



Armed Forces Act 2006

2006 CHAPTER 52

PART 7

TRIAL BY COURT MARTIAL

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.

Status: Point in time view as at 31/10/2009.

Changes to legislation: Armed Forces Act 2006, Chapter 4 is up to date with all changes known to be in force on or before 15 July 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)

Modifications etc. (not altering text)

- C1** 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

- I1** 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](#))
- I2** S. 166 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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

- I3** 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](#))
- I4** S. 167 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 31/10/2009.

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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.
- (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

- I5** 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](#))
- I6** 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.

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- (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
 - (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

- I7** 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](#))
- I8** 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.

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- (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 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

- I9** 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](#))
- I10** 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 [^{F1}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;
- [^{F2}“the responsible clinician” means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.]

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- (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

- F1** 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.](#))
- F2** 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

- I11** 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](#))
- I12** 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 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.

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Modifications etc. (not altering text)

- C2** 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](#))

Commencement Information

- I13** 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](#))
- I14** S. 172 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

Status:

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Changes to legislation:

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