



# Armed Forces Act 1981

## 1981 CHAPTER 55

### PART I

#### CONTINUANCE OF SERVICES ACTS

#### **1 Continuanance of Services Acts**

- (1) The Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 shall, instead of expiring on 31st August 1981, continue in force until 31st August 1982, and shall then expire unless continued in force in accordance with the following provisions of this section.
- (2) Subject to subsection (3) below, Her Majesty may from time to time by Order in Council provide for the said Acts to continue in force for a period not exceeding twelve months beyond the day on which they would otherwise expire.
- (3) No Order in Council shall be made under subsection (2) above so as to continue the said Acts beyond the end of the year 1986.
- (4) No recommendation shall be made to Her Majesty in Council to make an order under subsection (2) above unless a draft thereof has been laid before Parliament and approved by a resolution of each House of Parliament.
- (5) Section 1 of the Armed Forces Act 1976 shall be repealed on 1st September 1981.

### PART II

#### TRIAL AND PUNISHMENT OF OFFENCES

#### **2 Young service offenders: custodial orders**

- (1) The following section shall be inserted after section 71A of the Army Act 1955 and the Air Force Act 1955—

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**“71AA Young service offenders: custodial orders.**

- (1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial of an offence punishable under this Act with imprisonment, the court shall have power, instead of so punishing him, to make an order (in this section referred to as a "custodial order") committing him to be detained in accordance with the provisions of this section for a maximum period to be specified in the order of not more than two years.
  - (2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable after the confirmation of the sentence is completed be removed to the United Kingdom.
  - (3) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this section.
  - (4) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction.
  - (5) Sections 71(3) and (4), 114(1), 118(1), 119A(1) and (3) and 145 of this Act shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of detention (or, in the case of section 71(3), imprisonment); and so shall sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B for the period before a person sentenced under such an order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received).
  - (6) In this section "appropriate institution" means—
    - (a) where the offender is in or removed to England or Wales—
      - (i) if the maximum period specified in the order exceeds six months, a borstal institution, and
      - (ii) in any other case, a detention centre;
    - (b) where the offender is in or removed to Scotland—
      - (i) in the case of a male person ordered to be detained for a period of at least twenty-eight days but not exceeding four months, a detention centre, and
      - (ii) in any other case, a young offenders institution;
    - (c) where the offender is in or removed to Northern Ireland, a young offenders centre.
  - (7) This section does not apply to offenders who are civilians (as regards whom similar provision is made by paragraph 10 of Schedule 5A to this Act)".
- (2) The following section shall be inserted after section 43A of the Naval Discipline Act 1957—

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**“43AA Young service offenders: custodial orders.**

- (1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial of an offence punishable under this Act with imprisonment, the court shall have power, instead of so punishing him, to make an order (in this section referred to as a "custodial order") committing him to be detained in accordance with the provisions of this section for a maximum period to be specified in the order of not more than two years.
  - (2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable be removed to the United Kingdom.
  - (3) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this section.
  - (4) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction.
  - (5) Sections 43(3) and (4), 85(1), 89(1) and (3) and 92(1) of this Act shall apply in the case of a sentence under a custodial order as they apply in the case of a sentence of detention (or, in the case of section 43(3), imprisonment); and so shall sections 81, 82, 87, 88, 104, 119 and 130A for the period before a person sentenced under such an order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received).
  - (6) In this section "appropriate institution" means—
    - (a) where the offender is in or removed to England or Wales—
      - (i) if the maximum period specified in the order exceeds six months, a borstal institution, and
      - (ii) in any other case, a detention centre;
    - (b) where the offender is in or removed to Scotland—
      - (i) in the case of a male person ordered to be detained for a period of at least twenty-eight days but not exceeding four months, a detention centre, and
      - (ii) in any other case, a young offenders institution;
    - (c) where the offender is in or removed to Northern Ireland, a young offenders centre.
  - (7) This section does not apply to offenders who are civilians (as regards whom similar provision is made by paragraph 10 of Schedule 4A to this Act).”
- (3) Accordingly—
- (a) the following paragraph shall be inserted after section 71(1)(b) of the Army Act 1955 and the Air Force Act 1955—
    - “(bb) detention by virtue of a custodial order made under section 71AA of this Act;”.

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(b) the following paragraph shall be inserted after section 43(1)(b) of the Naval Discipline Act 1957—

“(bb) detention by virtue of a custodial order made under section 43AA of this Act;”.

### **3 Power to stay further proceedings under one of the Services Acts with a view to other proceedings**

(1) Sections 77 to 79 of the Army Act 1955 and the Air Force Act 1955 (which prescribe the procedure to be followed for the trial of offences under those Acts) shall be amended as provided in subsections (2) to (5) of this section.

(2) In section 77, after subsection (4), there shall be inserted the following subsection—

“(4A) This section has effect subject to section 77A of this Act”.

(3) After section 77 there shall be inserted the following section—

#### **“77A Power to stay further proceedings.**

Where, in the course of investigating a charge, it appears to the accused's 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 ought to be, taken against the accused otherwise than under this Act he may stay further proceedings on the charge.”.

(4) In section 78, in subsection (1), there shall be added at the end the words " and has not stayed further proceedings thereon " .

(5) In section 79, in subsection (1), after the word " dismissed " there shall be inserted the words " or stayed further proceedings on .

(6) The Naval Discipline Act 1957 shall have effect with the insertion after section 52 of a section 52A in the same terms as the section 77A inserted by subsection (3) above in the Army Act 1955 and the Air Force Act 1955.

### **4 Marines: forfeiture of service where desertion confessed**

(1) So much of section 81(2) of the Army Act 1955 as relates to forfeiture of service (period of service as respects which confession of desertion is made to be forfeited in certain circumstances) shall apply to warrant officers, non-commissioned officers and marines of the Royal Marines and of the Royal Marines Reserve and to warrant officers, non-commissioned officers and marines of the Royal Fleet Reserve who have served in the Royal Marines.

(2) Accordingly, in paragraph 6 of Schedule 7 to that Act the words " and so much of Part II as relates to forfeiture of service " shall cease to have effect.

### **5 Power on review or confirmation to annul the taking into consideration of other offences**

(1) In section 110 of the Army Act 1955 and the Air Force Act 1955 (which confer various powers on confirming officers when dealing with the finding or sentence of a court-martial), after subsection (4), there shall be inserted the following subsection—

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- “(4A) Where it appears to a confirming officer that a court-martial, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 105 of this Act to take other offences into consideration, he shall, whether or not he substitutes a different sentence or remits or commutes punishment, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where he does so, the offence or offences shall be treated for all purposes as not having been taken into consideration.”.
- (2) In section 113 of the Army Act 1955 and the Air Force Act 1955, in subsection (5) (which confers like powers on a reviewing authority when reviewing the finding or sentence of a court-martial), for paragraph (c) there shall be substituted the following paragraph—
- “(c) in any case, exercise the like powers of substituting findings, substituting sentences, remitting or commuting punishment or annulling the taking of other offences into consideration (and orders dependent thereon) as are conferred on a confirming officer by subsections (2) to (4A) of section 110 of this Act;”.
- (3) In Schedule 3 to the Armed Forces Act 1976, in paragraph 20(2) (which confers like powers on a reviewing authority when reviewing the finding or sentence of a Standing Civilian Court), for paragraph (c) there shall be substituted the following paragraph—
- “(c) in any case, subject to sub-paragraph (3) below, exercise the like powers of substituting findings, substituting sentences, remitting or commuting punishment or annulling the taking of other offences into consideration (and orders dependent thereon) as are conferred on a confirming officer in relation to the findings and sentences of courts-martial by subsections (2) to (4A) of section 110 of the Army Act 1955 ;”.
- (4) In consequence of the amendments made by subsections (1) and (2) above the following amendments shall be made in sections 133 and 134 of those Acts (which prevent a person being tried twice, whether by a court-martial or other service authority or by a civil court, for an offence of or in respect of which he has been convicted or sentenced), that is to say—
- (a) in section 133(2), at the end of paragraph (b), there shall be added the words " (as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or reviewing authority) "; and
- (b) in section 134(2), at the end of paragraph (b), there shall be added the words " (as well as in a case where the taking into consideration of the offence has been annulled by the confirming officer or reviewing authority) ".
- (5) In section 72 of the Naval Discipline Act 1957 (which confers various powers on the Defence Council on the review of the sentence of a court-martial), after subsection (1), there shall be inserted the following subsection—
- “(1A) Where it appears to the Defence Council that the court, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 58(2)(aa) of this Act to take other offences into consideration they shall, whether or not they remit or commute the sentence or substitute a different sentence, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where they do so,

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the offence or offences shall be treated for all purposes as not having been taken into consideration.”.

## **6 Trial of persons ceasing to be subject to service law and time limits for trials**

- (1) Sections 131 and 132 of the Army Act 1955 and the Air Force Act 1955 and sections 51 and 52 of the Naval Discipline Act 1957 (which respectively provide for the trial by court-martial of persons ceasing to be subject to service law and set time limits for the initiation of proceedings) shall be amended as provided in this section.
- (2) In section 131 of the Army Act 1955, in subsection (1), after the words " investigation of charges" there shall be inserted the words " summary dealing with charges " and, in subsection (2), there shall be omitted the words " and the provisions thereof as to the summary dealing with charges ".
- (3) In section 132 of the Army Act 1955—
  - (a) in subsection (1), for the words "No person shall be tried by court-martial for any offence " there shall be substituted the words " No proceedings shall be taken against a person for an offence " and for the words "unless the trial is" there shall be substituted the words " unless the trial or proceedings on a summary dealing with the charge is or are ";
  - (b) in paragraph (b) of the proviso to subsection (1), for the words " tried by court martial " there shall be substituted the words " proceeded against " and for the words " if the Attorney General consents to the trial" there shall be substituted the words " or summary proceedings, if the Attorney General consents to the proceedings "; and
  - (c) for subsection (3) there shall be substituted the following subsections—
    - “(3) Except in relation to the offences specified in subsection (3A) below, no proceedings shall be taken against a person by virtue of subsection (1) of section 131 of this Act unless—
      - (a) in a case where the charge is one which may be dealt with summarily, the proceedings on the summary dealing with the charge are begun within three months or the trial by court-martial is begun within six months after he ceases to be subject to military law;
      - (b) in a case where the charge is one which cannot be dealt with summarily, the trial is begun within six months after he ceases to be subject to military law.
    - (3A) Subsection (3) above does not apply to an offence against section 31 or 32 of this Act or desertion or to an offence against section 70 where the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the proceedings.”
- (4) In the corresponding subsections of sections 131 and 132 of the Air Force Act 1955 the same amendments shall be made as are made by subsections (2) and (3) above in those sections of the Army Act 1955 except that the words " air-force law " shall be substituted for the words " military law " wherever those words occur.
- (5) In section 51 of the Naval Discipline Act 1957, subsection (2) (trial of a person no longer subject to the Act to be by court-martial only) shall be omitted.

- (6) In section 52 of the Naval Discipline Act 1957, in subsection (2), after the words "three months" there shall be inserted the words " or, in the case of trial by court-martial, six month\* ",

## **7 Extent of accused's right to copy of record of court-martial proceedings**

- (1) Sections 141 of the Army Act 1955 and the Air Force Act 1955 and section 66 of the Naval Discipline Act 1957 (which require the record of the proceedings of a court-martial to be kept for a prescribed period and a copy thereof supplied to the accused or his personal representatives) shall be amended as provided in this section.
- (2) In the said sections 141—
- (a) after subsection (3), there shall be inserted the following subsection—
- “(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.”;
- (b) in subsection (4), for the words "either of the two last foregoing subsections", there shall be substituted the words " this section ".
- (3) In the said section 66, after subsection (3), there shall be inserted the following subsection—
- “(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) This section shall not apply to a record of proceedings commenced before this section comes into force.

## **8 Right of penalised parent or guardian to copy of record of court-martial proceedings**

- (1) The following section shall be inserted after section 141 of the Army Act 1955 and the Air Force Act 1955—

### **“141A 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 5 A to this Act, the parent or guardian shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate as the Judge Advocate General may determine a copy of the relevant part of the record of the proceedings of the court.
- (2) Where the parent or guardian dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the rate

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determined under subsection (1) above a copy of the relevant part of the record of the proceedings of the court.

- (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 141(2) or (3) of this Act.
  - (4) If, on an application in pursuance of this section for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite 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.
  - (5) In this section "the relevant period" means the period of five years beginning with the date of the promulgation of the findings and sentence.
  - (6) 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.
  - (7) Subsection (6) of section 141 of this Act applies for the purposes of this section as it applies for the purposes of that section.”.
- (2) Accordingly, in section 141(1) of the Army Act 1955 and the Air Force Act 1955 (record of court-martial proceedings to be kept for certain period) after "subsections" there shall be inserted " and by section 141A below ".
  - (3) The following section shall be inserted after section 66 of the Naval Discipline Act 1957—

**“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.”.

## **9 Evidence derived from computer records**

- (1) In subsection (1) of section 198 of the Army Act 1955 and the Air Force Act 1955 (general provisions as to evidence), after the word " provisions " there shall be inserted the words " of this section and of sections 198A and 198B of this Act "and the following sections shall be inserted after each of the said sections 198—

### **“198A Evidence derived from computer records.**

- (1) In any proceedings under this Act, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) below are satisfied in relation to the statement and computer in question.
- (2) The said conditions are—
  - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by any body or by any individual;
  - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which information so contained is derived;
  - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
  - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) above was regularly performed by computers or—
  - (a) by a combination of computers operating over that period ; or
  - (b) by different computers operating in succession over that period ; or
  - (c) by different combinations of computers operating in succession over that period; or

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- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer.

- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—
- (a) identifying the document containing the statement and describing the manner in which it was produced;
  - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
  - (c) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate ; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (5) For the purposes of this section—
- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
  - (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
  - (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- (6) Subject to subsection (3) above, in this section " computer " means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.
- (7) Subsection (9) of section 198 of this Act shall apply for the purposes of this section as it applies for the purposes of that section,

#### **198B Supplementary provisions as to evidence derived from computer records.**

- (1) Where in any proceedings a statement contained in a document is admissible in evidence by virtue of section 198A of this Act, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the

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material part thereof, authenticated by the person who would be authorised by section 198A(4) of this Act to sign a certificate identifying the original document.

- (2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of the said section 198A, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.
- (3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of the said section 198A regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—
  - (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information; and
  - (b) to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.
- (4) In section 198A of this Act and this section—

"document" includes, in addition to a document in writing—

  - (a) any map, plan, graph or drawing;
  - (b) any photograph;
  - (c) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;

" film " includes a microfilm ; and

" statement" includes any representation of fact, whether made in words or otherwise.
- (5) In section 198A of this Act and this section any reference to a copy of a document includes—
  - (a) in the case of a document falling within paragraph (c) but not (d) of the definition of " document" in subsection (4) above, a transcript of the sounds or other data embodied therein;
  - (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
  - (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and

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(d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not; and any reference to a copy of the material part of a document shall be construed accordingly.

(6) If any person in a certificate tendered in evidence in proceedings by virtue of section 198A(4) of this Act intentionally makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.”.

(2) The sections 198A of the Army Act 1955 and the Air Force Act 1955 inserted by paragraph 4 of Schedule 9 to the Armed Forces Act 1976 shall be re-numbered 198C and treated as inserted after the sections 198B inserted by subsection (1) above in those Acts.

**10 Amendments relating to trial and punishment of civilians under the Services Acts**

Schedule 1 to this Act (which amends provisions of the Services Acts relating to the trial and punishment of civilians under those Acts and related matters) shall have effect.

**11 Minor amendments and repeals relating to procedure and evidence**

Schedule 2 to this Act (which amends or repeals provisions of the Services Acts and other enactments relating to procedure and evidence) shall have effect.

**12 Increase in fine for certain minor offences under the Reserve Forces Act 1980**

In section 143(1) of the Reserve Forces Act 1980 (fine not exceeding £5 for member of Ulster Defence Regiment for failure to attend or comply with orders, etc.) for " £5 " there shall be substituted " £50 ".

**PART III**

MISCELLANEOUS

*New powers in relation to persons under incapacity*

**13 Temporary removal to and detention for treatment in service hospitals abroad of servicemen and others suffering from mental disorder**

(1) In the circumstances specified in subsection (2) below a person who is subject to service law and is serving in a country or territory outside the United Kingdom and a civilian in a corresponding position may be admitted to and detained in a service hospital outside the United Kingdom for observation or treatment on the authority of an order of his commanding officer.

(2) Where it appears to a person's commanding officer—

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- (a) that the person is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for observation or treatment for at least a limited period; and
  - (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,that officer may, if he thinks fit, order that person to be admitted to and detained in a hospital specified in the order.
- (3) Subject to subsection (4) below, no order shall be made by a person's commanding officer under this section except on the written recommendations of two registered medical practitioners each of whom shall include in his recommendation a statement that he is satisfied of the matters set out in paragraphs (a) and (b) of subsection (2) above.
- (4) In a case of urgent necessity a person's commanding officer may make an order under this section for that person's detention on the written recommendation of one registered medical practitioner if the practitioner includes in his recommendation, in addition to the statement required by subsection (3) above, a statement that it is of urgent necessity for the person in question to be admitted to and detained in a hospital under this section and that the obtaining of another recommendation for his admission and detention would involve undesirable delay.
- (5) Where a person's commanding officer makes an order for that person's admission to and detention in a hospital by virtue of subsection (4) above on the recommendation of one registered medical practitioner he may, on production to him during the currency of that order of a recommendation of another registered medical practitioner made for the purposes of this section, make a further order for that person's further detention in the hospital specified in his original order or for that person's admission to and detention in a hospital specified in the order.
- (6) An order of a person's commanding officer under this section shall have effect for twenty-eight days or, in the case of an order made by virtue of subsection (4) above, for five days and shall, while in force, be sufficient authority for the following acts in relation to that person, that is to say—
  - (a) his being taken and conveyed to the hospital specified in the order;
  - (b) his detention in the hospital; and
  - (c) where arrangements are made for his removal to the United Kingdom for further observation or treatment, his being taken from the hospital and conveyed to the United Kingdom and, for that purpose, his detention, subject to subsection (7) below, in any place or on board any ship or aircraft;and a person in relation to whom such an order is in force shall, while being so conveyed or detained, be deemed to be in military, air-force or naval custody, as the case may be.
- (7) Where a person is removed to the United Kingdom on the authority of his commanding officer's order under this section he shall not, on the authority of the order, be detained in any place in the United Kingdom for longer than twenty-four hours.
- (8) Where a person's commanding officer is absent or otherwise not available the powers conferred by this section shall,  
  
except where that person is a civilian, be exercisable, in the same circumstances and subject to the same limitations, by any officer under the command of the first-mentioned officer, being an officer of or above the following ranks, that is to say,

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captain, flight-lieutenant or lieutenant according as he serves in the military, air or naval forces of the Crown.

(9) In this section—

" civilian in a corresponding position " means a person to whom Part II of the Army Act 1955, Part II of the Air Force Act 1955 or Parts I and II of the Naval Discipline Act 1957 is or are applied by section 209 of the Army Act 1955, section 209 of the Air Force Act 1955 or section 118 of the Naval Discipline Act 1957 respectively;

" commanding officer ", in relation to a person, means—

- (a) where that person is subject to military law or air-force law, the officer in command of the unit or detachment to which that person belongs or is attached;
- (b) where that person is subject to the Naval Discipline Act 1957, the officer in command of the ship or naval establishment to which that person belongs;
- (c) where that person is a civilian in a corresponding position to a person subject to military law, air-force law or the Naval Discipline Act 1957, any officer of or above the rank of lieutenant colonel, wing commander or commander respectively;

" mental disorder " has the same meaning as it has in the Mental Health Act 1959 ;

" service hospital " means a military, air-force or naval unit or establishment or a ship at or in which medical or surgical treatment is provided for persons subject to service law ; and

" service law " means military law, air-force law or the Naval Discipline Act 1957 ;

and any reference to the United Kingdom includes a reference to the Channel Islands and the Isle of Man.

#### **14 Temporary removal to and detention in a place of safety abroad of children of service families in need of care or control**

(1) This section applies to a child who—

- (a) forms part of the family of a person subject to service law serving in a country or territory outside the United Kingdom or of a civilian in a corresponding position;
- (b) resides outside the United Kingdom with that family or another such family ; and
- (c) is under seventeen years of age and unmarried.

(2) This section also applies to a child who is staying (for however short a time) with a family other than the family to which he belongs but otherwise satisfies the conditions specified in subsection (1) above and so applies to him as if he resided with that family.

(3) A child to whom this section applies may be removed to and detained for a limited period in a place of safety outside the United Kingdom in a case where an officer having power under this section to order the child's removal to and detention in such a place thinks fit to do so on being satisfied, on one or more of the grounds specified in subsection (4) below, that the child is in need of care or control.

- (4) The grounds which justify the making of such an order in relation to a child to whom this section applies are—
  - (a) that his proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being or is likely to be ill-treated;
  - (b) that he is exposed to moral danger;
  - (c) that he is beyond the control of his parent or guardian or, in a case where the child resides for the time being with the family of another person, of that person.
- (5) The power to make an order for the child's removal to and detention in a place of safety is vested in the following officers, that is to say—
  - (a) the commanding officer of the person to whose family the child belongs;
  - (b) the commanding officer of the person with whose family the child resides ;  
and
  - (c) any officer who is superior in command to the commanding officer of either of those persons.
- (6) Where a person's commanding officer is absent or otherwise not available the power to make such an order shall, except where that person is a civilian, be exercisable, in the same circumstances and subject to the same limitations, by any officer under the command of the first-mentioned officer, being an officer of or above the following ranks, that is to say, captain, flight-lieutenant or lieutenant according as he serves in the military, air or naval forces of the Crown.
- (7) An order under this section shall specify the place of safety to which the child is to be removed and the period during which the child is to be detained there and shall be sufficient authority for his removal and detention in accordance with the order.
- (8) The maximum period during which a child may be detained in a place of safety by virtue of an order under this section is—
  - (a) eight days in a case where the order is made by the commanding officer of the person to whose family the child belongs or with whose family the child resides; and
  - (b) twenty days in a case where the order is made by an officer superior in command to the commanding officer of either of those persons ;  
being a period beginning in either case with the date of the order.
- (9) Where an order has been made under this section for the detention of a child for a period of eight days or less the child may be further detained for a period not exceeding twenty days in the same or another place of safety on the making of a further order under this section by any superior officer in whom the power to make such an order in relation to the child is vested.
- (10) No order shall be made under this section in relation to a child without affording the child's parent or guardian and, in a case where the child resides for the time being with the family of another person, that person an opportunity to make representations to the officer by whom the case is being considered except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it will be impracticable, or will cause unnecessary delay, to communicate with the parent or guardian or with that other person.
- (11) In this section—

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*Status: This is the original version (as it was originally enacted).*

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" civilian in a corresponding position", " commanding officer ", " service hospital " and " service law " have the same meanings as they have in section 13 above; and

" place of safety " means any service hospital or other suitable place the occupier of which is willing temporarily to receive the child ;

and any reference to the United Kingdom includes a reference to the Channel Islands and the Isle of Man.

*Amendments of the Naval Discipline Act 1957 as to offences and punishments*

**15 Prize offence: minor amendment as to intent**

- (1) In section 24(c) of the Naval Discipline Act 1957 (which penalises breaking bulk on prizes with intent to embezzle or fraudulently misapply anything therein) for the words " embezzle or fraudulently misapply " there shall be substituted the word " steal "
- (2) This section shall not apply to an offence alleged to have been committed before this section comes into force.

**16 Power on summary trial to award stoppages**

- (1) In section 49(5) of the Naval Discipline Act 1957 (officer other than commanding officer may try offences summarily but may only award a fine or prescribed minor punishment), in the proviso, after the word "fine" there shall be inserted the word " stoppages ".
- (2) This section shall not apply to an offence alleged to have been committed before this section comes into force.

**17 Abolition of death penalty for spying in ships etc. abroad**

No person shall be liable to suffer death for having committed the offence under section 93 of the Naval Discipline Act 1957 of spying for the enemy in ships or vessels or in naval establishments abroad.

*Amendments of the Services Acts relating to evidence and proceedings thereunder*

**18 Service of process in maintenance proceedings**

- (1) Section 153 of the Army Act 1955 and the Air Force Act 1955 and section 101 of the Naval Discipline Act 1957 (which make provision for the service of process in maintenance proceedings) shall be amended as provided in this section.
- (2) In the said sections 153—
  - (a) in subsection (1), for the words "either on him or" there shall be substituted the word " on ";
  - (b) in subsection (3) for the word " then" there shall be substituted the words " the service of the process shall be of no effect " and the words from " the service of the process " onwards shall be omitted; and
  - (c) after subsection (3), there shall be inserted the following subsection—



“(3A) Where any such process as is mentioned in subsection (1) of this section is to be served in the United Kingdom or elsewhere and the defendant will be required to appear in person at the hearing, the service of the process shall be of no effect if his commanding officer certifies to the court by which the process was issued that the defendant is absent without leave or has deserted and remains in desertion.”.

(3) In the said section 101—

- (a) subsection (2) (which permits service on the Secretary of the Defence Council) shall be omitted ;
- (b) in subsection (4), for the words from " it is certified " to " section " there shall be substituted the words " his commanding officer certifies " and for the words " in the opinion of that officer " there shall be substituted the words " in the commanding officer's opinion "; and
- (c) after subsection (4), there shall be inserted the following subsection—

“(4A) Where any such process is to be served in the United Kingdom or elsewhere and the defendant will be required to appear in person at the hearing, the service of that process shall be of no effect if his commanding officer certifies to the court by which the process was issued that the defendant is absent without leave or has deserted and remains in desertion.”.

## **19 Officers who can take affidavits and declarations abroad**

(1) The enactments specified in this section (which empower certain officers to take affidavits and declarations outside the United Kingdom) shall be amended as follows.

(2) In section 10 of the Emergency Laws (Miscellaneous Provisions) Act 1953—

- (a) in subsection (1), after the words "or relative rank" there shall be inserted the words " or is of the rank of lieutenant and is specially appointed for the purposes of this section "; and
- (b) after subsection (1), there shall be inserted the following subsection—

“(1A) An officer of the rank of lieutenant shall not be appointed to take affidavits and declarations under subsection (1) above unless he is a barrister, solicitor or advocate.”.

(3) In section 204 of the Army Act 1955, in subsection (1), for the words " of a rank not below that of major " there shall be substituted the words " who is of or above the rank of major or is of the rank of captain and is a member of the legal corps of those forces ".

(4) In section 204 of the Air Force Act 1955, in subsection (1), for the words " of a rank not below that of squadron leader " there shall be substituted the words " who is of or above the rank of squadron leader or is of the rank of flight lieutenant and is a member of the legal branch of that force ".

*Miscellaneous*

**20 Women's services: statutory assimilation and application thereto of certain enactments**

- (1) Parts I and II of Schedule 3 to this Act shall have effect for the purpose of completing the assimilation for all purposes of the statute law of the women's services administered by the Defence Council with the military, naval and air forces of the Crown in or with which their members serve.
- (2) Part III of that Schedule shall have effect for the purpose of applying to the members of Queen Alexandra's Royal Naval Nursing Service and the Women's Royal Naval Service provisions of the Armed Forces Act 1966 applicable to ratings in the Royal Navy relating to discharge from service and to false statements made on entry into service.
- (3) The Reserve Forces Act 1980 shall have effect, and be deemed always to have had effect, with the substitution, in section 156(3) (application of the Act to women as to men), for the words " so far as it relates to the military and air forces " of the words "except so much of it as relates to the Royal Fleet Reserve and the Royal Marines Reserve ".

**21 Clarification of the meaning in the Naval Discipline Act 1957 of " marine forces " and " naval reserve forces "**

In section 132 of the Naval Discipline Act 1957 (which defines certain expressions for the purposes of that Act), for subsections (7) and (8) there shall be substituted the following subsections—

- “(7) In this Act " the marine forces " means the Royal Marines, the Royal Marines Reserve and the Royal Fleet Reserve so far as it consists of warrant officers, non-commissioned officers and marines who have served in the Royal Marines.
- (8) In this Act " naval reserve forces " means—
  - (a) the Royal Naval Reserve including officers of reserve to the Royal Navy and including the Royal Fleet Reserve except so far as it consists of warrant officers, non-commissioned officers and marines who have served in the Royal Marines, and
  - (b) any reserve of Queen Alexandra's Royal Naval Nursing Service or the Women's Royal Naval Service.”.

**22 Members of the armed forces are " employees " for the purposes of the Patents Act 1977**

- (1) The Patents Act 1977 shall have effect, and be deemed always to have had effect, with the following amendments (being amendments to secure that members of the armed forces are " employees " for the purposes of that Act).
- (2) In section 42(4), at the end of the definition of " Crown employee ", there shall be added the words " or a person serving in the naval, military or air forces of the Crown. ".

- (3) In section 130(1), at the end of the definition of "employee ", there shall be added the words " or a person who serves (or served) in the naval, military or air forces of the Crown ".

## **23 Inquiries: persons affected who must be given an opportunity to be present and represented**

- (1) Section 135(4) of the Army Act 1955 and the Air Force Act 1955 (which require rules for boards of inquiry to secure to witnesses and other persons affected the right to be present and represented) shall be amended by the insertion after the words " other person " of the words " to whom this subsection applies " and the addition at the end of the following paragraph—

“This subsection, so far as it applies to persons other than witnesses who may be affected by the findings, applies to persons of the following descriptions only, that is to say—

- (a) persons who are subject to military law, air-force law or the Naval Discipline Act 1957;
  - (b) persons who, though not so subject, are in the service of the Crown and may be so affected in character or professional reputation ; and
  - (c) persons who, though not so subject, are employed by the Civil Aviation Authority in or in connection with the provision by the Authority of air navigation services and may be so affected in character or professional reputation.”
- (2) Section 26(3) of the Army and Air Force Act 1961 (whose effect is reproduced by the provision made by subsection (1) above) is hereby repealed.

## **24 Abolition of the office of Accountant General of the Navy**

- (1) The office of Accountant General of the Navy is hereby abolished and the functions of that office shall become functions of the Secretary of State.
- (2) Accordingly the enactments specified in this subsection which refer to that office shall be amended as follows—
- (a) in sections 6 and 8 of the Naval Agency and Distribution Act 1864 (registration of certain instruments in the Accountant General's office) for the words "in the office of the Accountant General of the Navy " there shall be substituted the words " with the Secretary of State "; and
  - (b) in section 47 of the Greenwich Hospital Act 1865 (Accountant General to prepare for audit the accounts of the hospital's property) for the words " The Accountant General of the Navy " there shall be substituted the words " The Secretary of State ".

## **25 Naval prize cash balance not to include percentage deduction**

The percentage of the proceeds of all prizes, grants, bounty money and other money distributable among the officers and crew of Her Majesty's ships of war which is directed by section 17 of the Naval Agency and Distribution Act 1864 to be carried to and form part of the naval prize cash balance shall cease to be so dealt with and shall instead be distributable in the same way as the respective sums from which it would otherwise have been deducted.

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*Status: This is the original version (as it was originally enacted).*

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## **26 Payment of military pensions**

The Army Pensions Act 1914 (which requires pensions in respect of military service, whether payable under statute or the prerogative, to be paid in advance) shall cease to have effect except in relation to pensions which have been granted before the passing of this Act and which are, at the date of its passing, paid in advance in accordance with that Act.

## **27 Naval and marine pay and pensions: no further publication in London Gazette**

Orders in Council made under the Naval and Marine Pay and Pensions Act 1865 (which regulate the payment of such pay and pensions) shall cease to be published in the London Gazette.

# **PART IV**

## **GENERAL**

## **28 Minor and consequential amendments and repeals**

- (1) The enactments specified in Schedule 4 to this Act shall be amended in accordance with the provisions of that Schedule.
- (2) The enactments specified in Schedule 5 to this Act (which include some spent enactments) are hereby repealed to the extent specified in the third column of that Schedule subject, in the case of the repeals included in Part I, to the saving at the end of that Part.

## **29 Commencement**

- (1) Subject to subsections (4) and (5) below, this Act shall come into force on such date as the Secretary of State may appoint by order made by statutory instrument.
- (2) Different dates may be so appointed for different provisions or for different purposes.
- (3) A provision brought into force by an order under subsection (1) above shall have effect subject to such supplementary provisions (which may include saving and transitional provisions) as may be specified in the order.
- (4) The following provisions of this Act shall come into force on the day it is passed, namely, sections 1, 7, 15, 16, 17, 19, 20, 21, 22, 25, 26, 27, 28(2), this section, section 30 and Schedule 3.
- (5) The repeals contained in Schedule 5 to this Act shall come into force in accordance with the provisions at the end of that Schedule.

## **30 Short title**

This Act may be cited as the Armed Forces Act 1981.