

*Status: Point in time view as at 01/04/2023.*

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# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 7

#### TRIAL BY COURT MARTIAL

##### Modifications etc. (not altering text)

- C1** Pt. 7 modified (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), art. 1, [rule 128\(1\)](#)

### CHAPTER 1

#### THE COURT MARTIAL

#### **154 The Court Martial**

- (1) There shall be a court, to be known as the Court Martial.
- (2) The Court Martial may sit in any place, whether within or outside the United Kingdom.

##### Commencement Information

- I1** S. 154 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I2** S. 154 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **155 Constitution of the Court Martial**

- (1) In the case of any proceedings, the Court Martial is to consist of—
  - (a) a judge advocate; and

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(b) [<sup>F1</sup>three or, in the case of proceedings of a prescribed description, six] other persons (“lay members”).

(2) But Court Martial rules may provide that, in the case of proceedings of a prescribed description, there are to be—

- <sup>F2</sup>(a) .....
- (b) no lay members.

[<sup>F3</sup>(2A) In the case of proceedings where the number of lay members would (but for this subsection) be three, a judge advocate may, in accordance with Court Martial rules, direct that the number of lay members is to be four.]

(3) In the case of proceedings where the Court Martial consists of a judge advocate and lay members—

- (a) a prescribed number of the lay members must be officers [<sup>F4</sup>, warrant officers or OR-7 ranks] qualified for membership under section 156 and not ineligible by virtue of section 157; and
- (b) the rest must be officers so qualified and not so ineligible.

(4) Subsection (3) is subject to any provision made by Court Martial rules.

(5) The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General.

(6) The lay members for any proceedings are to be specified by or on behalf of the court administration officer.

[<sup>F5</sup>(6A) Court Martial rules may provide that in prescribed circumstances the Court Martial is to remain validly constituted despite the reduction of the number of lay members—

- (a) from six to five, or
- (b) where a direction has been made under subsection (2A), from four to three, if a judge advocate gives a direction to that effect.]

<sup>F6</sup>(7) .....

<sup>F6</sup>(8) .....

[<sup>F7</sup>(9) In this section—

“OR-7 rank” means any of the following—

- (a) chief petty officer;
- (b) staff corporal;
- (c) staff sergeant;
- (d) colour sergeant, Royal Marines;
- (e) flight sergeant;
- (f) chief technician;

“prescribed” means prescribed by Court Martial rules.]

**Textual Amendments**

**F1** Words in s. 155(1)(b) substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), s. 24(1), [Sch. 1 para. 1\(2\)](#); [S.I. 2022/471](#), reg. 2(a); [S.I. 2022/1095](#), reg. 2

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- F2** S. 155(2)(a) omitted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by virtue of Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(3)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F3** S. 155(2A) inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(4)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F4** Words in s. 155(3)(a) substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(5)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F5** S. 155(6A) inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(6)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F6** S. 155(7)(8) omitted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by virtue of Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(7)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F7** S. 155(9) substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 1(8)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2

**Modifications etc. (not altering text)**

- C2** S. 155(3) excluded (31.10.2009) by The Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041), art. 1, **rule 31(2)**, 33(1)

**Commencement Information**

- I3** S. 155 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I4** S. 155 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

**156 Officers [F8] etc] qualified for membership of the Court Martial**

- (1) Subject to subsections (2) to (4), an officer [F9, warrant officer or OR-7 rank] is qualified for membership of the Court Martial if he is subject to service law.
- (2) An officer is not qualified for membership of the court unless—
- (a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.

[F10(3A) An OR-7 rank is not qualified for membership of the court if that person is an acting—

- (a) chief petty officer,
- (b) staff corporal,
- (c) staff sergeant,
- (d) colour sergeant, Royal Marines,
- (e) flight sergeant, or
- (f) chief technician.]

- (4) An officer [F11, warrant officer or OR-7 rank] is not qualified for membership of the court if—

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- (a) he is a member of the Military Court Service;
- (b) he is a member of or on the staff of the Service Prosecuting Authority;
- (c) he is a service policeman;
- (d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;
- (e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
- (f) he is an advocate or solicitor in Scotland;
- (g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(5) In this section “relevant territory” means—

- (a) any of the Channel Islands;
- (b) the Isle of Man;
- (c) a Commonwealth country; or
- (d) a British overseas territory.

[<sup>F12</sup>(6) In this section “OR-7 rank” has the meaning given by section 155(9).]

#### Textual Amendments

- F8** Word in *s. 156* heading substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by *Armed Forces Act 2021* (c. 35), *s. 24(1)*, **Sch. 1 para. 2(2)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F9** Words in *s. 156(1)* substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by *Armed Forces Act 2021* (c. 35), *s. 24(1)*, **Sch. 1 para. 2(3)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F10** *S. 156(3A)* inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by *Armed Forces Act 2021* (c. 35), *s. 24(1)*, **Sch. 1 para. 2(4)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F11** Words in *s. 156(4)* substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by *Armed Forces Act 2021* (c. 35), *s. 24(1)*, **Sch. 1 para. 2(5)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F12** *S. 156(6)* inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by *Armed Forces Act 2021* (c. 35), *s. 24(1)*, **Sch. 1 para. 2(6)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2

#### Commencement Information

- I5** *S. 156* in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I6** *S. 156* in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

### 157 Officers [<sup>F13</sup>etc] ineligible for membership in particular circumstances

- (1) An officer is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if—

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- (a) he was the commanding officer of the defendant at any time in the period beginning with the date of commission of the offence to which the arraignment relates and ending with the arraignment;
  - (b) he has taken part in investigating the subject matter of any charge against the defendant; or
  - (c) he has conducted (whether alone or with other persons) an inquiry into the subject matter of any charge against the defendant.
- (2) A warrant officer [<sup>F14</sup>or OR-7 rank] is ineligible for membership of the Court Martial for proceedings after the arraignment of a defendant if he falls within subsection (1) (b) or (c).
- (3) Where a defendant is arraigned in respect of more than one offence, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.
- (4) Court Martial rules may provide that an officer [<sup>F15</sup>, warrant officer or OR-7 rank] of a description prescribed by the rules is ineligible for membership of the Court Martial for a description of proceedings so prescribed.

[<sup>F16</sup>(5) In this section “OR-7 rank” has the meaning given by section 155(9).]

#### Textual Amendments

- F13** Word in s. 157 heading substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 1 para. 3\(2\)](#); S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F14** Words in s. 157(2) inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 1 para. 3\(3\)](#); S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F15** Words in s. 157(4) substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 1 para. 3\(4\)](#); S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F16** S. 157(5) inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\), Sch. 1 para. 3\(5\)](#); S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2

#### Commencement Information

- I7** S. 157 in force at 28.3.2009 for specified purposes by [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I8** S. 157 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167, art. 4](#)

## CHAPTER 2

### COURT MARTIAL PROCEEDINGS

#### 158 Open court

Subject to any provision made by Court Martial rules, the Court Martial must sit in open court.

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**Modifications etc. (not altering text)**

**C3** S. 158 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 152\(5\)](#)

**Commencement Information**

**I9** S. 158 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I10** S. 158 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**159 Rulings and directions**

- (1) In the case of proceedings where the Court Martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (2) Any rulings or directions given under subsection (1) are binding on the court.

**Commencement Information**

**I11** S. 159 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I12** S. 159 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**160 Decisions of Court Martial: finding and sentence**

[<sup>F17</sup>(A1) The finding of the Court Martial on a charge must be determined by votes of the members of the Court Martial other than the judge advocate (the “lay members”) and—

- (a) where there are three lay members, must be a finding with which no fewer than two of them agree;
- (b) where there are four lay members, must be a finding with which no fewer than three of them agree;
- (c) where there are five lay members, must be a finding with which no fewer than four of them agree;
- (d) where there are six lay members, must be a finding with which no fewer than five of them agree.]

(1) Subject to [<sup>F18</sup>subsection (4), any sentence passed by the Court Martial] must be determined by a majority of the votes of the members of the court.

<sup>F19</sup>(2) .....

<sup>F19</sup>(3) .....

(4) In the case of an equality of votes on the sentence, the judge advocate has a casting vote.

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### Textual Amendments

- F17** S. 160(A1) inserted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 4(2)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F18** Words in s. 160(1) substituted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 4(3)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2
- F19** S. 160(2)(3) omitted (1.5.2022 for specified purposes, 1.1.2023 in so far as not already in force) by virtue of Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 1 para. 4(4)**; S.I. 2022/471, reg. 2(a); S.I. 2022/1095, reg. 2

### Commencement Information

- I13** S. 160 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I14** S. 160 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## 161 Power of Court Martial to convict of offence other than that charged

- (1) Where the Court Martial acquits a person of an offence specifically charged in the charge sheet, but the allegations in the charge sheet amount to or include (expressly or by implication) an allegation of another service offence, the court may convict him of that other offence.
- (2) For the purposes of subsection (1)—
- (a) an allegation of an offence to which section 39(1) applies (offence X) shall be taken as including an allegation of an offence under that section of attempting to commit offence X; and
- (b) an allegation of a completed section 42 offence shall be taken as including an allegation of a section 42 offence of attempt.
- (3) Subsection (1) applies in relation to a charge sheet containing more than one charge as if each charge were contained in a separate charge sheet.
- (4) In this section—
- “a completed section 42 offence” means an offence that, by virtue of section 1(4) of the Criminal Attempts Act 1981 (c. 47) as modified by section 43 of this Act, is an offence to which section 1 of that Act applies;
- “a section 42 offence of attempt” has the meaning given by section 44(2).

### Commencement Information

- I15** S. 161 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I16** S. 161 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

## 162 Privileges of witnesses and others

A witness before the Court Martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

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### Commencement Information

- I17** S. 162 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I18** S. 162 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 163 Court Martial rules

- (1) The Secretary of State may by rules (referred to in this Act as “Court Martial rules”) make provision with respect to the Court Martial.
- (2) Court Martial rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) trials and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the defendant;
  - (f) appeals from the Service Civilian Court.
- (3) Without prejudice to the generality of subsections (1) and (2), Court Martial rules may make provision—
  - (a) as to oaths and affirmations for members of the court, witnesses and other persons;
  - (b) as to objections to, and the replacement of, members of the court;
  - (c) as to the constitution of the court;
  - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
  - (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
    - (i) the payment of expenses to persons summoned to attend the court;
    - (ii) the issue by the court of warrants for the arrest of persons;
  - (f) as to the amendment of charges;
  - (g) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
  - (h) for the variation by the court of a sentence passed by it or the variation or rescission by it of an order made by it;
  - (i) for appeals—
    - (i) against any orders (including directions) of the court prohibiting or restricting the publication of any matter or excluding the public from any proceedings (whether made in preliminary proceedings or otherwise);
    - (ii) against any other orders or rulings made in proceedings preliminary to a trial;
  - (j) for the discharge of a court (including provision as to retrials and rehearings following discharge);
  - (k) for the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 (c. 11) (orders for the inspection of bankers' books for the purposes of



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- legal proceedings) to be exercisable by a judge advocate as well as by the court or a judge within the meaning of that Act;
- (l) for the making and retention of records of the proceedings of the court;
  - (m) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
  - (n) conferring functions in relation to the court on the court administration officer;
  - (o) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
- (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) Court Martial rules must secure that, after arraignment, charges may not be amended—
- (a) in circumstances substantially different from those in which indictments are amendable by the Crown Court; or
  - (b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which indictments are so amendable.
- (7) Rules made by virtue of subsection (3)(h) may make provision about the commencement of sentences or orders varied by the court (including provision conferring on the court a power to direct that a sentence shall take effect otherwise than as mentioned in section 289(1)).
- (8) Court Martial rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.
- (9) Rules made by virtue of paragraph (i) of subsection (3) may confer jurisdiction on the Court Martial Appeal Court, and rules under section 49 of the Court Martial Appeals Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of that paragraph.

#### Commencement Information

- I19** S. 163 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I20** S. 163 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### [<sup>F20</sup>163A Offences

Schedule 2A makes provision about offences relating to members of the Court Martial and their deliberations.]

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### Textual Amendments

**F20** S. 163A inserted (13.4.2015) by **Criminal Justice and Courts Act 2015 (c. 2)**, s. 95(1), **Sch. 14 para. 2**; S.I. 2015/778, art. 3, Sch. 1 para. 80 (with Sch. 2 para. 3(c))

## CHAPTER 3

### PUNISHMENTS AVAILABLE TO COURT MARTIAL

#### 164 Punishments available to Court Martial

- (1) The second column of the following Table lists the punishments that may be awarded by sentence of the Court Martial, subject in the case of each punishment to any limitation shown in the third column opposite it.

*TABLE*

<i>Row Number</i>	<i>Punishment</i>	<i>Limitation</i>
1	imprisonment	
2	dismissal with disgrace from Her Majesty's service	
3	dismissal from Her Majesty's service	
4	detention for a term not exceeding two years	not if the person being sentenced is an officer
5	forfeiture of a specified term of seniority or of all seniority	only if the person being sentenced is an officer
6	reduction in rank, or disrating	only if the person being sentenced is a warrant officer or non-commissioned officer, and not to an extent prohibited by regulations under subsection (4)
7	a fine	
8	a service community order (defined by section 178)	only if the person being sentenced is on the same occasion sentenced to dismissal or dismissal with disgrace and subsection (5) permits
9	a severe reprimand or a reprimand	only if the person being sentenced is an officer,

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		warrant officer or non-commissioned officer
10	a service supervision and punishment order (defined by section 173)	only if the person being sentenced is an able rate, marine, soldier or airman
11	such minor punishments as may from time to time be authorised by regulations made by the Defence Council	
12	a service compensation order (defined by section 175)	
[ <sup>F21</sup> 13	a deprivation order (defined by section 177B)	only if section 177C permits]
[ <sup>F22</sup> 14	a driving disqualification order (defined by section 177B)	only if subsection (5A) permits]

(2) Where this Act provides that a person guilty of a particular offence is liable to any punishment mentioned in the Table or in specified rows of the Table, it means he is liable to any one or more of the punishments so mentioned (subject in the case of each one to any limitation shown in the third column opposite it).

(3) The previous provisions of this section are subject to (in particular)—

<sup>F23</sup>  
...

Chapters 4 to 6 of Part 8 (imprisonment for [<sup>F24</sup>two years or less], young offenders' custodial sentences, and mandatory etc sentences for serious offences); <sup>F25</sup>...

Part 9 (general provisions about sentencing)[<sup>F26</sup>; and  
Schedule 3A (offender elected Court Martial trial).]

(4) The Defence Council may by regulations restrict the extent to which persons of a description specified in the regulations may be reduced in rank or disgraced under this section.

(5) The court may not make a service community order unless—

- (a) the offender is aged 18 or over when convicted; and
- (b) it appears to the court that he will reside in the United Kingdom when the order is in force.

[<sup>F27</sup>(5A) The court may not make a driving disqualification order unless—

- (a) the offence was committed on or after the commencement of section 15 of the Armed Forces Act 2021, and
- (b) the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court (and the notice has not been withdrawn).]

(6) Where regulations under row 11 of the Table authorise a minor punishment, they may—

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- (a) confer on the Court Martial a power, when awarding the punishment, to direct that the punishment shall take effect from a date after the date of the award;
- (b) confer on the offender's commanding officer the function of deciding the details of the punishment;
- (c) provide for the delegation by the commanding officer of any of his functions under the regulations.

(7) This section is modified in relation to certain offenders by Schedule 3 (civilians etc).

#### Textual Amendments

- F21** Words in s. 164(1) Table inserted (1.5.2022 for specified purposes) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 14\(3\)](#), 24(1); S.I. 2022/471, [reg. 2\(f\)](#)
- F22** Words in s. 164(1) Table inserted (1.5.2022 for specified purposes, 1.4.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 15\(2\)\(a\)](#), 24(1); S.I. 2022/471, [reg. 2\(f\)](#); S.I. 2023/158, [reg. 3](#)
- F23** Words in s. 164(3) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(a\)](#), [Sch. 5](#); S.I. 2012/669, [art. 4\(e\)\(f\)\(i\)](#)
- F24** Words in s. 164(3) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 69](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#)
- F25** Word in s. 164(3) repealed (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(b\)](#), [Sch. 5](#); S.I. 2012/669, [art. 4\(e\)\(f\)\(i\)](#)
- F26** Words in s. 164(3) inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), s. 32(3), [Sch. 4 para. 9\(c\)](#); S.I. 2012/669, [art. 4\(e\)](#)
- F27** [S. 164\(5A\)](#) inserted (1.5.2022 for specified purposes, 1.4.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 15\(2\)\(b\)](#), 24(1); S.I. 2022/471, [reg. 2\(f\)](#); S.I. 2023/158, [reg. 3](#)

#### Modifications etc. (not altering text)

- C4** S. 164(2) applied by 1996 c. 14, s. 127(4) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 14 para. 53\(3\)](#) (with s. 385); S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#))
- C5** S. 164(2) applied by 1991 c. 62, s. 23(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 13 para. 9\(3\)](#) (with s. 385); S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#))
- C6** S. 164(3) applied by 1991 c. 62, s. 23(1A) (as inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 13 para. 9\(3\)](#) (with s. 385); S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#))
- C7** S. 164(3) applied by 1996 c. 14, s. 127(4) (as added (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 14 para. 53\(3\)](#) (with s. 385); S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#))

#### Commencement Information

- I21** S. 164 in force at 28.3.2009 for specified purposes by S.I. 2009/812, [art. 3\(a\)\(b\)](#) (with transitional provisions in S.I. 2009/1059)
- I22** S. 164 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, [art. 4](#)

*Status: Point in time view as at 01/04/2023.*

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## [<sup>F28</sup>165 Sentencing powers of Court Martial where election for trial by that court instead of CO

Schedule 3A (sentencing powers of Court Martial where election for trial by that court instead of CO) has effect.]

### Textual Amendments

**F28** S. 165 substituted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 14\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 4\(b\)](#)

## CHAPTER 4

### FINDINGS OF UNFITNESS TO STAND TRIAL AND INSANITY

#### 166 Fitness to stand trial

- (1) This section applies where on a trial by the Court Martial the question arises (at the instance of the defence or otherwise) whether the defendant is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 (c. 84) it would constitute a bar to his being tried on indictment in England and Wales.
- (3) Subject to subsections (5) and (6), the question of fitness to stand trial must be determined as soon as it arises.
- (4) The question of fitness to stand trial is to be determined by the judge advocate.
- (5) If having regard to the nature of the supposed disability the judge advocate is of the opinion that it is expedient to do so and in the interests of the defendant, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.
- (6) If before the question of fitness to stand trial falls to be determined the court finds the defendant not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (7) A judge advocate may not make a determination under subsection (4) except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.

### Modifications etc. (not altering text)

**C8** S. 166 applied (31.10.2009) by [The Armed Forces \(Court Martial\) Rules 2009 \(S.I. 2009/2041\)](#), [art. 1](#), [rule 49\(5\)](#)

### Commencement Information

**I23** S. 166 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**I24** S. 166 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 01/04/2023.*

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## **167 Finding that defendant did the act or made the omission charged**

- (1) This section applies where in accordance with section 166(4) it is determined by the judge advocate that the defendant is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but the court must, as respects the charge or each of the charges on which the defendant was to be or was being tried, determine whether it is satisfied that he did the act charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is so satisfied, it must make a finding that the defendant did the act charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, it must find the defendant not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) must be made—
  - (a) on the evidence (if any) already given in the trial; and
  - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed under this section by the judge advocate to put the case for the defence.
- (6) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but as respects any charge to which subsection (2) above applies—
  - (a) the question whether the court is satisfied as mentioned in that subsection is to be determined by the members of the court other than the judge advocate (“the lay members”); and
  - (b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.
- (7) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

### **Commencement Information**

- I25** S. 167 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I26** S. 167 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **168 Findings of insanity**

- (1) This section applies where on the trial of a person by the Court Martial the court is satisfied, as respects the charge or any of the charges on which he is being tried, that—
  - (a) the defendant did the act charged against him as the offence; but
  - (b) at the time of that act he was insane.
- (2) The court must find that the defendant was not guilty of that offence by reason of insanity.
- (3) No finding under this section may be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by section 172.

*Status: Point in time view as at 01/04/2023.*

*Changes to legislation: Armed Forces Act 2006, Part 7 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Section 160 (Court Martial decisions) does not apply to a determination or finding under this section, but—
- (a) the question whether the court is satisfied as mentioned in subsection (1) above is to be determined by the members of the court other than the judge advocate (“the lay members”); and
  - (b) the court is so satisfied if, on a vote on the question whether they are so satisfied, a majority of the lay members are in favour.
- (5) In this section “act” includes an omission and references to the doing of an act are to be read accordingly.

#### Commencement Information

- I27** S. 168 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I28** S. 168 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 169 Powers where person unfit to stand trial or not guilty by reason of insanity

- (1) This section applies where on a trial by the Court Martial—
- (a) the defendant is found to be unfit to stand trial and to have done the act charged against him; or
  - (b) the defendant is found not guilty by reason of insanity.
- (2) Subject to subsections (4) and (5), the court must make in respect of the defendant—
- (a) a hospital order, with or without a restriction order;
  - (b) a service supervision order (defined by section 170); or
  - (c) an order discharging him absolutely.
- (3) In this section—
- “hospital order” means an order under section 37 of the Mental Health Act 1983 (c. 20) (“the 1983 Act”) as modified by Schedule 4 to this Act;
  - “restriction order” means an order under section 41 of that Act as so modified.
- (4) The power to make a hospital order by virtue of this section is not exercisable unless the conditions in subsections (1)(b) and (2) of section 37 of the 1983 Act, as modified by Schedule 4 to this Act, are satisfied.
- (5) Where—
- (a) the finding mentioned in subsection (1) relates to an offence the sentence for which is fixed by law, and
  - (b) the court has power to make a hospital order,
- the court must make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).
- (6) The functions of the court under this section, and any functions under the 1983 Act that are exercisable by the court by reason of this section or Schedule 4, are to be exercised by—
- (a) the judge advocate for the trial mentioned in subsection (1); or

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- (b) in a case where that judge advocate has made an interim hospital order under section 38 of the 1983 Act as modified by Schedule 4, by that or any other judge advocate.
- (7) In subsection (1) “act” includes an omission and the reference to the doing of an act is to be read accordingly.
- (8) Schedule 4 (modifications of the 1983 Act) has effect.

#### Commencement Information

- I29** S. 169 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I30** S. 169 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 170 Service supervision orders

- (1) In section 169 and this section a “service supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a person specified in the order (“the supervising officer”) for a period specified in the order.
- (2) The period specified in the order must not exceed the maximum period for the time being specified in paragraph 1(1) of Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84) (maximum period of civilian supervision order).
- (3) The court may not make a service supervision order under section 169(2)(b) unless it is satisfied—
  - (a) that, having regard to all the circumstances of the case, the making of a service supervision order is the most suitable way of dealing with the defendant;
  - (b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (c) that arrangements have been made for any treatment which (under subsection (4)) is intended to be specified in the order.
- (4) An order under section 169(2)(b) may, in accordance with regulations under subsection (5), require the supervised person to submit, during the whole of the period specified in the order or such part of it as may be so specified, to treatment by or under the direction of a registered medical practitioner.
- (5) The Secretary of State may by regulations make further provision in relation to service supervision orders, including in particular provision—
  - (a) as to the procedure to be followed by a court making a service supervision order;
  - (b) as to the descriptions of supervising officer who may be specified in such an order;
  - (c) for treatment to be provided, in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated, at a place other than a place specified in the order;
  - (d) authorising a court to include in a service supervision order requirements corresponding to any requirements that Schedule 1A to the Criminal



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- Procedure (Insanity) Act 1964 (c. 84) for the time being allows to be included in supervision orders under that Act;
- (e) imposing on the supervised person obligations corresponding to any for the time being imposed by that Schedule;
  - (f) for the amendment and revocation of a service supervision order.

#### Commencement Information

- I31** S. 170 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I32** S. 170 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 171 Remission for trial

- (1) Where—
- (a) a person is detained in pursuance of a hospital order which the Court Martial had power to make by virtue of section 169(1)(a),
  - (b) the court also made a restriction order, and
  - (c) the restriction order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with [<sup>F29</sup>the responsible clinician] that the person can properly be tried, may remit the person for trial by the Court Martial.
- (2) A person remitted under this section must be transferred to service custody, but when he is so transferred—
- (a) he must as soon as practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody; and
  - (b) on that review he is to be dealt with as on a review under section 108(1) (see section 108(4) to (8)).
- (3) On the transfer of a person to service custody under this section the hospital order and restriction order cease to have effect.
- (4) In this section—
- “hospital order” and “restriction order” have the same meanings as in section 169;
  - [<sup>F30</sup>“the responsible clinician” means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.]
- (5) In subsection (1)(a) the reference to a hospital order as there mentioned includes a reference to—
- (a) a hospital order made by virtue of section 16(1)(b) or 22(3A) of the Court Martial Appeals Act 1968 (c. 20);
  - (b) a hospital order made by virtue of section 25B(1) of that Act in a case in which a finding within section 169(1)(a) of this Act was made by the Court Martial.

#### Textual Amendments

- F29** Words in s. 171(1) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 15\(5\)\(a\)](#), 56(1); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), Sch.)

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**F30** Words in s. 171(4) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 15(5)(b)**, 56(1); [S.I. 2008/1900](#), **art. 2(b)** (with [art. 3](#), [Sch.](#))

#### Commencement Information

**I33** S. 171 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))

**I34** S. 171 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## 172 Provision supplementary to sections 166 and 168

- (1) In sections 166 and 168 and this section “duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State [<sup>F31</sup>, or by another person by virtue of section 12ZA or 12ZB of that Act,] as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the provisions of sections 166 and 168 which permit a court to act on the written evidence of—
  - (a) a registered medical practitioner, or
  - (b) a registered medical practitioner who is duly approved,
 a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may (subject to subsection (4)) be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved.
- (3) The court may require the signatory of any such report to be called to give oral evidence.
- (4) Where in pursuance of a direction of the court any such report is tendered in evidence otherwise than by or on behalf of the defendant, then—
  - (a) if the defendant is represented by counsel or a solicitor, a copy of the report must be given to his counsel or solicitor;
  - (b) if the defendant is not so represented the substance of the report must be disclosed to him or, if he is aged under 18, to his parent or guardian if present in court;
  - (c) the defendant may require the signatory of the report to be called to give oral evidence; and
  - (d) evidence to rebut the evidence contained in the report may be called by the defendant or on his behalf.

#### Textual Amendments

**F31** Words in s. 172(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 38(5)(e)**, 306(4); [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))

#### Modifications etc. (not altering text)

**C9** S. 172 applied (with modifications) by 1968 c. 20, s. 22(3B) (as substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), **s. 383(2)**, **Sch. 8 para. 23(c)** (with [s. 385](#)); [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), **art. 4**)

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**Status:** Point in time view as at 01/04/2023.

**Changes to legislation:** Armed Forces Act 2006, Part 7 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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**Commencement Information**

- I35** S. 172 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I36** S. 172 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**Status:**

Point in time view as at 01/04/2023.

**Changes to legislation:**

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