

SCHEDULES

SCHEDULE 1

PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

PART I

SUMMARY DISPOSAL OF OFFENCES

Army Act 1955 (c. 18)

- 1 The Army Act 1955 shall be amended as follows.
2 For section 76 there shall be substituted the following sections—

“76 Investigation of charges by commanding officer

- (1) An allegation that a person subject to military law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
 - (a) the accused is an officer or warrant officer; or
 - (b) the charge is not capable of being dealt with summarily.

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- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76A Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or soldier and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of lieutenant-colonel or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.
- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76B Summary dealings

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the

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charge has been proved, afford the accused an opportunity of electing court-martial trial.

- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
 - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or soldier, refer the charge back to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

76C Punishments available on summary dealings

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
 - (a) if the offender is a soldier, detention for a period not exceeding 60 days;
 - (b) fine;
 - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages;
 - (e) any minor punishment for the time being authorised by the Defence Council.
- (3) The appropriate superior authority may award one or more of the following punishments—
 - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
 - (b) fine;
 - (c) severe reprimand or reprimand;

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- (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
- (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.
- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
- (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (10) If the offender is a lance-corporal or lance-bombardier, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender to be reduced to the ranks.
- (11) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
- (a) to revert to his permanent rank;
 - (b) to assume an acting rank lower than that held by him but higher than his permanent rank; or
 - (c) where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks.”

3 Sections 77 to 80 shall cease to have effect.

4 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

“(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—

- (a) he is a general officer, flag officer, air officer or brigadier, or

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- (b) where the Defence Council so direct, he is a colonel or a naval or air force officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

5 For section 83 there shall be substituted the following section—

“83 Regulations as to summary dealings etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
- (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the delegation by the commanding officer of any of his functions;
 - (d) the charges which are capable of being dealt with summarily;
 - (e) the amendment or substitution of charges;
 - (f) the procedure on summary dealings;
 - (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
 - (l) who is to act as the higher authority and the appropriate superior authority in any particular case.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

Air Force Act 1955 (c. 19)

6 The Air Force Act 1955 shall be amended as follows.

7 For section 76 there shall be substituted the following sections—

“76 Investigation of charges by commanding officer

- (1) An allegation that a person subject to air-force law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.

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- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
 - (a) the accused is an officer or warrant officer; or
 - (b) the charge is not capable of being dealt with summarily.
- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76A Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or airman and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of wing commander or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.
- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76B Summary dealings

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.
- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
 - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or airman, refer the charge back to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

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76C Punishments available on summary dealings

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
 - (a) if the offender is an airman, detention for a period not exceeding 60 days;
 - (b) fine;
 - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages;
 - (e) any minor punishment for the time being authorised by the Defence Council.
- (3) The appropriate superior authority may award one or more of the following punishments—
 - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
 - (b) fine;
 - (c) severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.
- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to

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the offender in respect of the day on which punishment is awarded in respect of the offence.

- (10) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
- (a) to revert to his permanent rank; or
 - (b) to assume an acting rank lower than that held by him but higher than his permanent rank.”

8 Sections 77 to 80 shall cease to have effect.

9 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

- “(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—
- (a) he is an air officer, flag officer, general officer or brigadier, or
 - (b) where the Defence Council so direct, he is a group captain or a naval or military officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

10 For section 83 there shall be substituted the following section—

“83 Regulations as to summary dealings etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
- (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the delegation by the commanding officer of any of his functions;
 - (d) the charges which are capable of being dealt with summarily;
 - (e) the amendment or substitution of charges;
 - (f) the procedure on summary dealings;
 - (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;

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(l) who is to act as the higher authority and the appropriate superior authority in any particular case.

(3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

Naval Discipline Act 1957 (c. 53)

11 The Naval Discipline Act 1957 shall be amended as follows.

12 Sections 49, 50 and 52A shall cease to have effect.

13 After section 52A there shall be inserted the following sections—

“Investigation and summary trial

52B Investigation of charges by commanding officer

- (1) An allegation that a person subject to this Act (“the accused”) has committed an offence against any provision of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge, the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) try the accused summarily.
- (6) The commanding officer may not try summarily—
 - (a) any charge against an officer; or
 - (b) any charge which is not capable of being tried summarily.
- (7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than an offence punishable by sentence of death or an offence of murder.

52C Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.

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- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it; and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a rating and is capable of being tried summarily, the higher authority may, subject to subsection (4) below, refer it back to the commanding officer of the accused to be so tried.
- (4) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) This section has effect subject to any power of the higher authority under section 52G(1) below to order a disciplinary court.

52D Summary trial

- (1) This section applies where a charge is to be tried summarily.
- (2) If the commanding officer considers that, if the charge were proved, he would award a punishment—
 - (a) in the case of a warrant officer, of disrating, a fine or stoppages;
 - (b) in the case of any other rating, of dismissal from Her Majesty's service, detention or disrating,he shall afford the accused an opportunity of electing court-martial trial.
- (3) If the accused so elects and does not withdraw his election with leave, the commanding officer shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (4) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) If, in the course of trying the charge, the commanding officer considers that it should not be tried summarily, he may refer the charge to higher authority.
- (6) If the commanding officer determines that the charge has not been proved, he shall acquit the accused.
- (7) If the commanding officer determines that the charge has been proved, he shall record a finding of guilt and award punishment accordingly.
- (8) A commanding officer shall not have power on a summary trial to award a sentence of dismissal with disgrace from Her Majesty's service, a sentence of imprisonment or a sentence of detention for any term exceeding three months.

52E Commanding officers

- (1) In this Act “the commanding officer”, in relation to a person charged with an offence, means the officer in command of the ship or naval establishment

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to which he belongs at the time of the commission of the offence or at the time of its investigation or summary trial.

- (2) The Defence Council may by regulations make provision—
 - (a) enabling the powers conferred by this Act on the commanding officer of an accused to be exercised by other persons of such descriptions as may be specified;
 - (b) with respect to the delegation by the commanding officer, or other person exercising the powers of a commanding officer by virtue of regulations under paragraph (a) above, of any of his powers to any officer not below the rank of lieutenant or corresponding rank.
- (3) An officer to whom any powers are delegated by virtue of subsection (2) (b) above shall not have power to award any punishment other than a fine, stoppages or those described in section 43(1)(m) of this Act.
- (4) The reference in subsection (3) above to stoppages does not include a reference to stoppages for personal injury.

52F Regulations as to summary trial etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary trial.
- (2) Regulations under this section may in particular make provision with respect to—
 - (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the amendment or substitution of charges;
 - (d) the procedure on summary trial;
 - (e) limitations on the punishments which may be awarded on summary trial by a specified description of commanding officer;
 - (f) limitations on the punishments which may be so awarded to a specified description of accused;
 - (g) requirements for punishments to be approved before taking effect;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Disciplinary courts

52G Disciplinary courts

- (1) If an officer of Her Majesty's naval forces below the rank of commander is charged with an offence to which this section applies at a time when the force to which he belongs is on active service, the higher authority to whom the charge was referred may order a disciplinary court.
- (2) A disciplinary court shall have power, subject to the provisions of this section and of any rules made under it, to try and punish the offence accordingly.
- (3) This section applies to any offence triable by court-martial under this Act other than an offence under the following provisions—
 - (a) sections 2 to 4, 6, 9, 10, 23 and 24, section 29(1) so far as relating to public or service property, section 29A, and sections 34 to 37 and 42;
 - (b) sections 40 and 41, so far as applicable to an offence under any of the provisions mentioned in paragraph (a) of this subsection.
- (4) A disciplinary court shall consist of not less than three nor more than five officers, at least one of whom is not below the rank of commander.
- (5) An officer shall not be a member of a disciplinary court unless he is an officer of Her Majesty's naval forces and is subject to this Act.
- (6) The officer who orders a disciplinary court shall not be a member of the court.
- (7) A disciplinary court shall not have power to award any punishment greater than dismissal from Her Majesty's service.
- (8) The Secretary of State may by statutory instrument make rules as to the assembling, constitution, procedure and practice of disciplinary courts.
- (9) Rules under subsection (8) above may apply in relation to disciplinary courts and to proceedings of such courts, with the necessary modifications, any provisions of this Part of this Act or of rules under section 58 of this Act relating to courts-martial and proceedings of courts-martial."