be prescribed by regulations made by the Defence Council, apply to persons embarked as passengers on board Her Majesty's ships or aircraft (not being persons who are subject to air-force law by virtue of any of the foregoing provisions of this Act, or persons who are subject to air-force law or to the [M81]Naval Discipline Act 1957) as it applies to persons subject to air-force law.**]**

Textual Amendments

F599 S. 208A inserted by Armed Forces Act 1971 (c.33), **s. 72(1)**

Marginal Citations
M81 1957 c. 53.

209 Application of Act to civilians.

(1) Subject to the modifications hereinafter specified, where any body of the regular air force is on active service, Part II of this Act shall apply to any person who is employed in the service of that body of the force or any part or member thereof, or accompanies the said body or any part thereof, and is not subject to air-force law, **[**[F600]the [M82]Naval Discipline Act 1957**]** or military law apart from this section or any corresponding provisions of that Act or the [M83]Army Act 1955, as the said Part II applies to persons subject to air-force law.

(2) Subject to the modifications hereinafter specified, Part II of this Act shall at all times apply to a person of any description specified in the Fifth Schedule to this Act who is within the limits of the command of any officer commanding a body of the regular air force outside the United Kingdom and is not subject to air-force law, **[**[F600]the [M84]Naval Discipline Act 1957**]** or military law apart from this section or any corresponding provisions of that Act or the [M85]Army Act 1955, as the said Part II applies to persons subject to air-force law:

Provided that none of the provisions contained in sections twenty-four to sixty-nine of this Act shall apply to a person by virtue only of this subsection **[**[F601]except—

(a) sections 29, 35, 36 and 55 to 57, and **[**[F602]sections 68 and 68A so far as they relate**]** to those sections, and

(b) in the case of persons falling within any description specified in paragraphs 1 to 4 of Schedule 5, section 34B and **[**[F602]sections 68 and 68A so far as they relate**]** to that section.**]**

(3) The said modifications are the following:

[[F603](a) on a trial—

(i) a court-martial may award the punishment specified in paragraphs [F604]. . . (b) and (h) of section 71(1) above, except that section 71(5)(a) above shall not apply to the amount of a fine;

(ii) a Standing Civilian Court established under the [M86]Armed Forces Act 1976 may award any punishment authorised for such courts by section 8 of that Act; and

(iii) a court-martial or Standing Civilian Court may make any order authorised by Schedule 5A below;

(aa) any such order shall be treated as a punishment for the purposes of this Act;

(ab) paragraph 15 of Schedule 5A below shall have effect in substitution for the words in section 71(1) above from "and references in this Act" to the end;**]**

(b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding **[**[F605]£100**]**, but no other punishment;

(c) the following provision shall have effect in substitution for subsections (2) to (4) of section seventy-four, that is to say that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular air force;

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[[F606](ca) section 75J(2)(b) above shall have effect with the omission of the words from the beginning to "of this Act";

(cb) section 75K(6) above shall have effect with the omission of paragraph (a);**]**

[F607](d) . . . . . .

(e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall save as otherwise expressly provided apply as they apply to officers and warrant officers;

(f) for the purposes of **[**[F608]Part 2 of this Act**]**, the commanding officer shall be such officer as may be determined by or under regulations of **[**[F609]the Defence Council**]** made for the purposes of this section;

[[F610](fa) a court-martial for the trial of any such person as is mentioned in subsection (1) or (2) above may include in place of the corresponding number of **[**[F611]officers or warrant officers**]**—

(i) if it is a general court-martial [F612]. . ., not more than two persons who are in the service of the Crown and are persons such as are mentioned in subsection (1) or (2) above, and

(ii) if it is a district court-martial [F613]. . ., not more than one person who is in the service of the Crown and is himself a person such as is mentioned in either of those subsections,

but a person who is a member of a court-martial by virtue of this paragraph shall not be appointed the president of the court-martial;**]**

[[F614](faa) references to the officers appointed members of a court-martial shall be construed as including references to persons who are members of a court-martial by virtue of paragraph (fa) above;**]**

[[F615](fab) where the summary appeal court hears an appeal brought by any such person as is mentioned in subsection (1) or (2) above and the court would otherwise include two officers qualified under section 83ZC of this Act for membership of the court, the court may include in place of either or both of them a corresponding number of persons who are in the service of the Crown and are persons such as are mentioned in subsection (1) or (2) above,

(fac) references in Part II of this Act to the officers qualified under section 83ZC for membership of the summary appeal court shall be construed as including references to persons who are members of that court by virtue of paragraph (fab) above,**]**

[F616](fb) . . . . . .

(g) for references in sections one hundred and thirty-one and one hundred and thirty-two of this Act to being, continuing, or ceasing to be subject to air-force law there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that the said Part II applies, and subsection (3) of the said section one hundred and thirty-one shall not apply.

[[F617](3A) For the purposes of paragraph (*g*) of subsection (3) of this section a person shall be deemed not to have ceased to be in such circumstances as are mentioned in that paragraph if he has so ceased by reason only of one or both of the following, namely—

(a) the fact that he has ceased to be within the limits of a command within whose limits he continues to have his ordinary residence or to serve or to be employed;

(b) the fact that there has been an interruption of his residence with a family of persons whose place of residence continues to be his home.**]**

[[F618]**[** In their application to any area for which Standing Civilian Courts are established [F619](3B)**]** under the [M87]Armed Forces Act 1976—

[F620](a) . . . . . .

[[F621](aa) section 83 above shall have effect as if after subsection (1) there were inserted the following subsection—

(1A) Regulations under this section may provide for sections 76 to 76C of this Act to have effect subject to such modifications as may be specified in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try.**]**

[[F622](b) section 103(1) above shall have effect as if the following paragraph were inserted after paragraph (b)—

(c) the hearing by courts-martial of appeals against findings and sentences of Standing Civilian Courts.**]**

(c) subsection (3) above shall have effect in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try, but without prejudice to its effect in relation to other charges, as if the following paragraph were substituted for paragraph (e):—

"(e) sections 76, **[**[F623]to 76C**]** above shall apply as they apply to officers and warrant officers, subject to such modifications **[**[F624]as may be specified by regulations under section 83 of this Act**]** and by any order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976;"**]**.

[F625](3C) . . . . . .

[[F626](4) A fine awarded against any person by virtue of this section by a court-martial, a Standing Civilian Court or the appropriate superior authority, and a sum which an order under paragraph 11 of Schedule 5A below requires any person to pay shall be recoverable, in the United Kingdom or any colony, as a debt due to Her Majesty.

(4A) The registration of a financial penalty enforcement order under section 133A above shall not affect the power of recovery in a colony conferred by subsection (4) above.

(4B) Section 199 above shall appply to persons such as are mentioned in subsection (1) or (2) above, as it applies to persons subject to **[**[F627]air force law**]]**.

[[F628](5) This section does not apply to any person to whom section 208A above applies.**]**

Textual Amendments

F600 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F601 Words in the proviso to s. 209(2) substituted (28.2.2002) by 2001 c. 19, ss. 32(9), 39(2), **Sch. 5 para. 4**; S.I. 2002/345, **arts. 2**,3

F602 Words in paras. (a)(b) of the proviso to s. 209(2) substituted (28.2.2002) by 2001 c. 19, ss. 34, 39(2), **Sch. 6 Pt. 6 para. 50(2)**; S.I. 2002/345, **arts. 2**,3

F603 S. 209(3)(a)(aa)(ab) substituted for s. 209(3)(a) by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 5**

F604 Word in s. 209(3)(a)(i) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F605 Words substituted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 1**

F606 S. 209(3)(ca)(cb) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 4(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F607 S. 209(3)(d) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 81(a), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

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F608 Words in s. 209(3)(f) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 50(3)**; S.I. 2001/3234, **art. 2**
F609 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**
F610 S. 209(3)(fa) inserted by Armed Forces Act 1976 (c. 52), **s. 9(1)**
F611 Words in s. 209(3)(fa) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 14**; S.I. 2002/345, **arts. 2**,3
F612 Words in s. 209(3)(fa)(i) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 81(b), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F613 Words in s. 209(3)(fa)(ii) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 81(b), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F614 S. 209(3)(faa) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 81(c)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F615 S. 209(3)(fab)(fac) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 17**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)
F616 S. 209(3)(fb) repealed by Armed Forces Act 1981 (c. 55), **Sch. 5 Pt. II**
F617 S. 209(3A) inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 8(1)**
F618 S. 209(3A) inserted by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 6**
F619 S. 209(3A) renumbered as subsection (3B) by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 8(1)**
F620 S. 209(3B)(a) repealed (2.10.2000) by 2000 c. 4, s. 27, **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)
F621 S. 209(3B)(aa) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 82(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F622 S. 209(3B)(b) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 82(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F623 Words in s. 209(3B)(c) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 82(4)(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F624 Words in s. 209(3B)(c) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 82(4)(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
F625 S. 209(3C) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 50(4), **Sch. 7 Pt. 4**; S.I. 2001/3234, **art. 2**
F626 S. 209(4)(4A)(4B) substituted for s. 209(4) by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 7**
F627 Words substituted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 2**
F628 S. 209(5) added by Armed Forces Act 1971 (c. 33), **s. 72(2)**

Marginal Citations

M82 1957 c.53.
M83 1955 c. 18.
M84 1957 c. 53.
M85 1955 c. 18.
M86 1976 c. 52.
M87 1976 c. 52.

Application of Act to particular forces

210 Application of Act to reserve and auxiliary forces.

(1) Subject to the provisions of this section, references in Parts II to V of this Act to the regular air force shall include references to the following persons, that is to say—

[[F629](a) officers of the air force reserve when in permanent service, in full-time service or undertaking any training or duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the air force reserve,**]**

(b) officers who have retired (within the meaning of any order under section two of the [M88]Air Force (Constitution) Act 1917) but are for the time being subject to air-force law, and

[[F630](c) officers of the Royal Auxiliary Air Force when in permanent service, in full-time service, called out for home defence service or undertaking any training or duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the Royal Auxiliary Air Force,**]**

(d) warrant officers, non-commissioned officers and men of the air force reserve and the Royal Auxiliary Air Force while subject to air-force law;

and references to officers, warrant officers, non-commissioned officers or airmen, or to members or a body, of the regular air force or to illegal absence from that force shall be construed accordingly.

[[F631](2) Subsection (4) of section 17 shall apply to warrant officers, non-commissioned officers and men of the air force reserve and the Royal Auxiliary Air Force as if the references to forfeited service were references to a period of permanent service or, as the case may be, of service as a member of the force concerned, which is to be disregarded under section 98(6) of the Reserve Forces Act 1996.**]**

[F632](3) . . . . . .

[[F633](4) The provisions of this Act mentioned in subsection (4A) below shall apply to officers, warrant officers, non-commissioned officers and men of the air force reserve and the Royal Auxiliary Air Force only when they are in permanent service, in full-time service, called out for home defence service or serving on the permanent staff of the air force reserve or the Royal Auxiliary Air Force.

[F633](4A) The provisions referred to in subsection (4) above are—

(a) sections 150 to 153 of this Act;

(b) except insofar as they may be applied by regulations made under section 103(2) of the Reserve Forces Act 1996, the provisions of Part II of this Act relating to the award of stoppages and sections 144 to 149 of this Act.**]**

[[F634](6) Section 182 of this Act shall not apply at any time to officers, warrant officers, non-commissioned officers or men of the Royal Auxiliary Air Force.**]**

(7) In the case of a non-commissioned officer or man of the Royal Auxiliary Air Force found guilty of an offence by a court-martial or his commanding officer, Part II of this Act shall apply as if in the scale set out in **[**[F635]section 71(1) there were inserted immediately before paragraph (h)**]** the following paragraph—

[[F635]"(gg)**]** dismissal from the Royal Auxiliary Air Force", and as if the punishments specified in **[**[F636]section 76C(2)**]** of this Act included dismissal from the Royal Auxiliary Air Force:

Provided that if the commanding officer awards such dismissal he shall not award any other punishment.

[[F637](8) An officer of the air force reserve or the Royal Auxiliary Air Force may be attached temporarily to any of Her Majesty's naval or military forces whether or not he is in permanent service but, if not in permanent service, shall not be so attached except with his consent.**]**

[[F638](9) In this section—

"full-time service" means service under a commitment entered into under section 24 of the Reserve Forces Act 1996;

"permanent service" means permanent service on call out under any provision of the Reserve Forces Act 1980, the Reserve Forces Act 1996 or any other call-out obligations of an officer.**]**

Textual Amendments

F629 S. 210(1)(a) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(2)(a)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F630 S. 210(1)(c) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(2)(b)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F631 S. 210(2) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(3)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F632 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F633 S. 210(4)(4A) substituted for s. 210(4)(5) (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(4)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F634 S. 210(6) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(5)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F635 Words substituted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(10)**

F636 Words in s. 210(7) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 83**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F637 S. 210(8) substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(6)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

F638 S. 210(9) inserted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 11(7)** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

Marginal Citations

M88 1917 c. 51.

211 Modification of certain provisions in relation to women.

In relation to women members of the regular air force this Act shall have effect subject to the following modifications:—

(a) if and in so far as regulations made by Her Majesty so provide, for references to any rank there shall be substituted references to such equivalent rank as may be specified by such regulations;

F639(b) . . . . . .

(c) references in sections one hundred and fifty and one hundred and fifty-one to a wife shall be construed as references to a husband.

Textual Amendments

F639 S. 211(b) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

Application to different countries

212 Application to Scotland.

(1) The provisions of this section shall have effect for the purpose of the application of this Act to Scotland.

(2) For any reference to a county court there shall be substituted a reference to the sheriff; and the powers and duties conferred or imposed on a justice of the peace may be exercised or performed either by such justice or by the sheriff.

[F640](3) . . . . . .

(4) In subsection (2) of section one hundred and twenty-eight for the reference to **[**[F641]the Coroners Acts 1887 to 1926**][**[F641]the Coroners Act 1988**]**, there shall be substituted a reference to section twenty-five of the [M89]Prisons (Scotland) Act 1952, and that section as applied in relation to any such premises as are mentioned in the said subsection (2) shall have effect subject to the necessary modifications.

[[F642](4A) In section 150, at the end of subsection (5), there shall be added the words "and to any sum awarded as inlying expenses in a decree of affiliation and aliment"**]**.

(5) For any reference to the Minister of Housing and Local Government there shall be substituted a reference to the Secretary of State; and the local authority for the purposes of Part IV of this Act shall be a **[**[F643]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**.

(6) Section one hundred and eighty-seven shall have effect as if subsection (4) were omitted.

(7) Section one hundred and ninety-five shall have effect as if for the obligation imposed by subsection (4) on the officer therein mentioned to bring a person before a court of summary jurisdiction there were substituted an obligation to report to the procurator fiscal.

(8) [F644] the expression "chattel" means corporeal moveable.

[[F645](9) Where by virtue of this Act a document is admissible in evidence or is evidence of any matter stated in it in proceedings before a civil court in England, it shall be sufficient evidence of the matter so stated in such proceedings in Scotland.**]**

Textual Amendments

F640 S. 212(3) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F641 Words "the Coroners Act 1988" substituted (E.W.) for words "the Coroners Acts 1887 to 1926" by Coroners Act 1988 (c. 13, SIF 33), s. 36(1), **Sch. 3 para. 10**

F642 S. 212(4A) inserted by Armed Forces Act 1966 (c. 45), **Sch. 4**

F643 Words in s. 212(5) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 45(2)**; S.I. 1996/323, **art. 4(1)(b)(c)**

F644 Words repealed by Army and Air Force Act 1961 (c. 52), **s. 29(2)(b)**

F645 S. 212(9) inserted by Armed Forces Act 1971 (c. 33), **s. 76**

Marginal Citations

M89 1952 c. 61.

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213 Application to Northern Ireland.

(1) The provisions of this section shall have effect for the purpose of the application of this Act to Northern Ireland.

(2) [F646] all fines imposed in proceedings taken before a court of summary jurisdiction in Northern Ireland shall be dealt with in the manner provided by section twenty of the [M90]Administration of Justice Act (Northern Ireland) 1954.

[F647](3) . . . . . .

[F648](4) . . . . . .

(5) References in subsection (2) of section one hundred and twenty-eight to **[**[F649]the Coroners Acts 1887 to 1926**]**[F649]the Coroners Act 1988**]**, shall be construed as references to section thirty-nine of the [M91]Prison Act (Northern Ireland) 1953; and that section as applied in relation to any such premises as are mentioned in the said subsection (2) shall have effect subject to the necessary modifications.

[[F650](5A) Where a financial penalty enforcement order has been registered under section 133A above by a court of summary jurisdiction in Northern Ireland in respect of any person, a justice of the peace may issue a summons to that person requiring him to appear before the court which registered that penalty or a warrant for the arrest of that person.

(5B) Where a person appears before a court of summary jurisdiction in Northern Ireland in pursuance of a summons or warrant issued under subsection (5A) above, the court may exercise the like powers as are conferred on it by **[**[F651]Part IX of the [M92]Magistrates' Courts (Northern Ireland) Order 1981**]** (satisfaction and enforcement of orders).

(5C) A financial penalty enforcement order shall be registered in Northern Ireland under section 133A above in accordance with Magistrates' Courts Rules.**]**

[F652](6) . . . . . .

[[F653](6A) The reference in section 151A(1) to any judgment or order enforceable by a court in the United Kingdom shall include a reference to a judgment enforceable by the Enforcement of Judgments Office.**]**

(7) In Part IV of this Act references to a local authority shall be construed as references to a **[**[F654]Health and Social Services Board established under the [M93]Health and Personal Social Services (Northern Ireland) Order 1972**]**, references to the Minister of Housing and Local Government shall be construed as references to the **[**[F655]Department of Health and Social Services**]** for Northern Ireland, and references to a chief officer of police shall be construed as references to a **[**[F655]chief superintendent of the Royal Ulster Constabulary or any other officer having a rank equivalent to chief superintendent**]**.

(8) For the reference in section one hundred and seventy-three to section thirty-five of the [M94]Road Traffic Act 1930, there shall be substituted a reference to section **[**[F655]75 of the [M95]Road Traffic Act (Northern Ireland) 1970 or any corresponding enactment for the time being in force in Northern Ireland**]**.

(9) For the reference in subsection (4) of section one hundred and eighty-seven to **[**[F656]the [M96]Magistrates' Courts Act 1980**]**, there shall be substituted a reference to the Summary Jurisdiction Acts (Northern Ireland) and the rules made thereunder.

(10) For the reference in subsection (3) of section two hundred and three to a bankrupt's trustee in bankruptcy there shall be substituted a reference to an assignee in bankruptcy.

[F657](11) . . . . . .

Textual Amendments

F646 Words repealed by Northern Ireland Act 1962 (c. 30), **Sch. 4 Pt. IV**
F647 S. 213(3) repealed by S.I. 1973/2163, **Sch. 6**
F648 S. 213(4) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**
F649 Words "the Coroners Act 1988" substituted (E.W.) for words "the Coroners Acts 1887 to 1926" by Coroners Act 1988 (c. 13, SIF 33), s. 36(1), **Sch. 3 para. 11**
F650 S. 213(5A)—(5C) inserted by Armed Forces Act 1976 (c. 52), s. 16, **Sch. 8 para. 4(1)(2)**
F651 Words substituted by S.I. 1981/1675 (N. I. 26), **Sch. 6 para. 9**
F652 S. 213(6) repealed (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(2), **Sch. 10**; S.R. 1996/297, **art. 2(2)**
F653 S. 213(6A) inserted by S.I. 1979/298, **art. 2**
F654 Words substituted by S.R. & O. 1973/256 (N.I.), Sch. 2
F655 Words substituted by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 8**
F656 Words substituted by Magistrates' Courts Act 1980 (c. 43), **Sch. 7 para. 13**
F657 Ss. 20, 213(11), Sch. 2 repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

Marginal Citations

M90 1954 c. 9 (N.I.)
M91 1953 c. 18 (N.I.)
M92 S.I. 1981/1675 (N.I. 26).
M93 S.I. 1972/1265 (N.I. 14).
M94 1930 c. 43.
M95 1970 c. 2 (N.I.)
M96 1980 c. 43.

214 Application to Channel Islands and Isle of Man.

[[F658](1) This Act extends to the Channel Islands and the Isle of Man subject to the following provisions of this section and to such modifications as Her Majesty may by Order in Council specify; and, where any such modifications refers to any law for the time being in force in any of the Channel Islands or the Isle of Man, the modification may be expressed to have effect for all purposes of this Act (and not only in the application of this Act to the Channel Islands or the Isle of Man, as the case may be).**]**

(2) Subject as hereinafter provided, references except in Part IV of this Act to the United Kingdom shall be construed as including references to the Channel Islands and the Isle of Man.

(3) References in sections one hundred and nineteen, one hundred and twenty-six, one hundred and twenty-seven and one hundred and forty-three to the United Kingdom shall not include references to the Channel Islands or the Isle of Man, and references in the said section one hundred and twenty-seven to a colony shall include references to the Channel Islands and the Isle of Man.

[F659](4) . . . . . .

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Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Textual Amendments

F658 S. 214(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 24(1)**; S.I. 1991/2719, **art. 2**

F659 S. 214(4) repealed (1.6.1996) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 24(3), 26(2), **Sch. 3**; S.I. 1996/1173, art. 2, **Sch.**

Modifications etc. (not altering text)

C81 S. 214 applied (11.5.2001) by 2001 c. 19, **s. 36(1)**

C82 S. 214 modified (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 24(4)**; S.I. 1991/2719, **art. 2**
S. 214 applied (24.7.1996) by 1996 c. 46, **s. 36(6)**

215 Application to certain overseas territories.

(1) This Act shall apply in relation to any territory under Her Majesty's protection, and any territory for the time being administered by Her Majesty's Government in the United Kingdom under the trusteeship system of the United Nations, as it applies in relation to a colony; and accordingly references in this Act to Her Majesty's dominions shall be construed as including references to any such territory.

(2) References in this Act to the law of a colony shall include, in relation to two or more colonies under a central legislature, references to law made by that legislature.

F660 216 . . . . . .

Textual Amendments

F660 S. 216 repealed by Federation of Malaya Independence Act 1957 (c. 60), **Sch. 2**

F661 217 . . . . . .

Textual Amendments

F661 Ss. 59, 217 repealed by Armed Forces Act 1966 (c. 45), s. 37(3), **Sch. 5**

Supplemental provisions

218 Jurisdiction of courts.

(1) In the United Kingdom or any colony, a civil court of any description having jurisdiction in the place where an offender is for the time being shall have jurisdiction to try him for any offence to which this section applies which is triable by a court of that description notwithstanding that the offence was committed outside the jurisdiction of the court:

Provided that such an offence committed in any part of the United Kingdom shall not be triable outside that part of the United Kingdom.

(2) The offences to which this section applies are offences against any of the following sections of this Act, that is to say, section nineteen, section one hundred and sixty-one, section one hundred and seventy-one, and sections one hundred and ninety-one to one hundred and ninety-seven; and references in this section to a part of the United Kingdom are references to England and Wales, Scotland or Northern Ireland.

[F662]219 . . . . . .

Textual Amendments
F662 S. 219 repealed by Criminal Justice Act 1972 (c. 71), **Sch. 6 Pt. II**

220 Provisions as to summary fines in Colonies.

In the application of this Act to any colony, there shall, if the law of the colony so provides, be substituted for the amount of any fine specified in this Act, being a fine which may be imposed on summary conviction, such amount as may be provided by that law; and it shall be competent for the law of any colony to declare what amount of the local currency is to be treated for the purposes of this Act as equivalent to any amount of money specified in this Act.

221 Execution of orders, instruments, etc.

Save as expressly provided by any rules or regulations under this Act, any order or determination required or authorised to be made under this Act by any air-force, naval or military officer or authority may be signified under the hand of any officer authorised in that behalf; and any instrument signifying such an order or determination and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised.

222 Provisions as to active service.

(1) In this Act the expression "on active service", in relation to a force, means that it is engaged in operations against an enemy or **[**[F663]is engaged elsewhere than in the United Kingdom in operations for the protection of life or property**]** or (subject to the provisions of this section) is in military occupation of a foreign country, and in relation to a person means that he is serving in or with a force which is on active service.

(2) Where any of Her Majesty's air forces is serving outside the United Kingdom, and it appears to the appropriate authority that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the force should be deemed to be on active service, the appropriate authority may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein that force shall be deemed to be on active service.

(3) Where it appears to the appropriate authority that it is necessary for the public service that the period specified in a declaration under the last foregoing subsection should be prolonged or, if previously prolonged under this subsection, should be further prolonged, the appropriate authority may declare that the said period shall

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be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any force—

(a) is on active service by reason only of being in military occupation of a foreign country; or

(b) is deemed to be on active service by virtue of the foregoing provisions of this section,

it appears to the appropriate authority that there is no necessity for the force to continue to be treated as being on active service, the appropriate authority may declare that as from the coming into operation of the declaration the force shall cease to be, or to be deemed to be, on active service.

(5) Before any declaration is made under this section, the appropriate authority shall, unless satisfied that it is not possible to communicate with sufficient speed with the Secretary of State, obtain the consent of the Secretary of State to the declaration; and in any case where that consent has not been obtained before the making of a declaration under this section the appropriate authority shall report the making thereof to the Secretary of State with the utmost practicable speed.

(6) The Secretary of State may, if he thinks fit, direct that any declaration whereby any force is deemed to be, or to continue, on active service shall cease to have effect as from the coming into force of the direction; but any direction under this subsection shall be without prejudice to anything done by virtue of the declaration before the coming into force of the direction.

(7) A declaration under this section shall have effect not only as respects the members of the force to which it relates but also as respects other persons the application to whom of any provision of this Act depends on whether that force is on active service.

(8) In this section the expression "the appropriate authority" means—

[F664](a) . . . . . .

(b) in relation to any force [F665]. . . , the air officer commanding the force, so however that where the force is under the command of a flag officer, general officer or brigadier that officer shall be the appropriate authority.

[F666](9) . . . . . .

(10) Any declaration or direction under this section shall come into operation on being published in general orders.

Textual Amendments

F663 Words substituted by Armed Forces Act 1966 (c. 45), **s. 20**

F664 S. 222(8)(a) repealed by Armed Forces Act 1966 (c. 45), ss. 20, 37(3), **Sch. 5**

F665 Words repealed by Armed Forces Act 1966 (c. 45), ss. 20, 37(3), **Sch. 5**

F666 S. 222(9) repealed by Armed Forces Act 1966 (c. 45), ss. 20, 37(3), **Sch. 5**

223 General provisions as to interpretation.

(1) In this Act:—

"acting rank" means rank of any description (however called) such that under Queen's Regulations a commanding officer has power to order the

holder to revert from that rank, and "acting warrant officer" and "acting non-commissioned officer" shall be construed accordingly;

"active service" shall be construed in accordance with the last foregoing section;

"aircraft" means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

"aircraft material" includes

(a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;

(b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;

(c) any other gear, apparatus or instruments in, or for use in, aircraft;

(d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and

(e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

"airman" (except in Parts I and IV of this Act) does not include a warrant officer or a non-commissioned officer;

"air signal" means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

"appropriate superior authority" **[**[F667]means a person who may act as an appropriate superior authority by virtue of**]** subsection (2) of section eighty-two of this Act;

[F668] . . .

"before the enemy", in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy;

"civil court" means a court of ordinary criminal jurisdiction but does not, except where otherwise expressly provided, include any such court outside Her Majesty's dominions;

"civil offence" has the meaning assigned to it by subsection (2) of section seventy of this Act;

"commanding officer" has the meaning assigned to it by subsection (1) of section eighty-two of this Act;

[[F669]"Commonwealth force" means any of the naval, military or air forces of Canada, the Commonwealth of Australia, New Zealand, **[**[F670]South Africa,**]**India, **[**[F671]Pakistan,**]**Ceylon, Ghana, Malaysia, the Republic of Cyprus, Nigeria, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, Kenya, Zanzibar, Malawi, Zambia, Malta, The Gambia, Guyana, Botswana, Lesotho, Singapore, Barbados, Mauritius, Swaziland, Tonga, Fiji, the Bahamas, Bangladesh, Grenada, Seychelles, Solomon Islands, Tuvalu, Dominica, Saint Lucia, Kirbati, Saint Vincent and the Grenadines, Papua New Guinea, Western Samoa, Nauru, the New Hebrides, Zimbabwe, Belize or Antigua and Barbuda **[**[F672]or Saint Christopher and Nevis**][**[F673]or Brunei or Maldives**][**[F674]or Namibia **[**[F675]or Cameroon or Mozambique**]]]**

"constable" includes any person (whether within or outside the United Kingdom) having powers corresponding with those of a constable **[**[F676]but does not include a provost officer or a person exercising authority under or on behalf of a provost officer**]**;

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"corps" means any such body of the regular air force as may from time to time be declared by order of Her Majesty to be a corps for the purposes of this Act;

"corresponding civil offence" has the meaning assigned to it by subsection (2) of section seventy of this Act;

"corresponding rank", in relation to any rank or rating of any of Her Majesty's naval, military or air forces, means such rank or rating of any other of those forces as may be declared by Queen's Regulations to correspond therewith;

[[F677]"court administration officer" and "the court administration officer" have the meanings assigned to them by section 84A of this Act;**]**

"court-martial", except where it is otherwise expressly provided, means a court-martial under this Act;

"damage" includes destruction, and references to damaging shall be construed accordingly;

"decoration" includes medal, medal ribbon, clasp and good-conduct badge;

"desertion" shall be construed in accordance with subsection (2) of section thirty-seven of this Act;

"enemy" includes all persons engaged in armed operations against any of Her Majesty's forces **[**[F678]or any forces co-operating therewith**]**, and also includes all armed mutineers, armed rebels, armed rioters and pirates;

"Governor" means, in relation to any colony, the officer, however styled, who is for the time being administering the government of the colony [F679], but where two or more colonies or the parts of any colony are under local governments and also under a central government, references to the Governor shall be construed as references to the officer, however styled, who is for the time being administering the central government;

[[F680]"handles" has the same meaning as in the [M97]Theft Act 1968**]**;

"Her Majesty's air forces", "Her Majesty's military forces" or "Her Majesty's naval forces"[F681], except where otherwise expressly provided, does not include any Commonwealth force **[**[F682]and references to "Her Majesty's forces", except in sections [F683] 177, shall be construed accordingly**]**;

[[F684]"the judge advocate", in relation to a court-martial, has the meaning assigned to it by section 84B(1) of this Act;**]**

[[F685]"judicial officer" means a person appointed under section 75L of this Act;**]**

except where the context otherwise requires "oath" includes affirmation, and references to swearing shall be construed accordingly;

"property" includes real property in England or Wales or Northern Ireland, heritable property in Scotland, and property outside the United Kingdom of the nature of real property;

[[F686]"the prosecuting authority" has the meaning assigned to it by section 83A(1) of this Act;**]**

"provost officer" means a provost marshal or officer appointed to exercise the functions conferred by or under this Act on provost officers and includes a naval provost marshal, an assistant to a naval provost marshal, and an officer appointed to exercise functions conferred by or under the [M98]Army Act 1955, and corresponding with those of a provost officer under this Act;

"public property" means any property belonging to any department of Her Majesty's Government in the United Kingdom or the Government of Northern Ireland or held for the purposes of any such department;

"Queen's Regulations" means the Queen's Regulations for the Royal Air Force;

"regular air force" means all of Her Majesty's air forces other than the air force reserve and the Royal Auxiliary Air Force, and other than forces raised under the law of a colony, so however that an officer who is retired within the meaning of any order under section two of the [M99]Air Force (Constitution) Act 1917, shall not be treated for the purposes of this Act as a member of the regular air force save in so far as is expressly provided by this Act;

[[F687]"the relevant time" in relation to a person arrested under section 74 of this Act, means the time of the arrest;**]**

[[F688]"the Royal Air Force Police" includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under this Act on provost officers;**]**

[F689] . . .

"service", when used adjectivally, means belonging to or connected with Her Majesty's air forces or any part of Her Majesty's air forces;

[[F690]"service l aw" means air-force law, military law or the [M100]Naval Discipline Act 1957;**]**

[[F691]"service property" includes property belonging to an association established, or having effect as if established, under section 110 of the Reserve Forces Act 1996 or to the Navy, Army and Air Force Institutes.**]**

"ship" includes any description of vessel;

[[F692]"steals" has the same meaning as in the [M101]Theft Act 1968, and references to "stolen goods" shall be construed as if contained in that Act**]**;

"stoppages" means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation [F693] . . ..

[[F694]"the summary appeal court" means the court established by section 83ZA of this Act;**]**

[[F695](1A) Any reference in this Act to Her Majesty's aircraft is a reference to aircraft in the service of Her Majesty, whether belonging to Her Majesty or not, but does not include a reference to aircraft of a Commonwealth force other than aircraft placed at the disposal of Her Majesty for service with any of Her Majesty's forces, and any reference to aircraft material shall be construed accordingly.

(1B) Any reference in this Act to Her Majesty's ships is a reference to ships in the service of Her Majesty, whether belonging to Her Majesty or not, but does not include a reference to ships of any Commonwealth force other than ships placed at the disposal of Her Majesty for service with any of Her Majesty's forces**]**.

[[F696](1C) References in this Act, in relation to any of Her Majesty's forces, to an officer holding a commission include references to a person to whom a commission is required to be issued; and for the purposes of this Act, where a commission issued to any person takes effect from a date earlier than the date of its issue, that earlier date shall be conclusively presumed to be the date on which the requirement to issue the commission arose.**]**

[[F697](2) References in this Act to warrant officers, non-commissioned officers or men of the air force reserve being called out on permanent service are references to their being

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so called out whether in pursuance of **[**[F698]section 10 of the [M102]Reserve Forces Act 1980**]** or not, but in Part I of this Act and subsection (2) of section one hundred and sixty-seven thereof do not include references to their being called out **[**[F699]in pursuance of section 11 of or paragraph 16(4) or (5) or (6) of Schedule 8 to the Reserve Forces Act 1980**]]**

(3) Any power conferred by this Act to make provision by regulations, rules or other instrument shall include power to make that provision for specified cases or classes of cases, and to make different provision for different classes of cases, and for the purposes of any such instrument classes of cases may be defined by reference to any circumstances specified in the instrument.

(4) Any power conferred by the foregoing provisions of this Act to make an order shall be construed as including power, exercisable in the like manner and subject to the like provisions, to vary or revoke the order.

Textual Amendments

F667 Words in the definition of "appropriate superior authority" substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 84(a)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F668 S. 223(1): definition of "arrest" repealed (2.10.2000) by 2000 c. 4, ss. 10, 27, Sch. 1 para. 5(2)(a), **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F669 Definition of "Commonwealth force" printed as amended by enactments listed in Chronological Table of the Statutes, Belize Act 1981 (c. 52), **Sch. 2 para. 1** and S.I. 1981/1105, **Sch. para. 2(b)**

F670 Words in the definition of "Commonwealth force" in s. 223(1) inserted (23.3.1995) by 1995 c. 3, s. 1, **Sch. para. 3**

F671 Word inserted (*retrospectively*: 1.10.1989) by Pakistan Act 1990 (c. 14, SIF 26:30), s. 1, **Sch. para. 3**

F672 Words added by S.I. 1983/882, art. 5, **Sch. para. 1**

F673 Words added by Brunei and Maldives Act 1985 (c. 3, SIF 26:9A), s. 1, **Sch. para. 4**

F674 Words in s. 223(1) added (retrospective to 21. 3. 1990) by Namibia Act 1991 (c. 4, SIF 26:25A), s. 1, **Sch. para. 2** (with s. 2(2))

F675 S. 223(1): words in the definition of "Commonwealth force" inserted (7.1.2003) by 2002 c. 39, **Sch. 2 para. 1(b)**

F676 S. 223(1): words in the definition of
"constable"
inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 49(b)**; S.I. 2001/3234, **art. 2**

F677 Definition of "court administration officer" in s. 223(1) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 84(b)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F678 Words inserted by Armed Forces Act 1966 (c. 45), **s. 28(1)(2)(4)**

F679 Words repealed by Zanzibar Act 1963 (c. 55), **Sch. 3**

F680 Definition inserted by Theft Act 1968 (c. 60), s. 33(2), **Sch. 2 Pt. II**

F681 Words repealed with saving by Armed Forces Act 1981 (c. 55), **Sch. 5 Pt. I**

F682 Words added by Armed Forces Act 1966 (c. 45), **s. 28(1)(2)(4)**

F683 Words repealed by Armed Forces Act 1976 (c. 52), **Sch. 10**

F684 Definition of "the judge advocate" in s. 223(1) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 84(c)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F685 S. 223(1): definition of "judicial officer" inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 5(2)(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F686 Definition of "the prosecuting authority" in s. 223(1) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 84(c)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F687 S. 223(1): definition of "the relevant time" inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 5(2)(c)**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F688 S. 223(1): definition of

"the Royal Air Force Police"
inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 47**; S.I. 2001/3234, **art. 2**

F689 Definition of "Rules of Procedure" in s. 223(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 84(e), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F690 Definition inserted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(11)**

F691 Definition of "service property" in s. 223(1) substituted (1.1.1999) by S.I. 1998/3086, **reg. 7**

F692 Definition substituted by Theft Act 1968 (c. 60), s. 33(2), **Sch. 2 Pt. II**

F693 Words in s. 223(1) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 7(2), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**

F694 S. 223(1): definition of "the summary appeal court" inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 23**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F695 S. 223(1A)(1B) inserted by Armed Forces Act 1966 (c. 45), **s. 27(2)**

F696 S. 223(1C) inserted (*retrospectively*) by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 10(1)**

F697 S. 223(2) ceases to have effect (1.1.1999) by virtue of S.I. 1998/3086, **reg. 9(1)**

F698 Words substituted by Reserve Forces Act 1980 (c. 9), s. 157(1), **Sch. 9 para. 6(a)**

F699 Words substituted by virtue of Reserve Forces Act 1966 (c. 30), **Sch. 1 para. 37** and Reserve Forces Act 1980 (c. 9), s. 157(1), **Sch. 9 para. 6(b)**

Modifications etc. (not altering text)

C83 S. 223(2) excluded by Reserve Forces Act 1980 (c. 9), **s. 83**

Marginal Citations

M97 1968 c. 60.
M98 1955 c. 18.
M99 1917 c. 51.
M100 1957 c. 53.
M101 1968 c. 60.
M102 1980 c. 9.

224 [X1]Short title, commencement and duration.

(1) This Act may be cited as the Air Force Act 1955.

[F700](2) . . . . . .

Editorial Information

X1 Unreliable marginal note.

Textual Amendments

F700 S. 224(2)–(5) repealed by Army and Air Force Act 1961 (c. 52), **s. 1(5)**

SCHEDULES

FIRST SCHEDULE

Sections 2, 18, 23.

PROCEDURE FOR ATTESTATION

1 The recruiting officer shall warn the person to be enlisted that if he makes any false answer to the questions to be read out to him he will be liable to be punished as provided by this Act.

2 He shall then read, or cause to be read, to that person the questions set out in the attestation paper and satisfy himself that he understands each of those questions and that his answers thereto have been duly recorded in the attestation paper.

3 He shall then ask that person to make and sign the declaration set out in the attestation paper as to the truth of the answers and shall administer to him the oath of allegiance as set out in the attestation paper.

4 Upon signing the declaration and taking the oath the said person shall become an airman of the regular air force.

5 The recruiting officer shall by signature attest, in the manner required by the attestation paper, that the requirements of this Act as to the attestation of the recruit have been carried out and shall deliver the attestation paper duly dated to such person as may be prescribed by regulations of **[**[F701]the Defence Council**]**.

Textual Amendments

F701 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

6 When in accordance with such regulations the recruit is finally approved for service, the officer by whom he is approved shall at his request furnish him with a certified copy of the attestation paper.

[F702]SECOND SCHEDULE

Textual Amendments

F702 Ss. 20, 213(11), Sch. 2 repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. I**

. . . . . .

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THIRD SCHEDULE

Section 98.

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE CONVICTED BY COURT-MARTIAL

Offence charged	***Alternative offence***
1. Communicating with or giving intelligence to the enemy, **F703** .	1. Disclosing information without authority.
F704 1A. . . .	**F704** 1A. . . .
F704 2. . . .	**F704** 2. . . .
3. Using violence to his superior officer **F705** .	3. Offering violence to his superior officer.
4. Using threatening language to his superior officer.	4. Using insubordinate language to his superior officer.
F704 4A. . . .	**F704** 4A. . . .
F706 5. . . .	**F706** . . .
6. Desertion.	6. Absence without leave.
7. Attempting to desert.	7. Absence without leave.
[[F707]7A. Using threatening, abusive, insulting or provocative words likely to cause a disturbance.	7A. Using threatening, abusive, insulting or provocative behaviour likely to cause a disturbance.
7B. Using threatening, abusive, insulting or provocative behaviour likely to cause a disturbance.	7B. Using threatening, abusive, insulting or provocative words likely to cause a disturbance.**]**
[[F708]7C. Wilfully damaging public or service property or property belonging to another person subject to airforce law.	7C. By wilful neglect causing damage to public or service property or property belonging to another person subject to airforce law.**]**
8. **F706** **F706** . . .	
9. **F709** **F709** . . .	

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[F710 9A. Misapplying public or service property.	9A. Wastefully expending public or service property.
9B. Wastefully expending public or service property.	9B. Misapplying public or service property.]
10. Any offence against subsection (1) of section fifty-four of this Act.	10. Any offence against subsection (2) of section fifty-four of this Act.
11. F704	11. F704
. . .	. . .
12. Any offence against section fifty-five of this Act involving the use of violence F705	12. The corresponding offence involving the offering of violence.
.	
[F711 13. F704 . . .	13. F704 . . .
14. F704 . . .	14. F704 . . .]

Textual Amendments

F703 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**
F704 Sch. 3 paras. 1A, 2, 4A, 11, 13, 14 repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**
F705 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**
F706 Sch. 3 paras. 5, 8 repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**
F707 Paras. 7A, 7B inserted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(14)**
F708 Sch. 3 para. 7C inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 13(2)**; S.I. 1991/2719, **art.2**
F709 Sch. 3 para. 9 repealed by Army and Air Force Act 1961 (c. 52), **Sch. 2**
F710 Paras. 9A, 9B inserted by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 1 para. 1(15)**
F711 Paras. 13, 14 added with saving by Armed Forces Act 1966 (c. 45), **s. 29**

FOURTH SCHEDULE

Sections 168, 172.

SUPPLEMENTARY PROVISIONS AS TO PAYMENT FOR REQUISITIONED VEHICLES

1 (1) Subject to the provisions of this Schedule, any payment under subsection (1) of section one hundred and sixty-eight of this Act shall (without prejudice to any agreement as to payment on account) become due on the expiration of the period for which possession of the vehicle in question is retained.

(2) Subject to the provisions of this Schedule, any payment under subsection (2) of section one hundred and sixty-eight of this Act shall become due on the furnishing of the vehicle.

(3) Any payment under paragraph (b)

of subsection (3) of the said section one hundred and sixty-eight shall become due on the furnishing of the vehicle.

2 (1) As soon as may be after the furnishing of a vehicle there shall be given or sent to the person by whom it was furnished, by such person and in such form and manner as may be specified by instructions of **[**[F712]the Defence Council**]**, a receipt for the vehicle specifying what payment, at what rate or of what amount, is offered in respect of the furnishing thereof under paragraph (a) of subection (1), or as the case may be under subsection (2), of section one hundred and sixty-eight of this Act.

(2) As soon as may be after the end of the period for which possession of a vehicle is retained, there shall be given or sent to the person by whom the vehicle was furnished, by such person and in such form and manner as aforesaid, a notice stating whether any, and if so what, damage to the vehicle has occurred during the period for which possession of the vehicle was retained, other than damage which has been made good by a person acting on behalf of Her Majesty, or that the total loss of the vehicle has occurred, and specifying what payment is offered in respect of the damage or loss under paragraph (b) or (c) of subsection (1) of section one hundred and sixty-eight of this Act.

Textual Amendments

F712 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

3 (1) A person to whom a receipt or notice under the last foregoing paragraph has been given or sent (hereinafter referred to as "the claimant") shall be deemed to have accepted the offer contained therein unless within three weeks from the time at which he received the receipt or notice he gives notice to the person by whom the receipt or notice was given or sent that he claims some specified greater amount or rate.

(2) Where a notice under the last foregoing paragraph has been given or sent stating that no damage has occurred to a vehicle during the period for which possession of the vehicle is retained, the claimant shall be deemed to have agreed that no damage has so occurred unless within three weeks from the time at which he received the notice he gives notice to the person by whom the notice was given or sent claiming that damage has so occurred and stating what payment he claims under subsection (1) of section one hundred and sixty-eight of this Act in respect of the damage.

(3) On the making of a claim under either of the two last foregoing sub-paragraphs **[**[F713]the Defence Council**]** may notify the claimant either that they do not propose to make any further offer or that they make a specified further offer.

Textual Amendments

F713 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

4 (1) Subject to the provisions of the last foregoing paragraph and to the following provisions of this paragraph, a county court shall have jurisdiction to determine any dispute—

(a) as to the amount of any payment due under subsection (1) or (2) of section one hundred and sixty-eight of this Act, or whether any payment is due under any provision of the said subsection (1), or

(b) as to the amount of any payment due under paragraph (b) of subsection (3) of that section,

irrespective of the amount in dispute.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(2) An application to the county court for the determination of any such dispute as is mentioned in head (a) of the last foregoing sub-paragraph shall not be made before the expiration of three weeks from the making of the claim under sub-paragraph (1) or (2) of the last foregoing paragraph unless a notification has been given to the applicant under sub-paragraph (3) of the last foregoing paragraph; and where such a notification contains a further offer by **[**[F714]the Defence Council**]**, the person to whom it is given shall be deemed to have accepted the offer unless he makes such an application within three weeks from receipt of the notification.

Textual Amendments
F714 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

5 The instructions of **[**[F715]the Defence Council**]** referred to in paragraph 2 of this Schedule shall secure that any receipt or notice under that paragraph, or any notification under sub-paragraph (2) of the last foregoing paragraph, contains a statement of the effect of paragraph 3 of this Schedule or, as the case may be, of sub-paragraph (2) of the last foregoing paragraph.

Textual Amendments
F715 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

6 In the foregoing provisions of this Schedule, the expression "damage" does not include damage resulting in a total loss, or damage attributable to fair wear and tear.

7 Nothing in the foregoing provisions of this Schedule shall apply to a case falling within subsection (4) of section one hundred and sixty-eight or the proviso to subsection (2) of section one hundred and seventy-two of this Act, and any sum payable by virtue of that subsection or proviso shall become due on the making, by the person by whom the vehicle is required to be furnished, of a claim therefor to such authority as may have been specified in that behalf in the direction requiring the furnishing of the vehicle (or if no such authority was specified, to **[**[F716]the Defence Council**]**):

Provided that before making any such payment the said authority or **[**[F716]the Defence Council**]**, as the case may be, may require reasonable particulars of the damage in question and of the circumstances in which it occurred and may require a reasonable opportunity to be afforded to a person authorised by them to inspect the vehicle in question.

Textual Amendments
F716 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

8 A county court shall have jurisdiction to deal with any claim arising under subsection (4) or subsection (5) of section one hundred and sixty-eight of this Act, or under the proviso to subsection (2) of section one hundred and seventy-two thereof, irrespective of the amount of the claim.

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

FIFTH SCHEDULE

Sections 204, 209.

CIVILIANS OUTSIDE THE UNITED KINGDOM SUBJECT TO PART II WHEN NOT ON ACTIVE SERVICE

1 Persons serving Her Majesty, or otherwise employed, in such capacities connected with Her Majesty's naval, military or air forces as may be specified for the purposes of this Schedule by regulations of **[**[F717]the Defence Council**]**, being persons serving or employed under Her Majesty's Government in the United Kingdom.

Textual Amendments

F717 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

2 Persons who are employed by, or in the service of, any naval, military or air-force organisation so specified to which Her Majesty's Government in the United Kingdom is a party and are employed by or in the service of that organisation by reason of that Government being a party thereto.

3 Persons belonging to or employed by any other organisation so specified which operates in connection with Her Majesty's naval, military or air forces.

4 Persons who, for the purposes of their profession **[**[F718], business**]** or employment, are attached to or accompany any of Her Majesty's naval, military or air forces in pursuance of an authorisation granted by or on behalf of [F719]. . . **[**[F720]the Defence Council **[**[F721]or by an officer authorised by the Defence Council**]**.**]**

Textual Amendments

F718 Words in Sch. 5 para. 4 inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 44(a)**; S.I. 2001/3234, **art. 2**

F719 Words repealed by S.I. 1964/488, **Sch. 1 Pt. I**

F720 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F721 Words in Sch. 5 para. 4 inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 44(b)**; S.I. 2001/3234, **art. 2**

5 Persons forming part of the family of members of any of Her Majesty's naval, military or air forces and residing with them or about to reside or departing after residing with them.

6 Persons forming part of the family of persons falling within paragraphs 1 to 4 of this Schedule and residing with them or about to reside or departing after residing with them.

7 Persons employed by members of any of Her Majesty's naval, military or air forces.

8 Persons employed by persons falling within paragraphs 1 to 6 of this Schedule.

9 Persons forming part of the family of persons falling within either of the last two foregoing paragraphs and residing with them or about to reside or departing after residing with them.

[F722] SCHEDULE 5A

POWERS OF COURT ON TRIAL OF CIVILIAN

Textual Amendments

F722 Sch. 5A inserted by Armed Forces Act 1976 (c. 52), **Sch. 4 paras. 1**,2

Modifications etc. (not altering text)

C84 Sch. 5A referred to (1.4.1997) by S.I. 1997/579, **regs. 4**, 7, 10, 12

General

1 The powers conferred by this Schedule shall be exercisable on the trial of a person (in this Schedule referred to as a "civilian") to whom Part II of this Act is applied by section 209 above.

2 (1) In this Schedule—

"community supervision order" has the meaning assigned to it by paragraph 4(2) below;

"compensation order" has the meaning assigned to it by paragraph 11(1) below;

"the court" means a court-martial or a Standing Civilian Court;

"custodial order" has the meaning assigned to it by paragraph 10(1) below;

"local authority in England or Wales" means the council of a non-metropolitan county, a metropolitan district or a London borough or the Common Council of the City of London;

"local authority in Scotland" means a **[**[F723]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

"order for absolute discharge" means an order under paragraph 3 below discharging a person absolutely;

"order for conditional discharge" means an order under that paragraph discharging a person subject to a condition;

"period of conditional discharge" means the period specified in an order for conditional discharge;

"prescribed" means prescribed by regulations under paragraph 17 below;

[F724] . . .

"the Services Acts" means this Act, the [M103]Army Act 1955 and the [M104]Naval Discipline Act 1957; and

"supervision period" and "supervisor" have the meanings assigned to them by paragraph 4(2) below.

(2) A parent or guardian is a service parent or guardian for the purposes of this Schedule if—

(a) he is subject to service law, or

(b) Part II of this Act is applied to him by section 209 above, or

(c) Part II of the [M105]Army Act 1955 is applied to him by section 209 of that Act, or

(d) Parts I and II of the [M106]Naval Discipline Act 1957 are applied to him by section 118 of that Act.

Textual Amendments

F723 Words in the definition of "local authority in Scotland" in Sch. 5A para. 2(1) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 45(3)**; S.I. 1996/323, **art. 4(1)(b)(c)**

F724 Definition in Sch. 5A para. 2 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(a), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch** (with art. 3(1)

Marginal Citations

M103 1955 c. 18.
M104 1957 c. 53.
M105 1955 c. 18.
M106 1957 c. 53.

[[F725]Deferment of award of sentence

Textual Amendments

F725 Sch. 5A para. 2A inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 9(1)(2)**

2A (1) Subject to the provisions of this paragraph, where a civilian is found guilty of an offence by a Standing Civilian Court, the Standing Civilian Court may defer the award of sentence against him for the purpose of enabling the Standing Civilian Court, or any other court to which it falls to deal with him, to have regard, in dealing with him, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

(2) Any deferment under this paragraph shall be until such date as may be specified by the Standing Civilian Court being a date not more than six months after the date on which the Standing Civilian Court announces the deferment; and where the award of sentence against an offender has been deferred on one occasion, it shall not be further deferred.

(3) The power conferred by this paragraph shall be exercisable only if the offender consents and the Standing Civilian Court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A Standing Civilian Court which has deferred the award of sentence against an offender may deal with him at a time when the period of deferment has not expired if—

(a) he is during that period found guilty of an offence by a court-martial under any of the Services Acts or by a Standing Civilian Court; or

(b) such conditions as may be specified for the purposes of this paragraph in an order under paragraph 12 of Schedule 3 to the Armed Forces Act [M107]1976 (proceedings in Standing Civilian Courts) are satisfied in relation to him.

(5) Without prejudice to sub-paragraph (4) above, where a Standing Civilian Court has deferred the award of sentence against an offender in respect of one or more offences

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and the offender is, during the period of the deferment, found guilty of an offence ('the subsequent offence') by a court-martial under any of the Services Acts or by a Standing Civilian Court, then, subject to subsection (6) below, the court which (whether during that period or not) deals with the offender for the subsequent offence may also, if this has not already been done, deal with him for the offence or offences in respect of which the award of sentence was deferred.

(6) Subject to sub-paragraph (7) below, the power of a court under this paragraph to deal with an offender for an offence in respect of which the award of sentence has been deferred shall be a power to deal with him in any way in which the Standing Civilian Court which deferred the award of sentence could have dealt with him for that offence.

(7) In a case falling within sub-paragraph (5) above a court-martial which awards a sentence of imprisonment or a sentence under a custodial order for the subsequent offence may (subject to the application to the aggregate of the sentences of any limit imposed by, or by any provision corresponding to, section 85 of this Act or paragraph 10(1A) below) order that the sentence shall begin to run from the expiry of any sentence which, being a sentence of imprisonment or a sentence under a custodial order, is awarded for the offence or offences in respect of which the award of sentence was deferred.

(8) Where a Standing Civilian Court has deferred the award of sentence against an offender, **[**[F726]a magistrate appointed under section 6(4) of the Armed Forces Act 1976**]** may order the offender's arrest either—

(a) in order to secure the offender's appearance on the day specified by the Standing Civilian Court as the day on which it proposes to deal with him (including a day before the end of the period of deferment); or

(b) where the offender has failed to appear on a day so specified.

(9) Where the arrest of an offender has been ordered under sub-paragraph (8) above , then, whether or not the offender continues to be **[**[F727]a person to whom Part 2 of this Act is applied by section 209 above**]**—

(a) he may be arrested—

(i) by a provost officer; or

(ii) by any warrant officer or non-commissioned officer legally exercising authority under or on behalf of a provost officer; or

(iii) by order of any officer of the regular air force or of the regular forces (within the meaning of the Army Act [M108]1955); and

(b) a warrant for the offender's arrest may be issued to any officer or officers of police by **[**[F728]a magistrate appointed under section 6(4) of the Armed Forces Act 1976**]**.

(10) A warrant under sub-paragraph (9)(*b*) above shall specify the name of the person for whose arrest it is issued and shall refer to the order of **[**[F729]the magistrate**]** that that person be arrested.

(11) A person arrested under this paragraph shall be delivered into military or air force custody and may be kept in such custody until his appearance before the Standing Civilian Court which deferred the award of sentence against him.

(12) Where under this section an officer of police delivers a person into military or air force custody, there shall be handed over with him a certificate which shall—

(a) be in such form as may be specified by order under paragraph 12 of Schedule 3 to the Armed Forces Act [M109]1976;

(b) be signed by that officer of police; and

(c) state the fact, date, time and place of arrest;

and such a certificate shall for the purposes of this Act be evidence of the matters stated therein.

[F730](13) . . . . . .]

Textual Amendments

F726 Words in Sch. 5A para. 2A(8) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 54(a)**; S.I. 2001/3234, **art. 2**

F727 Words in Sch. 5A para. 2A(9) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 54(b)(i)**; S.I. 2001/3234, **art. 2**

F728 Words in Sch. 5A para. 2A(9)(b) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 54(b)(ii)**; S.I. 2001/3234, **art. 2**

F729 Words in Sch. 5A para. 2A(10) substituted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 54(c)**; S.I. 2001/3234, **art. 2**

F730 Sch. 5A para. 2A(13) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 54(d), **Sch. 7 Pt. 7**; S.I. 2001/3234, **art. 2**

Marginal Citations

M107 1976 c.52 (**7:1**).

M108 1955 c.18 (**7:1**).

M109 1976 c.52 (**7:1**).

Absolute and conditional discharge

3 (1) The court by which a civilian is found guilty of an offence (not being an offence the sentence for which is fixed by law **[**[F731]or falls to be imposed under section 70(3A) above**]**) may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that, during such period, not exceeding 3 years from the date of the order, as may be specified in the order, he commits no offence that may be tried by court-martial under any of the Services Acts or by a Standing Civilian Court.

(2) If a court-martial under any of the Services Acts finds a person in whose case an order for conditional discharge has been made guilty of an offence committed during the period of conditional discharge, the court-martial may deal with him for the offence for which the order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence.

(3) If a Standing Civilian Court finds such a person guilty of an offence committed during the period of conditional discharge, the Standing Civilian Court may deal with him for the offence for which the order was made in any manner in which such a court could deal with him if it had just found him guilty of that offence.

(4) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

Textual Amendments

F731 Words in Sch. 5A para. 3(1) inserted (E.W.) (1.10.1997) by 1997 c. 43, s. 55(1), **Sch. 4 para. 2(4)**; S.I. 1997/2200, **art. 2(1)(l)(2)(a)**

Modifications etc. (not altering text)

C85 Sch. 5A para. 3 amended (E.W.) (1.10.1997) by 1997 c. 43, ss. 55(2), 57(2), **Sch. 4 para. 2(4)**; S.I. 1997/2200, **art. 2(1)(m)(2)(a)**

Community supervision orders

4 (1) Subject to sub-paragraph (4) below, where a civilian [F732]is found guilty of an offence and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient that he should undergo a period of supervision, the court may make an order directing him to comply during a specified period not exceeding **[**[F733]three years**]** with the reasonable requirements of a specified person nominated in the prescribed manner.

(2) In this Schedule—

"community supervision order" means an order under this paragraph;

"supervision period" means the period specified in a community supervision order; and

"supervisor" means a person with whose requirements a community supervision order for the time being requires compliance on the part of the person subject to it.

(3) The court making a community supervision order may include in it directions to the person who is to be subject to it to comply during the whole or any specified part of the supervision period with such requirements of any prescribed description as the court, having regard to the circumstances, considers will be beneficial for him.

(4) Before making a community supervision order the court—

(a) shall explain in ordinary language to the person who is to be subject to it the effect of such an order and the consequences under sub-paragraphs (6) to (10) below of breach of any requirement imposed by virtue of sub-paragraph (1) or (3) above, and

(b) shall obtain his consent and, if he is under 17 years of age, the consent of his parent or guardian, to the making of the order and to the inclusion in it of any requirement by virtue of sub-paragraph (3) above.

(5) If the court makes a community supervision order against any person on finding him guilty of an offence, it may not make any other order except a compensation order in respect of his conviction for that offence.

(6) If a person subject to a community supervision order fails without reasonable excuse to comply with any requirement reasonably imposed by his supervisor or with any requirement included in the order by virtue of sub-paragraph (3) above, he shall be guilty of an offence triable by court-martial.

(7) Any such offence shall be treated as if it were an offence against a provision of Part II of this Act.

[[F734F734](7A) Without prejudice to any other power of arrest, a person found committing an offence under sub-paragraph (6) above or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested by a provost officer, by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces.

[F734](7B) The power of arrest given to any person by sub-paragraph (7A) above may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

[F734](7C) A person shall not be arrested by virtue of sub-paragraph (7A) above after the end of a period of 6 months beginning with the end of the supervision period.

[F734](7D) No proceedings shall be taken against a person for an offence under sub-paragraph (6) above unless the trial is begun within 6 months after the end of the supervision period.**]**

[[F735](7E) Section 132(3) of this Act (as applied to civilians by section 209 of this Act) does not apply in relation to an offence under sub-paragraph (6) above.**]**

(8) If a court-martial under any of the Services Acts finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the court-martial may deal with him for the offence for which the community supervision order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence.

(9) If a Standing Civilian Court finds a person guilty of any offence (including an offence under sub-paragraph (6) above) committed during a supervision period, the Standing Civilian Court may deal with him for the offence for which the community supervision order was made in any manner in which such a court could deal with him if it had just found him guilty of it.

(10) If the court finds a person guilty of an offence under sub-paragraph (6) above, it may, instead of dealing with him for the offence for which the community supervision order was made, impose a fine not exceeding **[**[F736]£1,000**]** upon him.

(11) An officer authorised by the Defence Council—

(a) may discharge a community supervision order or modify such an order in any way which in his opinion does not increase its severity, and

(b) may replace a supervisor by specifying a new supervisor nominated in the prescribed manner.

(12) The powers conferred by sub-paragraph (11)(a) above are without prejudice to any of the powers of a [F737]. . . reviewing authority.

Textual Amendments

F732 Words repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), ss. 10(1), 16(2), **Sch. 2**

F733 Words in Sch. 5A para. 4(1) substituted (1.4.1997) by 1996 c. 46, s. 10, **Sch. 3 para. 2(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F734 Sch. 5A para. 4(7A)-(7D) inserted (1.4.1997) by 1996 c. 46, s. 10, **Sch. 3 para. 2(3)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F735 Sch. 5A para. 4(7E) inserted (1.10.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 6 para. 52**; S.I. 2001/3234, **art. 2**

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F736 Figure in Sch. 5A para. 4(10) substituted (1.4.1997) by 1996 c. 46, s. 10, **Sch. 3 para. 2(4)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F737 Words in Sch. 5A para. 4(12) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Modifications etc. (not altering text)

C86 Sch. 5A para. 4: power to exclude conferred by Criminal Justice Act 1988 (c. 33, SIF 39:1), **s. 50(4)(a)**

Absolute and conditional discharge and community supervision orders—supplementary

5 (1) If upon finding a person guilty of an offence the court makes in respect of that offence—

(a) an order for his absolute discharge, or

(b) an order for his conditional discharge, or

(c) a community supervision order,

he shall be deemed not to have been convicted of the offence except—

(i) where the order was an order for conditional discharge or a community supervision order, for the purposes of paragraph 3(2) or (3) or 4(8) or (9) above, as the case may be, and

(ii) in all cases, for the purposes specified in sub-paragraph (2) below.

(2) The purposes mentioned in sub-paragraph (1)(ii) above are the purposes—

(a) of the proceedings in which the order is made,

(b) of any [F738]. . . review of those proceedings,

(c) of any appeal against conviction in those proceedings, and

(d) of the [M110]Rehabilitation of Offenders Act 1974 **[**[F739]or of the [M111]Rehabilitation of Offenders (Northern Ireland) Order 1978**]**.

(3) Sub-paragraph (1) above shall not affect—

(a) any right of a person in respect of whom an order for absolute or conditional discharge or a community supervision order was made to rely on his conviction in bar of any subsequent proceedings for the same offence; or

(b) the restoration of any property in consequence of the conviction.

(4) No appeal shall lie against any such order.

(5) If a person is dealt with for an offence for which an order for conditional discharge or a community supervision order was made, the original order shall cease to have effect.

(6) The powers conferred by paragraphs 3(2) and (3) and 4(8) and (9) above to deal with an offence for which an order for conditional discharge or a community supervision order has been made are without prejudice to any power of the court to deal with an offence, whenever committed, other than the offence for which the order in question was made.

Textual Amendments

F738 Words in Sch. 5A para. 5(2)(b) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F739 Words added by S.I. 1978/1908 (N.I. 27), **art. 4(5)**

Modifications etc. (not altering text)

C87 Sch. 5A para. 5(1) excluded (1.5.2004) by Sexual Offences Act 2003 (c. 42), **ss. 134(1)(d)**, 141 (with s. 134(2)(3)); S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2

Marginal Citations

M110 1974 c. 53.

M111 1978/1908 (N.I. 27).

Reception orders and committal into care—general

F740 6 . . . . . .

Textual Amendments

F740 Sch. 5A para. 6 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**,Sch. (with art. 3(1)

Committal into care—England and Wales

F741 7 . . . . . .

Textual Amendments

F741 Sch. 5A para. 7 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), **Sch. 3**; S.I. 1991/2719, **art. 2**,Sch. (with art. 3(1))

Committal into care—transfer to Scotland

F742 8 . . . . . .

Textual Amendments

F742 Sch. 5A para. 8 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**,Sch. (with art. 3(1))

Committal into care—transfer to Northern Ireland

F743 9 . . . . . .

Textual Amendments

F743 Sch. 5A para. 9 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(b), 26(2), **Sch.3**; S.I. 1991/2719, **art. 2**,Sch. (with art. 3(1))

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

Custodial orders

10 (1) Where a civilian who has attained **[**[F744]the minimum age**]** but is under 21 years of age is found guilty of an offence punishable under this Act with imprisonment, the court shall have power, **[**[F745]subject to **[**[F746]sub-paragraphs (1A) and (1AA) below**]]**, to make an order (in this Schedule referred to as a "custodial order") committing him to be **[**[F747] detained for a period, to be specified in the order, which—

(a) shall not be less than the appropriate minimum period, that is to say—

(i) in the case of an offender who has attained the age of 18, the period of 21 days; or

(ii) in the case of an offender who is under 18 years of age, the period of two months;

(b) shall not exceed the maximum period for which he could have been sentenced to imprisonment if he had attained the age of 21; and

(c) if the order is made by a Standing Civilian Court, shall not exceed six months.**]**

[and in this sub-paragraph "the minimum age", in relation to a male offender, means 15 years of age and, in relation to a female offender, means 17 years of age.**]**

[[F748](1A) [F749]. . . **[**[F750F749]. . . the court shall not make a custodial order committing an offender under **[**[F751]18 years**]** of age to be detained for a period which exceeds twelve months or for a period such that the continuous period for which he is committed to be detained under that order and any one or more other custodial orders exceeds twelve months.**]**

[The court may not make a custodial order unless it is satisfied—

[F752](1AA) (a) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and

(b) that he qualifies for a custodial sentence.

(1AB) An offender qualifies for a custodial sentence if—

(a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or

(b) only a custodial sentence would be adequate to protect the public from serious harm from him; or

(c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.**]**

[F748](1B) For the purposes of determining whether **[**[F753]it is satisfied as mentioned in paragraphs (a) and (b) of sub-paragraph (1AA) above with respect to an offender**]** the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his mental and physical condition.**]**

(2) Before making a custodial order, the court shall consider any report made in respect of the offender by or on behalf of the Secretary of State.

(3) The court shall give a copy of any such report to the offender or any person representing him.

[[F754](3A) Where the court makes a custodial order it shall be its duty—

(a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the

paragraphs of sub-paragraph (1AB) above, the paragraph or paragraphs in question, and why it is so satisfied; and

(b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(3B) Where the court makes a custodial order and, in accordance with its duty under sub-paragraph (3A) above, makes the statement required by paragraph (a) of that sub-paragraph, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.**]**

[[F755](4) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.

(4A) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this paragraph.**]**

(5) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction.

[[F756](5A) The following provisions shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of imprisonment by the same court, that is to say—

(a) where the court is a court-martial, sections 118(1) and 118A(1) and (3) of this Act; and

(b) where the court is a Standing Civilian Court, section 8(2) of the Armed Forces Act [M112]1976;

and, accordingly, references in those provisions to a sentence of imprisonment shall include for the purposes of this sub-paragraph references to a sentence under a custodial order.**]**

[[F757](5B) For the period before a person sentenced under a custodial order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received), sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B of this Act shall apply in the case of the sentence as they apply in the case of a sentence of **[**[F758]imprisonment**]**.**]**

(6) In this paragraph "appropriate institution" means—

[[F759](a) where the offender is **[**[F760]in or**]** removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, **[**[F761]section 98 of the Powers of Criminal Courts (Sentencing) Act 2000**]** having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;**]**

[[F762](b) where the offender is **[**[F760]in or**]** removed to Scotland, a young offenders institution;**]**

[[F763](c) where the offender is **[**[F760]in or**]** removed to Northern Ireland,

[[F764](i) if the offender is a male person who is under the age of 17 years, a remand home; and

(ii) in any other case, a young offenders centre;**]]**

and in sub-paragraph (4) above "enactment", in relation to an offender who is removed to Northern Ireland, includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly.

[[F765](6A) **[**[F766]Section 65 of the Criminal Justice Act 1991**]** (release of young offenders) shall apply to persons released from a term of detention under a custodial order as it applies to persons released from a term of detention under a detention centre order or a term of youth custody.**]**

[F767](6B) . . . . . .

Textual Amendments

F744 Words substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 11(1)**(*a*)(6)

F745 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 7(a)(i)**

F746 Words in Sch. 5A para. 10(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(2)(a)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F747 Words in Sch. 5A para. 10(1) substituted (1.10.1992) by Criminal Justice 1991 (c. 53, SIF 39:1), ss. 71, 102(2), **Sch. 9 para. 4** (a); S.I. 1992/333, art. 2(2), **Sch. 2**

F748 Sch. 5A para. 10(1A)(1B) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 7**(*b*)

F749 Words in Sch. 5A para. 10(1A) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 5(3), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1))

F750 Words inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 11(2)(6)**

F751 Words in Sch. 5A para. 10(1A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 71, 102(2), **Sch. 9**, para. 4(b); S.I. 1992/333, art. 2(2), **Sch. 2**

F752 Sch. 5A para. 10(1AA)(1AB) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(4)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F753 Words in Sch. 5A para. 10(1B) substitued (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(5)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F754 Sch. 5A para. 10(3A)(3B) substituted (1.1.1992) for sub-paras. (3A)(3B) (inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 7(c)**) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(6)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F755 Sch. 5A para. 10(4)(4A) substituted (1.1.1992) for sub-para. (4) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(7)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F756 Sch. 5A para. 10(5A) substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 5(3)**

F757 Para. 10(5B) inserted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 3(3)**

F758 Word substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 5(4)**

F759 Sch. 5A para. 10(6)(a) substituted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 123(6), **Sch. 8 para. 5(a)**

F760 Words in Sch. 5A para. 10(6)(a)(b)(c) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 5(8)**; S.I. 1991/2719, **art. 2** (with art. 3(1))

F761 Words in Sch. 5A para. 10(6)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 17**

F762 Sch. 5A para. 10(6)(b) substituted (S.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(4), **Sch. 9 para. 3(a)**

F763 Para. 10(6)(c) substituted by S.I. 1980/1088, **art. 3**

F764 Words substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 11(4)(6)**

F765 Sch. 5A para. 10(6A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 7**(*e*)

F766 Words in Sch. 5A para. 10(6A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 71, 102(2), **Sch. 9 para. 4(c)**; S.I. 1992/333, art. 2(2), **Sch. 2**

F767 Sch. 5A para. 10(6B) repealed (1. 10. 1993) by 1993 (c. 9), s. 47(3), Sch. 7 Pt. I: S.I. 1993/2050, **art. 3(4)**

Marginal Citations
M112 1976 c.52 (**7:1**).

Compensation orders

11 (1) The court, on finding a civilian guilty of an offence, may, on application or otherwise (and whether or not it makes any other order), make an order (in this Schedule referred to as a "compensation order") requiring him to pay such sum as appears to the court to be just as or towards compensation for any **[**[F768]personal injury, loss or damage**]**, resulting from the offence or any other offence taken into consideration in determining sentence.

[[F769](1A) Unless the Secretary of State by order provides that this sub-paragraph shall no longer apply, the sum specified in a compensation order made by a court-martial for any personal injury shall not exceed such sum as is for the time being specified in sub-paragraph (2) below or such larger sum as may for the time being be specified by an order made by the Secretary of State; and the power to make an order under this sub-paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

(2) The sum specified in a compensation order made by a Standing Civilian Court shall not exceed **[**[F770]£5,000**]**.

(3) In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of this paragraph has having resulted from the offence, however and by whomsoever the damage was caused.

(4) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of his death, [F771] . . .

[[F772](4A) A compensation order may only be made in respect of injury, loss or damage which was due to an accident arising out of the presence of a motor vehicle on a road if—

(a) it is in respect of damage which is treated by sub-paragraph (3) above as resulting from an offence of unlawfully obtaining any property; or

(b) it is in respect of injury, loss or damage as respects which—

(i) the offender is uninsured in relation to the use of the vehicle; and

(ii) compensation is not payable under any arrangements specified by the Secretary of State for the purposes of this paragraph;

and, where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

(4B) For the purposes of sub-paragraph (4A) above, a person is not uninsured in relation to the use of a vehicle if—

(a) the vehicle is in the public service of the Crown; or

(b) the use of the vehicle is exempted from insurance by section 144 of the Road Traffic Act 1988 or paragraph (2) or paragraph (3) of Article 90 of the Road Traffic (Northern Ireland) Order 1981.**]**

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

(5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

[F773(6) Where the court considers—

(a) that it would be appropriate both to impose a fine and to make a compensation order, but

(b) that the person concerned has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).]

Textual Amendments

F768 Words in Sch. 5A para. 11(1) substituted (1.1.1992) by Armed Forces Act (c. 62, SIF 7:1), s. 9(2); S.I. 1991/2719, **art. 2**

F769 Sch. 5A para. 11 (1A) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 9(3)**; S.I. 1991/2719, **art. 2**

F770 Words in Sch. 5A para. 11(2) substituted (E.W.) (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 17(3), **Sch. 4 Pt.I** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

F771 Words in Sch. 5A para. 11(4) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 9(4), 26(2), **Sch.3**; S.I. 1991/2719, art. 2, **Sch.**

F772 Sch. 5A para. 11(4A)(4B) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 9(4)**; S.I. 1991/2719, **art. 2**

F773 Sch. 5A para. 11(6) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), **s. 9(5)**; S.I. 1991/2719, **art. 2**

Modifications etc. (not altering text)

C88 Power to amend para. 11(2) conferred by Magistrates' Courts Act 1980 (c. 43, SIF 82), **s. 143(1)(2)**(*g*) as substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 48(1)**(*a*)(*b*)(iii)

12 (1) The operation of a compensation order made by a court-martial shall be suspended—

(a) in any case until the end of the period specified under Part II of the M113Courts-Martial (Appeals) Act 1968 as the period within which an application for leave to appeal must be lodged; and

(b) if such an application is duly lodged, until either the application is finally refused or it is withdrawn or the appeal is determined or abandoned.

(2) The operation of a compensation order made by a Standing Civilian Court shall be suspended—

(a) in any case until the end of the period within which notice of appeal may be given; and

(b) if such notice is given, until the appeal is determined or abandoned.

(3) Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—

(a) the order shall cease to have effect if he successfully petitions or appeals against his conviction of the offence or all the offences of which he was convicted in the proceedings in which the order was made; and

(b) he may petition or appeal against the order as if it were part of the sentence imposed for the offence in respect of which it was made.

Marginal Citations
M113 1968 c. 20.

Imposition of fines on and making of compensation orders against parents and guardians

13 [F774(1) Where—

[F775(a) [a civilian under 17 years of age is found guilty of an offence; and

(b) the court is of the opinion that the case would best be met (whether or not in conjunction with any other punishment) by the exercise of any power of the court to impose a fine in respect of the offence or to make a compensation order in respect of the offence or of any other offence taken into consideration in determining sentence,]

it shall be the duty of the court to order that the fine or compensation awarded be paid by any parent or guardian of his who is a service parent or guardian, instead of by the person himself, unless the court is satisfied—

(i) that the parent or guardian cannot be found; or

(ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(2) An order under this paragraph may be made against the parent or guardian if—

(a) he has been required to attend in the manner prescribed by [F776rules] under section 103 above or, as the case may be, by an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976 to attend the court, and

(b) he has failed to do so,

but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.]

[F777(3) A parent or guardian on or against whom a fine has been imposed or compensation order made under this paragraph may petition or appeal against the sentence as follows, that is to say—

(a) if the court which imposed the fine or made the order was a court-martial, the parent or guardian may present a petition in accordance with [F778section 113] of this Act against sentence or may appeal against sentence in accordance with section 8 of the M114Courts-Martial (Appeals) Act 1968 as if he had been convicted of and sentenced for the offence by the court-martial; or

(b) if the court which imposed the fine or made the order was a Standing Civilian Court, the parent or guardian may present a petition in accordance with [F778section 113] of this Act against sentence or may appeal against sentence under paragraph 18 of Schedule 3 to the M115Armed Forces Act 1976 as if he had been convicted of and sentenced for the offence by the Court.]

(4) If a parent or guardian against whom a fine is so imposed or an order so made—

(a) is a member of the regular air force, or

(b) is a member of the regular forces, as defined by section 225(1) of the M116Army Act 1955, or

(c) is subject to the M117Naval Discipline Act 1957,

Status: *Point in time view as at 10/06/2004.*
Changes to legislation: *There are currently no known outstanding effects for the Air Force Act 1955 (repealed). (See end of Document for details)*

any sum which he is liable to pay, in so far as not otherwise paid by him, may be deducted from his pay.

Textual Amendments

F774 Sch. 5A para. 13(1)(2) substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 9**

F775 Paras. (*a*)(*b*) substituted (*retrospectively*) by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 11**

F776 Words in Sch. 5A para. 13(2)(a) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 85**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F777 Para. 13(3) substituted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 3(6)**

F778 Words in Sch. 5A para. 13(3)(a)(b) substituted (1.4.1997) by 1996 c. 46, s. 35(1), **Sch. 6 para. 7** (with art. 3, Sch. 2)

Marginal Citations

M114 1968 c. 20.

M115 1976 c. 52.

M116 1955 c. 18.

M117 1957 c. 53.

Orders requiring parents or guardians to enter into recognisance

14 (1) Subject to sub-paragraph (2) below, where a civilian under 17 years of age is found guilty of any offence, the court may make an order requiring any parent or guardian of his who is a service parent or guardian to enter into a recognisance for an amount not exceeding **[**[F779]£1000**]** for a period not exceeding one year to exercise proper control over him.

(2) The power conferred by sub-paragraph (1) above shall not be exercisable unless the parent or guardian consents.

(3) Before making an order in the exercise of that power the court shall explain to the parent or guardian in ordinary language that if the offender is found guilty by court-martial under any of the Services Acts or by a Standing Civilian Court of another offence committed during the period specified in the order, his recognisance may be forfeited under sub-paragraph (4) below.

(4) If a person whose parent or guardian has entered into a recognisance under this paragraph is found guilty by court-martial under any of the services Acts or by a Standing Civilian Court of any offence committed within the period specified in the order, the recognisance or any part of it may in the prescribed manner be declared to be forfeited (without prejudice to any power of the court to punish the offender or to make any other order against him or an order against his parent or guardian under this paragraph or paragraph 13 above) and the person bound by it adjudged, subject to sub-paragraphs (5) and (6) below, to pay the sum in which he is bound or any lesser sum.

(5) No declaration may be made except against a person who is a service parent or guardian when it is made.

(6) No declaration may be made against any person without giving him an opportunity of being heard unless—

(a) he has been required in the manner prescribed by **[**[F780]rules**]** under section 103 above or, as the case may be, by an order under paragraph 12 of Schedule 3 to the [M118]Armed Forces Act 1976 to attend the court, and

(b) he has failed to do so.

(7) Payment of any sum adjudged to be paid under this paragraph shall be enforceable as if it were a fine imposed for an offence against section 70 above.

(8) No appeal shall lie from an order or declaration under this paragraph.

[[F781](9) In this paragraph "guardian", in relation to an offender, includes any individual who, in the court's opinion, has control of the offender.**]**

Textual Amendments

F779 "£1,000" substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 10(1)(2)** and S.I. 1984/447, art. 2(1), **Sch. 1**

F780 Words in Sch. 5A para. 14(6)(a) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 85**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F781 Para. 14(9) inserted by Armed Forces Act 1981 (c. 55), **Sch. 1 para. 3(9)**

Modifications etc. (not altering text)

C89 Power to amend para. 14(1) conferred by Magistrates' Courts Act 1980 (c. 43, SIF 82), **s. 143(1)(2)**(*h*) (as substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 48(1)**(*a*)(*b*)(iii))

Marginal Citations

M118 1976 c. 52.

Scale of punishments and orders

15 (1) In their application to civilians, references in this Act to any punishment provided by this Act are, subject to sub-paragraphs (4) to (7) below and to the limitation imposed in any particular case by the addition of the word "less", references to any one or more of the punishments that may be awarded to civilians under this Act or of the orders that may be made against them under it.

(2) For the purposes of Part II of this Act—

(a) a punishment or order specified in any paragraph of one of the columns in the Table below shall be treated as less than any punishments or orders specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it; and

(b) a fine on or compensation order against an offender's parent or guardian shall be treated as involving the same degree of punishment as a fine of the same amount on the offender or, as the case may be, a compensation order of the same amount against him.

(3) In the Table—

(a) the first column applies in the case of a person who at the date of his conviction had attained 21 years of age;

(b) the second column applies in the case of a person who at the date of his conviction had attained 17 years of age but was under 21 years of age; and

(c) the third column applies in the case of a person who at the date of his conviction was under 17 years of age.

Table

GRADING OF PUNISHMENTS AND ORDERS

Offender* 21 *or over	***Offender* 17 *or over but under 21***	***Offender under* 17**
F782 . . .	F782 . . .	1. Detention as the Secretary of State may direct.
		[F783 1A. Custodial order.**]**
2. Imprisonment.	**[**F784 2. Custody for life**]**.	F785 . . .
3. Fine.	3. Custodial order.	3. Fine.
[F786 3A. Community supervision order.**]**		
4. Compensation order.	4. Fine.	4. Community supervision order.
5. Order for conditional discharge.	5. Community supervision order.	5. Compensation order.
6. Order for absolute discharge.	6. Compensation order.	6. Order for absolute discharge.
	7. Order for conditional discharge.	7. Order for conditional discharge.
	8. Order for absolute discharge.	8. Order for absolute discharge.

Note. In the application of the above Table—

(a) to a person convicted of murder **[**F787 or any other offence the sentence for which is fixed by law as life imprisonment**]** who was under 18 years of age when the offence was committed, F788. . .

(b) . . . . . .

. . . a reference to detention during Her Majesty's pleasure shall be substituted—

(i) for the reference to **[**F789 custody for life**]** in the second column, and

(ii) for the reference to detention as the Secretary of State may direct in the third column.

(4) No order requiring the giving of a consent or the making of an explanation may be made on any F790. . ., review F790. . .of a sentence or any appeal against a sentence without the consent being given or the explanation made.

(5) If a community supervision order is made on any such F791. . ., review, F791. . . or appeal, no other order may be made except a compensation order.

(6) Where an order under paragraph 13 or 14 above was made at the trial, no other order under either of those paragraphs may be substituted for it on any such [F791]. . ., review, [F791]. . . or appeal.

(7) Where—

(a) on the trial of any person an order might have been made against his parent or guardian under paragraph 13 or 14 above, and

(b) there is power, on [F791]. . ., review, [F791]. . . or appeal, to substitute a fine or compensation order for the order made on the trial,

that power shall include—

(i) power to substitute a fine or compensation order of an equal or smaller amount under paragraph 13 above, and

(ii) power to make an order under paragraph 14 above which is not of greater severity, in the opinion of the person to whom it falls to exercise the power, than the order made on the trial.

Textual Amendments

F782 Sch. 5A para. 15(3): entries in table repealed (11.5.2001) by 2001 c. 19, ss 39(3)(g), 38, **Sch. 7 Pt. 4**

F783 Words inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 11(5)(6)**

F784 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 11**(*a*)

F785 Sch. 5A para. 15(3) Table: in Column 3, para. 2 repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), ss. 6(c), 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.** (with art. 3(1))

F786 Words inserted by Armed Forces Act 1986 (c. 21, SIF 7:1), **s. 10(2)**

F787 Sch. 5A para. 15(3): words in the note to the table inserted (30.11.2000 with effect as mentioned in Sch. 7 para. 25(4)) by 2000 c. 43, s. 74, **Sch. 7 para. 25(3)(c)(i)**

F788 Sch. 5A para. 15(3): words and para. (b) in the note to the table repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

F789 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, **Sch. 8 para. 11**(*b*)

F790 Words in Sch. 5A para. 15(4) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F791 Words in Sch. 5A para. 15(5)-(7) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

Indemnity for persons carrying out orders under Schedule

16 No action shall lie in respect of anything done by any person in pursuance of an order under this Schedule if the doing thereof would have been lawful but for a defect in any instrument made for the purposes of that order.

Regulations

17 (1) The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule.

(2) The power to make regulations conferred by this paragraph includes power to make provision for specified cases or classes of cases, and for the purpose of any such orders classes of cases may be defined by reference to any circumstances specified in the regulations.

(3) The power to make such regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SIXTH SCHEDULE

APPLICATION OF ACT TO ATTACHED MEMBERS OF NAVAL AND MILITARY FORCES

1 (1) As respects the punishment of a person subject to air-force law by virtue of section two hundred and eight of this Act, the following provisions of this paragraph shall have effect.

[F792](2) . . . . . .

(3) If he is a member of any of Her Majesty's naval forces [F793]. . . , references to reduction to the ranks or any less reduction in rank shall be construed as references to disrating to an extent not greater than that which would have been authorised on conviction by a court-martial under **[**[F794]the [M119]Naval Discipline Act 1957**]**

Textual Amendments

F792 Ss. 40, 41, 53, 58, 67, 75(3), 81(3), 210(3), Sch. 3 paras. 5, 8, Sch. 6 para. 1(2) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F793 Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

F794 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

Marginal Citations

M119 1957 c. 53.

2 For the purposes of the provisions of this Act relating to the constitution of courts-martial an officer subject to air-force law as aforesaid shall be treated as an officer belonging to Her Majesty's air forces of corresponding rank.

[F795]3 . . . . . .

Textual Amendments

F795 S. 179(3), Sch. 6 paras. 3, 4 repealed by S.I. 1964/488, **Sch. 1 Pt. I**

[[F796]3A Notwithstanding anything in section two hundred and one of this Act, a commanding officer dealing summarily, under section seventy-eight of this Act, with a lance-corporal or lance-bombardier subject to air-force law as aforesaid may, if he finds him guilty and awards no other punishment or no other punishment except stoppages, order him to be reduced to the ranks.**]**

Textual Amendments

F796 Para. 3A inserted by Army and Air Force Act 1961 (c. 52), **s. 37(1)(3)**

[F797 3B In relation to a person subject to air-force law as aforesaid, section 78(4) of this Act shall have effect with the addition, after the words added by section 22 of the M120 Army and Air Force Act 1961, of the words "or, where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks".]

Textual Amendments
F797 Para. 3B inserted by Armed Forces Act 1966 (c. 45), **s. 30**

Marginal Citations
M120 1961 c. 52.

F798 4 . . . . . .

Textual Amendments
F798 S. 179(3), Sch. 6 paras. 3, 4 repealed by S.I. 1964/488, **Sch. 1 Pt. I**

5 In proceedings under this Act against a person subject to air-force law as aforesaid any document which would have been evidence in the like proceedings under his own service law shall be evidence in like manner, subject to the like conditions and for the like purposes as in the first-mentioned proceedings.

6 In the application of this Act to a person subject to air-force law as aforesaid references to the regular air force shall include references to his own service, and references to any rank shall include references to the corresponding rank of his own service.

7 In relation to a person subject to air-force law as aforesaid subsection (3) of section one hundred and thirty-two of this Act shall have effect with the [F799 substitution for references to air-force law of references to service law.]

Textual Amendments
F799 Words substituted by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(1), **Sch. 1 para. 6(2)**

8 In the application of sections one hundred and forty-four and one hundred and forty-nine of this Act to a person subject to air-force law as aforesaid references to an order under section two of the M121 Air Force (Constitution) Act 1917, shall include references to an Order in Council (if he is a member of any of Her Majesty's naval forces or of the Royal Marines) or to a Royal Warrant (if he is a member of any of Her Majesty's military forces other than the Royal Marines).

Marginal Citations
M121 1917 c. 51.

9 Sections one hundred and fifty to one hundred and fifty-two F800 . . .of this Act shall not apply to a person subject to air-force law as aforesaid.

Textual Amendments

F800 Words in Sch. 6 para. 9 repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 43, **Sch. 7 Pt. 7**; S.I. 2001/3234, **art. 2**

10 In this Schedule—

(a) references to a person's own service shall be construed as references to the naval or miltary force to which he belongs,

(b) references to a person's own service law shall be construed as references to **[**[F801]the [M122]Naval Discipline Act 1957**]** or to military law, and

[F802](c) . . . . . .

according as he is a member of Her Majesty's naval forces or Her Majesty's military forces.

Textual Amendments

F801 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

F802 Para. 10(c) repealed by S.I. 1964/488, **Sch. 1 Pt. I**

Marginal Citations

M122 1957 c. 53.

11 In relation to officers, **[**[F803]warrant officers**]** non-commissioned officers and marines of the Royal Marines who are subject to air-force law as aforesaid, the foregoing provisions of [F804]. . . this Schedule shall have effect [F805]. . . as if references to a person's own service law included references to **[**[F806]the [M123]Naval Discipline Act 1957**]**.

Textual Amendments

F803 Words inserted by Armed Forces Act 1976 (c. 52), s. 3(2), **Sch. 1 para. 4**

F804 Words repealed by Army and Air Force Act 1961 (c. 52), **Sch. 2**

F805 Words repealed by S.I. 1964/488, **Sch. 1 Pt. I**

F806 Words substituted by virtue of Naval Discipline Act 1957 (c. 53), **s. 137(2)**

Marginal Citations

M123 1957 c. 53.

Status:
Point in time view as at 10/06/2004.

Changes to legislation:
There are currently no known outstanding effects for the Air Force Act 1955 (repealed).