



# Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

## PART II

TRIAL AND PUNISHMENT OF OFFENCES

### Textual Amendments applied to the whole legislation

- F1** Act repealed (prosp.) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 17](#) and the repeal being partly in force, as to which see individual provisions

### *Arrest*

#### **45 Duty to bring offenders to justice and powers of arrest.**

- (1) It shall be the duty of every person subject to this Act who knows or has reasonable grounds for suspecting that any other person subject thereto is committing or has committed an offence under any provision of Part I of this Act, to take all reasonable steps within his power to cause that person to be brought to justice.
- (2) Subject to Standing Orders of the commanding officer of any of Her Majesty's ships or naval establishments, the following persons shall have power to arrest a person subject to this Act who is found committing or is alleged to have committed or is reasonably suspected of having committed any such offence as aforesaid, that is to say:—
  - (a) in the case of an officer, an officer subject to this Act who is his superior officer or, if the person to be arrested is engaged in a mutiny, quarrel or disturbance, any officer subject to this Act;
  - (b) in the case of a rating, an officer subject to this Act, a [<sup>F1</sup>warrant officer] chief petty officer, petty officer or leading rating subject to this Act who is of superior rate or senior to him in the same rate, and any rating exercising authority as a member of the regulating staff or as a member of the staff of the officer of the watch;

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- (c) in any case, a provost officer and any officer or person legally exercising authority under or on behalf of a provost officer:

Provided that an officer shall not be arrested by virtue of paragraph (c) of this subsection except on the order of another officer.

- (3) Any power of arrest under this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person’s arrest.

**Textual Amendments**  
F1 Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), [Sch. 3 para. 5\(1\)](#)

VALID FROM 18/07/2008

**[<sup>F2</sup>45A Power of arrest in anticipation of commission of offence**

- (1) A service policeman may arrest a person whom he reasonably suspects of being about to commit an offence under any provision of Part 1 of this Act.
- (2) Subsection (7) of section 45 of this Act applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.
- (3) Where a person is arrested under this section—
  - (a) the arrest must be reported as soon as practicable to his commanding officer; and
  - (b) he may be kept in naval, military or air-force custody until such time as a service policeman is satisfied that the risk of his committing the offence concerned has passed.]

**Textual Amendments**  
F2 S. 45A inserted (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), [art. 9](#)

<sup>F3</sup>46 .....

**Textual Amendments**  
F3 S. 46 repealed (2.10.2000) by [2000 c. 4, ss. 10, 27, Sch. 1 para. 7, Sch. 4; S.I. 2000/2366, art. 2](#) (with [Sch. para. 15](#))

**47 Evidence of arrest or surrender.**

- (1) In any proceedings for an offence under Part I of this Act against a person who—
  - (a) has surrendered himself to any consular officer;
  - (b) has been taken on arrest or surrender into the custody of a provost officer; or

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- (c) has been taken on arrest or surrender into custody at any police station, guard-room or other place in any part of Her Majesty's dominions, a certificate purporting to be signed by the consular or provost officer, or the officer in charge of the police station, guard-room or other place, as the case may be, containing a statement of the fact, date, time and place of arrest or surrender, and whether or not the person charged was wearing the uniform of any of Her Majesty's naval forces at the time of arrest or surrender, shall be evidence of the matter therein contained.
- (2) In any proceedings for an offence of desertion, absence without leave or improperly leaving his ship . . . <sup>F4</sup> against a person who on arrest or surrender has been brought before a court of summary jurisdiction in accordance with the provisions of Part III of this Act, a certificate purporting to be signed by a justice of the peace [<sup>F5</sup>or (in Northern Ireland) resident magistrate] containing a statement of the fact, date, time and place of arrest or surrender, and whether the person charged was wearing the uniform of any of Her Majesty's naval forces at the time of arrest and such particulars as to the proceedings before the court as may be prescribed by regulations made by [<sup>F6</sup>the Defence Council] by statutory instrument, shall be evidence of the matter therein contained.
- (3) In this section "provost officer" includes a corresponding officer of any of the forces of a Commonwealth country, or of a force raised under the law of any colony.

#### Textual Amendments

- F4** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F5** Words in s. 47(2) inserted (N.I.) (1.4.2005) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\), ss. 10, 87, Sch. 4 para. 12; S.R. 2005/109, art. 2, Sch.](#)
- F6** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

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

- C1** S. 47(2) modified by [Armed Forces Act 1966 \(c. 45\), s. 33](#)

### <sup>F7</sup> Custody

#### Textual Amendments

- F7** Ss. 47A-47F and crossheading inserted (2.10.2000) by [2000 c. 4, s. 1\(3\); S.I. 2000/2366, art. 2 \(with Sch. para. 15\)](#)

### <sup>F8</sup>47A Limitations on custody without charge.

- (1) A person arrested under section 45 of this Act shall not be kept in naval custody without being charged except in accordance with sections 47B to 47D of this Act.
- (2) If at any time the commanding officer of a person who is kept in naval custody without being charged—
- becomes aware that the grounds for keeping that person in naval custody have ceased to apply; and
  - is not aware of any other grounds on which continuing to keep that person in naval custody could be justified under the provisions of this Act,

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it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from naval custody.

- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 47B to 47L of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 52B(1) of this Act.

#### Textual Amendments

**F8** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### <sup>F9</sup>47B Authorisation of custody without charge.

- (1) Where a person is arrested under section 45 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in naval custody without being charged, shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in naval custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in naval custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;
 and the person to whom the report relates may be kept in naval custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in naval custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously,
 he may authorise the keeping of that person in naval custody.
- (5) An authorisation under subsection (4) above—
  - (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  - (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.

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- (6) A person shall not be kept in naval custody later than 48 hours after the relevant time without being charged except in accordance with section 47D of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 45 of this Act means the time of the arrest.

#### Textual Amendments

**F9** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

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

**C2** S. 47B(1)(3)(5)(6) modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 4 (with Sch. para. 15)

### <sup>F10</sup>47C Review of custody by commanding officer.

- (1) The commanding officer of a person kept in naval custody in accordance with section 47B of this Act shall, subject to subsection (3) below, review the keeping of that person in naval custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 47B of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under subsection (4) of that section, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in naval custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—
  - (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 47B(4) of this Act, and
  - (b) the keeping in naval custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

#### Textual Amendments

**F10** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

### <sup>F11</sup>47D Extension of custody without charge.

- (1) If, on an application by the commanding officer of a person arrested under section 45 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in naval custody is justified, the judicial officer may by order authorise the keeping of that person in naval custody.

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- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in naval custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in naval custody is justified only if—
  - (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 47C of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and
  - (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in naval custody is justified, he shall—
  - (a) refuse the application, or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in naval custody during the adjournment.
- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in naval custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.

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- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from naval custody.
- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from naval custody.

#### Textual Amendments

**F11** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### <sup>F12</sup>47E Custody without charge: other cases.

- (1) Sections 47A to 47D of this Act apply—
- (a) where a person is delivered into naval custody under section 103(3), 108(2) or 109(1) or (3) of this Act or under Schedule 2 to the <sup>M1</sup>Reserve Forces Act 1996, and
  - (b) in any other case where a person arrested by a constable is delivered into naval custody,
- as they apply where a person is arrested under section 45 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.
- (2) In those cases references to the relevant time are—
- (a) in relation to a person delivered into naval custody following arrest under section 103 or 105 of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into naval custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.
- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F12** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### Marginal Citations

**M1** 1996 c. 14.

#### <sup>F13</sup>47F Custody without charge: supplementary.

- (1) The Defence Council may by regulations make provision with respect to—
- (a) the delegation by the commanding officer of a person in naval custody of any of the commanding officer's functions under sections 47A to 47D of this Act to any other person subject to this Act;



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- (b) circumstances in which a person kept in naval custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) the keeping of written records relating to compliance with any requirement of sections 47A to 47D of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 47B to 47D of this Act to a period of time is to be treated as approximate only.]

#### Textual Amendments

**F13** Ss. 47A-47F inserted (2.10.2000) by 2000 c. 4, s. 1(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F14</sup>47G Custody after charge.

- (1) Where a person subject to this Act (“the accused”) is kept in naval custody after being charged with an offence under any provision of Part I of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in naval custody, but only if—
  - (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from naval custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in naval custody for his own protection or, if he is under 17 years of age, for his own welfare;
  - (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
  - (d) the accused, having been released from naval custody after being charged with the offence, has deserted or absented himself without leave.
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused’s behaviour on previous occasions while charged with an offence and released from naval custody or while on bail in criminal proceedings,
  - (d) the strength of the evidence that the accused committed the offence,
 as well as to any others which appear to be relevant.
- (4) If—
  - (a) the accused is charged with an offence to which this subsection applies;
  - (b) representations are made as to any of the matters mentioned in subsection (2) (a) above; and



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- (c) the judicial officer decides not to authorise the keeping of the accused in naval custody,  
the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.
- (5) Subsection (4) above applies to any offence under section 42 of this Act where the civil offence constituting the offence is—
- (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in naval custody shall be such period, ending (subject to section 47H(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in naval custody—
- (a) if the accused is subsequently released from naval custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary trial of the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in naval custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.]

#### Textual Amendments

**F14** S. 47G inserted (2.10.2000) by 2000 c. 4, s. 2(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F15</sup>47H Review of custody after charge.

- (1) Where the keeping of the accused in naval custody is authorised by an order under section 47G(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he shall—
- (a) release the accused from naval custody, or
  - (b) request a review.
- (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.
- (4) Subsections (2) to (6) of section 47G of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
- (5) At the first review the accused may support an application for release from naval custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

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- (6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in naval custody for a period of not more than 28 clear days.
- (8) In this section “review” means a review under subsection (1) above.]

#### Textual Amendments

**F15** S. 47H inserted (2.10.2000) by 2000 c. 4, s. 3(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

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

**C3** S. 47H(6) applied (2.10.2000) by S.I. 2000/2367, rule 23

### [<sup>F16</sup>47J Custody during court-martial proceedings.

- (1) Where the accused is kept in naval custody under an order under section 47G(2) of this Act at any time after the commencement of his trial by court-martial, section 47H of this Act (and section 47G as applied by that section) shall apply with the following modifications.
- (2) In relation to a review before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate [<sup>F17</sup>, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer].
- (3) In section 47G(2), after paragraph (d) there shall be inserted— “; or
  - (e) the accused’s case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in naval custody.”
- (4) Section 47G(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 47G(2) does not authorise the keeping of the accused in naval custody after he is sentenced by the court-martial.
- (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.]

#### Textual Amendments

**F16** S. 47J inserted (2.10.2000) by 2000 c. 4, s. 4(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

**F17** Words in s. 47J(2) inserted (25.8.2006) by 2001 c. 19, ss. 29, 39(2), Sch. 4 para. 8; S.I. 2006/2309, art. 2(a)

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**[<sup>F18</sup>47K Release from custody after charge or during proceedings.**

- (1) This section applies where, at a hearing under section 47G(1) of this Act or on a review under section 47H(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in naval custody.
- (2) Where this section applies, the accused—
  - (a) subject to paragraph (b) below, shall be released from naval custody forthwith, but
  - (b) if he is a person to whom section 51 of this Act applies or is subject to this Act by virtue of section 111(3) or (5) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.

[ On an application made—

- <sup>F19</sup>(2A) (a) by or on behalf of the accused, or  
(b) by the commanding officer of the accused,  
any requirement imposed under subsection (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 47J(2) of this Act has effect, by the judge advocate in relation to the court-martial.]
- (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
  - (4) A person guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.
  - (5) Any such offence shall be treated as if it were an offence under Part I of this Act.]

**Textual Amendments**

**F18** S. 47K inserted (2.10.2000) by 2000 c. 4, s. 5(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

**F19** S. 47K(2A) inserted (25.8.2006) by 2001 c. 19, ss. 29, 39(2), Sch. 4 para. 9; S.I. 2006/2309, art. 2

**[<sup>F20</sup>47L Arrest during proceedings.**

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to this Act (“the accused”) who—
  - (a) has been charged with, or is awaiting sentence for, an offence under any provision of Part I of this Act, and
  - (b) is not in naval custody,may, if satisfied that taking the accused into naval custody is justified, give orders for his arrest.
- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial’s finding on the charge or every charge against the accused.

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- (3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into naval custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence under Part I of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.
- [ Where on an adjournment of the court-martial the judge advocate has ordered that
- <sup>F21</sup>(3A) during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.]
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.
- (5) For the purposes of this section, taking the accused into naval custody is justified if there are substantial grounds for believing that, if not taken into naval custody, he would—
- (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (6) Taking the accused into naval custody is also justified for the purposes of this section if—
- (a) the accused is a person to whom section 51 of this Act applies, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in naval custody—
- (a) shall be treated as being in naval custody under an order under section 47G(2) of this Act, and
  - (b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 47H(1) of this Act.
- (8) A person arrested under subsection (3) above—
- (a) shall be treated as being in naval custody under an order under section 47G(2) of this Act, and
  - (b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made [<sup>F22</sup>or any judicial officer (unless already before the judge advocate or a judicial officer)], and shall be dealt with by him as on a review under section 47H(1) of this Act.]

#### Textual Amendments

- F20** S. 47L inserted (2.10.2000) by 2000 c. 4, s. 6(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F21** S. 47L(3A) inserted (25.8.2006) by 2001 c. 19, ss. 29, 39(2), Sch. 4 para. 10(2); S.I. 2006/2309, art. 2(a)
- F22** Words in s. 47L(8)(b) substituted (25.8.2006) by 2001 c. 19, ss. 29, 39(2), Sch. 4 para. 10(3); S.I. 2006/2309, art. 2

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

- C4** S. 47L(1)(7) modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 7 (with Sch. para. 15)

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### [<sup>F23</sup>47M Judicial officers.

- (1) Judicial officers shall be appointed for the purposes of this Act by the [<sup>F24</sup>Judge Advocate General] .
- (2) No person shall be appointed under this section unless—
  - (a) he is qualified under section 53B(2) of this Act for appointment as the judge advocate in relation to a court-martial, <sup>F25</sup> . . .
  - (b) he has, and has had for at least five years, in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.][<sup>F26</sup>or]
  - [<sup>F26</sup>(c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the [<sup>F24</sup>Judge Advocate General] to be appropriate.]
- [<sup>F27</sup>(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates’ Courts).]

#### Textual Amendments

- F23** S. 47M inserted (2.10.2000) by 2000 c. 4, s. 7(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F24** Words in s. 47M substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), Sch. 16 para. 26; S.I. 2007/2913, art. 3
- F25** Word in s. 47M(2)(a) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 36(2), Sch. 7 Pt. 7; S.I. 2001/3234, art. 2 (subject to transitional provisions in art. 3)
- F26** S. 47M(2)(c) and the word “or” immediately preceding it inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 36(2); S.I. 2001/3234, art. 2 (subject to transitional provisions in art. 3)
- F27** S. 47M(3) inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 36(3); S.I. 2001/3234, art. 2 (subject to transitional provisions in art. 3)

### [<sup>F28</sup>47N Custody rules.

- (1) The Secretary of State may make rules with respect to proceedings—
  - (a) on an application under section 47D of this Act;
  - (b) under section 47G(1) of this Act;
  - (c) on a review under section 47H(1) of this Act.
  - [<sup>F29</sup>(d) on an application under section 47K(2A) of this Act.]
- (2) Rules under this section may in particular make provision with respect to—
  - (a) arrangements preliminary to the proceedings;
  - (b) the representation of the person to whom the proceedings relate;
  - (c) the admissibility of evidence;
  - (d) procuring the attendance of witnesses;
  - (e) the immunities and privileges of witnesses;
  - (f) the administration of oaths;

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- (g) circumstances in which a review under section 47H(1) of this Act may be carried out without a hearing;
  - (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 47D(2)(b), 47G(1) or 47L(7)(b) or (8) (b) of this Act for a person to be brought before a judicial officer or judge advocate;
  - (i) the appointment of persons to discharge administrative functions under the rules.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F28** S. 47N inserted (2.10.2000) by 2000 c. 4, s. 8(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

**F29** S. 47N(1)(d) inserted (25.8.2006) by 2001 c. 19, ss. 34, 39(2), Sch. 4 para. 11; S.I. 2006/2309, art. 2

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

**C5** S. 47N modified (4.9.2000) by S.I. 2000/2366, art. 3, Sch. para. 7 (with Sch. para. 15)

### Jurisdiction

#### 48 Jurisdiction of courts-martial.

- (1) Subject to the provisions of this section, any offence under Part I of this Act may be tried and punished by court-martial; and a court-martial shall have jurisdiction to try any such offence whether committed within the United Kingdom or elsewhere.
- (2) A person shall not be tried by court-martial by virtue of section forty-two of this Act for a civil offence of treason, murder, manslaughter, treason-felony <sup>F30</sup> . . . [<sup>F31</sup> or an offence under section 1 of the Geneva Conventions Act 1957]. . . [<sup>F32</sup> or an offence under section 1 of the <sup>M2</sup>Biological Weapons Act 1974][<sup>F33</sup> or an offence under section 2 or 11 of the Chemical Weapons Act 1996][<sup>F34</sup> or an offence under section 51 or 52 of the International Criminal Court Act 2001]committed on shore within the United Kingdom; and for the purposes of this subsection an offence of murder or manslaughter [<sup>F35</sup>, or an offence under section 1 of the Geneva Conventions Act 1957 or section 51 of the International Criminal Court Act 2001 consisting of the killing of a person,]. . . shall be deemed to have been committed at the place of the commission of the act or the occurrence of the neglect which caused the death, irrespective of the place of the death. [<sup>F36</sup>In this subsection the references to murder shall apply also to aiding, abetting, counselling or procuring suicide].
- (3) Except as provided by subsection (3) of section thirty-eight of this Act, a person who commits an offence under that section in relation to a court-martial shall not be dealt with by that court for that offence.

#### Textual Amendments

**F30** Words in s. 48(2) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 139, 140, 141, Sch. 6 para. 12, Sch. 7; S.I. 2004/874, art. 2; S.S.I. 2004/138, art. 2



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- F31** Words in s. 48(2) inserted (1.9.2001) by 2001 c. 17, s. 74(2)(a) (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**
- F32** Words inserted by **Biological Weapons Act 1974 (c. 6), s. 5(2)**
- F33** Words in s. 48(2) inserted (16.9.1996) by 1996 c. 6, s. 35(c) (with s. 37); S.I. 1996/2054, **art. 2**
- F34** Words in s. 48(2) inserted (1.9.2001) by 2001 c. 17, s. 74(2)(b) (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**
- F35** Words in s. 48(2) inserted (1.9.2001) by 2001 c. 17, s. 74(3) (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**
- F36** Words added by **Suicide Act 1961 (c. 60), Sch. 1 Pt. II**

**Marginal Citations**

- M2** 1974 c. 6.

**F37** 49 .....

**Textual Amendments**

- F37** S. 49 repealed (1.4.1997 with savings) by 1996 c. 46, ss. 5, 35(2), Sch. 1 para. 12, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F38** 50 .....

**Textual Amendments**

- F38** S. 50 repealed (1.4.1997 with savings) by 1996 c. 46, ss. 8, 35(2), Sch. 1 para. 12, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

**51 Jurisdiction to try offenders no longer subject to this Act.**

- (1) Subject to the provisions of . . . <sup>F39</sup> the next following section, a person who has ceased to be subject to this Act may be tried under this Part of this Act for any offence committed while subject to this Act, and may for that purpose be arrested and kept in custody, as if he had not ceased to be subject thereto.
- (2) . . . <sup>F40</sup>

**Textual Amendments**

- F39** Words repealed by **Armed Forces Act 1981 (c. 55), Sch. 5 Pt. II**
- F40** S. 51(2) repealed by **Armed Forces Act 1981 (c. 55), Sch. 5 Pt. II**

**52 Limitation of time for trial.**

[<sup>F41</sup>(1) Where by virtue of any enactment proceedings on indictment for any civil offence must be brought within a limited period, a person shall not be tried for that offence under section 42 of this Act unless the trial is begun within that period.]



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(2) Without prejudice to the foregoing subsection, but subject to the provisions of subsection (3) of this section, a person shall not be tried by virtue of section fifty-one of this Act for an offence committed while subject to this Act unless the trial is begun within three months [<sup>F42</sup>or, in the case of trial by court-martial, six months] after he ceased to be subject thereto.

[<sup>F43</sup>(3) [<sup>F44</sup>Subsection (2)] above shall not apply to an offence of mutiny or desertion; [<sup>F44</sup>or, without prejudice to subsection (1) above, to a civil offence punishable under section 42 of this Act where the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the trial.]]

#### Textual Amendments

**F41** S. 52(1) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 7\(2\)\(6\)](#)

**F42** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 6\(6\)](#)

**F43** S. 52(3) substituted by [Armed Forces Act 1971 \(c. 33\), ss. 41, 78\(4\)](#)

**F44** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 7\(3\)\(6\)](#)

<sup>F45</sup>**52A** .....

#### Textual Amendments

**F45** S. 52A repealed (1.4.1997 with savings) by [1996 c. 46, ss. 8, 35\(2\), Sch. 1 para. 12, Sch. 7 Pt. I; S.I. 1997/304, art. 2](#) (with art. 3)

[<sup>F46</sup> *Investigation and summary trial*]

#### Textual Amendments

**F46** Crossheading before s. 52B inserted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. I para. 13; S.I. 1997/304, art. 2](#) (with art. 3)

### [<sup>F47</sup> **52B Investigation of charges by commanding officer**

- (1) An allegation that a person subject to this Act (“the accused”) has committed an offence against any provision 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

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otherwise than under this Act he may stay further proceedings with respect to the charge.

- (5) After investigating a charge, the commanding officer may, subject to [F48subsections (6) and (6A)] below—
- (a) dismiss the charge;
  - (b) refer the charge to higher authority; or
  - (c) try the accused summarily.
- [F49(6) The commanding officer may not try summarily any charge which is not capable of being tried summarily.
- (6A) The commanding officer may not try summarily any charge against an officer unless—
- (a) the commanding officer is of or above the rank of commander,
  - (b) the rank of the commanding officer is at least two ranks higher than that of the accused, and
  - (c) the accused is below the rank of captain.
- (6B) For the purposes of subsection (6A) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.]
- [F50(7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than—
- (a) an offence listed in subsection (8) below (offences which, before the passing of the Human Rights Act 1998, were punishable by sentence of death), or
  - (b) an offence under section 42 of this Act where the civil offence is one for which the sentence is fixed by law as life imprisonment.
- (8) The offences are—
- (a) an offence under section 2 of this Act, if it consists in an act or omission falling within subsection (1) or (2)(a) of that section and it is charged that it was committed with intent to assist the enemy;
  - (b) an offence under section 3 of this Act, if it consists in an act or omission falling within subsection (1)(a), (b), (c), (d) or (f) of that section and it is charged that it was committed with intent to assist the enemy;
  - (c) an offence under section 4 of this Act, if it is charged that it was committed with intent to assist the enemy;
  - (d) an offence under section 9 of this Act, if it is charged that the mutiny had as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against the enemy, or the impeding of the performance of any such duty or service;
  - (e) an offence under section 10 of this Act, if it is charged that it was committed with intent to assist the enemy;
  - (f) an offence under section 42 of this Act, where the civil offence is treason.]

#### Textual Amendments

F47 Ss. 52B-52G inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. I para. 13; S.I. 1997/304, art. 2 (with art. 3)

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- F48** Words in s. 52B(5) substituted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 9(2); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F49** S. 52B(6)-(6B) substituted (28.2.2002) for s. 52B(6) by 2001 c. 19, s. 17, Sch. 1 para. 9(3); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F50** S. 52B(7)(8) substituted (11.5.2001) for s. 52B(7) by 2001 c. 19, ss. 34, 39(3)(f), **Sch. 6 Pt. 4 para. 22**

### [<sup>F51</sup>52C 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 rating and is capable of being tried summarily, the higher authority may, subject to subsection (4) below, refer it back to the commanding officer of the accused to be so tried.

[ If the charge is against an officer below the rank of captain and is capable of being  
<sup>F52</sup>(3A) tried summarily, the higher authority may, subject to subsection (4) below—

- (a) in a case where the commanding officer satisfies the conditions in section 52B(6A)(a) and (b) of this Act, refer the charge back to the commanding officer to be so tried, and
- (b) in any other case, refer the charge to the appropriate superior authority to be so tried.]]

(4) 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 [<sup>F53</sup>or appropriate superior authority] to be tried summarily.

(5) <sup>F54</sup> .....

#### Textual Amendments

- F51** Ss. 52B-52G inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. 1 para. 13**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F52** S. 52C(3A) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 10; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F53** Words in s. 52C(4) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 27**; S.I. 2007/2913, **art. 3**
- F54** S. 52C(5) repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, **art. 2** (subject to **art. 3**)

### [<sup>F55</sup>52D Summary trial.

(1) This section applies where a charge is to be tried summarily.

[<sup>F56</sup>(2) The commanding officer or appropriate superior authority (as the case may be) shall afford the accused the opportunity of electing court-martial trial.]

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[ Where in accordance with regulations under section 52F of this Act two or more<sup>F57</sup>(2A) charges are together to be tried summarily, any election for court-martial trial must relate to all the charges concerned.]]

(3) If the accused [<sup>F58</sup>elects court-martial trial] and does not withdraw his election with leave, the commanding officer [<sup>F59</sup>or appropriate superior authority] shall refer the charge to higher authority with a view to the trial of the accused by court-martial.

[<sup>F60</sup>(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 a rating, refer the charge back to the commanding officer of the accused;

[<sup>F61</sup>(b) if the accused is an officer below the rank of captain whose commanding officer satisfies the conditions in section 52B(6A)(a) and (b), refer the charge back to the commanding officer of the accused;

(c) if the accused is an officer other than one within paragraph (b) above, refer the charge back to the appropriate superior authority;]

for the commanding officer or appropriate superior authority to try the charge summarily.]

[<sup>F62</sup>(4A) [<sup>F63</sup>Subsection (2) 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 commanding officer or appropriate superior authority under subsection (4) above.

(4B) 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 or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.

(4C) Where under subsection (4B) above a charge is amended or one charge is substituted for another, [<sup>F64</sup>subsection (2) above] applies in relation to the amended or substituted charge.]

(5) If, in the course of trying the charge, the commanding officer [<sup>F65</sup>or appropriate superior authority] considers that it should not be tried summarily, he may refer the charge to higher authority.

(6) If the commanding officer [<sup>F65</sup>or appropriate superior authority] determines that the charge has not been proved, he shall acquit the accused.

(7) If the commanding officer [<sup>F65</sup>or appropriate superior authority] determines that the charge has been proved, he shall record a finding of guilt and award punishment accordingly.

(8) A commanding officer [<sup>F65</sup>or appropriate superior authority] shall not have power on a summary trial to award a sentence of dismissal with disgrace from Her Majesty's service, a sentence of imprisonment or a sentence of detention for any term exceeding three months.

[<sup>F66</sup>(9) Nothing in this section or section 52C of this Act shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.]

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### Textual Amendments

- F55** SS. 52B-52G inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 13**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F56** S. 52D(2) substituted (4.6.2007) for s. 52D(2)(2ZA) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 28(2)**; S.I. 2007/1442, **art. 2(1)**
- F57** S. 52D(2A) inserted (2.10.2000) by 2000 c. 4, s. 11(4); S.I. 2000/2366, **art. 2** (with Sch. para. 15)
- F58** Words in s. 52D(3) substituted (2.10.2000) by 2000 c. 4, s. 11(5); S.I. 2000/2366, **art. 2** (with Sch. para. 15)
- F59** Words in s. 52D(3) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 11(4); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F60** S. 52D(4) substituted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 11(5); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F61** S. 52D(4)(b)(c) substituted (4.6.2007) for s. 52D(4)(b) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 28(3)**; S.I. 2007/1442, **art. 2(1)**
- F62** S. 52D(4A)-(4C) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 11(6); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F63** Words in s. 52D(4A) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 28(4)**; S.I. 2007/1442, **art. 2(1)**
- F64** Words in s. 52D(4C) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 28(5)**; S.I. 2007/1442, **art. 2(1)**
- F65** Words in s. 52D(5)-(8) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 11(7); S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F66** S. 52D(9) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 11(8); S.I. 2002/345, **art. 2** (subject to **art. 3**)

### [<sup>F67</sup>52E Commanding officers.

- (1) In this Act “the commanding officer”, in relation to a person charged with [<sup>F68</sup>, or in custody in connection with,] an offence, means the officer in command of the ship or naval establishment to which he belongs at the time of the commission of the offence [<sup>F69</sup>, while he is in custody in connection with it] or at the time of its investigation or summary trial.
- (2) The Defence Council may by regulations make provision—
- enabling the powers conferred by this Act on the commanding officer of [<sup>F70</sup>a person charged with, or in custody in connection with, an offence] to be exercised by other persons of such descriptions as may be specified;
  - with respect to the delegation by the commanding officer, or other person exercising the powers of a commanding officer by virtue of regulations under paragraph (a) above, of any of his powers to any officer not below the rank of lieutenant or corresponding rank.
- (3) An officer to whom any powers are delegated by virtue of subsection (2)(b) above shall not have power to award any punishment other than a fine, stoppages or those described in section 43(1)(m) of this Act.

[<sup>F71</sup>(3A) Subsection (2)(b) above is without prejudice to section 47F(1)(a) of this Act.]

- (4) The reference in subsection (3) above to stoppages does not include a reference to stoppages for personal injury.

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#### Textual Amendments

- F67** Ss. 52B-52G inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 13**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F68** Words in s. 52E(1) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 8(2)(a)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
- F69** Words in s. 52E(1) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 8(2)(b)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
- F70** Words in s. 52E(2)(a) substituted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 8(3)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
- F71** S. 52E(3A) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 8(4)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

#### [<sup>F72</sup>52EE Officers who may act as appropriate superior authorities

- (1) A person may act as appropriate superior authority in relation to a person charged with an offence if—
  - (a) he is of or above the rank of commander, and
  - (b) his rank is at least two ranks higher than that of the accused.
- (2) The appropriate superior authority in relation to a person charged with an offence shall be appointed by the higher authority.
- (3) For the purposes of subsection (1) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.]

#### Textual Amendments

- F72** S. 52EE inserted (28.2.2002) by 2001 c. 19, s. 17, **Sch. 1 para. 12**; S.I. 2002/345, **art. 2** (subject to **art. 3**)

#### [<sup>F73</sup>52F Regulations as to summary trial etc.

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary trial.
- (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 amendment or substitution of charges;
  - (d) the procedure on summary trial;
  - (e) limitations on the punishments which may be awarded on summary trial by [<sup>F74</sup>a commanding officer or appropriate superior authority of a specified description;]];
  - (f) limitations on the punishments which may be so awarded to a specified description of accused;
  - (g) requirements for punishments to be approved before taking effect;

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- [<sup>F75</sup>(gg) the procedure for making elections under section 85A(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;
  - [<sup>F76</sup>(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

- F73** Ss. 52B-52G inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. I para. 13; S.I. 1997/304, art. 2 (with art. 3)
- F74** Words in s. 52F(2)(e) substituted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 13(a); S.I. 2002/345, art. 2 (subject to art. 3)
- F75** S. 52F(2)(gg) inserted (2.10.2000) by 2000 c. 4, s. 25, Sch. 3 para. 5; S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F76** S. 52F(2)(k)(l) substituted (28.2.2002) for s. 52F(2)(k) by 2001 c. 19, s. 17, Sch. 1 para. 13(b); S.I. 2002/345, art. 2 (subject to art. 3)

#### [<sup>F77</sup> *The summary appeal court*

#### Textual Amendments

- F77** S. 52FF and crossheading inserted (2.10.2000) by 2000 c. 4, s. 14(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### <sup>F78</sup> **52FF The summary appeal court.**

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded on summary trial.
- (2) The court shall consist of—
  - (a) judge advocates appointed under section 52FG of this Act, <sup>F79</sup> . . .
  - (b) officers qualified under section 52FH of this Act to be members of the court [<sup>F80</sup>, and
  - (c) warrant officers qualified under an order made by virtue of section 20 of the Armed Forces Act 2001 to be members of the court]
- (3) The court—
  - (a) may sit in two or more divisions, and
  - (b) may sit in any place, whether within or outside the United Kingdom.



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- (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
- (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
- (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 52FP of this Act.]

#### Textual Amendments

- F78** S. 52FF and crossheading inserted (2.10.2000) by 2000 c. 4, s. 14(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F79** Word in s. 52FF(2)(a) omitted (19.8.2004) by virtue of The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), art. 6(2)(a)
- F80** S. 52FF(2)(c) and preceding word inserted (19.8.2004) by The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), art. 6(2)(b)

#### [<sup>F81</sup>52FG] Judge advocates.

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the [<sup>F82</sup>Judge Advocate General] .
- (2) No person shall be appointed under this section unless he is qualified under section 53B(2) of this Act for appointment as the judge advocate in relation to a court-martial.]

#### Textual Amendments

- F81** S. 52FG inserted (2.10.2000) by 2000 c. 4, s. 15(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F82** Words in s. 52FG(1) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, Sch. 16 para. 29; S.I. 2007/2913, art. 3

#### [<sup>F83</sup>52FH] Officers qualified for membership of summary appeal court.

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a naval officer of or above the rank of lieutenant who has held a commission in any of Her Majesty's naval, military, or air forces for a period of not less than three years or periods amounting in the aggregate to not less than three years.
- (2) Subject to subsection (3) below, rules under section 52FP of this Act may specify circumstances in which any other naval officer or a military or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
  - (a) the court administration officer,
  - (b) an officer under the command of the court administration officer,
  - (c) the prosecuting authority,
  - (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,

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- (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
- (f) a member of the Bar of Northern Ireland,
- (g) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules, or
- (h) any person who is, or has at any time during the preceding five years been, a member of the Royal Navy Regulating Branch.

(4) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act.]

#### Textual Amendments

**F83** S. 52FH inserted (2.10.2000) by 2000 c. 4, s. 16(3); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F84</sup>52FJ Constitution of summary appeal court for appeals.

- (1) For the purpose of hearing an appeal, the summary appeal court shall consist of—
  - (a) one of the judge advocates appointed under section 52FG of this Act, and
  - [<sup>F85</sup>(b) an officer qualified under section 52FH of this Act for membership of the court, and
  - (c) a third person who is either—
    - (i) an officer qualified under that section, or
    - (ii) a warrant officer qualified under an order made by virtue of section 20 of the Armed Forces Act 2001,
 for membership of the court.]
- (2) Subsection (1) above has effect subject to any provision made by virtue of section 52FP of this Act [<sup>F86</sup>or section 20 of the Armed Forces Act 2001 (eligibility of warrant officers to be members of summary appeal courts)] .
- (3) The judge advocate for any appeal shall be specified by or on behalf of the [<sup>F87</sup>Judge Advocate General] .
- (4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.
- (5) In specifying members of the court under subsection (4) above the person doing so shall ensure that at least one member of the court for any appeal is of or above the rank of commander.
- (6) At any sitting of the court, the most senior member of the court at that sitting shall preside.]

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#### Textual Amendments

- F84** S. 52FJ inserted (2.10.2000) by 2000 c. 4, s. 17(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)
- F85** S. 52FJ(1)(b)(c) substituted (19.8.2004) for s. 52FJ(1)(b) by The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), art. 6(3)(a)
- F86** Words in s. 52FJ(2) inserted (19.8.2004) by The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), art. 6(3)(b)
- F87** Words in s. 52FJ(3) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, Sch. 16 para. 30; S.I. 2007/2913, art. 3

#### [<sup>F88</sup> 52FK] Right of appeal.

- (1) Any person in respect of whom—
  - (a) a charge has been tried summarily, and
  - (b) a finding of guilt has been recorded,may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).
- (2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.
- (3) The court may at any later time give leave for an appeal to be brought.
- (4) On any appeal under this section, the respondent shall be the prosecuting authority.]

#### Textual Amendments

- F88** S. 52FK inserted (2.10.2000) by 2000 c. 4, s. 18(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F89</sup> 52FL] Hearing of appeals.

- (1) An appeal under section 52FK of this Act against a finding shall be by way of a rehearing of the charge.
- (2) An appeal under section 52FK of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.
- (3) Except in such cases as may be prescribed by rules under section 52FP of this Act, appeals shall be heard in open court.
- (4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.
- (5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (6) Any directions given by the judge advocate shall be binding on the court.]

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#### Textual Amendments

**F89** S. 52FL inserted (2.10.2000) by 2000 c. 4, s. 19(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F90</sup> 52FM Powers of court.

- (1) On an appeal against a finding of guilt, the summary appeal court—
  - (a) may confirm or quash the finding, or
  - (b) in a case where the officer who conducted the summary trial could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.
- (2) Where the court quashes a finding—
  - (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
  - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding of guilt, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded at the summary trial so as to award any punishment which—
  - (a) it would have been within the powers of the officer who conducted the summary trial to award, and
  - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
  - (a) may confirm the punishment awarded at the summary trial, or
  - (b) may substitute any other punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
    - (ii) in the opinion of the court, is no more severe than that originally awarded.
- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on summary trial of the charge.
- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been awarded or made by the officer who conducted the summary trial.]

#### Textual Amendments

**F90** S. 52FM inserted (2.10.2000) by 2000 c. 4, s. 20(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

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

**C6** S. 52FM(1)(b) modified (2.10.2000) by S.I. 2000/2370, rule 46(4)

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### [<sup>F91</sup>52FNMaking of, and appeals from, decisions of court.

- (1) Subject to section 52FL(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 52FJ(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.]

#### Textual Amendments

**F91** S. 52FN inserted (2.10.2000) by 2000 c. 4, s. 21(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

### [<sup>F92</sup>52FPRules of summary appeal court.

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
  - (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 52FK of this Act;
  - (b) as to the bringing and abandonment of appeals;
  - (c) as to the procedure for applying for leave under section 52FK(2) or (3) of this Act;
  - (d) as to the procedure for applying for leave, or making a reference, under section 71B(5A) or (5B) of this Act;
  - (e) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 52FG of this Act sitting alone;
  - (f) enabling an uncontested appeal to be determined without a hearing;
  - (g) as to the convening and constitution of the court to hear any appeal;
  - (h) as to circumstances in which officers otherwise qualified under section 52FH of this Act are ineligible to hear particular appeals;
  - (i) enabling the appellant to object to members of the court;
  - (j) as to the representation of the appellant on the hearing of appeals under section 52FK of this Act and at any preliminary proceedings;
  - (k) as to the admissibility of evidence;
  - (l) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
  - (m) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
  - (n) as to the administration of oaths;
  - (o) as to the recording of the proceedings of the court and custody of records of the proceedings;
  - (p) as to making copies of the records of proceedings available and as to the fees payable for such copies;
  - (q) as to the procedure for applying to have a case stated under section 52FN(2) of this Act.

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- (3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.
- (4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F92** S. 52FP inserted (2.10.2000) by 2000 c. 4, s. 22(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F93</sup>52FQ Administration of oaths to members of summary appeal court.

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.
- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F93** S. 52FQ inserted (2.10.2000) by 2000 c. 4, s. 23(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F94</sup>52FR Privileges of witnesses and others.

A witness before the summary appeal court 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 and Wales.]

#### Textual Amendments

**F94** S. 52FR inserted (2.10.2000) by 2000 c. 4, s. 24(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)

#### [<sup>F95</sup>Disciplinary courts]

#### Textual Amendments

**F95** Crossheading before s. 52G inserted (1.4.1997) by 1996 c. 46, s. 5, Sch. 1 Pt. I para. 13; S.I. 1997/304, art. 2 (with art. 3)

#### 52G Disciplinary courts.

F96

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#### Textual Amendments

**F96** S. 52G repealed (28.2.2002) by 2001 c. 19, ss. 18, 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to art. 3)

### *<sup>F97</sup> The prosecuting authority*

#### Textual Amendments

**F97** Crossheading and ss. 52H-52J inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. II para. 16; S.I. 1997/304, art. 2 (with art. 3)

### <sup>F98</sup>**52H The prosecuting authority.**

- (1) Her Majesty may appoint a qualified officer of Her naval forces to be the prosecuting authority for the Royal Navy; 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 five 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 five 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 five years’ standing.

#### Textual Amendments

**F98** Ss. 52H-52J inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. II para. 16; S.I. 1997/304, art. 2 (with art. 3)

### <sup>F99</sup>**52I 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 refer the case to the commanding officer of the accused for the preliminary charge to be tried summarily.
- (3) In subsection (2) above “the preliminary charge” means the charge which would have been tried 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 determine any charge to be preferred and [<sup>F100</sup>(subject to section 52II of this Act)] prefer any such charge.
- (5) The prosecuting authority shall, in accordance with rules under section 58 of this Act, notify the commanding officer of the accused and a court administration officer of



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any charge preferred; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.

- (6) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (7) 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 58 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.
- (8) The powers mentioned in subsection (7)(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.
- [ If the case has been referred to the prosecuting authority as a result of an election for
- <sup>F101</sup>(8A) court-martial trial, the prosecuting authority may not—
- (a) determine under subsection (4) 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 (7)(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 52II of this Act.]
- (9) The prosecuting authority may not exercise any power mentioned in subsection (7)(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.
- (10) 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 (7) (b) above, he may, in accordance with rules under section 58 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 (5) above shall apply with such exceptions and modifications as may be prescribed.
- (11) The prosecuting authority may not exercise the power mentioned in subsection (7)(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>F102</sup>(12) (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 the accused shall not be liable to be tried summarily or by court-martial for the offence charged.]
- (13) 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 (12) above.

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#### Textual Amendments

- F99** Ss. 52H-52J inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 16**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F100** Words in s. 52I(4) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 2(1)**; S.I. 2000/2366, **art. 2**
- F101** S. 52I(8A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 2(2)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 12**)
- F102** S. 52I(12) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 2(3)**; S.I. 2000/2366, **art. 2**

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

- C7** S. 52I(2) modified (1.1.2008) by The Courts-Martial (Royal Navy) Rules 2007 (S.I. 2007/3443), **rule 5**

### **Cases where charge may be referred back to commanding officer.**

**F103** **52II**

(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 tried 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—

**F104** (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 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) [**F105** or (2A)] above, the commanding officer shall deal with the charge as if it had been reported to him under section 52B(1) of this Act.]

#### Textual Amendments

- F103** S. 52II inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 4**; S.I. 2000/2366, **art. 2**

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**F104** S. 52II(2A) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 14(2); S.I. 2002/345, **art. 2** (subject to **art. 3**)

**F105** Words in s. 52II(3) inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 14(3); S.I. 2002/345, **art. 2** (subject to **art. 3**)

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

**C8** S. 52II(1) modified (1.1.2008) by The Courts-Martial (Royal Navy) Rules 2007 (S.I. 2007/3443), **rule 6**

S. 52II(1) modified (1.1.2008) by The Courts-Martial (Royal Navy) Rules 2007 (S.I. 2007/3443), **rule 13**

**[** **F106** **52IJ** **Power of prosecuting authority to advise police forces**

(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 Navy Regulating Branch;
- (b) the Royal Air Force Police;
- (c) the Royal Military Police;
- (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;
- (k) <sup>F107</sup> .....]

**Textual Amendments**

**F106** S. 52IJ inserted (28.2.2002) by 2001 c. 19, s. 17, Sch. 1 para. 15; S.I. 2002/345, **art. 2** (subject to **art. 3**)

**F107** S. 52IJ(2)(k) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, Sch. 4 para. 5, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, Sch. (subject to **art. 4(2)-(7)**)

**F108** **52J** **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>M3</sup>Courts and Legal Services Act 1990;
- (b) an advocate or solicitor in Scotland; or

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- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.]

**Textual Amendments**

**F108** Ss. 52H-52J inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 16**; S.I. 1997/304, **art. 2** (with **art. 3**)

**Marginal Citations**

**M3** 1990 c. 41.

*Constitution of courts-martial*

<sup>F109</sup>53 .....

**Textual Amendments**

**F109** S. 53 repealed (1.4.1997 with savings) by 1996 c. 46, ss. 8, 35(2), **Sch. 1 Pt. III para. 50**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

[<sup>F110</sup>53A **Court administration officers.**

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to order courts-martial and perform such other functions as may be prescribed by rules under section 58 of this Act; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who ordered the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.]

**Textual Amendments**

**F110** Ss. 53A, 53B and 53C inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 51**; S.I. 1997/304, **art. 2** (with **art. 3**)

<sup>F111</sup>53B **Judge advocates.**

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the [<sup>F112</sup>Judge Advocate General] to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
- (a) a person who has a five year general qualification within the meaning of section 71 of the <sup>M4</sup>Courts and Legal Services Act 1990;
  - (b) an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or

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- (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

#### Textual Amendments

**F111** Ss. 53A, 53B and 53C inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 51**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F112** Words in s. 53B(1) substituted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 31**; S.I. 2007/2913, **art. 3**

#### Marginal Citations

**M4** 1990 c. 41.

### <sup>F113</sup>**53C Ordering of courts-martial.**

- (1) On being notified by the prosecuting authority of the charge preferred, a court administration officer shall order a court-martial.
- (2) The order assembling the court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial;
  - <sup>F114</sup>(cc) any warrant officers who are to be members of the court-martial;
  - (d) any other officers [<sup>F115</sup>or warrant officers] appointed for the purpose of filling vacancies,
 and shall state that a judge advocate appointed by or on behalf of the [<sup>F116</sup>Judge Advocate General] is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 58 of this Act, amend or withdraw the order assembling the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
  - (a) the court administration officer;
  - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
  - (c) the higher authority to whom the preliminary charge against the accused was referred;
  - (d) any other officer who has investigated the subject matter of the charge against the accused;
  - (e) any other officer [<sup>F117</sup>or warrant officer] who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

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### Textual Amendments

- F113** Ss. 53A, 53B and 53C inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 51**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F114** S. 53C(2)(cc) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 15(2)(a)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F115** Words in s. 53C(2)(d) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 15(2)(b)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F116** Words in s. 53C(2) substituted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 32**; S.I. 2007/2913, **art. 3**
- F117** Words in s. 53C(4)(e) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 15(3)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)

## [<sup>F118</sup>54] Composition of courts-martial

- (1) A court-martial shall consist of—
  - (a) the president, who shall be a naval officer,
  - (b) the judge advocate, and
  - (c) not less than four nor more than eight other persons, of whom—
    - (i) two shall each be either a naval officer or a naval warrant officer, and
    - (ii) the rest shall be naval officers.
- (2) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (3) An officer shall not be appointed under subsection (1)(c) above as a member of a court-martial unless—
  - (a) he is of or above the rank of lieutenant and has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than three years, or for periods amounting in the aggregate to not less than three years, or
  - (b) immediately before he received his commission, he was a warrant officer in any of those forces.
- (4) The officers and warrant officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (5) The members appointed under subsection (1)(c) above—
  - (a) shall not include any warrant officer, unless the court-martial is for the trial of a person of a rank or rate below that of a warrant officer,
  - (b) shall not include any officer who qualifies under subsection (3) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank or rate below that which the officer held immediately before he received his commission,
  - (c) in the case of a trial of an officer of flag rank, shall be of or above the rank of captain,
  - (d) in the case of a trial of a commodore or captain, shall be of or above the rank of commander,
  - (e) in the case of a trial of a commander, shall include at least two members who are of or above the rank of commander.

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- (6) If, in the opinion of the court administration officer, the necessary number of naval officers or naval warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) above, he may appoint under that provision—
  - (a) any military or air-force officer having qualifications corresponding to those required for a naval officer, or
  - (b) where a naval warrant officer could be appointed, any military or air-force warrant officer having qualifications corresponding to those required for a naval warrant officer.

(7) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;

“military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act;

“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to this Act;

“warrant officer” does not include an acting warrant officer (that is, a warrant officer whom a commanding officer has power under Queen’s Regulations to order to revert from the rank of warrant officer).]

**Textual Amendments**  
**F118** S. 54 substituted (28.2.2002) by 2001 c. 19, s. 19, Sch. 2 para. 16; S.I. 2002/345, art. 2 (subject to art. 3)

**F119** 55 .....

**Textual Amendments**  
**F119** S. 55 repealed (1.4.1997 with savings) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 53, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3)

**56 Place and time of sittings of courts-martial.**

- (1) A court-martial shall be held on board such of Her Majesty’s ships or vessels, or at such premises on shore, whether within or out of the United Kingdom, as may be [<sup>F120</sup>specified in the order assembling the court].
- (2) A court-martial may, if it appears to the court to be expedient in the interests of justice, be adjourned, either generally or for the purpose of any part of the proceedings, to any other ship, vessel or place <sup>F121</sup> . . .



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- (3) Without prejudice to the provisions of the last foregoing subsection, a court-martial may, if it appears to the court that an adjournment is desirable for any reason, be adjourned for such period as the court thinks fit:

Provided that except with the consent of the accused and the [F122]prosecuting authority[F123], or for the purpose of exercising powers under section 63A of this Act,] the period for which the court may be adjourned under this subsection shall not on any occasion exceed six days.

- (4) Subject to the provisions of this section, a court-martial shall, unless prevented by weather or other unavoidable cause, sit from day to day (with the exception of Sundays) until the court has arrived at a finding and, in the case of a conviction, until sentence is pronounced.

#### Textual Amendments

**F120** words in s. 56(1) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 54(2)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F121** Words in s. 56(2) repealed (1.4.1997 with savings) by 1996 c. 46, s. 5, 35(2), **Sch. 1 Pt. III para. 54(3)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F122** Words in s. 56(3) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 54(4)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F123** Words in s. 56(3) inserted (31.3.2005) by **Domestic Violence, Crime and Victims Act 2004 (c. 28)**, ss. 26, 60, **Sch. 3 para. 4** (with **Sch. 12 para. 8**); S.I. 2005/579, **art. 3(b)**

#### [F124]56A Dissolution of courts-martial.

- (1) Where, before the commencement of the trial, it appears to the court administration officer necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.
- (2) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.
- (3) If after the commencement of the trial the president dies or is otherwise unable to attend, the court-martial shall be dissolved.
- (4) Where a court-martial is dissolved the accused may be tried by another court.]

#### Textual Amendments

**F124** S. 56A inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 55**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### 57 Quorum.

[F125](1) .....

- (2) The proceedings of a court-martial shall be valid notwithstanding the absence of one or more of the [F126]officers] other than the president, so long as the number of [F126]officers] present throughout the proceedings is not reduced below four:

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Provided that [<sup>F127</sup>an officer appointed] a member of the court who has been absent for any time during a sitting shall take no further part in the proceedings.

<sup>F125</sup>(3) .....

#### Textual Amendments

**F125** S. 57(1) and (3) repealed (1.4.1997 with savings) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 56(2), Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with art. 3)

**F126** Word in s. 57(2) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. III para. 56(3)(a); S.I. 1997/304, art. 2 (with art. 3)

**F127** Words in s. 57(2) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. III para. 56(3)(b); S.I. 1997/304, art. 2 (with art. 3)

### *Proceedings of courts-martial*

#### [<sup>F128</sup>58 Rules.

- (1) The Secretary of State may make rules with respect to—
  - (a) the investigation, prosecution and trial of, and the awarding of punishment for, offences cognizable by courts-martial;
  - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
  - (a) proceedings preliminary to trials by courts-martial;
  - (b) the appointment of a judge advocate for any preliminary proceedings;
  - [<sup>F129</sup>(ba) appeals against orders or rulings made in preliminary proceedings;]
  - (c) the delegation by court administration officers of any of their functions;
  - (d) the ordering and composition of courts-martial;
  - (e) the sittings, adjournment and dissolution of courts-martial;
  - (f) the procedure to be followed in trials by courts-martial;
  - (g) the functions of the clerk of the court and the exercise by him of those functions;
  - (h) the representation of the accused at trials by courts-martial and any preliminary proceedings;
  - (i) procuring the attendance of witnesses at such trials and any preliminary proceedings;
  - (j) enabling a court-martial, in such cases and to such extent as may be prescribed by the rules, to amend a charge which is being tried by the court;
  - (k) enabling a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
  - (l) directing that the powers conferred by section 7 of the <sup>M5</sup>Bankers' Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) may be exercised for the

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- purposes of a court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate, as well as by the court or a judge within the meaning of that Act;
- (m) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
- (n) the cases in which, and extent to which, offences may be taken into consideration by a court-martial and the powers of the court in relation to any offences taken into consideration;
- <sup>F130</sup>(nn) [ enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;]
- <sup>F131</sup>(no) [ appeals against any orders (including directions) of courts-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings;]
- (o) the recording of the proceedings of a court-martial;
- (p) the procedure to be followed on review of findings and sentences of courts-martial.
- <sup>F132</sup>(2A) [ In subsection (2)(a), (b) and (ba), the references to proceedings preliminary to trials include hearings at which the accused is arraigned.
- (2B) Rules made by virtue of subsection (2)(ba) or (no) may confer jurisdiction on the Courts-Martial Appeal Court, and rules under section 49 of the Courts-Martial (Appeals) Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of subsection (2)(ba) or (no).]
- (3) Rules made by virtue of paragraph (j) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- <sup>F133</sup>(3A) [ Rules under this section may make provision as to the application of sections 52I and 52II of this Act in relation to cases where an election for court-martial trial relates to two or more charges.]
- (4) Rules under this section which are inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F128** S. 58 substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 57**; S.I. 1997.304, art. 2 (with art. 3)
- F129** S. 58(2)(ba) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 33(2)(a)**; S.I. 2007/2913, **art. 3**
- F130** S. 58(2)(nn) inserted (14.10.2005) by 2001 c. 19, ss. 28(5), 39(2); S.I. 2005/2861, **art. 2**
- F131** S. 58(2)(no) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 33(2)(b)**; S.I. 2007/2913, **art. 3**
- F132** S. 58(2A)(2B) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 33(3)**; S.I. 2007/2913, **art. 3**
- F133** S. 58(3A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 6**; S.I. 2000/2366, **art. 2**

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### Marginal Citations

M5 1879 c. 11.

## [<sup>F134</sup>58A Preliminary hearings as to plea

- (1) Subsections (2) to (4) apply in relation to a charge against a person (“the accused”) preferred by the prosecuting authority.
- (2) The accused shall be arraigned at a hearing before a judge advocate.
- (3) That hearing may take place at any time before the time when the court-martial that is to try the charge first sits.
- (4) The arraignment is to be treated as having occurred before the court-martial.
- (5) Rules under section 58 may make provision for and in connection with the making of orders and rulings by a judge advocate at a hearing at which the accused is arraigned, including in particular—
  - (a) provision corresponding to any provision of, or that may be made by virtue of, sections 31, 33, 34 and 37 of the Criminal Procedure and Investigations Act 1996, subject to such modifications as the Secretary of State considers appropriate;
  - (b) provision for the variation or discharge of such orders and rulings.
- (6) The reference in subsection (1) to a charge preferred by the prosecuting authority includes—
  - (a) a charge substituted by the prosecuting authority; and
  - (b) where a charge is amended by the prosecuting authority before the accused is arraigned in respect of it, the charge as so amended.
- (7) Nothing in this section applies in relation to a charge preferred or substituted after the time when the court-martial first sits.]

### Textual Amendments

**F134** S. 58A inserted (1.1.2008) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 34](#); S.I. 2007/2913, [art. 3](#)

## 59 Challenge by accused.

- (1) Before the [<sup>F135</sup>officers appointed] members of a court-martial [<sup>F136</sup>, and any warrant officers so appointed,] are sworn, the names of the [<sup>F137</sup>members of] the court shall be read over in the presence of the accused, and he shall be asked whether he objects to [<sup>F137</sup>any of those members].
- (2) Every objection made by the accused in respect of any [<sup>F138</sup>member] shall be [<sup>F139</sup>determined by the judge advocate].
- [<sup>F140</sup>(3) If an objection to the president is allowed, the court shall be dissolved.]
- (4) If [<sup>F141</sup>an objection to any other officer appointed a member of the court [<sup>F142</sup>or to any warrant officer so appointed] is allowed], the member objected to shall retire, and the vacancy shall be filled by the first officer [<sup>F143</sup>or warrant officer][<sup>F144</sup>appointed] as a

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spare member in accordance with the provisions of [F145section 53C] of this Act who is qualified to be and is not already a member of the court.

[F146(4A) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the [F147Judge Advocate General] .]

(5) . . . . .

(6) After the [F148officers appointed] members of a court-martial [F149, and any warrant officers so appointed,] have been duly sworn, no question as to the constitution of the court shall be raised in the proceedings, but without prejudice to any power of the Courts-Martial Appeal Court or of [F150the [F151reviewing authority]] in a case in which it appears that a substantial miscarriage of justice has occurred by reason of the court not having been duly constituted.

#### Textual Amendments

- F135** Words in s. 59(1) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(1)(2)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F136** Words in s. 59(1) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 17(2)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F137** Words in s. 59(1) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(2)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F138** Word in s. 59(2) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(3)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F139** Words in s. 59(2) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(3)(b)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F140** S. 59(3) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(4)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F141** S. 59(4): it is provided (1.4.1997 with savings) that, for the words from "objection" to "the member" there shall be substituted the words "an objection to any other officer appointed a member of the court is allowed" by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(5)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**) [Editorial note: it is thought that it was not the drafter's intention to remove the words "the member"]
- F142** Words in s. 59(4) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 17(3)(a)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F143** Words in s. 59(4) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 17(3)(b)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F144** Word in s. 59(4) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(5)(b)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F145** Words in s. 59(4) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(5)(c)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F146** S. 59(4A) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(6)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F147** Words in s. 59(4A) inserted (1.1.2008) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 35**; S.I. 2007/2913, **art. 3**
- F148** Words in s. 59(6) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(8)(a)**; S.I. 1997/304, **art. 2** (with **art. 3**)
- F149** Words in s. 59(6) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 17(4)**; S.I. 2002/345, **art. 2** (subject to **art. 3**)
- F150** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**
- F151** Words in s. 59(6) substituted (1.4.1997 with savings) by virtue of 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 58(8)(b)**; S.I. 1997/304, **art. 2** (with **art. 3**)

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## 60 Administration of oaths.

[<sup>F152</sup>(1) An oath shall be administered separately to each member of a court-martial, to the clerk of the court and any officer or other person in attendance for instruction, and to any person appointed to attend as interpreter.]

<sup>F153</sup>[<sup>F154</sup>(2) A witness before a court-martial—

- (a) shall be examined on oath if he has attained the age of fourteen; and
- (b) shall give evidence unsworn if he is under that age.

(3) Unsworn evidence admitted by virtue of subsection (2)(b) above may corroborate evidence (sworn or unsworn) given by any other person.]

[<sup>F155</sup>(3A) Unsworn evidence admitted by virtue of subsection (3) above may corroborate evidence (sworn or unsworn) given by any other person.]

(4) A person shall be permitted to make a solemn affirmation instead of taking an oath under this section—

- (a) if he objects to being sworn, <sup>F156</sup>. . . ; or
- (b) if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief.

(5) An oath or affirmation required to be administered under this section shall be in such form, and shall be administered at such time, by such person and in such manner, as may be prescribed by [<sup>F157</sup>rules] under section fifty-eight of this Act.

[<sup>F158</sup>(6) 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

**F152** S. 60(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 59(2)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F153** S. 60(2)(3) substituted (1.10.1992 for E.W.) by Criminal Justice Act 1991 (c. 53), ss. 71, 102(2)(8), **Sch. 9 para. 7**; S.I. 1992/333, arts. 2(2), 3(1), **Sch. 2**

**F154** S. 60(2)(3) repealed (1.4.2000) by 1999 c. 23, ss. 67, 68(3), **Sch. 6** (with **Sch. 7 para. 5(2)**); S.I. 1999/3427, **art. 3**

**F155** S. 60(3A) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(1), **Sch. 2 para. 3(2)(b)**; S.I. 1991/2719, **art. 2** and repealed (1.10.1992 for E.W.) by Criminal Justice Act 1991 (c. 53), ss. 101(2), 102(2)(8), **Sch. 13**; S.I. 1992/333, arts. 2(2), 3(1), **Sch. 2**

**F156** Words repealed by Administration of Justice Act 1977 (c. 38) Sch. 5 Pt. II

**F157** Word in s. 60(5) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 59(3)**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F158** S. 60(6) added by Oaths Act 1961 (c. 21), s. 1; saved by Oaths Act 1978 (c. 19), s. 7(4)

## 61 Courts-martial to sit in open court.

(1) Subject to the provisions of this section and to any provisions of General Orders under section fifty-eight of this Act with respect to the deliberations of the court upon their finding and sentence or upon other matters specified in those Orders, a court-martial shall sit in open court and in the presence of the accused.



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(2) It is hereby declared that a court-martial has the like power to order the exclusion of the public from its proceedings as a civil court; and without prejudice to any such power, a court-martial may order that, subject to such exceptions, if any, as 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 made in the course of the proceedings or of that part of the proceedings, 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.

[<sup>F159</sup>(3) A court-martial shall sit in closed court while deliberating on their finding and 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 by rules under section 58 of this Act.

(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.

(7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.

(8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court.]

**Textual Amendments**

**F159** S. 61(3)-(8) added (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 60**; S.I. 1997/304, **art. 2** (with **art. 3**)

**62 Finding and sentence.**

(1) Subject to the provisions of this section, [<sup>F160</sup>the finding of a court-martial and any sentence awarded] shall be determined by a majority of the votes of the members of the court.

[<sup>F161</sup>(1A) The judge advocate shall not be entitled to vote on the finding.]

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) Without prejudice to the provisions of section sixty-one of this Act, the finding of a court-martial on each charge, and any sentence of the court, together with any recommendation to mercy [<sup>F162</sup>and any reasons for the sentence], shall be announced in open court.

<sup>F163</sup>(4) .....

<sup>F163</sup>(5) .....

**Textual Amendments**

**F160** Words in s. 62(1) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 61(2)**; S.I. 1997/304, **art. 2** (with **art. 3**)



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- F161** S. 62(1A) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 61(3)**; S.I. 1997/304, **art. 2** (with art. 3)
- F162** Words in s. 62(3) inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 61(4)**; S.I. 1997/304, **art. 2** (with art. 3)
- F163** S. 62(4)(5) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

[<sup>F164</sup>**62Z Powers of court-martial where accused elected court-martial trial.**

- (1) Where a court-martial tries a person in pursuance of an election for court-martial trial, the court shall not award any punishment which could not have been awarded by the officer who would have tried the preliminary charge summarily if the election had not been made.
- (2) In subsection (1) above, “the preliminary charge” means the charge which would have been tried summarily had the accused not elected court-martial trial.
- (3) Where regulations under section 52F of this Act would have prevented a punishment of a particular description awarded by the officer from taking effect without the approval of another person, it shall be assumed for the purposes of subsection (1) above that the approval would have been obtained.
- (4) For the purposes of this section a court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the prosecuting authority has referred the charge back to the commanding officer under section 52II of this Act.]

**Textual Amendments**

- F164** S. 62ZA inserted (2.10.2000) by 2000 c. 4, s. 12(3); S.I. 2000/2366, **art. 2**

[<sup>F165</sup>**63E Provisions supplementary to sections 62A to 63D.**

- (1) In this section and sections 62A to 63D above—
  - “the appropriate mental health legislation” means—
    - (a) in a case where an order is treated as if it had been made by a civil court in England and Wales, the <sup>M6</sup>Mental Health Act 1983;
    - (b) in a case where an order is treated as if it had been made by a civil court in Scotland, the <sup>M7</sup>Mental Health (Scotland) Act 1984 and Part VI of the <sup>M8</sup>Criminal Procedure (Scotland) Act 1995;
    - (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the <sup>M9</sup>Mental Health (Northern Ireland) Order 1986;
  - “duly approved” means—
    - (a) 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);
    - (b) approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act); or

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- (c) appointed for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986 by the Mental Health Commission for Northern Ireland;
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 62A, 63, 63C and 63D 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—
- if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
  - if the accused is not so represented, the substance of the report shall be disclosed to him; and
  - 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 63A, 63B, 63C and 63D above, and orders under section 63D(2) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F165** Ss. 62A–63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

#### Marginal Citations

**M6** 1983 c. 20.  
**M7** 1984 c. 36.  
**M8** 1995 c. 43.  
**M9** S.I. 1986/595 (N.I. 4).

*[<sup>F166</sup>Findings of unfitness to stand trial and insanity]*

#### Textual Amendments

**F166** Ss. 62A–63D and preceding cross-heading substituted (31.3.2005) for s. 63 by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 26, 60, **Sch. 3 para 3**; S.I. 2005/579, **art. 3(b)**

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## [<sup>F167</sup> 62A 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.
- (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.]

### Textual Amendments

**F167** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); [S.I. 2005/579](#), [art. 3\(b\)](#)

## [<sup>F168</sup> 62B Finding that the accused did the act or made the omission charged

- (1) This section applies where in accordance with section 62A(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.

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- (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.]

#### Textual Amendments

**F168** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)

### [<sup>F169</sup> 63 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.]

#### Textual Amendments

**F169** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)

### [<sup>F170</sup> 63A 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 sections 56A(3) and 57 above shall not apply.

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- (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 [<sup>F171</sup>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.]

#### Textual Amendments

**F170** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)

**F171** Words in s. 63A(5)(b) substituted (1.1.2008) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 36](#); S.I. 2007/2913, [art. 3](#)

#### [<sup>F172</sup>63B Orders under the Mental Health Act

- (1) In relation to the making of an order by virtue of subsection (2)(a) of section 63A 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 63A 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 the managers of the hospital specified in the order to admit him in accordance with it.”
- (2) In relation to a case where section 63A 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—

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- (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 63A 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 63A 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 63A(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;
  - (b) provision for the hospital order and the restriction order to cease to have effect at such time as may be prescribed.]

#### Textual Amendments

**F172** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)

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

**C9** Ss. 63B-63D applied (with modifications) (31.5.2005) by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\)](#), s. 16 (as substituted by [Domestic Violence, Crime and Victims Act 2004](#) ss. 26, 60, {Sch. 3 para. 10}); S.I. 2005/579, [art. 3](#)



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**C10** Ss. 63B-63D applied (with modifications) (31.5.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16 (as substituted by Domestic Violence, Crime and Victims Act 2004 ss. 26, 60, {Sch. 3 para. 7}); S.I. 2005/579, art. 3

## [<sup>F173</sup> 63C Supervision orders

- (1) The court shall not make an order under section 63A(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 63A(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 63A(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.]

### Textual Amendments

**F173** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 26, 60, Sch. 3 para. 3; S.I. 2005/579, art. 3(b)

### Modifications etc. (not altering text)

**C11** Ss. 63B-63D applied (with modifications) (31.5.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16 (as substituted by Domestic Violence, Crime and Victims Act 2004 ss. 26, 60, {Sch. 3 para. 10}); S.I. 2005/579, art. 3

**C12** Ss. 63B-63D applied (with modifications) (31.5.2005) by Courts-Martial (Appeals) Act 1968 (c. 20), s. 16 (as substituted by Domestic Violence, Crime and Victims Act 2004 ss. 26, 60, {Sch. 3 para. 7}); S.I. 2005/579, art. 3



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[<sup>F174</sup>**63D Provisions supplementary to sections 62A to 63C**

- (1) In this section and sections 62A to 63C 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 62A and 63 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 63A to 63C above, and orders under section 63C(3) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F174** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 26, 60, Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)

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

**C13** Ss. 63B-63D applied (with modifications) (31.5.2005) by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 16](#) (as substituted by [Domestic Violence, Crime and Victims Act 2004 ss. 26, 60, {Sch. 3 para. 10}](#)); S.I. 2005/579, [art. 3](#)

**C14** Ss. 63B-63D applied (with modifications) (31.5.2005) by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 16](#) (as substituted by [Domestic Violence, Crime and Victims Act 2004 ss. 26, 60, {Sch. 3 para. 7}](#)); S.I. 2005/579, [art. 3](#)

**64 Summoning of witnesses.**

<sup>F175</sup>(1) .....

(2) Any person not subject to this Act who attends a court-martial in pursuance of a [<sup>F176</sup>summons issued in accordance with rules under section 58] shall be entitled to

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receive such expenses of his attendance as may be authorised in accordance with regulations made by [<sup>F177</sup>the Secretary of State].

#### Textual Amendments

- F175** S. 64(1) omitted (1.1.2008) by virtue of [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch 16 para. 37\(a\)](#); S.I. 20072913, {art. 3}
- F176** Words in s. 64(2) substituted (1.1.2008) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 37\(b\)](#); S.I. 2007/2913, [art. 3](#)
- F177** Words substituted by S.I. 1964/488, [Sch. 1 Pt. I](#)

#### [<sup>F178</sup>64A Rules of evidence

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall, subject to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc) [<sup>F179</sup>to Schedules 6 and 7 to the Criminal Justice Act 2003] and to service modifications, be the same as those observed in trials on indictment 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 in a trial on indictment in England.
- (2) 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.
- (3) Regulations under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) 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 trial on indictment in England.]

#### Textual Amendments

- F178** Ss. 64A-64D inserted (1.4.1997) by [1996 c. 46, s. 5](#), [Sch. 1 Pt. III para. 63](#); S.I. 1996/304, [art. 2](#) (with [art. 3](#))
- F179** Words in s. 64A(1) inserted (1.1.2005 for certain purposes and 4.4.2005 in so far as not already in force) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336, [Sch. 36 Pt. 5 para. 83](#); S.I. 2004/3033, [art. 4\(1\)\(2\)\(b\)\(c\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 43(b) (subject to [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#) and S.I. 2007/391, [art. 2](#)))

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

- C15** S. 64A(1)(4) applied (with modifications) by S.I. 2000/2370, [rule 27\(a\)](#)
- C16** S. 64A(1)(4) applied (with modifications) by S.I. 2000/2370, [rule 27\(a\)](#)

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## **[<sup>F180</sup> 64B Proofs at courts-martial by written statement**

- (1) Without prejudice to section 64A above, section 9 of the 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 Parts I and II of this Act are applied by section 117 or section 118 of this Act, or to whom Part II of the Army Act 1955 or Part II of the Air Force Act 1955 is applied by section 208A or section 209 of the Army Act 1955 or the Air Force Act 1955 respectively,and the persons mentioned in this paragraph include persons to whom section 119 of this Act, section 131 of the Army Act 1955 or section 131 of the Air Force Act 1955 apply.
- (3) In subsection (1) above “service modifications” means—
  - (a) modifications made by any regulations under section 12 of the 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.
- (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**

**F180** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with **art. 3**)

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

**C17** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)

**C18** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)

**C19** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)

## **[<sup>F181</sup> 64C Proof of service facts and records.**

- (1) This section applies with respect to proceedings before a court-martial.
- (2) A letter, return or other document stating that any person—

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- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces;
- (b) was discharged from any part of those forces at or before any specified time;
- (c) held or did not hold at any specified time any specified rank or appointment in any of those forces;
- (d) had at or before any specified time been attached, posted or transferred to any part of those forces;
- (e) at any specified time or during any specified time was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem;

shall if purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matter stated in the document.

(3) A record—

- (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval duty; and
- (b) purporting to be signed by the commanding officer or by any person whose duty it was to make or keep the records,

may be received without formal proof in all trials under this Act as prima facie evidence of the record.

(4) A copy of a record (including the signature thereto) such as is mentioned in subsection (3) above, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the record, may be received without formal proof in all trials under this Act as prima facie evidence of the record.

(5) A document purporting to be issued by order of the Defence Council and to contain instructions given or regulations made by the Defence Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.

(6) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, and stating—

- (a) that a decoration of a description specified in, or as annexed to, the certificate is a military, naval or air force decoration; or
- (b) that a badge or emblem of a description specified in, or as annexed to, the certificate is one supplied or authorised by the Defence Council;

shall be evidence of the matters stated in the certificate.

(7) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any ship, train or aircraft;
- (b) any formation or unit or body of Her Majesty's forces; or
- (c) any command or other area, or place;

shall in proceedings against that person be evidence of the matters stated in the certificate.

(8) Any document which would be evidence in any proceedings under the Army Act 1955 or the Air Force Act 1955 shall in like manner, subject to the like conditions, and for the like purposes, be evidence in a court-martial under this Act.]

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#### Textual Amendments

**F181** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with **art. 3**)

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

**C20** S. 64C applied (with modifications) by S.I. 2000/2370, **rule 27(c)**

### [<sup>F182</sup> 64D 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.]

#### Textual Amendments

**F182** Ss. 64A-64D inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with **art. 3**)

### 65 Contempt of court-martial by civilians.

- (1) Subject to the provisions of this section, if any person not subject to this Act (whether within the United Kingdom or elsewhere)—
  - (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons;
  - (b) is guilty in relation to a court-martial of any such act or default as is described in paragraphs (b) to (f) of subsection (1) of section thirty-eight of this Act; or
  - (c) does any other act in relation to a court-martial which, if the court were a court of law having power to commit for contempt, would be punishable as contempt of that court,the president of the court-martial may certify the offence to any court of law having jurisdiction in the place where it is alleged to have been committed or in the place where the offender is to be found, being a court having power to commit as aforesaid.
- (2) The court to which an offence is certified under this section may inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged therewith, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in or in relation to that court.
- (3) A person shall not be dealt with under this section in respect of failure to comply with a summons requiring him to attend as a witness before a court-martial unless any expenses to which he is entitled under this Act in respect of his attendance have been paid or tendered:

Provided that for the purposes of this subsection—

- (a) the tender of a warrant or voucher entitling any person to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorised by the warrant or voucher; and

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- (b) the tender of a written undertaking on behalf of the [<sup>F183</sup>Defence Council] to defray at the trial any other expenses to which such a person may be entitled under this Act in respect of his attendance shall be deemed to constitute tender of those expenses.
- (4) Without prejudice to the provisions of [<sup>F184</sup>section 52G(9)] of this Act, this section applies in relation to a disciplinary court as it applies in relation to a court-martial.
- [<sup>F185</sup>(5) References in subsections (1) and (3) above to a court-martial include references to the summary appeal court.]
- [<sup>F186</sup>(6) References in subsections (1) and (3) above to a court-martial or its president include references to a judicial officer.]

#### Textual Amendments

**F183** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F184** Words in s. 65(4) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. IV para. 87](#); [S.I. 1997/304, art. 2](#) (with [art. 3](#))

**F185** S. 65(5) inserted (2.10.2000) by [2000 c. 4, s. 25, Sch. 3 para. 7](#); [S.I. 2000/2366, art. 2](#) (with [Sch. para. 15](#))

**F186** S. 65(6) inserted (2.10.2000) by [2000 c. 4, s. 10, Sch. 1 para. 9](#); [S.I. 2000/2366, art. 2](#)

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

**C21** S. 65(1) modified (21.7.2008) by [Criminal Evidence \(Witness Anonymity\) Act 2008 \(c. 15\), s. 8\(4\)\(5\)](#) (with [s. 9\(1\)](#) and with saving in [s. 1\(3\)](#))

### [<sup>F187</sup>65A Powers to compel attendance of witnesses

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
- (a) that a person not subject to this Act who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - [<sup>F188</sup>(b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or other thing, and]
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,
- the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the court-martial is convened, a judicial officer and, thereafter, the judge advocate.
- (3) Where—
- (a) a person not subject to this Act (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,

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- (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
- (c) it is proved on oath or in such manner as may be prescribed by rules under section 58 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of section 65(3) of this Act), and
- (d) it appears to the judge advocate that there is no just excuse for the defaulter's failure to attend,

the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.

- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
  - (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
  - (d) for paragraph (c) of subsection (3) above there is substituted—
  - (c) “it is proved on oath or in such manner as may be prescribed by rules under section 47N of this Act that he has been duly served with the summons and that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and ” and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
  - (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
    - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 52FG of this Act, and
    - (ii) thereafter, the summary appeal court;
  - (d) for paragraph (c) of subsection (3) above there is substituted—
  - (c) it is proved on oath or in such manner as may be prescribed by rules under section 52FP of this Act that he has been duly served with the summons and



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that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and ; and

- (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.]

#### Textual Amendments

**F187** S. 65A inserted (1.1.2008) by [Armed Forces Act 2001 \(c. 19\)](#), ss. 25(3), 39(2); S.I. 2007/3434, [art. 2](#)

**F188** S. 65A(1)(b) substituted (1.6.2008) by [Armed Forces Act 2001 \(c. 19\)](#), s. 25 (as substituted by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#)), ss. 170, 178; S.I. 2008/1325, [art. 2](#)

#### <sup>X1</sup>66 Record of proceedings of courts-martial.

- (1) As soon as practicable after the conclusion of a court-martial, the [<sup>F189</sup>court administration officer shall transmit the record of the proceedings] to [<sup>F190</sup>the Defence Council].
- (2) Subject to the provisions of this section, a person who has been charged before a court-martial shall be entitled, on application made to <sup>F190</sup>the Defence Council within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by <sup>F190</sup>the Defence Council.
- (3) Where a person charged as aforesaid dies within the period of five years mentioned in subsection (2) of this section, his personal representatives, or any person who in the opinion of <sup>F190</sup>the Defence Council ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to <sup>F190</sup>the Defence Council within one year after his death, have the like right to receive a copy of the record as that person would have had on application made under that subsection.
- <sup>F191</sup>[(3A) The right of a person or his representatives to obtain a copy of the record under this section does not extend to so much of the record as relates only to a charge of which he was found not guilty.]
- (4) If, on application made in pursuance of this section for a copy of the record of any proceedings, <sup>F190</sup>the Defence Council certify that it is necessary for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

#### Editorial Information

**X1** The insertion of the new crossheading "Findings of unfitness to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

#### Textual Amendments

**F189** Words in s. 66(1) substituted (1.4.1997 with savings) by [1996 c. 46, s. 5, Sch. 1 Pt. IV para. 88](#); S.I. 1997/304, [art. 2](#) (with [art. 3](#))

**F190** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F191** S. 66(3A) inserted by [Armed Forces Act 1981 \(c. 55\)](#), [s. 7\(3\)\(4\)](#) except in relation to a record of proceedings commenced before 1.5.1982

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## X2[F192] **66A Right of penalised parent or guardian to copy of record of court-martial proceedings.**

- (1) Subject to the provisions of this section, where a court-martial imposes a fine on or makes a compensation order against a parent or guardian under paragraph 13 of Schedule 4A to this Act, the parent or guardian shall be entitled, on application made to the Defence Council within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the relevant part of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by the Defence Council.
- (2) Where the parent or guardian dies within the period of five years mentioned in subsection (1) of this section, his personal representatives, or any person who in the opinion of the Defence Council ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to the Defence Council within one year after his death, have the like right to receive a copy of the relevant part of the record as that person would have had on application made under that subsection.
- (3) In a case where this section applies, any entitlement conferred by subsection (1) or (2) above is in addition to any entitlement conferred by section 66(2) or (3) of this Act.
- (4) If, on application made in pursuance of this section for a copy of the record of any proceedings, the Defence Council certify that it is necessary for reasons of security that any part of the proceedings should not be disclosed, the applicant shall not be entitled to a copy of the part to which the certificate relates.
- (5) In this section “the relevant part of the record” means so much of the record as relates to compliance with the requirements of the said paragraph 13 or to any matters taken into account by the court in deciding to impose the fine or make the compensation order.]

### **Editorial Information**

**X2** The insertion of the new crossheading "Findings of unfitness to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

### **Textual Amendments**

**F192** S. 66A inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(3\)](#)

## *Power to convict of mitigated or alternative offence*

### **67 Power to convict of mitigated offence.**

Where the punishment for any offence under this Act depends upon the intent with which or the circumstances in which the offender acts, and any person is charged with committing that offence with an intent or in circumstances involving the higher degree of punishment, he may be found guilty of committing that offence without that intent, or in circumstances involving the lower degree of punishment, as the case may be.

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## **68 Power to convict of alternative offence.**

- (1) Where a person is charged with an offence under any provision of this Act other than section forty-two, and it is not proved that he committed that offence but is proved that he committed any other such offence, being—
  - (a) an attempt to commit the offence charged; or
  - (b) an offence of the same class as the offence charged and not involving greater punishment,
 he may be found not guilty of the offence charged but guilty of the said other offence.
- (2) Where a person is charged with a civil offence under section forty-two of this Act and it is not proved that he committed that offence but is proved that he committed any other civil offence of which, if he had been tried by a civil court for committing the first-mentioned offence in England, he might have been found guilty, he may be convicted of an offence under the said section forty-two in respect of the commission of that other civil offence.

## **69 Power to convict of attempt notwithstanding proof of completed offence.**

It is hereby declared that a person charged under this Act with an attempt to commit any offence may be convicted notwithstanding proof that he actually committed that offence.

### *Review of finding and sentence*

## **[<sup>F193</sup>70 Review of findings and sentences of courts-martial.**

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review shall (if it does not begin sooner) begin as soon as is practicable after—
  - (a) in a case where a petition has been presented under this section, the presentation of the petition;
  - (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review of the finding or sentence has been completed—
  - (a) the reviewing authority shall complete the review as soon as is practicable; but
  - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
- (5) For the purposes of this Act the reviewing authority is—
  - (a) the Defence Council; or
  - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.

<sup>F194</sup>(6) .....

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(7) <sup>F195</sup> .....

(8) In this section “prescribed” means prescribed by rules under section 58 of this Act.]

#### Textual Amendments

**F193** S. 70 substituted (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 9**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F194** S. 70(6) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

**F195** S. 70(7) repealed (28.2.2002) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to **art. 3**)

#### [<sup>F196</sup>71 Powers of the reviewing authority.

(1) On a review under section 70 of this Act the reviewing authority has the following powers.

(2) In so far as the review is of a finding of guilt, the authority may—

- (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
- (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to the court-martial on making such a finding as appears proper.

(3) The findings referred to in subsection (2) above are—

- (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
- (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.

(4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.

(5) In reviewing a sentence, the authority may—

- (a) revoke an order made by the court under section 89A(1) of this Act;
- (b) remit in whole or part any punishment awarded by the court;
- (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.

(6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.

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- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
- (a) shall be treated for all purposes as having been made or passed by the court;
  - (b) shall be promulgated and shall have effect as from the date of promulgation.]

#### Textual Amendments

**F196** S. 71 substituted (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 10**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### [<sup>F197</sup>71A Power to authorise retrial.

- (1) The following provisions of the <sup>M10</sup>Courts-Martial (Appeals) Act 1968, that is to say,—
- section 19,  
section 20, and  
Parts I and IV of Schedule 1,
- power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by the [<sup>F198</sup>reviewing authority] under section 70 of this Act of the findings of a courts-martial as they apply in relation to an appeal to the Courts-Martial Appeal Court.
- (2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the [<sup>F198</sup>reviewing authority] shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.]

#### Textual Amendments

**F197** S. 71A added by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

**F198** Words in s. 71A substituted (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 11**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### Marginal Citations

**M10** 1968 c. 20.

#### [<sup>F199</sup>71AB Scope of section 71AC

- (1) Section 71AC of this Act applies to any case—
- (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or
  - (b) in which a sentence is passed by a court-martial on a person—
    - (i) in respect of an offence against section 42 of this Act which satisfies the condition in subsection (2) below, or
    - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the civil offence is—

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- (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 71AC of this Act—
- (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following a review under section 70 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament]

#### Textual Amendments

**F199** Ss. 71AB, 71AC inserted (28.2.2007) by 2001 c. 19, ss. 21(2), 39(2); S.I. 2007/662, art. 2

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

**C22** S. 71AB(1)(a) applies (31.3.2007) by The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007 (S.I. 2007/711), art. 2, Sch.

### [<sup>F200</sup>71A] **Review of sentences by Courts-Martial Appeal Court**

- (1) If it appears to the Attorney General—
  - (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may—
  - (a) quash the sentence passed by the court-martial on the person; and
  - (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
- (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that—
  - (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 70 of this Act; or

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- (b) the sentence passed on the person was not that required by section 42(1B), (1E) or (1G) of this Act.

<sup>F201</sup> [ Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Courts-Martial Appeal Court shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.]

- (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
- (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
- (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
- (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F200** Ss. 71AB, 71AC inserted (28.2.2007) by 2001 c. 19, ss. 21(2), 39(2); S.I. 2007/662, art. 2

**F201** S. 71AC(3A) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 272(2)(c)(3), 336(2)

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

**C23** S. 71AC applied (31.3.2007) by The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007 (S.I. 2007/711), art. 2, Sch. (with art. 3)

#### <sup>F202</sup>71B Review of summary findings and awards.

- (1) This section applies where on a summary trial the accused has been found guilty of any offence.



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- <sup>F203</sup>(2) .....
- (3) The finding or any [<sup>F204</sup>punishment] awarded (or both) may be reviewed at any <sup>F205</sup> . . .time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
- (a) the Defence Council;
  - (b) any naval officer superior in command to the officer who tried the charge summarily;
  - (c) a flag officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- [ Where—
- <sup>F206</sup>(5A) (a) the period of fourteen days referred to in subsection (2) of section 52FK of this Act has expired, and
- (b) no appeal has been brought under that section,
- the authority carrying out a review under this section may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both) to that court to be considered by it as on an appeal.
- <sup>F206</sup>(5B) Where an appeal has been brought under section 52FK of this Act and it appears to the authority carrying out a review under this section, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both), including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal.
- <sup>F206</sup>(5C) A reference to the summary appeal court under subsection (5A) or (5B) of this section shall for the purposes of this Act be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.
- <sup>F206</sup>(5D) In a case where exceptionally the authority carrying out a review under this section of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment awarded relates only to that finding, quash the punishment awarded in consequence of that finding.
- <sup>F206</sup>(5E) The powers conferred by subsection (5D) of this section are exercisable whether or not the conditions in subsection (5A)(a) and (b) are satisfied.]
- (6) .....
- <sup>F207</sup>(7) .....]

**Textual Amendments**

**F202** S. 71B inserted (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 12**; S.I. 1997/304, **art. 2** (with **art. 3**)

**F203** S. 71B(2) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 10(2)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

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- F204** Word in s. 71B(3) substituted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 20(3)(a)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
  - F205** Word in s. 71B(3) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 20(3)(b)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
  - F206** S. 71B(5A)-(5E) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 20(4)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
  - F207** S. 71B(6)(7) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 20(5)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)
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- Modifications etc. (not altering text)**
- C24** S. 71B(5A)(5B) modified (2.10.2000) by S.I. 2000/2370, **rule 13(7)**

**F208** 72 .....

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- Textual Amendments**
- F208** S. 72 repealed (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 13**; S.I. 1997/304, **art. 2**, **Sch.** (with **art. 3**)

**73 Saving for functions of [F209 Judge Advocate General].**

Nothing in this Part of this Act shall prejudice the exercise by the [F209 Judge Advocate General] of his functions of considering and reporting on the proceedings of courts-martial <sup>F210</sup> . . . , or any other of his functions in relation to such courts.

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- Textual Amendments**
- F209** Words in s. 73 and in sidenote substituted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 38**; S.I. 2007/2913, **art. 3**
  - F210** Words in s. 73 repealed (28.2.2002) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to **art. 3**)

*Special powers of Admiralty.*

**74 Power to dispense with trial of persons confessing to desertion.**

- (1) If any rating subject to this Act signs a confession that he is guilty of desertion, [F211 the Defence Council] may by order dispense with his trial for that offence and, if they think fit, impose on him any such forfeiture as could be imposed on conviction of that offence under Part I of this Act.
- (2) The powers of [F211 the Defence Council] under this section may be exercised by any flag officer authorised by [F211 the Defence Council] in that behalf, as well as by [F211 the Defence Council.]

- 
- Textual Amendments**
- F211** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

**Status:** Point in time view as at 01/06/2008. This version of this part contains provisions that are not valid for this point in time.

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## 75 Forfeiture of pay and effects of certain absentees.

(1) If it appears to [<sup>F212</sup>the Defence Council] that any person subject to this Act is absent without leave . . . <sup>F213</sup> (whether or not he appears to be guilty of desertion), then, without prejudice to any proceedings which may be taken against him in the event of his apprehension or return, [<sup>F212</sup>the Defence Council] may by an order containing a statement of his said absence impose on him any such forfeiture as could be imposed on conviction of an offence of desertion under Part I of this Act.

(2) An order under this section for the forfeiture of any property shall be sufficient authority for the sale of that property and for the disposal of the proceeds of sale in accordance with the directions of [<sup>F212</sup>the Defence Council]:

Provided that [<sup>F212</sup>the Defence Council] may, if they think fit on sufficient cause shown at any time after the making of the order—

- (a) remit the forfeiture of any property which has not been sold thereunder; or
- (b) pay or dispose of the proceeds of sale of any property sold thereunder to or for the use of the person to whom it belonged or his representatives.

[<sup>F214</sup>(3) The powers conferred by this section on the Defence Council may also be exercised in relation to any person by the Commander-in-Chief or flag officer from whose command that person is absent as aforesaid and by any other officer authorised in that behalf by the Defence Council.]

### Textual Amendments

**F212** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F213** Words repealed by [Armed Forces Act 1971 \(c. 33\), Sch. 4 Pt. II](#)

**F214** S. 75(3) substituted by [Armed Forces Act 1971 \(c. 33\), s. 60](#)

## 76 Restitution or compensation on conviction of larceny, etc.

(1) Where any person is convicted under this Part of this Act of unlawfully obtaining any property, whether by stealing it, [<sup>F215</sup>handling] it, . . . <sup>F216</sup> or otherwise, [<sup>F217</sup>the Defence Council] may—

- (a) if the whole or any part of the property unlawfully obtained is found in the possession of the offender, order the property so found to be repaid or restored to the person appearing to [<sup>F217</sup>the Defence Council] to be its owner;
- (b) if any property (other than money) appearing to [<sup>F217</sup>the Defence Council] to have been obtained by the conversion or exchange of any of the property unlawfully obtained is found as aforesaid, order the property so found to be delivered to the person appearing to [<sup>F217</sup>the Defence Council] to be the owner of the property unlawfully obtained;
- (c) if and so far as neither the property unlawfully obtained nor property of equivalent value in respect of which an order is made under paragraph (b) of this subsection is found in the possession of the offender, order that the offender be required to pay to the person appearing to [<sup>F217</sup>the Defence Council] to be the owner of the property unlawfully obtained such sum as or towards compensation as appears to [<sup>F217</sup>the Defence Council] to be just.

[<sup>F218</sup>(1A) The Defence Council may also exercise the powers conferred by subsection (1) above where the court has taken an offence mentioned in that subsection into consideration in determining sentence.]

*Status:* Point in time view as at 01/06/2008. This version of this part contains provisions that are not valid for this point in time.

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- (2) Where a person is convicted as aforesaid and it appears to <sup>F217</sup>the Defence Council] that any of the property unlawfully obtained was taken in exchange from the offender by any other person who did not then know it to have been unlawfully obtained, <sup>F217</sup>the Defence Council] may—
- (a) if the whole or any part of the property given in exchange by the said other person is found in the possession of the offender, order that on restitution of the property taken in exchange to the person appearing to <sup>F217</sup>the Defence Council] to be its owner, the property so found be restored to the said other person;
  - (b) if and so far as the said property is not so found, order that on restitution as aforesaid of the property taken in exchange the offender be required to pay to the said other person such sum as or towards compensation as appears to <sup>F217</sup>the Defence Council] to be just.
- (3) Where a person is convicted as aforesaid and it appears to <sup>F217</sup>the Defence Council] that any of the property unlawfully obtained was purchased or taken in pawn from the offender by a person who did not then know it to have been unlawfully obtained, <sup>F217</sup>the Defence Council] may order that on restitution of that property to the person appearing to <sup>F217</sup>the Defence Council] to be its owner the offender be required to pay to the said other person such sum as or towards compensation as appears to <sup>F217</sup>the Defence Council] to be just.
- (4) Any sum payable by an offender by way of compensation under this section may be ordered to be paid out of money found in the possession of the offender or by means of deductions from his pay.
- (5) . . . <sup>F219</sup>
- (6) Subject to regulations made by <sup>F217</sup>the Defence Council], the powers conferred on <sup>F217</sup>the Defence Council] by the foregoing provisions of this section may be exercised—
- (a) where the offender is tried by a court-martial <sup>F220</sup> . . . , by that court, <sup>F221</sup> . . . ;
  - (b) where the offender is tried summarily under <sup>F222</sup>section 52D]of this Act, by the officer in command of the ship or establishment to which he belongs, as well as by <sup>F217</sup>the Defence Council], and references in those provisions to <sup>F217</sup>the Defence Council] shall be construed accordingly.
- (7) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

#### Textual Amendments

**F215** Word substituted by [Theft Act 1968 \(c. 60\), Sch. 2 Pt. II](#)

**F216** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

**F217** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F218** S. 76(1A) added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 3\(1\)](#)

**F219** S. 76(5) repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)

**F220** Words in s. 76(6)(a) repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, [art. 2](#) (subject to [art. 3](#))

**F221** Words in s. 76(6)(a) repealed (1.4.1997 with savings) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 89(a), [Sch. 7 Pt. I](#); S.I. 1997/304, [art. 2](#) (with [art. 3](#))

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**F222** Words in s. 76(6)(b) substituted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 89(b)**; S.I. 1997/304, **art. 2** (with art. 3)

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

**C25** S. 76 modified by Courts-Martial (Appeals) Act 1968 (c. 20), s. **46(1)**

**77 Effect of appeal against conviction on order for restitution or compensation.**

(1) The operation of any order made under section seventy-six of this Act on conviction by a court-martial <sup>F223</sup> . . . shall be suspended—

(a) in any case, until the expiration of the period prescribed under [<sup>F224</sup>Part II of the <sup>M11</sup>Courts-Martial (Appeals) Act 1968], as the period within which an application for leave to appeal to the Courts-Martial Appeal Court against [<sup>F225</sup>a relevant conviction] must be lodged; and

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of any such order is suspended under this subsection, the order shall not take effect if the conviction is quashed on appeal.

(2) On any appeal to the Courts-Martial Appeal Court the court may by order annul or vary any order made under the said section seventy-six although [<sup>F225</sup>a relevant conviction] in respect of which it was made is not quashed.

(3) Rules of court made under [<sup>F224</sup>Part II of the said Act of 1968] may make provision for securing the safe custody, during the period during which the operation of an order is suspended under this section, of the property ordered to be restored or handed over or the money to which the order relates.

(4) Notwithstanding anything in this section, an order under the said section seventy-six shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if it is certified by [<sup>F226</sup>the Defence Council], or by the court or officer by whom the order is made, that the title to the property is not in dispute.

[<sup>F227</sup>(5) In this section “relevant conviction” means—

(a) where an order under section 76 above was made as a result of a conviction of such an offence of unlawfully obtaining property as is mentioned in subsection (1) of that section, that conviction; or

(b) where an order under that section was made as a result of such an offence of unlawfully obtaining property having been taken into consideration in determining sentence, the conviction or, if more than one, each conviction in respect of which the said sentence fell to be determined.]

**Textual Amendments**

**F223** Words in s. 77(1) repealed (28.2.2002 ) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to art. 3)

**F224** Words substituted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

**F225** Words substituted by **Armed Forces Act 1976** (c. 52), s. 14, **Sch. 7 para. 4(1)**

**F226** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

**F227** S. 77(5) added by **Armed Forces Act 1976** (c. 52), s. 14, **Sch. 7 para. 4(2)**

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**Marginal Citations**  
M11 1968 c. 20.

*Execution of sentence of death*

F228 **78** .....

**Textual Amendments**  
F228 Ss. 78-80 repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4

F229 **79** .....

**Textual Amendments**  
F229 Ss. 78-80 repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4

F230 **80** .....

**Textual Amendments**  
F230 Ss. 78-80 repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), Sch. 7 Pt. 4

*Service of sentence of imprisonment or detention*

**81 Place of imprisonment or detention.**

- (1) Any person sentenced under this Act to imprisonment may be confined during the term of the sentence—
  - (a) in any naval detention quarters;
  - (b) in any military establishment or air-force establishment within the meaning of Part II of the <sup>M12</sup>Army Act 1955, or Part II of the <sup>M13</sup>Air Force Act 1955;
  - (c) in any civil prison in any part of Her Majesty’s dominions;
  - (d) in any other establishment in which persons may be required to serve sentences of imprisonment passed under the <sup>M14</sup>Army Act 1955, or the <sup>M15</sup>Air Force Act 1955.
- (2) Any person sentenced under this Act to detention may be confined during the term of the sentence—
  - (a) in any naval detention quarters;
  - (b) in any such military or air-force establishment as aforesaid, not being a military or air-force prison;

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and may, in such cases and subject to such conditions as may be specified by or under regulations made by [<sup>F231</sup>the Secretary of State], be temporarily detained in a military or air-force prison or a civil prison for any period not exceeding seven days.

(3) Subject to the foregoing provisions of this section, the place to which a person sentenced under this Act to imprisonment or detention is to be committed may be determined by any of the following authorities, that is to say:—

- (a) in any case, [<sup>F231</sup>the Defence Council] or the Commander-in-Chief;
- (b) where the offender is tried on any foreign station, the senior naval officer present at the place where he is tried;
- (c) where the offender is tried by court-martial, the [<sup>F232</sup>court-martial by which he is tried];
- (d) where the offender is summarily tried under [<sup>F232</sup>section 52D] of this Act, the officer by whom he is so tried or the officer in command of the ship or naval establishment to which the offender belongs;

and a committal order made by any such authority shall be sufficient warrant for sending the offender to such place as may be specified therein, there to undergo his sentence according to law, and for detaining him in custody until he reaches that place.

#### Textual Amendments

**F231** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F232** Words in s. 81(3)(c) and (d) substituted (1.4.1997 with savings) by [1996 c. 46, s. 5, Sch. 1 Pt. IV para. 90](#); [S.I. 1997/304, art. 2](#) (with [art. 3](#))

#### Marginal Citations

**M12** [1955 c. 18.](#)

**M13** [1955 c. 19.](#)

**M14** [1955 c. 18.](#)

**M15** [1955 c. 19.](#)

## 82 Naval Detention Quarters Rules.

(1) [<sup>F233</sup>The Defence Council] may set apart any premises or vessels under the control of [<sup>F233</sup>the Secretary of State], or any parts of such premises or vessels, as naval detention quarters, and [<sup>F234</sup>the Secretary of State] may make rules (in this Part of this Act referred to as Naval Detention Quarters Rules) with respect to all or any of the following matters, that is to say—

- (a) the provision, classification, regulation and management of naval detention quarters;
- (b) the classification, regulation, employment, discipline and control of persons serving sentences of imprisonment or detention passed under this Act in naval detention quarters or otherwise in naval custody;
- (c) the removal of such persons from such quarters or custody as aforesaid, either temporarily or by way of transfer to another establishment or form of custody, and their release on the expiration or determination of their term of imprisonment or detention;
- (d) the temporary release of such persons on compassionate grounds, the cases in which, periods for which and conditions subject to which they may be allowed



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out of such quarters or custody as aforesaid, and the remission of part of their sentences <sup>F235</sup> . . . ;

- (e) the appointment, powers and duties of inspectors and visitors and of officers and other members of the staff, of naval detention quarters;

and such rules may apply the provisions of [<sup>F236</sup>the Coroners Acts 1887 to 1926][<sup>F236</sup>the Coroners Act 1988], to naval detention quarters as those provisions apply in relation to prisons.

- (2) Naval Detention Quarters Rules shall not authorise the infliction of corporal punishment.
- (3) Naval Detention Quarters Rules may apply with the necessary modifications all or any of the provisions of sections thirty-nine to forty-two of the <sup>M16</sup>Prison Act 1952 (which relate to offences by persons other than prisoners).
- (4) Naval Detention Quarters Rules may, to such extent as may be provided by the Rules, be made so as to apply to persons detained in naval detention quarters while serving sentences of imprisonment or detention awarded under the <sup>M17</sup>Army Act 1955, or the <sup>M18</sup>Air Force Act 1955, notwithstanding that such persons are not for time being subject to this Act.
- (5) Naval Detention Quarters Rules may contain such incidental and supplementary provisions as are necessary for the purposes of the Rules.
- (6) [<sup>F233</sup>The Secretary of State] may, in respect of any foreign station on which persons subject to this Act are on active service, delegate the power to make Naval Detention Quarters Rules to the Commander-in-Chief or flag officer commanding the station, subject to such restrictions, reservations, exceptions and conditions as [<sup>F233</sup>the Secretary of State] may think fit.
- (7) Naval Detention Quarters Rules made by [<sup>F233</sup>the Secretary of State] under this section shall be made by statutory instrument; and any statutory instrument containing such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F233** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

**F234** Words inserted by S.I. 1964/488, **Sch. 1 Pt. I**

**F235** Words in s. 82(1)(d) repealed (1.10.1996) by 1996 c. 46, s. 35(1)(2), Sch. 6 para. 6, **Sch. 7 Pt. III**; S.I. 1996/2474, art. 2, **Sch.**

**F236** “the Coroners Act 1988” substituted (E.W.) for “the Coroners Acts 1887 to 1926” by **Coroners Act 1988 (c. 13, SIF 33)**, s. 36(1), **Sch. 3 para. 12**

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

**C26** S. 82 amended by Courts-Martial (Appeals) Act 1968 (c. 20), **s. 52**

**C27** S. 82(3) amended (E.W.) by Criminal Justice Act 1961 (c. 39), **s. 22(3)**

#### Marginal Citations

**M16** 1952 c. 52.

**M17** 1955 c. 18.

**M18** 1955 c. 19.

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[<sup>F237</sup> **82A Country for service of sentence.**

- (1) A person serving in the United Kingdom a sentence of imprisonment or detention awarded under this Act may (in so far as may be specified by or under Naval Detention Quarters Rules) be removed out of the United Kingdom to, but only to—
  - (a) any colony in which he was entered for service in the Royal Navy, or
  - (b) any place outside the United Kingdom where the ship or naval establishment to which he for the time being belongs is situated.
- (2) Subject to the following provisions of this section, a person sentenced by a court-martial held outside the United Kingdom to imprisonment or detention for a term exceeding twelve months shall as soon as practicable be removed to the United Kingdom.
- (3) Subsection (2) above shall not apply in relation to any person belonging to a class of persons specified by or under Naval Detention Quarters Rules as persons whose removal to the United Kingdom would, for reasons of climate, place of birth or place of entry in the Royal Navy, or for any other reason, not be beneficial.
- (4) Where a person has been sentenced by a court-martial held outside the United Kingdom to imprisonment or detention for a term exceeding twelve months, the Defence Council may, notwithstanding anything in subsection (2) above, direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding two years, as may be specified in the direction; and in determining whether or not to exercise the power conferred by this subsection, the Defence Council shall have regard to any recommendation in that behalf made by the court-martial.
- (5) Any direction under subsection (4) above may at any time be revoked by the Defence Council or superseded by a subsequent direction thereunder.
- (6) In ascertaining at any time for the purposes of this section the nature or length of any sentence, regard shall be had to any commutation or remission of the sentence previously directed.]

**Textual Amendments**

**F237** S. 82A added by [Armed Forces Act 1971 \(c. 33\), s. 52\(1\)](#)

**83 Service of sentence in civil prison in the United Kingdom.**

The provisions of any enactment, rule or regulation with respect to the confinement, removal and treatment of persons committed to civil prisons in any part of the United Kingdom (including provisions relating to release, discharge and remission) shall apply to any person sentenced under this Act to imprisonment and committed or transferred to any such prison as they apply to a person committed to that prison under a like sentence of a civil court.

**84 Removal of certain prisoners.**

- (1) Subject to the provisions of this section [<sup>F238</sup>the Defence Council], the Commander-in-Chief or the senior naval officer present may by order give directions, in the case of

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any person subject to this Act who is serving a sentence of imprisonment or detention in a civil prison or a military or air-force establishment,—

- (a) for the transfer of that person to any other prison or establishment to which he could have been committed under this Act, there to undergo the remainder of his sentence according to law; or
- (b) for the production of that person for the purpose of attending any proceedings under this Act, whether as a witness or for trial or otherwise, or for any other purpose specified in the order,

and any such order may give directions as to the custody of the person to whom it relates and, in the case of an order under paragraph (b) of this subsection, for his return or transfer to the place from which he is removed or to any other place in which his sentence may be required to be served.

- (2) An order under this section shall be a sufficient warrant for the removal of the person to whom it relates from the prison or establishment in which he is serving his sentence, for his reception in the prison or establishment to which he is transferred or returned in pursuance of the order, and for his detention in custody pending such reception.
- (3) Where the attendance of any such person as aforesaid is required for the purposes of a court-martial under this Act, the power to make an order under paragraph (b) of subsection (1) of this section may be exercised by the Commander-in-Chief or senior naval officer present at the place where that person is confined or where the court-martial is or is to be held.
- (4) Any time during which a person removed in pursuance of an order under this section is in naval, military, air force or civil custody, or is serving any sentence of imprisonment or detention passed on him while so removed, shall be reckoned as part of the sentence current when the order was made.
- (5) The provisions of this section shall be without prejudice to any enactment, rule or regulation authorising the removal of persons from civil prisons or military or air force establishments; but no order shall be made under this section for the transfer of a person confined in a civil prison within the United Kingdom to any other such prison to which he could be removed under the <sup>M19</sup>Prison Act 1952, the <sup>M20</sup>Prisons (Scotland) Act 1952, [<sup>F239</sup>the <sup>M21</sup>Prison Act (Northern Ireland) 1953, or the <sup>M22</sup>Criminal Justice Act 1961].

#### Textual Amendments

**F238** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F239** Words substituted by [Criminal Justice Act 1961 \(c. 39\), s. 41\(3\), Sch. 4](#)

#### Marginal Citations

**M19** 1952 c. 52.

**M20** 1952 c. 61.

**M21** 1953 c. 18 (N.I.)

**M22** 1961 c. 39.

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### Commencement and duration of sentences of imprisonment and detention

#### 85 Commencement of sentences.

(1) Except as otherwise provided by the following provisions of this Part of this Act, and by [<sup>F240</sup>section 11(2) of the <sup>M23</sup>Courts-Martial (Appeals) Act 1968] (which empowers the court in certain cases to direct that a sentence shall begin to run from the day upon which an application for leave to appeal is dismissed), any term of imprisonment or detention under a sentence awarded [<sup>F241</sup>by a court-martial] shall begin to run from the beginning of the day on which the sentence is awarded.

<sup>F242</sup>(2) . . . . .

(3) . . . <sup>F243</sup>

#### Textual Amendments

**F240** Words substituted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

**F241** Words in s. 85(1) substituted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 10(2)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

**F242** S. 85(2) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 10(3)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

**F243** S. 85(3) repealed by Armed Forces Act 1971 (c. 33), **Sch. 4 Pt. II**

#### Marginal Citations

**M23** 1968 c. 20.

#### [<sup>F244</sup>85A Sentence of detention awarded on summary trial.

(1) Subject to the following provisions of this Part of this Act, subsections (2) to (5) below apply to a sentence of detention awarded on summary trial.

(2) If the offender so elects at the time of the award, his sentence shall begin to run from the day on which it is awarded.

(3) For the purposes of subsection (2) above, a sentence shall be taken to be awarded on the day on which the warrant specifying the sentence, as approved in accordance with regulations made by the Defence Council, is read to the offender or, if the offender has been detained in custody since the signature of that warrant by the officer by whom he was tried, on the first day on which he was so detained.

(4) If the offender does not make an election under subsection (2) above or, having made such an election, withdraws it during the appeal period, his sentence or, in the case of withdrawal, the remainder of his sentence shall be suspended by virtue of this subsection—

- (a) until the end of the appeal period, or
- (b) where an appeal is brought within the appeal period, until the determination of the appeal.

(5) Where an appeal is brought—

- (a) within the appeal period, by an offender who has made an election under subsection (2) above which has not been withdrawn, or
- (b) after the end of the appeal period, by any offender,

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the remainder of his sentence shall be suspended by virtue of this subsection until the determination of the appeal.

- (6) In this section “the appeal period” means the period within which an appeal may be brought under section 52FK(2) of this Act.]

#### Textual Amendments

**F244** S. 85A inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 11**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

## 86 Consecutive sentences.

- (1) Where any person who is serving a sentence of imprisonment, whether passed under this Act or otherwise, is sentenced to imprisonment under this Part of this Act, or where a person sentenced to imprisonment under this Part of this Act is further sentenced to imprisonment under subsection (3) of section thirty-eight of this Act, the court or officer by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiration of the first-mentioned sentence.
- (2) Where any person who is serving a sentence of detention passed on him under this Act or under the <sup>M24</sup>Army Act 1955, or the <sup>M25</sup>Air Force Act 1955, is found guilty under this Act of another offence for which he is sentenced to detention, or where a person sentenced to detention under this Act is further sentenced to detention under subsection (3) of section thirty-eight of this Act, the court or officer by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiration of the first-mentioned sentence.
- [<sup>F245</sup>(2A) Where on awarding a sentence of detention (“the subsequent sentence”) the offender’s commanding officer orders under subsection (2) of this section that the subsequent sentence is to begin to run from the expiry of another sentence (“the current sentence”)
- 
- (a) section 85A of this Act shall have effect in relation to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were a reference to the expiry of the current sentence, and
- (b) where the suspension of a sentence by virtue of subsection (4) or (5) of that section would end before the expiry of the current sentence, the sentence shall run from the expiry of the current sentence.]
- [<sup>F246</sup>(3) Where a person is convicted by a court-martial of two or more offences under section 42 of this Act consisting in the commission of a civil offence for which a civil court in England could award imprisonment, the court-martial may by its sentence award, for any of the said offences, a term of imprisonment which is to run from the expiry of a term awarded by that sentence for any other of those offences.]

#### Textual Amendments

**F245** S. 86(2A) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 13**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

**F246** S. 86(3) added by **Armed Forces Act 1971 (c. 33), ss. 39(3), 78(4)**

*Status: Point in time view as at 01/06/2008. This version of this part contains provisions that are not valid for this point in time.*

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#### Marginal Citations

M24 1955 c. 18.

M25 1955 c. 19.

### 87 Periods of compassionate release.

Where any person detained in naval detention quarters or in a military or air-force establishment in pursuance of a sentence of imprisonment or detention passed on him under this Part of this Act is released on compassionate grounds in pursuance of Naval Detention Quarters Rules, or Imprisonment and Detention Rules made under the <sup>M26</sup>Army Act 1955, or the <sup>M27</sup>Air Force Act 1955, as the case may be, no account shall be taken, in calculating the period for which he is liable to be detained under his sentence, of the period beginning with the day after that on which he is so released and ending with the day on which he is required to return to custody.

#### Marginal Citations

M26 1955 c. 18.

M27 1955 c. 19.

### 88 Periods of unlawful absence.

- (1) Where any person sentenced under this Part of this Act to imprisonment or detention becomes unlawfully at large during the currency of the sentence, no account shall be taken, in calculating the period for which he is liable to be detained under his sentence, of the period beginning with the day on which he becomes unlawfully at large and ending with the day on which he is taken into naval, military or air force custody or the custody of a civil authority, as being a person unlawfully at large, or, not having been taken into such custody, returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if it appears to [<sup>F247</sup>the Defence Council] that during any part of that period he was in the custody of a civil authority or of any naval, military or air force authority specified in Imprisonment and Detention Rules made for the purpose of paragraph (b) of the proviso to subsection (2) of section one hundred and nineteen of the <sup>M28</sup>Army Act 1955, or the <sup>M29</sup>Air Force Act 1955, that part of the period shall be disregarded for the purposes of this subsection.

- (2) For the purposes of this section a person temporarily released from custody in pursuance of the appropriate rules or otherwise allowed out of naval, military, air force or civil custody for any period or subject to any condition, shall be treated as unlawfully at large if he fails to return at the expiration of the period, or to comply with the condition, as the case may be, or if an order recalling him has been made in pursuance of the said rules.
- (3) In this section “the appropriate rules” means—
- in relation to a person serving a sentence in naval detention quarters, Naval Detention Quarters Rules;
  - in relation to a person serving a sentence in military or air-force custody, Imprisonment and Detention Rules made under the <sup>M30</sup>Army Act 1955, or the <sup>M31</sup>Air Force Act 1955, as the case may be;



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- (c) in relation to a person serving a sentence in civil custody, rules made under subsection (5) of section forty-seven of the <sup>M32</sup>Prison Act 1952, subsection (6) of section [<sup>F248</sup>thirty-five of the <sup>M33</sup>Prisons (Scotland) Act 1952][<sup>F248</sup>39 of the Prisons (Scotland) Act 1989], or paragraph (c) of subsection (1) of section thirteen of the <sup>M34</sup>Prison Act (Northern Ireland) 1953, or (in the case of a person serving a sentence outside the United Kingdom) any corresponding provision of the law of the country or territory in which he is serving his sentence;

and “civil authority” means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable.

- (4) In relation to any person committed or transferred to a civil prison in the United Kingdom, this section shall have effect in substitution for section forty-nine of the <sup>M35</sup>Prison Act 1952, section [<sup>F249</sup>thirty-seven of the <sup>M36</sup>Prisons (Scotland) Act 1952][<sup>F249</sup>40 of the Prisons (Scotland) Act 1989], or section thirty-eight of the <sup>M37</sup>Prison Act (Northern Ireland) 1953, as the case may be.

#### Textual Amendments

**F247** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

**F248** “39 of the Prisons (Scotland) Act 1989” substituted (S.) for words commencing “thirty-five” by [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(1), [Sch. 2 para. 6](#)

**F249** By [Prisons \(Scotland\) Act 1989 \(c. 45, SIF 39:1\)](#), s. 45(1), [Sch. 2 para. 6](#) it is provided that the words “40 of Prisons (Scotland) Act 1989” are substituted (S.) for “37 of the Prisons (Scotland) Act 1952”

#### Marginal Citations

**M28** 1955 c. 18.

**M29** 1955 c. 19.

**M30** 1955 c. 18.

**M31** 1955 c. 19.

**M32** 1952 c. 52.

**M33** 1952 c. 61.

**M34** 1953 c. 18 (N.I.)

**M35** 1952 c. 52.

**M36** 1952 c. 61.

**M37** 1953 c. 18 (N.I.)

## 89 Limitation of total period of sentences of detention.

- (1) Notwithstanding anything in this Part of this Act, no offender shall be kept continuously in detention for a period exceeding two years in pursuance of two or more sentences of detention.
- (2) The foregoing subsection shall not affect the validity of any order or direction under this Part of this Act that a sentence of detention shall begin to run from the expiration of another such sentence; but so much of any term of detention to which any such order or direction relates as would prolong the total term of detention beyond two years shall be remitted by virtue of the order or direction.

[<sup>F250</sup>(2A) Where the whole or part of a sentence of detention is suspended by virtue of section 85A(4) or (5) of this Act, any period of detention ending with the beginning of



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the suspension shall be taken for the purposes of subsection (1) above to be continuous with any period of detention beginning with the end of the suspension.]

- (3) Where any person sentenced to detention under this Act, the <sup>M38</sup>Army Act 1955, or the <sup>M39</sup>Air Force Act 1955, is subsequently sentenced to imprisonment under this Act, any part of the sentence of detention which has not been served shall be remitted by virtue of the sentence of imprisonment, whether or not that sentence is suspended.

#### Textual Amendments

**F250** S. 89(2A) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 15**; S.I. 2000/2366, **art. 2** (with **Sch. para. 15**)

#### Marginal Citations

**M38** 1955 c. 18.

**M39** 1955 c. 19.

### *[<sup>F251</sup> Postponement of sentences]*

#### Textual Amendments

**F251** S. 89A and crossheading inserted (1.4.1997 with savings) by 1996 c. 46, **s. 9(3)**; S.I. 1997/304, **art. 2** (with **art. 3**)

### <sup>F252</sup>**89A Postponement of sentences.**

- (1) On passing any sentence a court-martial may order that the sentence shall not have effect until the end of the period specified in the order.
- (2) On reviewing a sentence under section 70 of this Act, the reviewing authority may—
  - (a) if the sentence has not had effect, order that the sentence shall not have effect until the end of the period specified in the order;
  - (b) if the sentence has had effect, order that the sentence shall cease to have effect on the making of the order until the end of the period specified in the order.
- (3) On exercising any power under section 71 of this Act to pass or substitute a sentence, the reviewing authority may order that the sentence shall not have effect until the end of the period specified in the order.
- (4) The Defence Council or any officer authorised by them may terminate the period specified in an order under this section or extend such a period for a further period specified by them.
- (5) On the termination of such a period the sentence in respect of which the order in question was made shall have effect or (in the case of an order under subsection (2) (b) above) resume effect.
- (6) Nothing in this section shall be taken to prevent section 85(1) of this Act from applying in relation to a sentence of imprisonment or detention awarded under this Act.

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### Textual Amendments

**F252** S. 89A inserted (1.4.1997 with savings) by 1996 c. 46, s. 9(3); S.I. 1997/304, art. 2 (with art. 3)

### *Suspension and reconsideration of sentences of imprisonment and detention*

## 90 Suspension of sentences.

- (1) Where any person has been sentenced under this Act to imprisonment or detention, the authority having power under section eighty-one of this Act to issue a committal order may, in lieu of issuing such an order, order that the sentence be suspended; and in <sup>F253</sup>any case where a sentence is suspended under this subsection] the sentence shall not begin to run until a committal order is issued under section ninety-one of this Act.
- <sup>F254</sup>[(1A) Where any person has been sentenced under this Act by a court-martial to imprisonment or detention, the court-martial may itself exercise the power under subsection (1) above to order the suspension of the sentence.]
- (2) Where any person has been sentenced under this Act to imprisonment or detention and a committal order in respect of that sentence has been issued under the said section eighty-one, the sentence may be suspended by an order made—
- in any case, by <sup>F255</sup>the Defence Council] or by any officer holding such command as may be prescribed by regulations made by <sup>F255</sup>the Defence Council];
  - where the committal order was issued by an officer not holding such command, by that officer;
- and in any such case the offender shall be released and the currency of the sentence suspended until a further committal order is issued in respect of that sentence under section ninety-one of this Act.
- (3) Where a sentence is suspended under this section, <sup>F255</sup>the Defence Council] or, subject to any regulations or directions made or given by <sup>F255</sup>the Defence Council], any other authority by whom the sentence is suspended, may direct that any other punishment which the suspended sentence involves shall be suspended or remitted; but except as aforesaid the suspension of a sentence under this section shall not affect any such other punishment.

### Textual Amendments

**F253** Words in s. 90(1) substituted (1.1.1992) by Armed Forces Act 1991 (c. 62), s. 12(1); S.I. 1991/2719, art. 2

**F254** S. 90(1A) inserted (1.1.1992) by Armed Forces Act 1991 (c. 62), s. 12(1); S.I. 1991/2719, art. 2

**F255** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

## 91 Committal or re-committal of persons under suspended sentence.

- (1) Where a sentence of imprisonment or detention is suspended under section ninety of this Act, a committal order may at any time be issued in respect of the sentence—

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- (a) in any case, by [<sup>F256</sup>the Defence Council] or by any officer holding such command as may be prescribed by regulations made by [<sup>F256</sup>the Defence Council];
  - (b) where a committal order under section eighty-one of this Act had been issued before the suspension of the sentence by an officer not holding such command, by that officer.
- (2) In relation to a sentence in respect of which a committal order has been issued under this section, subsection (2) of section ninety of this Act and subsection (1) of this section shall apply as if for any reference to a committal order under section eighty-one of this Act there were substituted a reference to the committal order under this section.
- (3) Where any person whose sentence is suspended under the said section ninety is, during the suspension, found guilty under this Act of another offence for which he is sentenced to imprisonment or detention, then, subject to any recommendation to the contrary made by the court or officer by whom he is so sentenced, and subject to the provisions of subsection (3) of section eighty-nine of this Act,—
- (a) the authority by whom a committal order under subsection (1) of this section is issued in respect of the suspended sentence, or
  - (b) the authority by whom a committal order under section eighty-one of this Act or under subsection (1) of this section is issued in respect of the further sentence
- may direct that the sentence in respect of which the order is issued shall begin to run from the expiration of the other sentence.

#### Textual Amendments

**F256** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

VALID FROM 18/07/2008

#### [<sup>F257</sup>91A Activation of suspended sentence by court-martial: appeals

- (1) Subsections (2) to (4) apply where a court-martial makes an order under section 91(1) of this Act.
- (2) For the purposes of the Courts-Martial (Appeals) Act 1968 (c. 20) (“the 1968 Act”)—
  - (a) the order is to be treated as a sentence passed on the offender for the offence for which the sentence was passed;
  - (b) if the offender was not convicted by court-martial of that offence, he is to be treated as having been so convicted;
  - (c) any appeal, or application for leave to appeal, against the sentence passed in respect of the new offence is to be treated as also being an appeal or application for leave to appeal against the order; and
  - (d) any appeal, or application for leave to appeal, against the order is to be treated as also being an appeal or application for leave to appeal against the sentence passed in respect of the new offence.
- (3) In relation to any appeal against the order, section 16A of the 1968 Act (powers on appeals against sentence) is to be read as conferring power—

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- (a) to quash the order; or
  - (b) if the court-martial gave a direction under section 91(2) of this Act, to quash the direction.
- (4) Where the Appeal Court quashes the order, or a direction under section 91(2) of this Act, then in relation to any appeal against the sentence passed in respect of the new offence—
- (a) section 16A of the 1968 Act has effect as if the words “and which is not of greater severity than that for which it is substituted” were omitted; but
  - (b) the Appeal Court may not exercise its powers under that section in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (5) Subsections (6) and (7) apply where a court-martial has power to make an order under section 91(1) of this Act in respect of a sentence (“the suspended sentence”) but does not do so.
- (6) On any appeal against the sentence passed in respect of the new offence, the Appeal Court's power under section 16A of the 1968 Act to pass a sentence in substitution for the sentence of the court-martial includes—
- (a) power to make an order under section 91(1) of this Act in respect of the suspended sentence; and
  - (b) if the court makes such an order, power to give a direction under section 91(2) of this Act in relation to the order.
- (7) But the Appeal Court may not exercise its powers under subsection (6) in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (8) In this section—
- (a) “the new offence” means the offence mentioned in section 91(1) of this Act;
  - (b) “the Appeal Court” means the Courts-Martial Appeal Court.

#### Textual Amendments

**F257** Ss. 91-91D substituted for s. 91 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), **art. 31** (with Sch. para. 10)

VALID FROM 18/07/2008

#### **91B Activation of suspended sentence by commanding officer**

- (1) Where, while a sentence of detention is suspended under section 90 of this Act—
- (a) an officer finds the offender guilty on summary trial of an offence committed since the sentence was suspended, or
  - (b) the offender is convicted of an offence in the British Islands committed since the sentence was suspended and subsequently appears before the officer in command of the ship or naval establishment to which he belongs,

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the officer may make an order determining the suspension of the sentence (whether or not he also makes a committal order under section 81(3) of this Act, in a case in which he is not prohibited by section 81(4) from doing so).

- (2) Subsections (3) to (8) apply where an officer makes an order under subsection (1).
- (3) If the sentence is for a term of more than 90 days, the order has effect as if the sentence were for a term of 90 days; but this is subject to section 91C of this Act (partial activation by commanding officer of suspended sentence for more than 90 days).
- (4) The sentence in respect of which the order is made is to be treated for the purposes of section 85A of this Act (commencement of sentence of detention awarded on summary trial) as a sentence awarded on summary trial at the time at which the order is made.
- (5) The reference in subsection (3) of that section to the signature of the warrant by the officer by whom the offender was tried is to be read, in relation to the sentence in respect of which the order is made, as a reference to the making, in accordance with regulations made under section 52F of this Act, of an application to higher authority for permission to make the order.
- (6) The officer may direct that the sentence in respect of which the order is made (“the subsequent sentence”) shall begin to run from the end of another sentence of detention (“the current sentence”) which—
  - (a) has been passed on the offender on a previous occasion; or
  - (b) where the order is made by virtue of subsection (1)(a), the officer passes on him on the same occasion.
- (7) Subsection (6) is subject to section 89 of this Act (limitation of total period of sentences of detention), as modified by section 91C of this Act in a case where that section applies.
- (8) Where the officer gives a direction under subsection (6)—
  - (a) section 85A of this Act applies to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were to the expiry of the current sentence, and subsection (3) of that section were omitted; and
  - (b) where the suspension of the subsequent sentence by virtue of subsection (4) or (5) of that section would end before the expiry of the current sentence, the subsequent sentence shall run from the expiry of the current sentence.

#### Textual Amendments

**F257** Ss. 91-91D substituted for s. 91 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), **art. 31** (with Sch. para. 10)

**Status:** Point in time view as at 01/06/2008. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 18/07/2008

**91C Partial activation by commanding officer of suspended sentence for more than 90 days**

- (1) This section applies where an officer has made an order under section 91B(1) of this Act (activation of suspended sentence by commanding officer) in respect of a sentence for a term of more than 90 days.
- (2) That part of the term which exceeds 90 days is not to be remitted by virtue of section 89(2) of this Act (limitation of total period of sentences of detention).
- (3) Unless the order is quashed on appeal, sections 91 and 91B of this Act (activation of suspended sentence by court-martial and by commanding officer respectively) have effect as if—
  - (a) the sentence were for that part of the term which exceeds 90 days; and
  - (b) no order determining the suspension of the sentence had been made.
- (4) For the purposes of section 92(3) of this Act (remission of suspended sentence) the date on which the order was made is to be treated as the date on which the suspension of the sentence took effect.

**Textual Amendments**

**F257** Ss. 91-91D substituted for s. 91 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), **art. 31** (with Sch. para. 10)

VALID FROM 18/07/2008

**91D Activation of suspended sentence by commanding officer: appeals etc.**

- (1) For the purposes of sections 52FF to 52FR and 71B of this Act (appeals and review) an order under section 91B(1) of this Act is to be treated as a punishment awarded for the offence for which the sentence was passed.
- (2) In relation to any appeal against such an order, section 52FM(4) of this Act (powers of the summary appeal court on an appeal against punishment) has effect as if for paragraphs (a) and (b) there were substituted—
  - “(a) may confirm the order;
  - (b) may quash the order; or
  - (c) if the officer who made the order gave a direction under section 91B(6) of this Act, may confirm the order but quash the direction.”.
- (3) Subsections (4) to (6) apply where an officer makes an order under section 91B(1) of this Act by virtue of paragraph (a) of that subsection.
- (4) Any appeal, or application for leave to appeal, against the finding or the punishment awarded in respect of the offence mentioned in that paragraph (“the new offence”)



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is for the purposes of sections 52FF to 52FR of this Act to be treated as also being an appeal or application for leave to appeal against the order.

- (5) Any appeal, or application for leave to appeal, against the order is for those purposes to be treated as also being an appeal or application for leave to appeal against the punishment awarded in respect of the new offence.
- (6) Where the summary appeal court quashes the order, or a direction under section 91B(6) of this Act, then—
- (a) in relation to any appeal against the finding of guilt in respect of the new offence, the references in section 52FM(2)(b)(ii) and (3)(b) of this Act to the punishment originally awarded include the order and any such direction given in relation to it (as well as the punishment awarded in respect of the new offence); and
  - (b) in relation to any appeal against the punishment awarded in respect of the new offence, the reference in section 52FM(4)(b)(ii) of this Act to the punishment originally awarded includes the order and any such direction given in relation to it (as well as the punishment awarded in respect of the new offence).
- (7) Subsections (8) and (9) apply where an officer has power to make an order under section 91B(1) of this Act by virtue of paragraph (a) of that subsection but does not do so.
- (8) On any appeal against the finding of guilt or the punishment awarded in respect of the new offence, the summary appeal court's powers under section 52FM(2)(b), (3) and (4)(b) of this Act to vary the punishment or substitute another punishment include—
- (a) power to make the order under section 91B(1) of this Act which the officer could have made; and
  - (b) power to give any direction under section 91B(6) of this Act which the officer could have given if he had made the order.
- (9) But the court may not exercise its powers under subsection (8) in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the officer who tried him for the new offence.]

#### Textual Amendments

**F257** Ss. 91-91D substituted for s. 91 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), [art. 31](#) (with [Sch. para. 10](#))

## 92 Reconsideration of sentences.

- (1) Where any person has been sentenced under this Act to imprisonment or detention and the sentence is not for the time being suspended under section ninety of this Act, the unexpired portion of the sentence may be remitted by an order made—
- (a) in any case, by [<sup>F258</sup>the Defence Council] or by any officer holding such command as may be prescribed by regulations made by [<sup>F258</sup>the Defence Council];
  - (b) where the committal order or last committal order under section eighty-one or section ninety-one of this Act was issued by an officer not holding such command, by that officer,



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and in any such case the offender shall be discharged from custody.

- (2) Any sentence of imprisonment or detention which is for the time being suspended under the said section ninety may at any time be reconsidered by [<sup>F258</sup>the Defence Council] or any other authority by whom the sentence was or could have been suspended, and shall be so reconsidered at intervals of not more than three months; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.
- [<sup>F259</sup>(3) Without prejudice to subsection (2) above, a sentence of imprisonment or detention which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect.]

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#### Textual Amendments

**F258** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

**F259** S. 92(3) added by **Armed Forces Act 1971 (c. 33), s. 54(2)**

**Status:**

Point in time view as at 01/06/2008. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Naval Discipline Act 1957 (repealed), Part II is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.