



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

#### 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](#)

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

#### [<sup>F1</sup>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

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- (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 liable—
- (a) if the offence consisted in an act or omission falling within subsection (1) or paragraph (a) of subsection (2) and was committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act;
  - (b) in any other case, 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**

**F1** Ss. 24—26 substituted for ss. 24-28 by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 21(1)(2)**, 78(4)

## **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 liable—
- (a) if the offence consisted in an act or omission falling within paragraph (a), (b), (c), (d) or (f) of subsection (1) and was committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act,
  - (b) in any other case, to imprisonment or any less punishment provided by this Act.

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## 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 liable—
  - (a) if the offence was committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act;
  - (b) in any other case, to imprisonment or any less punishment provided by this Act.

## [<sup>F2</sup>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 <sup>M1</sup>Naval Prize Act 1864, and “ship papers” and “aircraft papers” have the same meanings as in that Act.]

### Textual Amendments

**F2** Ss. 27, 28 inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 3(1)(2)**, 78(4)

### Marginal Citations

**M1** 1864 c. 25.

## 28 Other prize offences.

Any person subject to air-force law who—

- (a) . . . <sup>F3</sup> 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

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a prize court within the meaning of the <sup>M2</sup>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

**F3** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), [Sch. 2](#)

#### Marginal Citations

**M2** [1864 c. 25.](#)

### [<sup>F4</sup>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) . . . <sup>F5</sup> 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

**F4** [S. 29](#) substituted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 4(1)(2), 78(4)

**F5** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), [Sch. 2](#)

### [<sup>F6</sup>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

**F6** [S. 29A](#) inserted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 5(1)(2), 78(4)

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### 30 Looting.

Any person subject to air-force law who—

- (a) steals from, or with intent to steal searches, the person of anyone [<sup>F7</sup>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 [<sup>F7</sup>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

**F7** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 6\(1\), 78\(4\)](#)

#### Modifications etc. (not altering text)

**C1** [S. 30](#) extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\), s. 2\(3\)\(a\)](#)

### *Mutiny and insubordination*

### 31 Mutiny.

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

- (a) takes part in a mutiny <sup>F8</sup>; having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service, or
- (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to air-force law who, in a case not falling within the last foregoing subsection, 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,<sup>F8</sup>

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#### Textual Amendments

**F8** 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 court-martial,—

- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act,
- (ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

### 33 Insubordinate behaviour.

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

- (a) <sup>F9</sup>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:

[<sup>F10</sup> 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

**F9** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), **Sch. 2**

**F10** [S. 33\(1\)](#) proviso substituted by [Armed Forces Act 1971 \(c. 33\)](#), ss. **8(1)**, 78(4)

### [<sup>F11</sup>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.]

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#### Textual Amendments

**F11** S. 34 substituted by [Armed Forces Act 1971 \(c. 33\), ss. 8\(2\), 78\(4\)](#)

VALID FROM 01/10/1996

#### [34A <sup>F12</sup> 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 testing for the presence of drugs 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.

(2) For the purposes of this section—

“drug” means any drug which is a controlled drug for the purposes of the <sup>M3</sup>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

**F12** S. 34A inserted (1.10.1996) by [1996 c. 46, s. 32\(2\)](#); [S.I. 1996/2474, art. 2](#)

#### Marginal Citations

**M3** 1971 c. 38.

VALID FROM 28/02/2002

#### [<sup>F13</sup>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

**F13** 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

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(b) when called on, refuses to assist,  
 [<sup>F14</sup>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.

[<sup>F15</sup>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

**F14** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 9(1)(a)**, 78(4)

**F15** [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 be 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 [<sup>F16</sup>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

**F16** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 10(2)**, 78(4)

*Desertion, absence without leave, etc.*

### [<sup>F17</sup>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.]



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**Textual Amendments**

**F17** S. 37 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 11(1)(2)**, 78(4)

[<sup>F18</sup>**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**

**F18** S. 38 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 12(1)(2)**, 78(4)

[<sup>F19</sup>**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**

**F19** S. 39 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 13(1)(2)**, 78(4)

<sup>F20</sup>**40**, .....  
**41.**

**Textual Amendments**

**F20** 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

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- (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 [<sup>F21</sup>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**

**F21** 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 <sup>F22</sup>.

... <sup>F23</sup>

- (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 [<sup>F24</sup>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**

**F22** Words repealed by [Armed Forces Act 1966 \(c. 45\), s. 37\(3\), Sch. 5](#)

**F23** Proviso repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

**F24** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 15\(1\), 78\(4\)](#)

*Disorderly conduct*

**[<sup>F25</sup>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
- (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.]

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#### Textual Amendments

**F25** S. 43A inserted by [Armed Forces Act 1971 \(c. 33\)](#), [ss. 16\(1\)\(2\)](#), 78(4)

### *Offences relating to property*

#### [<sup>F26</sup>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

**F26** 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.

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- (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.

**[<sup>F27</sup> 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 a telecommunication system, 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; and
- “telecommunication system” has the same meaning as in the Telecommunications Act <sup>M4</sup>1984.]

**Textual Amendments**

**F27** S. 44B inserted by *Armed Forces Act 1986* (c. 21, SIF 7:1), s. 2(1)(2)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

#### Marginal Citations

M4 1984 c.12 (96).

### 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)

C2 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)

C3 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
- <sup>F28</sup>(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,]

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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**

**F28** 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*

**[<sup>F29</sup>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.]

**Textual Amendments**

**F29** S. 48A inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 19(1)(2)**, 78(4)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

#### 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.

#### [<sup>F30</sup>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

**F30** 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 [<sup>F31</sup>the Defence Council], . . . <sup>F32</sup>, 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.

[<sup>F33</sup>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

**F31** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F32** Words repealed by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F33** 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

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any person shall, on conviction by court-martial, be liable to [<sup>F34</sup>dismissal from Her Majesty’s service] or any less punishment provided by this Act.

[<sup>F35</sup>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**  
**F34** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 21\(2\), 78\(4\)](#)  
**F35** Proviso inserted by [Armed Forces Act 1971 \(c. 33\), ss. 21\(1\), 78\(4\)](#)

*Offences relating to, and by, persons in custody*

<sup>F36</sup>**53** .....

**Textual Amendments**  
**F36** [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 <sup>F37</sup>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 <sup>F37</sup>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.
- (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.



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### Textual Amendments

**F37** 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 document in his custody or under his control 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 <sup>F38</sup>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 [<sup>F39</sup> 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 (a day's pay being taken for this purpose as the gross amount 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) in any other case, to imprisonment or detention for such a term as aforesaid, or to such a fine as aforesaid.]

[<sup>F40</sup>(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.]

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- (3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial [<sup>F41</sup>or disciplinary court] held in pursuance of [<sup>F42</sup>the <sup>M5</sup>Naval Discipline Act 1957][<sup>F41</sup>and to a court-martial held in pursuance of] the <sup>M6</sup>Army Act 1955, or the law of any colony.

**Textual Amendments**

**F38** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

**F39** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 23\(1\)\(2\), 78\(4\)](#)

**F40** [S. 57\(2A\)](#) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 1\(1\)](#)

**F41** Words inserted by [Naval Discipline Act 1957 \(c. 53\), Sch. 5](#)

**F42** Words substituted by virtue of [Naval Discipline Act 1957 \(c. 53\), s. 137\(2\)](#)

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**Modifications etc. (not altering text)**

**C4** [S. 57\(1\)](#) extended by [Armed Forces Act 1976 \(c. 52\), Sch. 3 paras. 1\(2\), 15\(1\)](#)

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**Marginal Citations**

**M5** 1957 c. 53.

**M6** 1955 c. 18.

<sup>F43</sup>58 .....

**Textual Amendments**

**F43** [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](#)

<sup>F44</sup>59 .....

**Textual Amendments**

**F44** [Ss. 59, 217](#) repealed by [Armed Forces Act 1966 \(c. 45\), s. 37\(3\), Sch. 5](#)

*Miscellaneous offences*

<sup>F45</sup>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.]

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### Textual Amendments

**F45** 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)

**C5** S. 61 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), s. **2(3)(a)**

## 62 Making of false documents.

[<sup>F46</sup>(1)] Any person subject to air-force law who—

- [<sup>F47</sup>(a) makes an official document or official record which is to his knowledge false in a material particular, or
- (b) makes in any official document or official record an entry which is to his knowledge false in a material particular, or
- (c) tampers with the whole or any part of any official document or official record (whether by altering it, destroying it, suppressing it, removing it or otherwise), or
- (d) with intent to deceive, fails to make an entry in any official document or official record,] 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.

[<sup>F48</sup>(2) For the purposes of this section—

- (a) a document or record 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 or record made by another shall be treated, as well as that other, as the maker of the document or record.

(3) In this section—

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

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(d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable as aforesaid of being reproduced therefrom;

“film” includes a microfilm; and

“record” includes any account, any information recorded otherwise than in a document by mechanical, electronic or other means and any program in a computer.]

#### Textual Amendments

**F46** S. 62 renumbered as s. 62(1) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 3(2)

**F47** S. 62(a)–(d) substituted for paras. (a)–(c) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 3(1)

**F48** S. 62(2)(3) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 3(2)

#### Modifications etc. (not altering text)

**C6** S. 62 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), s. 2(3)(a)

### 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.

#### [<sup>F49</sup>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

**F49** S. 63A inserted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 28(1)(2), 78(4)

#### [<sup>F50</sup>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

**F50** S. 64 substituted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 29(2), 78(4)

#### Modifications etc. (not altering text)

**C7** S. 64 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), s. 2(3)(a)

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

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

If—

- (a) any officer subject to air-force law . . . <sup>F51</sup> 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 . . . <sup>F51</sup> 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**

**F51** 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)**

**C8** [S. 66](#) extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), s. 2(3)(a)

<sup>F52</sup>**67** .....

**Textual Amendments**

**F52** [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 [<sup>F53</sup>or against section 69 below] shall, on conviction by court-martial, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

**Textual Amendments**

**F53** Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 32(1), 78(4)

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**[<sup>F54</sup>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**

**F54** 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 [<sup>F55</sup>, 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.

**Textual Amendments**

**F55** 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.
- [<sup>F56</sup>(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 <sup>M7</sup>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) [<sup>F57</sup>Subject to s. 71A below,] A person convicted by court-martial of an offence against this section shall—
    - (a) if the corresponding civil offence is treason <sup>F58</sup>, be liable to suffer death <sup>F58</sup>
    - [<sup>F59</sup>(aa) if the corresponding civil offence is murder, be liable to imprisonment for life];

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- [<sup>F60</sup>(ab) if the corresponding civil offence is an offence of genocide consisting of the killing of any person, be liable 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:
- <sup>F61</sup>(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 or rape [<sup>F62</sup>or an offence of genocide][<sup>F63</sup>or an offence under section 1 of the <sup>M8</sup>Biological Weapons Act 1974.]
- [<sup>F64</sup>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 [<sup>F65</sup>or an offence of genocide consisting of the killing of any 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.
- [<sup>F66</sup>(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

- F56** S. 70(2A) inserted by [Criminal Attempts Act 1981 \(c. 47\), s. 7\(1\)](#)
- F57** Words inserted by [Armed Forces Act 1976 \(c. 52\), s. 10\(3\)\(a\)](#)
- F58** Words repealed by [Murder \(Abolition of Death Penalty\) Act 1965 \(c. 71\), Sch.](#)
- F59** S. 70(3)(aa) inserted by [Murder \(Abolition of Death Penalty\) Act 1965 \(c. 71\), Sch.](#)
- F60** S. 70(3)(ab) inserted by [Genocide Act 1969 \(c. 12\), s. 1\(6\)\(a\)](#)
- F61** Proviso repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F62** Words inserted by [Genocide Act 1969 \(c. 12\), s. 1\(6\)\(b\)](#)
- F63** Words inserted by [Biological Weapons Act 1974 \(c. 6\), s. 5\(1\)](#)
- F64** Words added by [Suicide Act 1961 \(c. 60\), Sch. 1 Pt. II](#)
- F65** Words inserted by [Genocide Act 1969 \(c. 12\), s. 1\(6\)\(c\)](#)
- F66** S. 70(6) added by [Armed Forces Act 1971 \(c. 33\), ss. 34\(1\)\(2\), 78\(4\)](#)

#### Modifications etc. (not altering text)

- C9** S. 70 amended by [Armed Forces Act 1976 \(c. 52\), s. 7\(4\)](#)

#### Marginal Citations

- M7** 1981 c. 47.
- M8** 1974 c. 6.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

### *Punishments available to courts-martial*

#### **[<sup>F67</sup>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 [<sup>F68</sup>and section 71A below] and to the limitations hereinafter provided on the powers of certain courts-martial, as follows—

- (a) death,
- (b) imprisonment,
- [<sup>F69</sup>(bb) detention by virtue of a custodial order made under section 71 AA of this Act;]
- (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, [<sup>F70</sup>personal 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:

[<sup>F71</sup>Provided 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 [<sup>F72</sup>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:



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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

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 [<sup>F72</sup>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;

and for the purposes of this subsection a day's pay shall, as regards a person found guilty of an offence, be deemed to be the gross pay that is, or would (apart from any forfeiture) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.]

- [<sup>F73</sup>(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.]

#### Textual Amendments

- F67** S. 71 substituted for ss. 71-73 by [Armed Forces Act 1971 \(c. 33\), ss. 36, 78\(4\)](#)
- F68** Words inserted by [Armed Forces Act 1976 \(c. 52\) s. 10\(3\)\(b\)](#)
- F69** S. 71(1)(bb) inserted by [Armed Forces Act 1981 \(c. 55\), s. 2\(3\)\(a\)](#)
- F70** 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](#)
- F71** Proviso substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para. 4](#)
- F72** Words inserted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para. 1\(1\)\(a\)](#)
- F73** 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](#)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

## [<sup>F74</sup>71A Juveniles

(1) A person under [<sup>F75</sup>21] years of age shall not be sentenced to imprisonment.

[ Where a person under 21 years of age is convicted of murder or any other civil offence  
<sup>F76</sup>(1A) the sentence for which is fixed by law as imprisonment for life, the court shall sentence him to custody for life unless he is liable to be detained under subsection (3) below.

(1B) Where a person aged [<sup>F77</sup>18 years] or over but under 21 years of age is convicted of any other offence for which a person aged 21 years or over would be liable to imprisonment for life [<sup>F78</sup>then, subject to subsection (1E) below], the court shall sentence him to custody for life if—

<sup>F79</sup>(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.]

[ Subject to subsections (3) and (4) below, the only custodial sentences that a court may  
<sup>F80</sup>(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)

<sup>F81</sup>(3) A person convicted of murder who was under 18 years of age when the offence was committed shall not be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against a person convicted of any offence who was under 18 years of age when the offence was committed; 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.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (4) [<sup>F82</sup>In any case where—
- (a) a person aged 14 or over but under [<sup>F77</sup>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, [<sup>F83</sup>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, [<sup>F84</sup>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 [<sup>F85</sup>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 [<sup>F85</sup>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.]
- [<sup>F86</sup>(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

- F74** S. 71A inserted by [Armed Forces Act 1976 \(c. 52\), s. 10\(1\)](#)
- F75** Figure substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 2\(a\)](#)
- F76** S. 71A(1A)–(1C) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 2\(b\)](#)
- F77** 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](#)
- F78** 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\(1\)\)](#)
- F79** 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\(1\)\)](#)
- F80** 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\(1\)\)](#)
- F81** S. 71A(2) repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 78, Sch. 16](#)
- F82** 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\(1\)\)](#)
- F83** 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\(1\)\)](#)
- F84** 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\(1\)\)](#)
- F85** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 2\(d\)](#)
- F86** 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\(1\)\)](#)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**[<sup>F87</sup>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, <sup>F88</sup> . . . , 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 [<sup>F89</sup>period to be specified in the order <sup>F90</sup> . . . [<sup>F91</sup>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.]

[ . . . . .  
<sup>F92</sup><sup>F93</sup>(1A)

<sup>F94</sup>(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.]

<sup>F93</sup>(1B) For the purposes of determining whether [<sup>F95</sup>it is satisfied as mentioned in subparagraphs (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 <sup>F96</sup> . . . 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.

[ The following provisions of this Act shall apply in the case of a sentence under a <sup>F97</sup>(5) 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.]

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(6) In this section “appropriate institution” means—

<sup>F98</sup>(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, section 1C of the Criminal Justice Act <sup>M9</sup>1982 having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;]

<sup>F99</sup>(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.

<sup>F100</sup>(6A) [ <sup>F101</sup>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.]

<sup>F102</sup>(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

- F87** S. 71AA inserted by [Armed Forces Act 1981 \(c. 55\), s. 2\(1\)](#)
- F88** 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](#)
- F89** Words in s. 71AA(1) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 3\(a\)](#)
- F90** 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.](#)
- F91** 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](#)
- F92** 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](#)
- F93** S. 71AA(1A)(1B) inserted by [Criminal Justice Act 1982 \(c. 8, SIF 39:1\), s. 58, Sch. 8 para. 3\(b\)](#)
- F94** 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](#)
- F95** 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\(1\)\)](#)
- F96** 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))
- F97** S. 71AA(5) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para. 5\(2\)](#)
- F98** S. 71AA(6)(a) substituted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 123\(6\), Sch. 8 para. 4\(a\)](#)
- F99** S. 71AA(6)(b) substituted (S.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 124\(4\), Sch. 9 para. 2\(a\)](#)
- F100** S. 71AA(6A) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 3\(d\)](#)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**F101** Words in s. 71AA(6A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 71, Sch. 9 para. 2(d); S.I. 1992/333, art. 2(2), Sch. 2

**F102** 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).

#### Marginal Citations

**M9** 1982 c.48 (39:1).

### [<sup>F103</sup>71A] **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

**F103** 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))

### [<sup>F104</sup>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, [<sup>F105</sup>or]
  - [<sup>F106</sup>(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 [<sup>F107</sup>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.

*Status:* Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

[ Subject to subsections (4) and (5) below, the Table in section 31(3A) of the Powers <sup>F108</sup>(2) of Criminal Courts Act <sup>M10</sup>1973 (maximum periods of imprisonment for default in payment of fines etc.), as [<sup>F109</sup>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 [<sup>F110</sup>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.

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

[ An order imposing a term of detention under this section shall be given effect as if it <sup>F111</sup>(5A) 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

**F104** S. 71B inserted by [Armed Forces Act 1976 \(c. 52\), s. 13, Sch. 6 para. 1](#)

**F105** Word inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 4\(1\)\(a\)](#)

**F106** S. 71B(1)(c)(d) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 4\(1\)\(a\)](#)

**F107** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 4\(1\)\(b\)](#)

**F108** S. 71B(2) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 5](#)

**F109** 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](#)

**F110** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 4\(1\)\(b\)](#)

**F111** S. 71B(5A) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 4\(1\)\(c\)](#)

#### Marginal Citations

**M10** [1973 c.62 \(39:1\)](#).

### 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.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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 <sup>F112</sup> . . . non-commissioned officer [<sup>F113</sup> 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

**F112** Words repealed by [Naval Discipline Act 1957 \(c. 53\)](#), [Sch. 5](#)

**F113** Words inserted by [Naval Discipline Act 1957 \(c. 53\)](#), [Sch. 5](#)

#### <sup>X1</sup>75 Provisions for avoiding delay after arrest.

- (1) The allegations against any person subject to air-force law who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.

- (2) Wherever any person subject to air-force law, having been taken into air-force custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of air-force operations.

- (3) . . . . . <sup>F114</sup>

#### Editorial Information

**X1** [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](#))

#### Textual Amendments

**F114** [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](#)



**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

**Modifications etc. (not altering text)**

**C10** S. 75 excluded by [Armed Forces Act 1966 \(c. 45\), s. 15\(7\)](#)

VALID FROM 02/10/2000

*F115* Custody

**Textual Amendments**

**F115** 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](#))

**F116 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.
- (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;

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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**

**F116** 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)

#### **Modifications etc. (not altering text)**

**C11** S. 75A(1)(3)(5)(6) modified (*temp.*)(4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 3

#### **<sup>F117</sup>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**

**F117** 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 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**F118 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.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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

**F118** 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)

#### <sup>F119</sup>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 <sup>M11</sup>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

**F119** 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 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

### Marginal Citations

M11 1996 c. 14.

### <sup>F120</sup>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

**F120** 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)

### [<sup>F121</sup>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—

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- (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**

**F121** S. 75F inserted (2.10.2000) by 2000 c. 4, s. 2(2); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### **[<sup>F122</sup>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.

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

- (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.]

#### Textual Amendments

**F122** 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)

#### [<sup>F123</sup>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.]

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

**F123** 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)

#### <sup>F124</sup>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

**F124** 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)

**C12** S. 75J(2)(b) restricted (2.10.2000) by S.I. 2000/2369, rule 14(3)

#### <sup>F125</sup>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.



*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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**

**F125** 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)**

**C13** S. 75K(1)(7) modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 6

#### **[<sup>F126</sup>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—

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

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

#### Textual Amendments

**F126** 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)

#### [<sup>F127</sup>75MCustody 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

**F127** 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)

**C14** S. 75M modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 6

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

### *Investigation of, and summary dealing with, charges*

#### **76 Investigation of charges by commanding officer.**

Before an allegation against a person subject to air-force law (hereinafter referred to as “the accused”) that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused’s commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

#### **Modifications etc. (not altering text)**

**C15** S. 76 excluded by Courts-Martial (Appeals) Act 1968 (c. 20), s. 19(4)

VALID FROM 01/04/1997

#### **<sup>F128</sup>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 wing commander 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**

**F128** 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)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

VALID FROM 02/10/2000

**[<sup>F129</sup>76A 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**

**F129** 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)**

**C16** 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)

VALID FROM 01/04/1997

**[<sup>F130</sup>76B Summary dealings.**

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

- (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.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.
- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) 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 airman, refer the charge back to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (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 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

**F130** 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**)

#### Modifications etc. (not altering text)

**C17** S. 76B(5) amended (4.9.2000) by S.I. 2000/2366, **art. 3**, **Sch. para. 9(2)**

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

VALID FROM 01/04/1997

**F131 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.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (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

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- (b) to assume an acting rank lower than that held by him but higher than his permanent rank.

#### Textual Amendments

**F131** 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)

## 77 Charges to be dealt with summarily or by court-martial.

- (1) After investigation, a charge against an officer below the rank of [<sup>F132</sup>wing commander] or against a warrant officer may, if an authority has power under the following provisions of this Part of this Act to deal with it summarily, be so dealt with by that authority (in this Act referred to as “the appropriate superior authority”) in accordance with those provisions.
- (2) After investigation, a charge against a non-commissioned officer or airman may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.
- (3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.
- (4) Notwithstanding anything in the foregoing provisions of this section, where—
- (a) the commanding officer has investigated a charge against an officer or warrant officer, or
  - (b) the commanding officer has investigated a charge against a non-commissioned officer or airman which is not one which can be dealt with summarily,
- the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

[<sup>F133</sup>(4A) This section has effect subject to section 77A of this Act]

- (5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

#### Textual Amendments

**F132** Words substituted by [Armed Forces Act 1966 \(c. 45\), s. 31](#)

**F133** S. 77(4A) inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(2\)](#)

#### Modifications etc. (not altering text)

**C18** S. 77 excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**[<sup>F134</sup>77A Power to stay further proceedings.**

Where, in the course of investigating a charge, it appears to the accused's 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 ought to be, taken against the accused otherwise than under this Act he may stay further proceedings on the charge.]

**Textual Amendments**

**F134** S. 77A inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(3\)](#)

**78 Further proceedings on charges against N.C.O.s and airmen.**

- (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or airman [<sup>F135</sup>and has not stayed further proceedings thereon].
- (2) If—
- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it, or
  - (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,
- he shall take the prescribed steps with a view to the charge being tried by court-martial.
- [<sup>F136</sup>(3) Otherwise, the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty, he may award one or more of the following punishments—
- (a) if the accused is an airman, detention for a period not exceeding [<sup>F137</sup>60] days,
  - (b) fine,
  - (c) if the accused is a non-commissioned officer, severe reprimand or reprimand,
  - (d) where the offence has occasioned any expense, loss or damage, stoppages, and
  - (e) any minor punishment for the time being authorised by the Defence Council:

Provided that no fine or minor punishment shall be awarded for an offence for which detention is awarded:

And provided also that the amount of a fine that may be awarded—

- (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 <sup>F138</sup>twenty-eight days, and
- (b) in the said excepted case—
  - (i) in any case, shall not exceed the amount of the offender's pay for <sup>F138</sup>twenty-eight days, and
  - (ii) where the said civil offence is punishable by a civil court in England only on summary conviction, and is so punishable by any fine of a maximum amount less than the amount limited by sub-paragraph (i) above, shall not exceed that maximum, and
  - (iii) where the said civil offence is punishable by a civil court in England on indictment by a fine of a maximum amount less than the amount so limited (whether or not it is also punishable on summary conviction) shall not exceed that maximum,



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a day's pay being taken for the purposes of this proviso, as regards a person found guilty of any offence, as the gross pay that is, or would (apart from any forfeiture) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.]

- (4) Where the accused is an acting warrant officer or non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank [F139] or to assume an acting rank lower than that held by him but higher than his permanent rank.]

- (5) Notwithstanding anything in subsection (3)

of this section, where the commanding officer [F140] considers] that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with Queen's Regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

- (6) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference the three last foregoing subsections shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

#### Textual Amendments

F135 Words added by [Armed Forces Act 1981 \(c. 55\), s. 3\(4\)](#)

F136 [S. 78\(3\)](#) substituted by [Armed Forces Act 1971 \(c. 33\), ss. 37\(1\), 78\(4\)](#)

F137 Word substituted by [Armed Forces Act 1976 \(c. 52\), s. 5\(1\)](#)

F138 Words repealed by [armed Forces Act 1976 \(c. 52\), Sch. 10](#)

F139 Words added by [Army and Air Force Act 1961 \(c. 52\), s. 22](#)

F140 Word substituted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 1](#)

#### Modifications etc. (not altering text)

C19 [S. 78](#) excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#); amended by [Armed Forces Act 1976 \(c. 52\), s. 5\(2\)](#)

## 79 Further proceedings on charges against officers and warrant officers.

- (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he had dismissed [F141] or stayed further proceedings on] the charge, or the case is one where he has power, and proposes, to direct trial by field general court-martial, submit it in the prescribed manner to higher authority; and thereupon

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following subsections.

- (2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.
- (3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.
- (4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

- [<sup>F142</sup>(5) If the appropriate superior authority records a finding of guilty, the 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, and
  - (d) where the offence has occasioned any expense, loss or damage, stoppages:

Provided that the appropriate superior authority may not award both forfeiture of seniority and a fine:

And provided also that the second proviso to section 78(3) of this Act shall have effect as respects fines awarded by virtue of this section as it has effect as respects fines awarded by virtue of the said section 78.]

- (6) Notwithstanding anything in subsection (4) of this section, where the appropriate superior authority [<sup>F143</sup>considers] that the accused is guilty and if the charge is dealt with summarily will award [<sup>F144</sup>any punishment other than severe reprimand or reprimand], or where a finding of guilty will involve a forfeiture of pay, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects [<sup>F145</sup>and does not subsequently in accordance with Queen's Regulations withdraw his election] the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

#### **Textual Amendments**

- F141** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(5\)](#)
- F142** [S. 79\(5\)](#) substituted by [Armed Forces Act 1971 \(c. 33\), ss. 37\(2\), 78\(4\)](#)
- F143** Word substituted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 2](#)
- F144** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 1 para. 1\(3\)](#)
- F145** Words in [s. 79\(6\)](#) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 11\(1\); S.I. 1991/2719, art. 2](#)

#### **Modifications etc. (not altering text)**

- C20** [S. 79](#) excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#); amended by [Armed Forces Act 1976 \(c. 52\), s. 5\(2\)](#)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**[<sup>F146</sup>80 Directions by higher authority for dismissal of charges or stay of proceedings.**

(1) Notwithstanding anything in section 78 or 79 of this Act, where a charge has been referred to higher authority with a view to its being tried by court-martial, or has been submitted to higher authority for determination how it is to be proceeded with, that authority may refer the charge back to the commanding officer of the accused with a direction to dismiss the charge or a direction to stay all further proceedings thereon; and the commanding officer shall deal with the charge accordingly.

(2) The reference back of a charge under subsection (1)

above shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.]

**Textual Amendments**

**F146** S. 80 substituted by [Armed Forces Act 1971 \(c. 33\)](#), s. 46

**Modifications etc. (not altering text)**

**C21** S. 80 extended by [Armed Forces Act 1976 \(c. 52\)](#), Sch. 3 paras. 1(2), 4(5), **6(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 [<sup>F147</sup>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 [<sup>F147</sup>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.

<sup>F148</sup>(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:—

<sup>F149</sup>(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**

**F147** Words substituted by [S.I. 1964/488](#), **Sch. 1 Pt. I**

**F148** [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**

**F149** [S. 81\(4\)\(a\)](#) repealed by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 4 Pt. I**

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C22** 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 an offence, means such officer having powers of command over that person as may be determined by or under regulations of [<sup>F150</sup>the Defence Council].
- (2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say,—
  - (a) any air officer, flag officer, general officer or brigadier having power to convene general courts-martial, or
  - (b) such other air officer, flag officer, general officer or brigadier, or, where [<sup>F150</sup>the Defence Council] so direct, group captain [<sup>F151</sup>or naval or military officer of corresponding rank] as may be specified by or under regulations of [<sup>F150</sup>the Defence Council]:

Provided that an officer under such rank as may be specified by regulations under this section shall not act as appropriate superior authority where the accused is above such rank as may be so specified.

- (3) Regulations under this section may confer on officers, or any class of officers, who by or under the regulations are authorised to exercise the functions of commanding officer power to delegate those functions, in such cases and to such extent as may be specified in the regulations, to officers of a class so specified.

**Textual Amendments**

**F150** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F151** Words inserted by [Armed Forces Act 1966 \(c. 45\), s. 23\(2\)](#)

**83 Limitations on powers of summary dealing with charges.**

- (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations of [<sup>F152</sup>the Defence Council].
- (2) In such cases as may be specified in that behalf by regulations of [<sup>F152</sup>the Defence Council], the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

**Textual Amendments**

**F152** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

VALID FROM 02/10/2000

*[<sup>F153</sup> The summary appeal court*

**Textual Amendments**

**F153** 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)

<sup>F154</sup>**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**

**F154** 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)

<sup>F155</sup>**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 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

**F155** 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)

#### <sup>F156</sup>83Z 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 <sup>M12</sup>Naval Discipline Act 1957.]

#### Textual Amendments

**F156** 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

**M12** 1957 c. 53.

#### <sup>F157</sup>83Z Constitution of summary appeal court for appeals.

- (1) For the purpose of hearing an appeal, the summary appeal court shall consist of—

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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

**F157** 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)

#### [<sup>F158</sup>83ZR] 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

**F158** 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)

#### [<sup>F159</sup>83ZH] 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.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

(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**

**F159** S. 83ZF inserted (2.10.2000) by 2000 c. 4, s. 19(1); S.I. 2000/2366, art. 2 (with transitional provisions in art. 3, Sch. para. 14)

#### **[<sup>F160</sup>83Z 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.



**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

- (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

**F160** 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)

**C23** S. 83ZG(1)(b) restricted (2.10.2000) by S.I. 2000/2372, rule 46(4)

### [<sup>F161</sup>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

**F161** 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)

### [<sup>F162</sup>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;

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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

**F162** 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)

#### <sup>F163</sup> 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

**F163** 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)

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

### <sup>F164</sup>**83ZI 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**

**F164** 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)

VALID FROM 01/04/1997

### <sup>F165</sup>*The prosecuting authority]*

#### **Textual Amendments**

**F165** 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)

### <sup>F166F167</sup>**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**

**F166** 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)

**F167** 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)

### <sup>F168</sup>**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—

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

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- (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 to record a finding that the preliminary charge has been proved and award punishment accordingly.
- (3) In subsection (2) above “the preliminary charge” means the charge for which punishment would have been awarded 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 subsection (5) below) whether any such charge is to be tried by general court-martial or district court-martial; and
    - (b) 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.
  - (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

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

that power with the leave of the court-martial, the court may try any additional charge preferred.

(13) If, before the commencement of the trial of any charge, the prosecuting authority 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

**F168** 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**)

VALID FROM 10/02/2000

#### **[<sup>F169</sup>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
- (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.

(3) Where a charge is referred to a commanding officer under subsection (1) 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

**F169** S. 83BB inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 3**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

VALID FROM 28/02/2002

**[ F170 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**

**F166** 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**)

**F170** 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**

**[ F171 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 <sup>M13</sup>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**

**F166** 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**)

**F171** 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**)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

### Marginal Citations

M13 1990 c. 41.

### *Courts-martial: general provisions*

#### **84 Trial to be by general court-martial, district court-martial or in certain cases field general court-martial.**

- (1) Subject to the provisions of this section, a charge which is to be tried by court-martial shall be tried either by general court-martial or by district court-martial.
- (2) Where the officer commanding a body of the regular air force on active service—
  - (a) being an officer (whether air-force, naval or military) to whom a charge has been submitted under subsection (1) of section seventy-nine of this Act for determining how it is to be dealt with, or
  - (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with, or
  - (c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

is of opinion that it is not possible without serious detriment to the public service that the charge should be tried by a general or district court-martial, the officer may (whether or not he is authorised to convene general courts-martial) direct that the charge shall be tried by a field general court-martial.

VALID FROM 01/04/1997

#### **[<sup>F172</sup>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**

**F172** 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)

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

VALID FROM 01/04/1997

**<sup>F173</sup>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 <sup>M14</sup>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**

**F173** 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**

**M14** 1990 c. 41.

VALID FROM 01/04/1997

**<sup>F174</sup>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;
  - (d) any other 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.



*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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 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

**F174** 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**)

VALID FROM 01/04/1997

#### **F175** 84D Constitution of general and district courts-martial.

- (1) A general court-martial shall consist of the president, not less than four other air-force officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other air-force officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general 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 three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a 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 two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (6) A general court-martial for the trial of an officer above the rank of flight lieutenant shall not include any member below the rank of flight lieutenant.
- (7) 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,

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available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.

(8) If, in the opinion of the court administration officer, the necessary number of air-force officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.

(9) 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 <sup>M15</sup>Naval Discipline Act 1957.

#### Textual Amendments

**F175** 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

**M15** 1957 c. 53.

## 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, and 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 of death or of imprisonment for a term exceeding two years [<sup>F176</sup>or make an order committing a person to be detained under section 71AA of this Act for a period exceeding two years].

(3) A field general court-martial shall have the powers of a general court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years [<sup>F177</sup>or detention under section 71AA of this Act for a period of two years].

#### Textual Amendments

**F176** Words inserted by **Criminal Justice Act 1982 (c. 48, SIF 39:1)**, s. 58, Sch. 8 para. 5(a)

**F177** Words inserted by **Criminal Justice Act 1982 (c. 48, SIF 39:1)**, s. 58, Sch. 8 para. 5(b)

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VALID FROM 02/10/2000

**[<sup>F178</sup>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**

**F178** 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)

**86 Officers having power to convene courts-martial.**

- (1) A general court-martial may be convened by any qualified officer authorised by Her Majesty by warrant under Her sign manual to convene general courts-martial or that court-martial, [<sup>F179</sup>or by any officer to whom a qualified officer so authorised has delegated his power under the warrant, being an officer under the command of the qualified officer and not below the rank of group captain].
- (2) A district court-martial may be convened by an officer authorised to convene general courts-martial, by any person, not below the rank of flight lieutenant, under the command of such an officer whom that officer has authorised to convene district courts-martial, by any air officer commanding a body of the air force or by any officer for the time being acting in the place of such an air officer.
- (3) A field general court-martial may be convened by the officer who directed that the charge should be tried by field general court-martial.
- (4)
- <sup>F180</sup>(5) In this section the expression “qualified officer” means any officer not below the rank of squadron leader or corresponding rank who—
  - (a) is in command of a body of the regular air force, or
  - (b) is in command of the command within which a body of the regular air force is serving.
- (6) Any warrant under this section, or any authorisation under this section to convene courts-martial—
  - (a) may be made subject to restrictions, reservations, exceptions or conditions;
  - (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or

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designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors;

- (c) may be varied or may be revoked, either wholly or in part, by a subsequent warrant of Her Majesty or, as the case may be, by the officer by whom it was given or his successor in office.

- (7) Where an officer on board ship—

- (a) has had power to convene general courts-martial delegated to him by an officer under whose command he was before the departure of the ship, or  
 (b) has been authorised under subsection (2) of this section to convene district courts-martial by such an officer,

he may convene courts-martial to the like extent as if he had continued under the command of the officer delegating the power or granting the authorisation.

#### **Textual Amendments**

**F179** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 48\(1\)\(2\)](#)

**F180** [S. 86\(4\)](#) repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)

## **87 Constitution of general courts-martial.**

- (1) A general court-martial shall consist of the president and not less than four other officers.
- (2) Save as hereinafter provided, an officer shall not be appointed a member of a general court-martial unless he belongs to Her Majesty's air forces, is subject to air-force law and has held a commission in [<sup>F181</sup>any of Her Majesty's naval, military or air forces] for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (3) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (4) The president of a general court-martial shall be appointed by order of the convening officer, and shall be of the rank of squadron leader or higher rank unless in the opinion of the convening officer no such officer having suitable qualifications is, with due regard to the public service, available; and in any event the president of a general court-martial shall not be under the rank of flight lieutenant.
- (5) The members of a general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.
- (6) An officer under the rank of flight lieutenant shall not be a member of a general court-martial for the trial of an officer above that rank.

#### **Textual Amendments**

**F181** Words substituted by [Armed Forces Act 1966 \(c. 45\), s. 24](#)

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## **88 Constitution of district courts-martial.**

- (1) A district court-martial shall consist of the president and not less than two other officers.
- (2) Save as hereinafter provided, an officer shall not be appointed to be a member of a district court-martial unless he belongs to Her Majesty's air forces, is subject to air-force law and has held a commission in [<sup>F182</sup>any of Her Majesty's naval, military or air forces] for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (3) The president of a district court-martial shall be appointed by order of the authority convening the court, and shall be of the rank of squadron leader or higher rank unless in the opinion of the authority convening the court no such officer having suitable qualifications is, with due regard to the public service, available; and in any event the president of a district court-martial shall not be under the rank of flight lieutenant.
- (4) The members of a district court-martial, other than the president, shall be appointed by order of the authority convening the court or in such other manner as may be prescribed.

### **Textual Amendments**

**F182** Words substituted by [Armed Forces Act 1966 \(c. 45\), s. 24](#)

## **89 Constitution of field general courts-martial.**

- (1) A field general court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualifications are not available without serious detriment to the public service, shall consist of the president and one other officer.
- (2) Save as hereinafter provided, the members of a field general court-martial shall be persons belonging to Her Majesty's air forces and subject to air-force law.
- (3) The president of a field general court-martial shall be an officer appointed by the convening officer and shall not be under the rank of flight lieutenant.
- (4) The members of a field general court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

## **90 Supplementary provisions as to constitution of courts-martial.**

- (1) The officer who convened a court-martial shall not be a member of that court-martial:  
Provided that if in the case of a field general court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he may himself be president of the court-martial.
- (2) An officer who at any time between the date on which the accused was charged with the offence and the date of the trial has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or 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, shall not sit

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as a member of a general or district court-martial, or act as judge advocate at such a court-martial.

- (3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of air-force officers having suitable qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with the consent of the proper naval or military authority, appoint any naval or military officer as president in lieu of an air-force officer or as any other member of the court in lieu of or in addition to an air-force officer or air-force officers:

Provided that no naval or military officer shall be qualified to act in relation to a court-martial unless he is of corresponding rank to that which would have been required in the case of an air-force officer and has held a commission in [<sup>F183</sup>any of Her Majesty's naval, military or air forces] for the like period or periods as would have been so required.

- (4) Where—

- (a) the officer convening a general or district court-martial appoints a flight lieutenant to be president, being of opinion that no officer of higher rank having suitable qualifications is, with due regard to the public service, available;
- (b) an officer directs that an offender shall be tried by a field general court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by a general or district court-martial, or the officer convening a field general court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious detriment to the public service available, or appoints himself to be president, being of opinion that it is not practicable to appoint another officer as president, or
- (c) the officer convening any court-martial appoints an officer not being an air-force officer as president or any other member of the court, being of opinion that the necessary number of air-force officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service,

the order convening the court-martial shall contain a statement of the said opinion, and that statement shall be conclusive.

- (5) In this section the expression “air-force officer” means an officer belonging to Her Majesty's air forces and subject to air-force law.

#### **Textual Amendments**

**F183** Words substituted by [Armed Forces Act 1966 \(c. 45\), s. 24](#)

## **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 Her Majesty's dominions) as may be specified in the order convening the court; and the convening officer may convene it to sit [<sup>F184</sup>at any place, whether or not, in the case of an officer having a command, within the limits of his command].

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- (2) A court-martial sitting at any place shall if the convening officer directs it to sit at some other place, and may without any such direction 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

**F184** Words substituted by [Armed Forces Act 1981 \(c. 55\)](#), [Sch. 2 para. 4](#)

### *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 officer.
- (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 they are sworn, and he shall be asked whether he objects to any of those officers.
- (3) Every objection made by an accused to any officer shall be considered by the other officers appointed members of the court.
- (4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.
- (5) If objection is made to a member of the court other than the president and not less than one half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

#### **93 Administration of oaths.**

- (1) An oath shall be administered to every member of a court-martial and to any person [<sup>F185</sup>other than an exempted person,] in attendance on a court-martial as judge advocate, officer [<sup>F186</sup>or other person] under instruction, <sup>F187</sup> or interpreter.
- <sup>F188</sup>(1A) In subsection (1) above “exempted person” means any person appointed under section 30 of the <sup>M16</sup>Courts-Martial (Appeals) Act 1951 (assistants to Judge Advocate General) who is acting as judge advocate at the court-martial and was appointed so to act either by or on behalf of the Judge Advocate General or by the convening officer.]
- <sup>F189</sup>(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.]
- <sup>F190</sup>(2A) .....

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- (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

- F185** Words inserted by [Armed Forces Act 1976 \(c. 52\), s. 12\(1\)\(a\)](#)  
**F186** Words inserted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 5\(1\)](#)  
**F187** Words repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)  
**F188** [S. 93\(1A\)](#) added by [Armed Forces Act 1976 \(c. 52\), s. 12\(2\)](#)  
**F189** [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](#)  
**F190** [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](#)

#### Marginal Citations

- M16** [1951 c. 46.](#)

### 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.

### 95 Dissolution of courts-martial.

- (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer 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.



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- (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 convening officer may appoint him president and the trial shall proceed accordingly; but
  - (b) if he is not, the court shall be dissolved.
- (4) Without prejudice to the generality of subsection (1)

of this section, if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.
- (5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court.

## **96 Decisions of courts-martial.**

- (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) 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 on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.
- (4) 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.
- (5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

## **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.
- (2) Any finding of guilty shall be, and be announced as being, subject to confirmation.
- (3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

## **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 <sup>F191</sup>subject to section 99A below <sup>F192</sup>to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.)<sup>F193</sup>and to service modifications<sup>F193</sup>],] be the same as those observed in civil courts 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 before a civil court in England.
- <sup>F194</sup>(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.]
- (2)
- <sup>F195</sup>(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 civil court in England.

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#### Textual Amendments

- F191** Words inserted by [Armed Forces Act 1976 \(c. 52\), s. 11, Sch. 5 para. 3\(a\)](#)
- F192** 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](#)
- F193** Words inserted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\), s. 119\(1\), Sch. 6 Pt. II para. 29\(2\)\(a\)](#)
- F194** 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\(2\)\(b\)](#)
- F195** 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](#)

#### [<sup>F196</sup>99A Proof at courts-martial by written statement.

- (1) [<sup>F197</sup>Without prejudice to section 99 above, section] 9 of the <sup>M17</sup>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—
- in the United Kingdom by any person, and
  - outside the United Kingdom by any person who at the time of making the statement was—
    - a person subject to service law, or
    - a person to whom Part II of this Act or Part II of the <sup>M18</sup>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 <sup>M19</sup>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 <sup>M20</sup>Army Act 1955 or section 119 of the <sup>M21</sup>Naval Discipline Act 1957 apply.
- (3) In subsection (1) above “service modifications” means—
- modifications made by any regulations under section 12 of the <sup>M22</sup>Criminal Justice Act 1967 in force on the coming into force of this section, and
  - 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

- F196** S. 99A inserted by [Armed Forces Act 1976 \(c. 52\), s. 11, Sch. 5 paras. 1, 2](#)

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**F197** 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)**

**C24** [S. 99A\(1\)\(2\)\(5\)](#) applied (with modifications) (2.10.2000) by [S.I. 2000/2372](#), [rule 27\(1\)\(b\)\(2\)\(b\)](#)

**Marginal Citations**

**M17** 1967 c. 80.

**M18** 1955 c. 18.

**M19** 1957 c. 53.

**M20** 1955 c. 18.

**M21** 1957 c. 53.

**M22** 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.**

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 document in his custody or under his control 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 [<sup>F198</sup>or is so attending], or wilfully insults any such person as aforesaid while that person <sup>F199</sup>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:

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

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 [<sup>F200</sup>the Defence Council] or any officer authorised by them.

#### Textual Amendments

**F198** Words inserted by [Army and Air Force Act 1961 \(c. 52\)](#), [Sch. 2](#)

**F199** Words repealed by [Army and Air Force Act 1961 \(c. 52\)](#), [Sch. 2](#)

**F200** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

### 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, <sup>F201</sup> . . . , 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,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

[<sup>F202</sup>(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

**F201** Words repealed by [Administration of Justice Act 1977 \(c. 38\)](#), [Sch. 5 Pt. III](#)

**F202** [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*

### 103 Rules of Procedure.

- (1) Subject to the provisions of this section, the Secretary of State may make rules (hereinafter referred to as Rules of Procedure) with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.
- (2) Without prejudice to the generality of the last foregoing subsection, Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—
  - (a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
  - (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision

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- for the application of section ninety-three of this Act in any case where the accused requires that evidence shall be taken on oath;
- (c) the addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation, and the treating of the investigation as the investigation of the new charge;
  - (d) the convening and constitution of courts-martial;
  - (e) the sittings, adjournment and dissolution of courts-martial;
  - (f) the procedure to be observed in trials by court-martial;
  - (g) the representation of the accused at such trials;
  - (h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (b) of this subsection;
  - (i) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of [<sup>F203</sup>sections 99 to 102 above];
  - (j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
  - (k) empowering a 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;
  - [<sup>F204</sup>(kk) directing that the powers conferred by section 7 of the <sup>M23</sup>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 convened, 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 the Rules relating to the investigation or trial of, or award of punishment for, offences cognizable by courts-martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial; and
  - (m) any matter which by this Part of this Act is required or authorised to be prescribed.
- (3) Rules made by virtue of paragraph (j) of the last foregoing subsection shall secure that the power to amend charges shall not be 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, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.
- (4) Rules of Procedure shall not make provision with respect to the carrying out of sentences passed by courts-martial or of other punishments awarded under this Part of this Act.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

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- (5) A Rule of Procedure which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

#### Textual Amendments

**F203** Words substituted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 7](#)

**F204** [S. 103\(2\)\(kk\)](#) inserted by [Armed Forces Act 1971 \(c. 33\), s. 49\(1\)](#)

#### Modifications etc. (not altering text)

**C25** [S. 103](#) amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 146, Sch. 13 para. 7](#)

#### Marginal Citations

**M23** [1879 c. 11.](#)

### 104 Rules as to exercise of functions of judge advocate.

- (1) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial.
- (2) Without prejudice to the generality of the foregoing provisions of this section, Rules of Procedure may make provision—
- (a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;
  - (b) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law [<sup>F205</sup>or of law and fact mixed] shall be determined by a judge advocate in the absence of the president and other members of the court and any officers [<sup>F206</sup>or other persons] under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.
- (3) In the last foregoing subsection references to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

#### Textual Amendments

**F205** Words inserted by [Armed Forces Act 1971 \(c. 33\), s. 49\(1\)](#)

**F206** Words inserted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 5\(2\)](#)

### 105 Taking of offences into consideration.

- (1) Rules of Procedure may be made for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.
- (2) Where Rules of Procedure make such provision as aforesaid, they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court

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would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

## 106 Rules of Procedure to be subject to annulment.

The power to make Rules of Procedure shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

VALID FROM 01/04/1997

### [<sup>F207</sup>Field General Courts-Martial]

#### Textual Amendments

**F207** 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)

### [<sup>F208</sup>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;
  - (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.
- (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.



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- (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

**F208** 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**)

#### **F209** 103B Constitution of field general courts-martial.

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other air-force officers.
- (2) If the officer who convened the field general court-martial is of opinion that three air-force officers having suitable qualifications are not available 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 <sup>M24</sup>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.
- (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 having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers 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;

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“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 <sup>M25</sup>Naval Discipline Act 1957.

**Textual Amendments**

**F209** 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)

**Marginal Citations**

**M24** 1990 c. 41

**M25** 1957 c. 53.

**<sup>F210</sup>103 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**

**F210** 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)

*Confirmation, Revision and Review of Proceedings of Courts-Martial*

**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 [<sup>F211</sup>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.

**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

#### Textual Amendments

**F211** Words inserted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 1\(1\)\(b\)](#)

### 108 Petitions against finding or sentence.

At any time after a court-martial has sentenced the accused, [<sup>F212</sup>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 [<sup>F213</sup>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

**F212** Words inserted by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), s. 8(3) proviso (c), Sch. 2 Pt. 1

**F213** 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.

[<sup>F214</sup>(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.]

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- (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 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

**F214** 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 [<sup>F215</sup>is under all the circumstances of the case unsafe or unsatisfactory] or involves a wrong decision on a question of law or that, [<sup>F215</sup>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:

[<sup>F216</sup>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—
- (a) some other finding of guilty could have been validly made by the court-martial on the charge before it, and
  - (b) 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 shall be exercised [<sup>F217</sup>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]

- [<sup>F218</sup>(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—
- (a) substitute for the finding a finding of guilty on the alternative charge, and
  - (b) 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.]

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

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- (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.
- (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.
- [<sup>F219</sup>(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

**F215** Words substituted by [Criminal Appeal Act 1966 \(c. 31\), s. 9\(2\), Sch. 1 Pt. II](#) (continued by [Supreme Court Act 1981 \(c. 54\), Sch. 5](#))

**F216** Proviso added by [Criminal Appeal Act 1966 \(c. 31\), s. 9\(2\), Sch. 1 Pt. II](#) (continued by [Supreme Court Act 1981 \(c. 54\), Sch. 5](#))

**F217** Words added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I

**F218** [S. 110\(2A\)](#) inserted by [Armed Forces Act 1971 \(c. 33\), s. 50\(2\)](#)

**F219** [S. 110\(4A\)](#) inserted by [Armed Forces Act 1981 \(c. 55\), s. 5\(1\)](#)

#### Modifications etc. (not altering text)

**C26** [S. 110](#): power to restrict conferred by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 50\(4\)\(b\)](#)

**C27** [S 110 \(2\)-\(4\)](#) extended by [Armed Forces Act 1976 \(c. 52\), Sch. 3 paras. 1\(2\), 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:—

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- (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;
  - (c) failing any such officer as aforesaid, any officer appointed by [<sup>F220</sup>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**

**F220** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

*[<sup>F221</sup> Review of proceedings of courts-martial]*

#### **Textual Amendments**

**F221** 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](#))

## **112 Approval as well as confirmation required for certain death sentences.**

- (1) A sentence of death confirmed by an officer below the rank of air vice-marshal shall not be carried into effect unless approved by an officer not below the rank of air vice-marshal or by a naval or military officer of corresponding rank, being a naval or

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*Status:* Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

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military officer commanding the command in which the person under sentence was serving at the date of the sentence.

- (2) Without prejudice to the provisions of the last foregoing subsection, a sentence of death passed by a court-martial shall not be carried into effect in a colony unless approved by the Governor of the colony.
- (3) Notwithstanding anything in the foregoing provisions of this section, sentence of death passed on a person on active service may be carried out without such approval as is mentioned in subsection (1) or subsection (2) of this section where in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

### **113 Review of findings and sentences of courts-martial.**

- (1) A finding or sentence which has been confirmed [F<sup>222</sup> or a sentence under subsection (2) of section 57 of this Act] may at any time be reviewed by a reviewing authority, and if [F<sup>223</sup> a petition is duly presented under section 108 of this Act against a] finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.
- (2) The reviewing authorities for the purposes of this Act are the following:—
  - (a) Her Majesty,
  - (b) [F<sup>224</sup> the Defence Council], or (so far as the delegation extends) any officer to whom the powers of [F<sup>224</sup> the Defence Council] as reviewing authority, or any of those powers, may be delegated by, or by regulations of, [F<sup>224</sup> the Defence Council],
  - (c) any officer superior in command to the confirming officer.
- (3) If an application for leave to appeal [F<sup>225</sup> against conviction or sentence] is received by the registrar of the Courts-Martial Appeal Court or the said registrar receives particulars of such an application furnished in pursuance of [F<sup>226</sup> section 9(4)(b) of the <sup>M26</sup>Courts-Martial (Appeals) Act 1968], so much of subsection (1) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding [F<sup>225</sup> or, as the case may be, to the sentence to which the application relates]
- (4) Notwithstanding anything in subsection (1)  
  
of this section, a sentence of death passed on a person on active service and the finding of guilty in consequence of which it was passed shall not be required to be reviewed if in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.
- (5) On a review under this section the reviewing authority may—
  - (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;
  - (b) in so far as the review is of a sentence, quash the sentence;

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

[<sup>F227</sup>(c) in any case, exercise the like powers of substituting findings, substituting sentences, remitting or commuting punishment or annulling the taking of other offences into consideration (and orders dependent thereon) as are conferred on a confirming officer by subsections (2) to (4A) of section 110 of this Act;]

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(6) Where a reviewing authority exercises any of the powers conferred by the last foregoing subsection, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

#### Textual Amendments

**F222** Words inserted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para.](#)

[1\(1\)\(d\)\(i\)](#)

**F223** Words substituted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para.](#)

[1\(1\)\(d\)\(ii\)](#)

**F224** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F225** Words inserted by [Armed Forces Act 1971 \(c. 33\), Sch. 2 para. 2](#)

**F226** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), Sch. 4](#)

**F227** [S. 113\(5\)\(c\)](#) substituted by [Armed Forces Act 1981 \(c. 55\), s. 5\(2\)](#)

#### Modifications etc. (not altering text)

**C28** [S. 113](#): power to restrict conferred by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 50\(4\)\(b\)](#)

#### Marginal Citations

**M26** [1968 c. 20.](#)

VALID FROM 01/04/1997

#### <sup>F228</sup>**113A 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—



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- (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

**F228** 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**)

#### [<sup>F229</sup>113A Power of reviewing authority to authorise retrial.

—(1) The following provisions of the <sup>M27</sup>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 Her Majesty or the Defence Council 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 Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.]

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F229** S. 113A inserted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

**Marginal Citations**

**M27** 1968 c. 20.

<sup>F230</sup>**114** .....

**Textual Amendments**

**F230** S. 114 repealed by Armed Forces Act 1986 (c. 21, SIF 7:1), s. 16(2), **Sch. 2**

*Review of summary findings and awards*

**115 Review of summary findings and awards.**

- (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.
- (2) The said authority is—
  - (a) [<sup>F231</sup>the Defence Council], or
  - (b) any air-force, naval or military officer superior in command to the officer who dealt summarily with the charge, or
  - (c) any other officer being—
    - (i) an air officer appointed by [<sup>F231</sup>the Defence Council] to act for the purposes of this section in any particular case, or
    - (ii) an air officer, or air officer of a class, so appointed for any class of cases.
- (3) Where on a review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding;<sup>F232</sup>
- [<sup>F233</sup>(3A) If a finding in any proceedings is quashed under the last foregoing subsection and the award made in those proceedings relates only to the finding quashed, the authority shall also quash the award; and if the award relates also to any other finding and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.]
- (4) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the

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award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

#### Textual Amendments

**F231** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

**F232** Words repealed by Army and Air Force Act 1961 (c. 52), s. 25

**F233** S. 115(3A) inserted by Army and Air Force Act 1961 (c. 52), s. 25

### *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 <sup>F234</sup>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 [<sup>F235</sup>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.

[<sup>F236</sup>For purposes of this subsection “unfit to stand his trial” means under any disability such as apart from the <sup>M28</sup>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 [<sup>F237</sup>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 [<sup>F235</sup>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.

[<sup>F238</sup>(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;

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- (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) <sup>F234</sup> 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 <sup>F234</sup> findings of guilty.
- [<sup>F239</sup>(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 [<sup>F240</sup>section 46 of the Mental Health Act 1983], [<sup>F241</sup>section 69 of the Mental Health (Scotland) Act 1984] or [<sup>F242</sup>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 (<sup>F240</sup>within the meaning of the Mental Health Act 1983) of a nature or degree which warrants his [<sup>F243</sup>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 [<sup>F244</sup>or Order], and the order shall be sufficient authority for him to be detained, and the Act [<sup>F244</sup>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 [<sup>F244</sup>or Order] (being in England or Wales an application for [<sup>F243</sup>admission for assessment]).

In this subsection any reference to the Mental Health [<sup>F242</sup>(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

**F234** Words repealed by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I

**F235** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F236** Words added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

- F237** Words substituted by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. I  
**F238** S. 116(4A) inserted by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. I  
**F239** S. 116(6)(7) added by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. I  
**F240** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), s. 148, Sch. 4 para. 10  
**F241** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), Sch. 3 para. 6  
**F242** Words substituted by S.I. 1986/596, art. 4  
**F243** 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  
**F244** Words inserted by S.I. 1986/596, art. 4

**Modifications etc. (not altering text)**

- C29** S. 116 extended by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16(2)(3)

**Marginal Citations**

- M28** 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 <sup>F245</sup>shall, subject to the <sup>F246</sup>following provisions of this Part of this Act and to <sup>F247</sup>section 11(2) of the <sup>M29</sup>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 or, as the case may be, was originally awarded by his commanding officer.
- (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 the confirming officer 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.

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

- F245** Words repealed by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 4 Pt. I**  
**F246** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 1 para. 1(4)**  
**F247** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\)](#), **Sch. 4**

#### Modifications etc. (not altering text)

- C30** [S. 118](#) excluded by [Armed Forces Act 1976 \(c. 52\)](#), Sch. 3 paras. 1(2), **18(7)**

#### Marginal Citations

- M29** [1968 c. 20](#).

VALID FROM 02/10/2000

### <sup>F248</sup> **118ZA 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

- F248** [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](#))

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

## [<sup>F249</sup> 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 <sup>M30</sup>Army Act 1955 or the <sup>M31</sup>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.
- (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**

**F249** S. 118A inserted by [Armed Forces Act 1971 \(c. 33\)](#), ss. **39(1)(2)**, 78(4)

### **Marginal Citations**

**M30** 1955 c. 18.

**M31** 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 [<sup>F250</sup>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 [<sup>F250</sup>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:

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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.
- (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 <sup>M32</sup>Prison Act 1952, subsection (6) of section thirty-five of the <sup>M33</sup>Prisons (Scotland) Act 1952, or paragraph (c) of subsection (1) of section thirteen of the <sup>M34</sup>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

**F250** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 1 para. 1\(5\)](#)

#### Marginal Citations

**M32** 1952 c. 52.

**M33** 1952 c. 61.



**Status:** Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

M34 1953 c. 18 (N.I.)

[<sup>F251</sup>**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.
- (3) Where any person who has been sentenced by a court-martial (whether under this Act, the <sup>M35</sup>Army Act 1955 or the <sup>M36</sup>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**

**F251** S. 119A inserted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 40, 78(4)

**Marginal Citations**

**M35** 1955 c. 18.

**M36** 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) Without prejudice to subsection (5)
- of section one hundred and ten of this Act, in confirming such a sentence the confirming officer may order that the sentence shall be suspended.
- (3) Any such sentence which is not for the time being suspended may, on the review <sup>F252</sup>of the sentence, be suspended by order of the authority reviewing <sup>F252</sup>the sentence.
- (4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review <sup>F252</sup>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 [<sup>F253</sup>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

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may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;

- (b) if the court does not exercise the powers conferred by the last foregoing paragraph, the confirming officer may exercise those powers on the confirmation of the later sentence;
- (c) if neither the court nor the confirming officer exercises the said powers, 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, the confirming officer 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:

<sup>F254</sup>(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 not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released [<sup>F255</sup>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].

(8)<sup>F256</sup>

#### Textual Amendments

**F252** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), **Sch. 2**

**F253** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 1 para. 1(6)**

**F254** Proviso repealed by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 4 Pt. I**

**F255** Words added by [Armed Forces Act 1971 \(c. 33\)](#), s. 54(2)

**F256** Ss. 120(8), 152(3), 153(2) repealed by [Armed Forces Act 1971 \(c. 33\)](#), **Sch. 4 Pt. II**

VALID FROM 01/04/1997

#### <sup>F257</sup>**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.

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- (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

**F257** 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*

#### **121 Execution of sentences of death.**

- (1) The Secretary of State may make regulations with respect to the execution of sentences of death under this Act, whether passed in the United Kingdom or elsewhere.
- (2) Without prejudice to the generality of the last foregoing subsection regulations under this section may make provision with respect to all or any of the following matters, that is to say—
  - (a) the manner in which, the person by whom and the country or territory, place and kind of establishment (whether air-force or not) where any such sentence is to be executed; and
  - (b) the custody and treatment of the person under sentence and his removal from one place or establishment to another between the passing and execution of the sentence,or may authorise such persons as may be specified in or determined by or under the regulations to give directions with respect to all or any of those matters.
- (3) Such provost marshal or other provost officer not below the rank of squadron leader as may be specified in or determined under regulations under this section shall be responsible for the due execution of any sentence of death passed under this Act.

#### Modifications etc. (not altering text)

**C31** S. 121 amended by Courts-Martial (Appeals) Act 1968 (c. 20), s. 52

#### **122 Imprisonment and detention rules.**

- (1) Subject to the provisions of this Act, the Secretary of State may make rules (in <sup>F258</sup> . . . 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;

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- (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 for good conduct and industry;
  - (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 <sup>M37</sup>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 [<sup>F259</sup>the <sup>M38</sup>Naval Discipline Act 1957] or the <sup>M39</sup>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**

**F258** 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.](#)

**F259** Words substituted by virtue of [Naval Discipline Act 1957 \(c. 53\), s. 137\(2\)](#)

#### **Modifications etc. (not altering text)**

**C32** [S. 122](#) amended by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 52](#)

**C33** [S. 122\(3\)](#) amended (E.W.) by [Criminal Justice Act 1961 \(c. 39\), s. 22\(3\)](#)

#### **Marginal Citations**

**M37** [1952 c. 52.](#)

**M38** [1957 c. 53.](#)

**M39** [1955 c. 18.](#)

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### **123 Supplementary provisions relating to regulations and rules under ss. 121 & 122.**

- (1) Regulations made under section one hundred and twenty-one of this Act or 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 regulations or rules.
- (2) Any such regulations or 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.

### **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 death or imprisonment and committed or transferred to a civil prison in pursuance of regulations under section one hundred and twenty-one of this Act or of 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) The <sup>M40</sup>Capital Punishment Amendment Act 1868 <sup>F260</sup> shall apply in relation to the execution in a civil prison of a sentence of death passed by a court-martial for any offence, but with the substitution in that Act for references to the sheriff of references to the provost marshal or other provost officer responsible for the due execution of the sentence.

#### **Textual Amendments**

**F260** Words repealed by [Murder \(Abolition of Death Penalty\) Act 1965 \(c. 71\)](#), [Sch.](#)

#### **Marginal Citations**

**M40** [1868 c. 24.](#)

### **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 sentences of death passed by courts-martial may in accordance with regulations under section one hundred and twenty-one of this Act be carried out in establishments under the control of those authorities and air-force sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in such establishments.

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- (2) The powers conferred on the Secretary of State by sections one hundred and twenty-one and 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 no sentence of death passed by a court-martial shall be executed, and 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.

### **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 <sup>F261</sup> . . . 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 confirming officer or 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 confirming officer or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.
- (5) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or by a reviewing authority, or superseded by any direction of the confirming officer or a reviewing authority which the officer or authority could have given under the last foregoing subsection; and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.
- (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.

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#### Textual Amendments

**F261** 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.](#)

### 128 Application of enactments relating to coroners. **U.K.**

- (1) Section five of the <sup>M41</sup>Capital Punishment Amendment Act 1868 (which makes special provision for the holding of inquests on the bodies of persons on whom judgment of death has been executed within the jurisdiction of a coroner) shall apply in relation to the execution in any premises in the United Kingdom under the control of the Secretary of State within such jurisdiction of a sentence of death passed under this Act by a court-martial as it applies to the execution of a judgment of death passed by a civil court, but with the substitution for the reference to the sheriff of a reference to the provost marshal or other provost officer responsible for the due execution of the sentence.
- (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.

#### Marginal Citations

**M41** 1868 c. 24.

### 128 Application of enactments relating to coroners. **E+W**

- (1) Section five of the <sup>M59</sup>Capital Punishment Amendment Act 1868 (which makes special provision for the holding of inquests on the bodies of persons on whom judgment of death has been executed within the jurisdiction of a coroner) shall apply in relation to the execution in any premises in the United Kingdom under the control of the Secretary of State within such jurisdiction of a sentence of death passed under this Act by a court-martial as it applies to the execution of a judgment of death passed by a civil court, but with the substitution for the reference to the sheriff of a reference to the provost marshal or other provost officer responsible for the due execution of the sentence.
- (2) [<sup>F301</sup>The Coroners Act 1988] 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

**F301** Words in s. 128(2) substituted (E.W.) by [Coroners Act 1988 \(c. 13, SIF 33\)](#), s. 36(1), [Sch. 3 para. 9](#)

#### Marginal Citations

**M59** 1868 c. 24.

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## 128 Application of enactments relating to coroners. **S+N.I.**

- (1) Section five of the <sup>M60</sup>Capital Punishment Amendment Act 1868 (which makes special provision for the holding of inquests on the bodies of persons on whom judgment of death has been executed within the jurisdiction of a coroner) shall apply in relation to the execution in any premises in the United Kingdom under the control of the Secretary of State within such jurisdiction of a sentence of death passed under this Act by a court-martial as it applies to the execution of a judgment of death passed by a civil court, but with the substitution for the reference to the sheriff of a reference to the provost marshal or other provost officer responsible for the due execution of the sentence.
- (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.

### Marginal Citations

**M60** 1868 c. 24.

## 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 regulations under section one hundred and twenty-one of this Act or 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 regulations or rules and to confine him until execution of the sentence is completed or 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.

### Modifications etc. (not altering text)

**C34** 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 <sup>M42</sup>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



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under the <sup>M43</sup>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 <sup>M44</sup>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 <sup>M45</sup>Army Act 1955).

#### Marginal Citations

M42 1955 c. 18.

M43 1955 c. 18.

M44 1955 c. 18.

M45 1955 c. 18.

*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, [<sup>F262</sup>summary dealing with charges] trial and punishment by court-martial (including confirmation, review, <sup>F263</sup> . . . 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 <sup>F264</sup>, 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:

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Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed 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

**F262** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 6\(2\)\(4\)](#)

**F263** 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.](#)

**F264** Word repealed by [Armed Forces Act 1981 \(c. 55\), Sch. 5 Pt. II](#)

### 132 Limitation of time for trial of offences under this Act.

- [<sup>F265</sup>(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.
- [<sup>F266</sup>(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

**F265** [S. 132\(1\)](#) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 7\(1\)\(6\)](#)

**F266** [S. 132\(3\)\(3A\)](#) substituted for [s. 132\(3\)](#) by [Armed Forces Act 1981 \(c. 55\), s. 6\(3\)\(c\)\(4\)](#)

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*Changes to legislation:* There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)

**Modifications etc. (not altering text)**

**C35** S. 132 excluded by Courts-Martial (Appeals) Act 1968 (c. 20), s. 20(1)

**C36** 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*

[<sup>F267</sup> **133 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 [<sup>F268</sup>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—

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence, or of a finding by the court-martial that he is not guilty of the offence by reason of insanity;
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence is withheld or the sentence is quashed [<sup>F269</sup>(as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or 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 of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof.]

**Textual Amendments**

**F267** S. 133 substituted by Armed Forces Act 1966 (c. 45), s. 25(2)

**F268** 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

**F269** Words added by Armed Forces Act 1981 (c. 55), s. 5(4)(a)

**Modifications etc. (not altering text)**

**C37** S. 133 extended with modifications by Armed Forces Act 1976 (c. 52), Sch. 3 paras. 1(2), 16

[<sup>F270</sup> **133A Financial penalty enforcement orders.**

(1) If—

- (a) a financial penalty has been awarded against any person under this Act, and

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- [ the penalty was—
- <sup>F271</sup>(b) (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 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 <sup>M46</sup>Army Act 1955 is applied by section 209 of that Act or Parts I and II of the <sup>M47</sup>Naval Discipline Act 1957 are applied by section 118 of that Act.
- (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 [<sup>F272</sup>offence or offences]in respect of which it was awarded;

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- (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.
- (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; <sup>F273</sup>
  - (d) <sup>F274</sup>“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,

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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 <sup>M48</sup>Army Act 1955, and
- (b) sections 128A and 128B of the <sup>M49</sup>Naval Discipline Act 1957; and

“stoppages” does not include sums swarded by virtue of section 147 or 148 below.]

[<sup>F275</sup>(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

**F270** S. 133A inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 16, Sch. 8 paras. 1, 2

**F271** S. 133A(1)(b) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(2\)](#)

**F272** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(3\)](#)

**F273** Word repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), [Sch. 2](#)

**F274** S. 133A(10)(d) repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), [Sch. 2](#)

**F275** S. 133A(11) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 7\(4\)](#)

#### Marginal Citations

**M46** 1955 c. 18.

**M47** 1957 c. 53.

**M48** 1955 c. 18.

**M49** 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—

[<sup>F276</sup>(a) has been tried for an offence by a competent civil court, wherever situated, or a court-martial (whether held under this Act, the <sup>M50</sup>Army Act 1955 or the <sup>M51</sup>Naval 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, [<sup>F277</sup>the <sup>M52</sup>Naval Discipline Act 1957] or the <sup>M53</sup>Army Act 1955, and has had the charge dismissed, or has been found guilty on the charge, 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 [<sup>F278</sup>the 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—

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- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence <sup>F279</sup>or of a finding by the court-martial that he is not guilty of the offence by reason of insanity];
  - (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed <sup>F280</sup>(as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or 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 of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;
  - (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 <sup>M54</sup>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.
- (3) Where confirmation of a finding of guilty of an offence <sup>F281</sup>or of a finding of not guilty of an offence by reason of insanity] is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.
- (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

**F276** S. 134(1)(a)(aa) substituted for s. 134(1)(a) by [Armed Forces Act 1966 \(c. 45\), s. 26](#)

**F277** Words substituted by virtue of [Naval Discipline Act 1957 \(c. 53\), s. 137\(2\)](#)

**F278** 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](#)

**F279** Words added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I

**F280** Words added by [Armed Forces Act 1981 \(c. 55\), s. 5\(4\)\(a\)](#)

**F281** Words inserted by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\), s. 8\(3\)](#) proviso (c), Sch. 2 Pt. I

#### Modifications etc. (not altering text)

**C38** S. 134 excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(2\)](#)

**C39** S. 134(1)(2) extended with modifications by [Armed Forces Act 1976 \(c. 52\), Sch. 3 paras. 1\(2\), 16](#)

#### Marginal Citations

**M50** 1955 c. 18.

**M51** 1957 c. 53.

**M52** 1957 c. 53.

**M53** 1955 c. 18.

*Status: Point in time view as at 23/03/1995. This version of this part contains provisions that are not valid for this point in time.*

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M54 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”), [<sup>F282</sup>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 [<sup>F282</sup>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.

[<sup>F283</sup>(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 <sup>M55</sup>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 [<sup>F284</sup>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.

[<sup>F285</sup>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 <sup>M56</sup>Naval Discipline Act 1957;



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- (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.]
- (5) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings <sup>F286</sup> for an offence against section seventy 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

- F282** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**
- F283** S. 135(2) substituted by Army and Air Force Act 1961 (c. 52), s. 26(1)
- F284** Words inserted by Armed Forces Act 1981 (c. 55), s. 23(1)
- F285** Words added by Armed Forces Act 1981 (c. 55), s. 23(1)
- F286** Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

#### Modifications etc. (not altering text)

- C40** 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

- M55** 1957 c. 53.
- M56** 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 [<sup>F287</sup>the Defence Council] or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

#### Textual Amendments

- F287** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

#### Modifications etc. (not altering text)

- C41** 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)**

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### 137 Unit inquiries.

- (1) An officer of any of Her Majesty's air forces authorised in that behalf by or under regulations of [<sup>F288</sup>the Defence Council] may cause an inquiry to be held, in such manner and [<sup>F289</sup>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 <sup>M57</sup>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 [<sup>F288</sup>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 [<sup>F288</sup>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

**F288** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F289** Words substituted by [Army and Air Force Act 1961 \(c. 52\), s. 26\(2\)](#)

#### Marginal Citations

**M57** [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, [<sup>F290</sup>handling it], <sup>F291</sup>, or otherwise [<sup>F292</sup>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.

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- (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, by the confirming officer or by any reviewing authority; and in this section the expression “appearing” means appearing to the court, officer or authority making the order.
- (8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part of this Act as to the confirmation and 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 [F<sup>293</sup>Part II of the <sup>M58</sup>Courts-Martial (Appeals) Act 1968], as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against [F<sup>294</sup>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 [F<sup>293</sup>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, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.

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(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.

[<sup>F295</sup>(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

- F290** Words substituted by [Theft Act 1968 \(c. 60\), Sch. 2 Pt. II](#)
- F291** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F292** Words added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(1\)](#)
- F293** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), Sch. 4](#)
- F294** Words substituted by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(2\)](#)
- F295** [S. 138\(12\)](#) added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para.1\(3\)](#)

#### Modifications etc. (not altering text)

- C42** [S. 138](#) extended with modifications by [Armed Forces Act 1976 \(c. 52\), Sch. 3 paras. 1\(2\), 17](#)
- C43** [S. 138\(9\)](#) modified by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 46\(1\)](#)

#### Marginal Citations

- M58** [1968 c. 20.](#)

### 139 Appointment of judge advocates.

Without prejudice to the powers conferred by Her Majesty on the Judge Advocate General, the appointment of a judge advocate to act at any court-martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer.

### 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 confirming officer or reviewing authority, as the case may be, may direct.

### 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 [<sup>F296</sup>and by section 141A below] shall be capable of being exercised.

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- (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 [<sup>F297</sup>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 [<sup>F297</sup>the rate determined under subsection (2) above] a copy of the record of the proceedings of the court.
- [<sup>F298</sup>(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 [<sup>F299</sup>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 or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:
- 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 or of the withholding of confirmation of that finding or those findings.
- (6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

#### Textual Amendments

**F296** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(2\)](#)

**F297** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 58](#)

**F298** [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

**F299** 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

#### [<sup>F300</sup>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

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*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Part II. (See end of Document for details)*

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**

**F300** 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 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;

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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;

“convening officer”, in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions;

“prescribed” means prescribed by Rules of Procedure.

- (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.

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**Changes to legislation:**

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