

# **ARMED FORCES DISCIPLINE ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Sections 11 – 12: Election for court-martial trial*

#### **Arrangements in force prior to commencement of this Act**

33. It was explained in paragraph 6 that an accused serving in the Army or Royal Air Force may, in all cases, elect trial by court-martial instead of being dealt with summarily by the CO. In the Royal Navy, this right to elect applies only in certain cases with the aim of ensuring that every person facing a charge which has potentially serious consequences, such as disrating (ie loss of rank), detention, imprisonment, or dismissal, has the right to elect trial by court-martial. In the Army and Air Force, the right to elect to be dealt with by court-martial can only be exercised after a CO has found the charge proved. Moreover, a court-martial has the power to award a greater sentence than the CO could have done.
34. The right to elect trial by court-martial was expanded by the Armed Forces Act 1996 because of concerns that summary proceedings, on their own, might not be compliant with the European Convention on Human Rights. It was considered that offering a wider right to trial by a court complying with the Convention would meet such concerns.

#### **The new arrangements**

35. With the introduction in this Act of a summary appeal court, the procedures for electing trial by court-martial have been reviewed. In order to allow the accused the right to be dealt with from the outset by a court complying with the Convention, the accused is now to be offered this right prior to the CO hearing the evidence on the charge. The right to elect court martial trial will, in future, be available at the outset of any summary proceedings and at any subsequent time should the authorities amend or change the charge. In the Royal Navy, election for court-martial trial is already made prior to the CO hearing the charge.
36. To ensure that an accused is not disadvantaged by electing court-martial trial, the sentencing powers of the court-martial will be limited to those that the CO could have exercised if he had heard that particular charge. However, should the prosecuting authority amend a charge and refer it back to the CO, the CO may decide that it is an offence that should be tried by court-martial, without the accused having the option of being dealt with summarily. In this case the sentencing powers of the court martial would not be restricted to those of the CO.
37. In the Royal Navy, officers are not dealt with summarily. In the Army and Royal Air Force, cases where warrant officers and officers up to and including the rank of Major or Squadron Leader are dealt with summarily are heard by an appropriate superior authority (ASA) rather than by the CO; an ASA is an officer superior in rank to the CO. However, throughout these notes, references to CO will encompass references to ASA for convenience.