



Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

Investigation of, and summary dealing with, charges

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}76 Investigation of charges by commanding officer

- (1) An allegation that a person subject to air-force law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the 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 should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.

Status: Point in time view as at 30/03/2004.

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- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
- (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
- (a) the accused is an officer or warrant officer; or
 - (b) the charge is not capable of being dealt with summarily.
- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.]

Textual Amendments

F1 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**)

^{F2}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 [^{F3}group captain] 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

F2 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**)

F3 Words in s. 76A(4) substituted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 5**; S.I. 2002/345, **arts. 2, 3**

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[^{F4}76AA 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

- F4** 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)

- C1** 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)

[^{F5}76B Summary dealings.

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

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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.

^{F6}(5)

^{F6}(6)

- (7) [^{F7}If the commanding officer or appropriate superior authority determines that the charge has been proved, he] shall record a finding that the charge has been proved and award punishment accordingly.

^{F6}(8)

- (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 [^{F8}or 76AA] 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

- F5** 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**)
- F6** S. 76B(5)(6)(8) repealed (2.10.2000) by 2000 c. 4, ss. 11(3)(a), 27, **Sch. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)
- F7** Words in s. 76B(7) substituted (2.10.2000) by 2000 c. 4, s. 11(3)(b); S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)
- F8** Words in s. 76B(10) inserted (2.10.2000) by 2000 c. 4, s. 11(3)(c); S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)

^{F9}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;

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- (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.
- [^{F10}(9) For the purposes of subsections (6) to (8) above, a day’s pay shall be taken to be—
- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
 - (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.
- (9A) In subsection (9)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.]
- (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
 - (b) to assume an acting rank lower than that held by him but higher than his permanent rank.

Textual Amendments

F9 S. 76C inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. 1 para. 7**; S.I. 1997/304, **art. 2** (with **art. 3**, **Sch. 2**)

F10 S. 76(9)(9A) substituted for s. 76(9) (1.1.1999) by S.I. 1998/3086, **reg. 3(4)**

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Textual Amendments

F11 S. 77 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F12 **77A**

Textual Amendments

F12 S. 77A repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F13 **78**

Textual Amendments

F13 S. 78 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F14 **79**

Textual Amendments

F14 S. 79 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F15 **80**

Textual Amendments

F15 S. 80 repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 8, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 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 [^{F16}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 [^{F16}the Defence Council] or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with

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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.

^{F17}(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:—

^{F18}(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

F16 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F17 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**

F18 S. 81(4)(a) repealed by Armed Forces Act 1971 (c. 33), s. 78(4), **Sch. 4 Pt. I**

Modifications etc. (not altering text)

C2 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 [^{F19}, or in custody in connection with,] an offence, means such officer having powers of command over that person as may be determined by or under regulations of [^{F20}the Defence Council].

[^{F21}(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—

(a) he is an air officer, flag officer, general officer [^{F22}, commodore]] or brigadier, or

(b) where the Defence Council so direct, he is a group captain or a naval or military officer of corresponding rank.

^{F23}(3)

Textual Amendments

F19 Words in s. 82(1) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 2**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

F20 Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

F21 S. 82(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 9(2)**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

F22 Word in s. 82(2)(a) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 6**; S.I. 2002/345, **arts. 2, 3**

F23 S. 82(3) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 9(3), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)

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[^{F24}83 Regulations as to summary dealings etc.

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
 - (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the delegation by the commanding officer of any of his functions;
 - (d) the charges which are capable of being dealt with summarily;
 - (e) the amendment or substitution of charges;
 - (f) the procedure on summary dealings;
 - (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
 - ^{F25}[(gg) the procedure for making elections under section 118ZA(2) of this Act and withdrawing such elections;]
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
 - (l) who is to act as the higher authority and the appropriate superior authority in any particular case.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Textual Amendments

- F24** S. 83 substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 10**; S.I. 1997/304, **art. 2** (with art. 3, Sch. 2)
- F25** S. 83(2)(gg) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 4**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, Sch. para. 14)

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