



Army Act 1955 (repealed)

1955 CHAPTER 18 3 and 4 Eliz 2

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Miscellaneous provisions

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**

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, [^{F1}handling it], ^{F2} or otherwise [^{F3} 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.
- (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

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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,^{F4} . . . , or by any reviewing authority; and in this section the expression “appearing” means appearing to the court,^{F4} . . . or authority making the order.
- (8)^{F5} . . . the provisions of this Part of this Act as to the^{F5} . . . 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 [^{F6}Part II of the^{M1}Courts-Martial (Appeals) Act 1968], as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against [^{F7}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 [^{F6}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,^{F8} . . . or authority making the order directs to the contrary in any case in which, in the opinion of the court,^{F8} . . . 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.

[^{F9}(12) In this section “relevant conviction” means—

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- (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

- F1** Words substituted by [Theft Act 1968 \(c. 60\), Sch. 2 Pt. II](#)
- F2** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F3** Words added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(1\)](#)
- F4** Words in s. 138(7) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F5** Words in s. 138(8) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F6** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), Sch. 4](#)
- F7** Words substituted by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(2\)](#)
- F8** Words in s. 138(10) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F9** S. 138(12) added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(3\)](#)

Modifications etc. (not altering text)

- C1** S. 138 extended with modifications by [Armed Forces Act 1976 \(c. 52\), Sch. 3 para. 17](#)
- C2** S. 138(9) modified by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 46\(1\)](#)

Marginal Citations

- M1** [1968 c. 20.](#)

F10 139

Textual Amendments

- F10** S. 139 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, ss. 5, 35\(2\), Sch. 1 Pt. IV para. 68, Sch. 7 Pt. I; S.I. 1997/304, art. 2](#) (with transitional provisions in [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 ^{F11}...reviewing authority, ^{F11}... may direct.

Textual Amendments

- F11** Words in s. 140 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

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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 [F12 and by subsection 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 [F13 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 [F13 the rate determined under subsection (2) above] a copy of the record of the proceedings of the court.

[F14(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 [F15 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 [F16 . . . :

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 [F16 . . .

[F17(6)

Textual Amendments

F12 Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(2\)](#)

F13 Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 58](#)

F14 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

F15 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

F16 Words in s. 141(5) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

F17 S. 141(6) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

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[^{F18}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

F18 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 a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

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