



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

*[<sup>F1</sup>The prosecuting authority*

### Textual Amendments

**F1** 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**)

### 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**

### <sup>F2</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.

*Status: Point in time view as at 01/04/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: The prosecuting authority.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

### Textual Amendments

**F2** 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>F3</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- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
  - (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 [<sup>F4</sup>to deal summarily with the preliminary charge].
- (3) In subsection (2) above “the preliminary charge” means the charge [<sup>F5</sup>which would have been dealt with summarily 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 [<sup>F6</sup>subsection (5) below and section 83BB of this Act]) whether any such charge is to be tried by general court-martial or district court-martial; and
  - (b) [<sup>F7</sup>(subject to section 83BB of this Act)]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.

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[ If the case has been referred to the prosecuting authority as a result of an election for<sup>F8</sup>(9A) court-martial trial, the prosecuting authority may not—

- (a) determine under subsection (4)(a) above that a charge different from that in respect of which the election was made is to be preferred, or
- (b) exercise any power mentioned in subsection (8)(a) or (b) above in relation to any charge against the accused before the commencement of the trial,

unless the accused has given his written consent or the charge is being referred under section 83BB of this Act.]

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

[ If the prosecuting authority—

- <sup>F9</sup>(13) (a) decides not to prefer any charge referred to him, or
- (b) before the commencement of the trial of any charge preferred by him, 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

- F3** 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**)
- F4** Words in s. 83B(2) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(1)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)
- F5** Words in s. 83B(3) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(2)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)
- F6** Words in s. 83B(4)(a) substituted (2.10.2000) by virtue of 2000 c. 4, s. 13, **Sch. 2 para. 1(3)(a)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 2, Sch. para. 14**)
- F7** Words in s. 83B(4)(b) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(3)(b)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)
- F8** S. 83B(9A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(4)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)

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**F9** S. 83B(13) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(5)**; S.I. 2000/2366, **art. 2** (with transitional provisions in **art. 3, Sch. para. 14**)

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

**C1** S. 83B(2) modified (2.10.2000) by S.I. 1997/171, **rule 4A** (as inserted (2.10.2000) by S.I. 2000/2375, **rule 2(4)**)

**[<sup>F10</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.

[ Where—

**[<sup>F11</sup>(2A)** (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,

- (b) the prosecuting authority—
  - (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
  - (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and

(c) the accused is below the rank of group captain,

the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.]

(3) Where a charge is referred to a commanding officer under subsection (1) [<sup>F12</sup>or (2A)]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**

**F10** 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**)

**F11** S. 83BB(2A) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 7(2)**; S.I. 2002/345, **arts. 2, 3**

**F12** Words in s. 83BB(3) inserted (28.2.2002) by 2001 c. 19, ss. 17, 39(2), **Sch. 1 para. 7(3)**; S.I. 2002/345, **arts. 2, 3**

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**Power of prosecuting authority to advise police forces**

**F13 83BC**

- (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;
  - F14**(k) .....]

**Textual Amendments**

- F13** 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**
- F14** S. 83BC(2)(k) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 4, Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), **Sch. paras. 1013(b)**

**F15 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>M1</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**

- F15** 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**)

**Marginal Citations**

- M1** 1990 c. 41.

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