



Air Force Act 1955 (repealed)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: 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 [^{F1}other than an exempted person,] in attendance on a court-martial as judge advocate, officer [^{F2}or other person] under instruction, ^{F3} or interpreter.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Courts-martial: provisions relating to trial.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

[^{F4}(1A) In subsection (1) above “exempted person” means any person appointed under section 30 of the ^{M1}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.]

(2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

(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

- F1** Words inserted by [Armed Forces Act 1976 \(c. 52\), s. 12\(1\)\(a\)](#)
- F2** Words inserted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 5\(1\)](#)
- F3** Words repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)
- F4** [S. 93\(1A\)](#) added by [Armed Forces Act 1976 \(c. 52\), s. 12\(2\)](#)

Marginal Citations

- M1** [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.

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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.
- (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.

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- (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 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 [^{F5},subject to section 99A below [^{F6}and to service modifications].] 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.

[^{F7}(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.

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(1C) Regulations under subsection (1A) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

(2)

^{F8}(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.

Textual Amendments

- F5** Words inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 11, [Sch. 5 para. 3\(a\)](#)
- F6** Words inserted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(1), [Sch. 6 Pt. II para. 29\(2\)\(a\)](#)
- F7** [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\(2\)\(b\)](#)
- F8** [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](#)

[^{F9}99A **Proof at courts-martial by written statement.**

(1) [^{F10}Without prejudice to section 99 above, section] 9 of the ^{M2}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—
- (a) in the United Kingdom by any person, and
 - (b) outside the United Kingdom by any person who at the time of making the statement was—
 - (i) a person subject to service law, or
 - (ii) a person to whom Part II of this Act or Part II of the ^{M3}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 ^{M4}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 ^{M5}Army Act 1955 or section 119 of the ^{M6}Naval Discipline Act 1957 apply.

- (3) In subsection (1) above “service modifications” means—
- (a) modifications made by any regulations under section 12 of the ^{M7}Criminal Justice Act 1967 in force on the coming into force of this section, and
 - (b) 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.

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- (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

- F9** S. 99A inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 11, Sch. 5 paras. 1, 2
- F10** 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)

- C1** S. 99A(1)(2)(5) applied (with modifications) (2.10.2000) by [S.I. 2000/2372](#), [rule 27\(1\)\(b\)\(2\)\(b\)](#)

Marginal Citations

- M2** 1967 c. 80.
- M3** 1955 c. 18.
- M4** 1957 c. 53.
- M5** 1955 c. 18.
- M6** 1957 c. 53.
- M7** 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 [^{F11}or is so attending], or wilfully insults any such person as aforesaid while that person ^{F12}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

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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:

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 [^{F13}the Defence Council] or any officer authorised by them.

Textual Amendments

- F11** Words inserted by [Army and Air Force Act 1961 \(c. 52\)](#), [Sch. 2](#)
- F12** Words repealed by [Army and Air Force Act 1961 \(c. 52\)](#), [Sch. 2](#)
- F13** 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,^{F14} . . . , 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.

[^{F15}(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

- F14** Words repealed by [Administration of Justice Act 1977 \(c. 38\)](#), [Sch. 5 Pt. III](#)
- F15** [S. 102\(2\)](#) added by [Oaths Act 1961 \(c. 21\)](#), [s. 1](#); saved by [Oaths Act 1978 \(c. 19\)](#), [s. 7\(4\)\(5\)](#)

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