



Army Act 1955 (repealed)

1955 CHAPTER 18 3 and 4 Eliz 2

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Confirmation, revision and review of proceedings of courts-martial

Textual Amendments applied to the whole legislation

- 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**

107 Confirmation of proceedings of courts-martial.

- (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.
- (2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not [^{F1}require a sentence under section 57(2) of this Act to be confirmed or] affect the keeping of the accused in custody pending confirmation or the operation of the two next following sections or the provisions of this Act as to confirmation or approval.

Textual Amendments

- F1** Words inserted (*retrospectively*) by **Armed Forces Act 1986** (c. 21, SIF 7:1), s. 16(1), Sch. 1 para. 1(1) (b)

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Confirmation, revision and review of proceedings of courts-martial. (See end of Document for details)

108 Petitions against finding or sentence.

At any time after a court-martial has sentenced the accused, [^{F2}or has found the accused to be unfit to stand his trial or to be not guilty by reason of insanity] but not later than the prescribed time after confirmation is completed [^{F3}or, in the case of a sentence under section 57(2) of this Act, after the award of the sentence], the accused may in the prescribed manner present a petition against finding or sentence or both.

Textual Amendments

- F2** Words inserted by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I
- F3** Words inserted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), Sch. 1 para. 1(1) (c)

109 Revision of findings of courts-martial.

- (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—
 - (a) that the finding was against the weight of evidence, or
 - (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.
- (2) Any such direction shall be accompanied by the necessary directions for the re-assembly of the court, and shall contain a statement of the reasons for the direction.
- (3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.
- (4) On any such revision the court shall not have power to receive further evidence.
- (5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

- [^{F4}(5A) The power conferred by subsection (5) above (as limited by the proviso to that subsection) shall also be exercisable by a court-martial notwithstanding that it substitutes a finding of not guilty for the finding, or each of the findings, to which a direction under this section relates if the original findings of the court included one or more findings of guilty to which the direction does not relate.]
- (6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Confirmation, revision and review of proceedings of courts-martial. (See end of Document for details)

substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

Textual Amendments

F4 S. 109(5A) inserted by Armed Forces Act 1971 (c. 33), s. 50(1)

110 Powers of confirming officers.

- (1) Subject to the provisions of the last foregoing section and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court [^{F5}is under all the circumstances of the case unsafe or unsatisfactory] or involves a wrong decision on a question of law or that, [^{F5}there was a material irregularity in the course of the trial], or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming officer.

[^{F6}Provided that the confirming officer may, notwithstanding that he is of opinion that he would apart from this proviso withhold confirmation of the finding, confirm the finding if he considers that no miscarriage of justice has actually occurred.]

- (2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer may, if—
- some other finding of guilty could have been validly made by the court-martial on the charge before it, and
 - he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) of this section should be exercised [^{F7}or a confirming officer may, if he is of opinion that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial, substitute a finding that the accused was unfit to stand his trial.]

- [^{F8}(2A) Where a court-martial has recorded no finding on one or more charges alternative to a charge on which the court has made a finding of guilty, a confirming officer, if he is of opinion that the court must have been satisfied of the facts necessary to justify a finding of guilty on the alternative charge or, as the case may be, one of the alternative charges, may, instead of withholding confirmation of the finding—

- substitute for the finding a finding of guilty on the alternative charge, and
- substitute for the sentence of the court such sentence as he thinks proper, being in his opinion one which is not of greater severity than that for which it is substituted.]

- (3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may in lieu of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Confirmation, revision and review of proceedings of courts-martial. (See end of Document for details)

- (4) In confirming the sentence of a court-martial, a confirming officer may—
- (a) remit in whole or in part any punishment awarded by the court; or
 - (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.
- [^{F9}(4A) Where it appears to a confirming officer that a court-martial, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 105 of this Act to take other offences into consideration, he shall, whether or not he substitutes a different sentence or remits or commutes punishment, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where he does so, the offence or offences shall be treated for all purposes as not having been taken into consideration.]
- (5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.
- (6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.
- (8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

Textual Amendments

- F5** Words substituted by [Criminal Appeal Act 1966 \(c. 31\)](#), [Sch. 1 Pt. II](#) (continued by [Supreme Court Act 1981 \(c. 54\)](#), [Sch. 5](#))
- F6** Proviso added by [Criminal Appeal Act 1966 \(c. 31\)](#), [Sch. 1 Pt. II](#) (continued by [Supreme Court Act 1981 \(c. 54\)](#), [Sch. 5](#))
- F7** Words added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), [s. 8\(3\)](#) proviso (c), [Sch. 2 Pt. I](#)
- F8** [S. 110\(2A\)](#) inserted by [Armed Forces Act 1971 \(c. 33\)](#), [s. 50\(2\)](#)
- F9** [S. 110\(4A\)](#) inserted by [Armed Forces Act 1981 \(c. 55\)](#), [s. 5\(1\)](#)

Modifications etc. (not altering text)

- C1** [S. 110](#): power to restrict conferred by [Criminal Justice Act 1988 \(c. 33\)](#), [SIF 39:1](#)), [s.50\(4\)\(b\)](#)
- C2** [S. 110\(2\)—\(4\)](#) extended by [Armed Forces Act 1976 \(c. 52\)](#), [Sch. 3 para. 20\(2\)\(c\)](#)

111 Confirming officers.

- (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say:—
- (a) the officer who convened the court-martial or any officer superior in command to that officer;
 - (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Confirmation, revision and review of proceedings of courts-martial. (See end of Document for details)

- (c) failing any such officer as aforesaid, any officer appointed by [^{F10}the Defence Council] to act as confirming officer, whether for the particular case or for a specified class of cases.
- (2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:—
- (a) any officer who was a member of the court-martial, or
 - (b) any person who as commanding officer of the accused investigated the allegations against him or who is for the time being the commanding officer of the accused, or
 - (c) any person who as appropriate superior authority investigated the allegations against the accused:

Provided that a person excluded by the foregoing provisions of this subsection may act as confirming officer for a field general court-martial, if otherwise having power to do so, where he is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming officer.

- (3) A warrant or authorisation empowering the convening of a general or district court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the warrant or authorisation, and the powers conferred by subsection (1) of this section shall be exercisable subject to any such reservation.
- (4) Where a person is found guilty by a court-martial held on board any ship and is disembarked before the finding or sentence has been confirmed it may be confirmed by any officer under, or in the area of, whose command he is for the time being, being an officer having power to confirm courts-martial of the like description as that held on board the ship.

Textual Amendments

F10 Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Confirmation, revision and review of proceedings of courts-martial.