



Naval Discipline Act 1957

1957 CHAPTER 53

PART II

TRIAL AND PUNISHMENT OF OFFENCES

Proceedings of courts-martial

58 General Orders as to procedure of courts-martial

- (1) Subject to the provisions of this section, the Admiralty may make General Orders for regulating the procedure and practice of courts-martial under this Act.
- (2) Without prejudice to the generality of the foregoing subsection, provision may be made by such General Orders—
 - (a) for authorising the receipt of evidence by statutory declaration and other documentary evidence in proceedings before courts-martial, subject to such conditions and restrictions as may be prescribed by the Orders;
 - (b) for authorising the judge advocate appointed for the purposes of a court-martial to hear submissions and evidence, in the absence of the members of the court, on such matters as may be prescribed by the Orders, and for applying to the judge advocate, in respect of such proceedings, any enactment relating to such a court;
 - (c) for prescribing anything which is authorised or required by this Part of this Act to be prescribed by such Orders.
- (3) General Orders under this section may direct that the powers conferred by section seven of the Bankers' Books Evidence Act, 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the purposes of a court-martial (whether within or without the United Kingdom) by the authority by whom the court-martial is ordered, as well as by the court or a judge within the meaning of that Act.
- (4) General Orders under this section shall not have effect unless and until approved by Her Majesty in Council in pursuance of a report of the Judicial Committee of the Privy

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Council ; and every Order in Council made for the purposes of this subsection shall be laid before both Houses of Parliament.

- (5) General Orders under this section shall be of no effect so far as inconsistent with any provision of this Act.

59 Challenge by accused

- (1) Before the members of a court-martial are sworn, the names of the officers constituting the court shall be read over in the presence of the accused, and he shall be asked whether he objects to being tried by any of those officers.
- (2) Every objection made by the accused in respect of any officer shall be considered by the other officers appointed members of the court.
- (3) If objection is made in respect of the president, and allowed by the other members of the court, the court shall adjourn and the authority by whom the court-martial was ordered shall appoint another president.
- (4) If objection is made in respect of any member of the court other than the president, and allowed by the members of the court entitled to vote, the member objected to shall retire, and the vacancy shall be filled by the first officer nominated as a spare member in accordance with the provisions of section fifty-four of this Act who is qualified to be and is not already a member of the court.
- (5) Without prejudice to the foregoing provisions of this section, the accused may, before the members of the court have been sworn, raise any other objection which he desires to make regarding the constitution of the court; and if it appears to the court that any such objection is well founded the court shall adjourn and report the objection to the authority by whom the court-martial was ordered.
- (6) After the members of a court-martial have been duly sworn, no question as to the constitution of the court shall be raised in the proceedings, but without prejudice to any power of the Courts-Martial Appeal Court or of the Admiralty in a case in which it appears that a substantial miscarriage of justice has occurred by reason of the court not having been duly constituted.

60 Administration of oaths

- (1) An oath shall be administered separately to each member of a court-martial, to the judge advocate, the clerk of the court and any officer in attendance for instruction in the duties of judge advocate or clerk of the court, and to any person appointed to attend for the purpose of reporting or transcribing the proceedings or as interpreter.
- (2) Except as provided by subsection (3) of this section, every witness before a court-martial shall be examined on oath.
- (3) Where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth:

Provided that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

- (4) A person shall be permitted to make a solemn affirmation instead of taking an oath under this section—
- (a) if he objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
 - (b) if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief.
- (5) An oath or affirmation required to be administered under this section shall be in such form, and shall be administered at such time, by such person and in such manner, as may be prescribed by General Orders under section fifty-eight of this Act.

61 Courts-martial to sit in open court

- (1) Subject to the provisions of this section and to any provisions of General Orders under section fifty-eight of this Act with respect to the deliberations of the court upon their finding and sentence or upon other matters specified in those Orders, a court-martial shall sit in open court and in the presence of the accused.
- (2) It is hereby declared that a court-martial has the like power to order the exclusion of the public from its proceedings as a civil court; and without prejudice to any such power, a court-martial may order that, subject to such exceptions, if any, as 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 made in the course of the proceedings or of that part of the proceedings, 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.

62 Finding and sentence

- (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court.
- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.
- (3) Without prejudice to the provisions of section sixty-one of this Act, the finding of a court-martial on each charge, and any sentence of the court, together with any recommendation to mercy, shall be announced in open court.
- (4) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where there is no such concurrence, but a majority of the members of the court are in favour of such a finding, the court shall be dissolved and the accused may be tried by another court.
- (5) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

63 Special finding of insane at time of trial or offence

- (1) Where, on the trial of any person by court-martial, it appears to the court—

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- (a) that the accused is by reason of insanity unfit to stand his trial; or
- (b) that the accused did the act or made the omission charged, but was insane at the time when the act was done or the omission made so as not to be responsible according to law for his actions,

the court shall so find, and shall order him to be kept in custody until effect is given to the directions of the Admiralty.

- (2) In the case of any such finding, the Admiralty may give orders for the safe custody of the accused during Her Majesty's pleasure in such place and manner as they think fit.

64 Summing of witnesses

- (1) Any person, whether subject to this Act or not, who is required to give evidence before a court-martial may be summoned by notice in writing given by the clerk of the court.
- (2) Any person not subject to this Act who attends a court-martial in pursuance of a notice under this section shall be entitled to receive such expenses of his attendance as may be authorised in accordance with regulations made by the Admiralty.

65 Contempt of court-martial by civilians

- (1) Subject to the provisions of this section, if any person not subject to this Act (whether within the United Kingdom or elsewhere)—
 - (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons;
 - (b) is guilty in relation to a court-martial of any such act or default as is described in paragraphs (b) to (f) of subsection (1) of section thirty-eight of this Act; or
 - (c) does any other act in relation to a court-martial which, if the court were a court of law having power to commit for contempt, would be punishable as contempt of that court,

the president of the court-martial may certify the offence to any court of law having jurisdiction in the place where it is alleged to have been committed or in the place where the offender is to be found, being a court having power to commit as aforesaid.

- (2) The court to which an offence is certified under this section may inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged therewith, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in or in relation to that court.
- (3) A person shall not be dealt with under this section in respect of failure to comply with a summons requiring him to attend as a witness before a court-martial unless any expenses to which he is entitled under this Act in respect of his attendance have been paid or tendered:

Provided that for the purposes of this subsection—

- (a) the tender of a warrant or voucher entitling any person to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorised by the warrant or voucher ; and
- (b) the tender of a written undertaking on behalf of the Admiralty to defray at the trial any other expenses to which such a person may be entitled under this Act in respect of his attendance shall be deemed to constitute tender of those

expenses. (4) Without prejudice to the provisions of subsection (5) of section fifty of this Act, this section applies in relation to a disciplinary court as it applies in relation to a court-martial.

66 Record of proceedings of courts-martial

- (1) As soon as practicable after the conclusion of a court-martial, the judge advocate or the clerk of the court shall transmit to the Commander-in-Chief or senior naval officer the record of the proceedings ; and the Commander-in-Chief or senior naval officer shall transmit it to the Admiralty.
- (2) Subject to the provisions of this section, a person who has been charged before a court-martial shall be entitled, on application made to the Admiralty within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by the Admiralty.
- (3) Where a person charged as aforesaid dies within the period of five years mentioned in subsection (2) of this section, his personal representatives, or any person who in the opinion of the Admiralty ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to the Admiralty within one year after his death, have the like right to receive a copy of the record as that person would have had on application made under that subsection.
- (4) If, on application made in pursuance of this section for a copy of the record of any proceedings, the Admiralty certify that it is necessary 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.