



Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

Courts-martial: general provisions

Textual Amendments applied to the whole legislation

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

^{F1}84

Textual Amendments

- F1** S. 84 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 34, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

[^{F2}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.]

Status: Point in time view as at 04/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Courts-martial: general provisions. (See end of Document for details)

Textual Amendments

F2 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)

^{F3}**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 ^{M1}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

F3 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

M1 1990 c. 41.

^{F4}**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;
 - ^{F5}(cc) any warrant officers who are to be members of the court-martial;
 - (d) any other officers [^{F6}or warrant officers]appointed for the purpose of filling vacancies,
 and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.

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Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Courts-martial: general provisions. (See end of Document for details)

- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
- (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer [^{F7}or warrant officer] who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

Textual Amendments

- F4** 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**)
- F5** S. 84C(2)(cc) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(2)(a)**; S.I. 2002/345, **arts. 2, 3**
- F6** Words in s. 84C(2)(d) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(2)(b)**; S.I. 2002/345, **arts. 2, 3**
- F7** Words in s. 84C(4)(e) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 8(3)**; S.I. 2002/345, **arts. 2, 3**

84D ^{F8} **Constitution of general and district courts-martial**

- (1) A general court-martial shall consist of—
- (a) the president, who shall be an air-force officer,
 - (b) the judge advocate, and
 - (c) at least four other persons, of whom—
 - (i) two shall each be either an air-force officer or an air-force warrant officer, and
 - (ii) the rest shall be air-force officers.
- (2) A district court-martial shall consist of—
- (a) the president, who shall be an air-force officer,
 - (b) the judge advocate, and
 - (c) at least two other persons, of whom—
 - (i) one shall be either an air-force officer or an air-force warrant officer, and
 - (ii) the rest shall be air-force officers.

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- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless—
 - (a) he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or
 - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above “the qualifying period” means—
 - (a) in relation to a general court-martial, three years, and
 - (b) in relation to a district court-martial, two years.
- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of warrant officer.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of flight lieutenant; and, in the case of a general court-martial for the trial of an officer above the rank of flight lieutenant, all the members so appointed shall be of or above the rank of flight lieutenant.
- (10) If, in the opinion of the court administration officer, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—
 - (a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or
 - (b) where an air-force warrant officer could be appointed, a naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.
- (11) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

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“air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;

“military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;

“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.

Textual Amendments

F8 S. 84D substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 9**; S.I. 2002/345, **arts. 2, 3**

85 Powers of different descriptions of court-martial.

- (1) A general court-martial shall have power to try any person subject to air-force law for any offence which under this Act is triable by court-martial, [^{F9}and, subject to section 85A below, to award] for any such offence any punishment authorised by this Act for that offence.
- (2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, discharge with ignominy, dismissal or detention, and shall not award the punishment ^{F10} . . . of imprisonment for a term exceeding two years [^{F11}or make an order committing a person to be detained under section 71AA of this Act for a period exceeding two years].

^{F12}(3)

Textual Amendments

F9 Words in s. 85(1) substituted (2.10.2000) by 2000 c. 4, s. 12(2); S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)

F10 Words in s. 85(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

F11 Words inserted by **Criminal Justice Act 1982** (c. 48, SIF 39:1), s. 58, Sch. 8 para. 5(a)

F12 S. 85(3) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 36, Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

[^{F13}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

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prosecuting authority has referred the charge back to the commanding officer under section 83BB of this Act.]

Textual Amendments

F13 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)

F14 86

Textual Amendments

F14 S. 86 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3, Sch. 2)

F15 87

Textual Amendments

F15 S. 87 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3, Sch. 2)

F16 88

Textual Amendments

F16 S. 88 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, Sch. 7 Pt. I; S.I.1997/304, art. 2 (with art. 3, Sch. 2)

F17 89

Textual Amendments

F17 S. 89 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3, Sch. 2)

F18 90

Textual Amendments

F18 S. 90 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 37, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3, Sch. 2)

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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 [^{F19}the United Kingdom]) as may be specified in the order convening the court; [^{F20} . . .].
- (2) A court-martial sitting at any place [^{F21}may] if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Textual Amendments

- F19** Words in s. 91(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 38(2)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F20** Words in s. 91(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 38(2)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F21** Words in s. 91(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 38(3)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

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