

ARMED FORCES DISCIPLINE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 13: Functions of prosecuting authority

40. This section introduces *Schedule 2* to the Act. This schedule amends the SDAs in relation to the functions and role of the prosecuting authority concerning cases where an election for court-martial trial has been made.

Paragraph 1 amends *section 83B* of the Army and Air Force Acts 1955.

- Currently an individual can only elect trial by court-martial after the CO has found the charge proved. If a defendant chooses to be tried by court-martial, the case is passed to the prosecuting authority (the authority in each Service responsible for prosecuting in court-martial trials). If the accused subsequently changes his mind, the prosecuting authority must send the case back to the CO so that the original finding of guilt can be recorded. However, under the provisions in this Act, an individual will exercise the option of court-martial trial prior to the case being heard summarily. If he exercises this right and then changes his mind, the case sent back by the prosecuting authority will be heard from the beginning when it is dealt with summarily by the CO. A similar provision is not needed for the Royal Navy as they already allow an election to be made before summary trial.
- A new *subsection (9A)* is inserted which provides that the prosecuting authority may not prefer a new charge or amend, substitute or add another charge, unless the accused has given his written consent.
- *Subsection (13)* is replaced with a new subsection. Cases may arise where for whatever reason the prosecuting authority considers it inappropriate to prefer a charge on the basis of the charge determined by the CO or may decide to discontinue proceedings on any charge they have preferred. In those circumstances, the prosecuting authority will exercise its discretion not to proceed to court-martial. This revised subsection gives the prosecuting authority a power to direct that the charge brought against the accused by the CO is deemed to have been heard by court-martial, to ensure that the individual cannot be tried summarily on this same charge at a later date.

Paragraph 2 provides for similar amendments to the Naval Discipline Act 1957.

Paragraph 3 inserts a new *section 83BB* into the Army and Air Force Acts 1955. It applies to cases that have been referred to the prosecuting authority as a result of election for court-martial trial, where the authority decides to substitute or add a charge. In these circumstances, the prosecuting authority may refer the case back to the CO. Once the suggested charge or charges are referred back, the CO then decides, as happens now, whether to dismiss the charge, refer it for court-martial or deal with it summarily.

Paragraph 4 inserts a new *section 52II* into the Naval Discipline Act 1957. This section is identical in effect to that described above.

*These notes refer to the Armed Forces Discipline Act
2000 (c.4) which received Royal Assent on 25 May 2000*

Paragraphs 5&6 create a power to make rules addressing how an election relating to multiple charges shall be dealt with by the prosecuting authority and CO where charges are discontinued, amended or substituted.