



Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

PART II

TRIAL AND PUNISHMENT OF OFFENCES

Proceedings 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F1 Act repealed (prosp.)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}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;
 - (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;

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- (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 ^{M1}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 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;
 - [enabling any jurisdiction conferred on a court-martial by virtue of sections 26 ^{F2}(nn) to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;]
 - (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.
- (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.
- [Rules under this section may make provision as to the application of sections 52I and ^{F3}(3A) 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

- F1** 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)
- F2** S. 58(2)(nn) inserted (14.10.2005) by 2001 c. 19, ss. 28(5), 39(2); S.I. 2005/2861, **art. 2**
- F3** 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

M1 1879 c. 11.

VALID FROM 01/01/2008

[^{F4}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

F4 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 [^{F5}officers appointed] members of a court-martial [^{F6}, and any warrant officers so appointed,] are sworn, the names of the [^{F7}members of] the court shall be read over in the presence of the accused, and he shall be asked whether he objects to [^{F7}any of those members].
- (2) Every objection made by the accused in respect of any [^{F8}member] shall be [^{F9}determined by the judge advocate].
- [^{F10}(3) If an objection to the president is allowed, the court shall be dissolved.]

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- (4) If [^{F11}an objection to any other officer appointed a member of the court [^{F12}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 [^{F13}or warrant officer][^{F14}appointed] as a spare member in accordance with the provisions of [^{F15}section 53C] of this Act who is qualified to be and is not already a member of the court.
- [^{F16}(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 [^{F17}Judge Advocate of Her Majesty's Fleet] .]
- (5)
- (6) After the [^{F18}officers appointed] members of a court-martial [^{F19}, 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 [^{F20}the [^{F21}reviewing 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

- F5** 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**)
- F6** 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**)
- F7** 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**)
- F8** 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**)
- F9** 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**)
- F10** 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**)
- F11** 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"]
- F12** 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**)
- F13** 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**)
- F14** 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**)
- F15** 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**)
- F16** 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**)
- F17** Words in s. 59(4A) substituted (16.1.2004) by The Naval Discipline Act 1957 (Remedial) Order 2004 (S.I. 2004/66), **art. 2(7)**
- F18** 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**)
- F19** 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**)

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- F20** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)
- F21** 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)

60 Administration of oaths.

[^{F22}(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.]

[^{F23F24}(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.]

[^{F25}(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, ^{F26}. . . ; 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 [^{F27}rules] under section fifty-eight of this Act.

[^{F28}(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

- F22** 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)
- F23** 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](#)
- F24** 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](#)
- F25** 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](#)
- F26** Words repealed by [Administration of Justice Act 1977 \(c. 38\) Sch. 5 Pt. II](#)
- F27** 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)
- F28** S. 60(6) added by [Oaths Act 1961 \(c. 21\), s. 1](#); saved by [Oaths Act 1978 \(c. 19\), s. 7\(4\)](#)

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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.
- (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.
- [^{F29}(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

F29 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, [^{F30}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.
- [^{F31}(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 [^{F32}and any reasons for the sentence], shall be announced in open court.
- ^{F33}(4)

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F33(5)

Textual Amendments

- F30** 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**)
- F31** 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**)
- F32** 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**)
- F33** S. 62(4)(5) repealed (11.5.2001) by 2001 c. 19, ss. 38, 39(3)(g), **Sch. 7 Pt. 4**

[^{F34}**62ZAPowers 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

- F34** S. 62ZA inserted (2.10.2000) by 2000 c. 4, s. 12(3); S.I. 2000/2366, **art. 2**

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