



Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

[^{F1}Findings of unfitness to stand trial and insanity]

Textual Amendments

F1 Ss. 115A-116D and cross-heading substituted for s. 116 and cross-heading (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 1](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b)

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}115A Fitness to stand trial

- (1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.
- (3) If, having regard to the nature of the supposed disability, the judge advocate is of opinion that it is expedient to do so and in the interests of the accused, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.

Status: Point in time view as at 31/03/2005.

Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Findings of unfitness to stand trial and insanity. (See end of Document for details)

- (4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the judge advocate sitting alone.
- (7) A judge advocate shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.]

[^{F1}115B Finding that the accused did the act or made the omission charged

- (1) This section applies where in accordance with section 115A(6) above it is determined by a judge advocate that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
 - (a) on the evidence (if any) already given in the trial, and
 - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the judge advocate under this section to put the case for the defence,
 whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) Where the question of fitness to stand trial was determined after arraignment of the accused, the determination under subsection (2) above shall be made by the court-martial by whom he was being tried.]

[^{F1}116 Findings of insanity

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.]

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[^{F1}116A Powers to deal with person unfit to stand trial or not guilty by reason of insanity

- (1) This section applies where, on a trial of a person by a court-martial—
 - (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
 - (b) the accused is found not guilty by reason of insanity.
- (2) The court shall make in respect of the accused—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
 - (a) the offence to which the finding relates is an offence the sentence for which is fixed by law, and
 - (b) the court has power to make a hospital order,the court shall make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).
- (4) The functions of the court under this section shall be exercised by the judge advocate (or, where subsection (5) below applies, the judicial officer) sitting alone, and section 95(2) and (3) above shall not apply.
- (5) Any function of the court under this section exercisable after an adjournment or an appeal shall be exercisable by a judicial officer if—
 - (a) the court ordering the adjournment, or (as the case may be) the Courts-Martial Appeal Court, so orders; or
 - (b) the Judge Advocate General so directs.
- (6) In this Act—

“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“restriction order” has the meaning given to it by section 41 of that Act;

“supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a person (“the supervising officer”) for a period specified in the order of not more than two years.]

[^{F1}116B Orders under the Mental Health Act

- (1) In relation to the making of an order by virtue of subsection (2)(a) of section 116A above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—
 - (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted—

“(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of

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the managers of the hospital specified in the order to admit him in accordance with it.”

- (2) In relation to a case where section 116A above applies but the court has not yet made one of the disposals mentioned in subsection (2) of that section—
- (a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
 - (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if—
 - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies; and
 - (ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.
- (3) In relation to the making of any order under the 1983 Act by virtue of this Act, that Act shall apply—
- (a) as if references to the Crown Court were references to a court-martial;
 - (b) as if references to an offender were references to a person in whose case section 116A above applies (references to an offence being construed accordingly); and
 - (c) with such further modifications as may be prescribed.
- (4) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an order is made under the 1983 Act by virtue of this Act.

Regulations under this subsection may in particular make provision for a person in respect of whom such an order has been made to be conveyed to, and detained in, a place of safety pending his admission to hospital.

- (5) Where—
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 116A(1)(a) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,

the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may either remit the person for trial before a court-martial or direct that he be tried before a civil court.

In this subsection “responsible medical officer” means the registered medical practitioner in charge of the person’s treatment.

- (6) The Secretary of State may by regulations make provision supplementing subsection (5) above, including in particular—
- (a) provision for a person in whose case that subsection applies to be conveyed to a court or place of detention and to be detained in such a place;

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- (b) provision for the hospital order and the restriction order to cease to have effect at such time as may be prescribed.]

Modifications etc. (not altering text)

- C1** Ss. 116B-116D applied (with modifications) by 1968 c. 20, s. 16(4)(d) (as substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 7](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b))
- C2** Ss. 116B-116D applied (with modifications) by 1968 c. 20, s. 23(4)(d) (as substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 3 para. 10](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b))

[^{F1}116C Supervision orders

- (1) The court shall not make an order under section 116A(2)(b) above unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of a supervision order is the most suitable means of dealing with the accused;
- (b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
- (c) that arrangements have been made for any treatment which (under subsection (2) below) is intended to be specified in the order.
- (2) An order under section 116A(2)(b) above may, in accordance with regulations under subsection (3) below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- (3) The Secretary of State may—
- (a) by order direct that the definition of “supervision order” in section 116A(6) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order under this subsection;
- (b) by regulations make further provision in relation to supervision orders.
- (4) Regulations under subsection (3) above may in particular make provision—
- (a) as to the procedure to be followed by a court-martial making a supervision order;
- (b) as the requirements which may be specified in such an order;
- (c) as to the descriptions of supervising officer who may be so specified;
- (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
- (e) for the amendment and revocation of any supervision order.]

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- C2** Ss. 116B-116D applied (with modifications) by 1968 c. 20, s. 23(4)(d) (as substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 3 para. 10](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b))

[^{F1}116D Provisions supplementary to sections 115A to 116C

- (1) In this section and sections 115A to 116C above—
- “duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 115A and 116 of this Act which permit a court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (3) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the court may require the signatory of any such report to be called to give oral evidence.
- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
 - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 116A to 116C above, and orders under section 116C(3) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Modifications etc. (not altering text)

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