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# Naval Discipline Act 1957 (repealed)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**F1** Act repealed (prosp.)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

### *Findings of unfitness to stand trial and insanity*

#### <sup>F1</sup> <sup>F2</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.

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- (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

- F1** 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\(b\)](#)
- F2** 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\(b\)](#)

### **F3** **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—
- on the evidence (if any) already given in the trial, and
  - on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the judge advocate under this section to put the case for the defence,
- whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) Where the question of fitness to stand trial was determined after arraignment of the accused, the determination under subsection (2) above shall be made by the court-martial by whom he was being tried.]

#### Textual Amendments

- F1** 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\(b\)](#)
- F3** 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\(b\)](#)

### **F4** **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

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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

- F1** 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\(b\)](#)
- F4** 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>F5</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.
- (5) Any function of the court under this section exercisable after an adjournment or an appeal shall be exercisable by a judicial officer if—
- (a) the court ordering the adjournment, or (as the case may be) the Courts-Martial Appeal Court, so orders; or
  - (b) the Judge Advocate of Her Majesty's Fleet 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.]

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### Textual Amendments

- F5** 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>F6</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—
    - (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.

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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

**F6** 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)

- C1** 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](#)
- C2** 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](#)

### **F7** **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.

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- (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

- F1** 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\(b\)](#)
- F7** 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)

- C3** 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](#)
- C4** 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>I</sup><sub>F8</sub> 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.

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- (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

- F1** 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\(b\)](#)
- F8** 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)

- C5** 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](#)
- C6** 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.

- (1) Any person, whether subject to this Act or not, who is required to give evidence before a court-martial may be summoned by notice in writing given by the [<sup>F9</sup>court administration officer].
- (2) Any person not subject to this Act who attends a court-martial in pursuance of a notice under this section shall be entitled to receive such expenses of his attendance as may be authorised in accordance with regulations made by [<sup>F10</sup>the Secretary of State].

#### Textual Amendments

- F9** Words in s. 64(1) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. III para. 62](#); [S.I. 1997/304](#), [art. 2](#) (with [art. 3](#))
- F10** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

## [<sup>F11</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

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before courts-martial etc) [<sup>F12</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

**F11** 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**)

**F12** 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)

**C7** S. 64A(1)(4) applied (with modifications) by S.I. 2000/2370, **rule 27(a)**

**C8** S. 64A(1)(4) applied (with modifications) by S.I. 2000/2370, **rule 27(a)**

### [<sup>F13</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,



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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

**F13** 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)

- C9** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)  
**C10** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)  
**C11** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)

### [<sup>F14</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—
- (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—

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- (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.]

#### Textual Amendments

**F14** 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)

**C12** S. 64C applied (with modifications) by S.I. 2000/2370, **rule 27(c)**

### [<sup>F15</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.]

*Status:* Point in time view as at 03/02/2006. This version of this cross heading contains provisions that are not valid for this point in time.

*Changes to legislation:* Naval Discipline Act 1957 (repealed), Cross Heading: is up to date with all changes known to be in force on or before 14 July 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. (See end of Document for details)

#### Textual Amendments

**F15** 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
- (b) the tender of a written undertaking on behalf of the [<sup>F16</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>F17</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>F18</sup>(5) References in subsections (1) and (3) above to a court-martial include references to the summary appeal court.]

[<sup>F19</sup>(6) References in subsections (1) and (3) above to a court-martial or its president include references to a judicial officer.]

#### Textual Amendments

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

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- F17** 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**)
- F18** 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**)
- F19** 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)**

- C13** 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)**)

VALID FROM 01/01/2008

**[<sup>F20</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,
  - (b) that he will not voluntarily attend as a witness or 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,
  - (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.

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- (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 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

- F1** 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\(b\)](#)
- F20** S. 65A inserted (1.1.2008) by [Armed Forces Act 2001 \(c. 19\)](#), ss. 25(3), 39(2); S.I. 2007/3434, [art. 2](#)

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

- (1) As soon as practicable after the conclusion of a court-martial, the [<sup>F21</sup>court administration officer shall transmit the record of the proceedings] to [<sup>F22</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>F22</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>F22</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>F22</sup>the Defence Council ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to <sup>F22</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>F23</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>F22</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**

- F1** 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\(b\)](#)
- F21** 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](#))
- F22** Words substituted by S.I. 1964/488, [Sch. 1 Pt. I](#)
- F23** 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

## [<sup>F24X2</sup>66 **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,

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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.]

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#### **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.

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#### **Textual Amendments**

- F24** S. 66A inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(3\)](#)

**Status:**

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**Changes to legislation:**

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