

*Status: Point in time view as at 03/02/2006.*

*Changes to legislation: Naval Discipline Act 1957 (repealed), Cross Heading: Constitution of courts-martial is up to date with all changes known to be in force on or before 16 July 2024.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)*



# Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

## PART II

TRIAL AND PUNISHMENT OF OFFENCES

### *Constitution of courts-martial*

#### 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**F1** Act repealed (prosp.)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

**F1** 53 .....

#### Textual Amendments

**F1** S. 53 repealed (1.4.1997 with savings) by [1996 c. 46](#), ss. 8, 35(2), [Sch. 1 Pt.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>F2</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.]

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#### Textual Amendments

**F2** 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>F3</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>F4</sup>Judge Advocate of Her Majesty’s Fleet] 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>M1</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
  - (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

**F3** 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**)

**F4** Words in s. 53B(1) substituted (16.1.2004) by **The Naval Discipline Act 1957 (Remedial) Order 2004** (S.I. 2004/66), **art. 2(5)**

#### Marginal Citations

**M1** 1990 c. 41.

#### <sup>F5</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>F6</sup>(cc) any warrant officers who are to be members of the court-martial;]
  - (d) any other officers [<sup>F7</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>F8</sup>Judge Advocate of Her Majesty’s Fleet] is to be a member of the court-martial.

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- (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>F9</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.

#### Textual Amendments

- F5** 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)
- F6** 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)
- F7** 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)
- F8** Words in s. 53C(2) substituted (16.1.2004) by The Naval Discipline Act 1957 (Remedial) Order 2004 (S.I. 2004/66), **art. 2(6)**
- F9** 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>F10</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

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- (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.
- (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

**F10** 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)

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<sup>F11</sup>55 .....

#### Textual Amendments

**F11** 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>F12</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>F13</sup>. . .
- (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 [<sup>F14</sup>prosecuting authority][<sup>F15</sup>, 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

**F12** 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)

**F13** 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)

**F14** 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)

**F15** 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)**

### [<sup>F16</sup>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.

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(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**

**F16** 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.**

<sup>F17</sup>(1) .....

(2) The proceedings of a court-martial shall be valid notwithstanding the absence of one or more of the [<sup>F18</sup>officers] other than the president, so long as the number of [<sup>F18</sup>officers] present throughout the proceedings is not reduced below four:

Provided that [<sup>F19</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>F17</sup>(3) .....

**Textual Amendments**

**F17** 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)

**F18** 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)

**F19** 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)

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