



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II U.K.

### DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

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

#### <sup>F2</sup>[<sup>F1</sup>83B Functions of the prosecuting authority. U.K.

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- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—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

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- (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.
- [<sup>F8</sup>(9A) If the case has been referred to the prosecuting authority as a result of an election for court-martial trial, the prosecuting authority may not—
- (a) determine under subsection (4)(a) above that a charge which is not capable of being dealt with summarily is to be preferred,
  - (b) substitute, before the commencement of the trial, any charge which is not capable of being dealt with summarily for any charge preferred against the accused, or
  - (c) prefer any additional charge against the accused before the commencement of the trial,
- unless the accused has given his written consent.]
- (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,

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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

- F1** Ss. 83A-83C and cross-heading 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**)
- 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**)
- F3** 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**)
- F4** 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**)
- F5** 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**)
- F6** Words in s. 83B(4)(a) omitted (18.7.2008) by virtue of The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, **17(2)(a)**
- F7** Words in s. 83B(4)(b) omitted (18.7.2008) by virtue of The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, **17(2)(b)**
- F8** S. 83B(9A) substituted (18.7.2008) by The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, **17(3)**
- 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)**)
- C2** S. 83B(2) modified (1.1.2008) by The Courts-Martial (Royal Air Force) Rules 2007 (S.I. 2007/3444), rules 1, **5**

#### 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** Act repealed (1.1.2008 for the repeal of s. 180 only) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 17**; S.I. 2007/2913, **art. 3** (with **art. 4(1)(2)**)

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