



# Army Act 1955 (repealed)

1955 CHAPTER 18 3 and 4 Eliz 2

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

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

- C1** Part II extended by [Reserve Forces Act 1980 \(c. 9\), s. 142](#)  
**C2** Part II applied (1.6.1996 subject to art. 3 of the commencing S.I.) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), ss. 18\(9\)\(a\), 20\(10\)\(a\); S.I. 1996/1173, art. 2](#)

#### Textual Amendments applied to the whole legislation

- F1** Act: the provisions of the 1955 Acts providing for findings of courts-martial to be subject to confirmation and to revision at the direction of the confirming officer cease to have effect (1.4.1997 subject to art. 3 of the commencing S.I.) by virtue of [1996 c. 46, s. 15; S.I. 1997/304, arts. 2, 3, Sch. 2](#)
- F416** Act repealed (1.1.2008 for the repeal of s. 180 only, 1.10.2008 for the repeal of ss. 135-137, 28.3.2009 for further specified purposes and 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 17; S.I. 2007/2913, art. 3 \(with art. 4\(1\)\(2\)\); S.I. 2008/1650, art. 2\(e\) \(with art. 3\); S.I. 2009/812, art. 3\(a\)\(b\) \(with transitional provisions in The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)\); S.I. 2009/1167, art. 4; and ss. 9, 133A, Sch. 7 para. 4A continued \(with modifications\) \(31.10.2009\) by The Armed Forces \(Discharge and Transfer to the Reserve Forces\) \(No. 2\) Regulations 2009 \(S.I. 2009/1091\), regs. 1, 9, 10, 13 \(with Sch.\) and The Armed Forces \(Financial Penalty Enforcement Orders\) Regulations 2009 \(S.I. 2009/1212\), regs. 1, 5\(2\)](#)

#### *Misconduct in action and other offences arising out of military service*

#### [<sup>F1</sup>24] **Misconduct in action.**

- (1) A person subject to military law shall be guilty of an offence against this section if, without lawful excuse, he—

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- (a) surrenders any place or thing to the enemy, or
  - (b) abandons any place or thing which it is his duty to defend against the enemy or to prevent from falling into the hands of the enemy.
- (2) A person subject to military law shall be guilty of an offence against this section if, being in the presence or vicinity of the enemy, or being engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy, he—
- (a) fails to use his utmost exertions to carry the lawful orders of his superior officers into execution, or
  - (b) while on guard duty and posted or ordered to patrol, or while on watch, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be, or
  - (c) behaves in such a manner as to show cowardice, or induces any other person so to behave at a time when that other person, being a member of Her Majesty's forces or of a force co-operating with Her Majesty's forces, is in the presence or vicinity of the enemy, or is engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy, or
  - (d) uses words likely to cause despondency or unnecessary alarm.
- (3) A person guilty of an offence against this section shall, on conviction by court-martial, be <sup>[F2]</sup>liable to imprisonment or any less punishment provided by this Act].
- (4) The reference in subsection (2)(a) above to superior officers shall be construed in accordance with section 33(2) of this Act.]

#### Textual Amendments

**F1** Ss. 24-26 substituted for ss. 24-28 by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 2(1), 78(4)**

**F2** Words in s. 24(3) substituted (11.5.2001) by [2001 c. 19, s. 34](#), **Sch. 6 Pt. 4 para. 14**

## 25 Assisting the enemy.

- (1) A person subject to military law shall be guilty of an offence against this section if, knowingly and without lawful excuse, he—
- (a) communicates with, or gives intelligence to, the enemy, or
  - (b) fails to make known to the proper authorities any information received by him from the enemy, or
  - (c) furnishes the enemy with supplies of any description, or
  - (d) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities or of measures likely to influence morale, or in any other manner whatsoever not authorised by international usage, or
  - (e) having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking, any reasonable steps to rejoin Her Majesty's service which are available to him or, as the case may be, to that other person, or
  - (f) harbours or protects an enemy not being a prisoner of war.
- (2) A person guilty of an offence against this section shall, on conviction by court-martial, be <sup>[F3]</sup>liable to imprisonment or any less punishment provided by this Act].

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#### Textual Amendments

**F3** Words in s. 25(2) substituted (11.5.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 4 para. 15

### 26 Obstructing operations, giving false air signals, etc.

- (1) A person subject to military law shall be guilty of an offence against this section if he does any act likely to imperil the success of any action or operation on the part of any of Her Majesty's forces, or wilfully delays or discourages upon any pretext whatsoever any such action or operation.
- (2) A person subject to military law shall be guilty of an offence against this section if, knowingly and without lawful excuse, he gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal.
- (3) A person guilty of an offence against this section shall, on conviction by court-martial, be <sup>[F4]</sup>liable to imprisonment or any less punishment provided by this Act]

#### Textual Amendments

**F4** Words in s. 26(3) substituted (11.5.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 4 para. 16

### <sup>[F5]</sup>27 Prize offences by commanding officers.

- (1) Any person subject to military law who, being in command of any of Her Majesty's ships or aircraft—
  - (a) having taken any ship or aircraft as prize, fails to send to the High Court, or to some other prize court having jurisdiction in the case, all the ship papers or aircraft papers, as the case may be, found on board, or
  - (b) unlawfully makes any agreement for the ransoming of any ship, aircraft or goods taken as prize, or
  - (c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, aircraft or goods taken as prize,shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) In this section “prize court” means a prize court within the meaning of the <sup>M1</sup>Naval Prize Act 1864, and “ship papers” and “aircraft papers” have the same meanings as in that Act.]

#### Textual Amendments

**F5** Ss. 27, 28 inserted by Armed Forces Act 1971 (c. 33), ss. 3(1), 78(4)

#### Marginal Citations

**M1** 1864 c. 25.

### 28 Other prize offences.

Any person subject to military law who—

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- (a) <sup>F6</sup> ill-treats any person who is on board a ship or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession, or
- (b) removes out of any ship or aircraft taken as prize (otherwise than for safe keeping or for the necessary use and service of any of Her Majesty's forces or any forces co-operating therewith) any goods not previously adjudged by a prize court within the meaning of the <sup>M2</sup>Naval Prize Act 1864 to be lawful prize, or
- (c) breaks bulk on board any ship or aircraft taken as prize, or detained in exercise of any belligerent right or under any enactment, with intent to steal anything therein,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### Textual Amendments

**F6** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), [Sch. 2](#)

#### Marginal Citations

**M2** 1864 c. 25.

### [<sup>F7</sup>29 Offences by or in relation to sentries, persons on watch, etc.

Any person subject to military law who—

- (a) while on guard duty and posted or ordered to patrol, or on watch, or under orders to regulate traffic by land, water or air, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be, or
- (b) <sup>F8</sup> uses force against a member of Her Majesty's forces, or of any forces co-operating therewith, who is on guard duty and posted or ordered to patrol, or on watch, or under orders to regulate traffic by land, water or air, or
- (c) by the threat of force compels any such person as is mentioned, leaves any place where it is his duty to be, or
- (d) in paragraph (b) above to let him or any other person pass,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### Textual Amendments

**F7** S. 29 substituted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 4(1), 78(4)

**F8** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), [Sch. 2](#)

### [<sup>F9</sup>29A Failure to attend for duty, neglect of duty, etc.

Any person subject to military law who—

- (a) without reasonable excuse fails to attend for any duty of any description, or leaves any such duty before he is permitted to do so, or
- (b) neglects to perform, or negligently performs, any duty of any description,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

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**Textual Amendments**

**F9** S. 29A inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 5(1)**, 78(4)

**30 Looting.**

Any person subject to military law who—

- (a) steals from, or with intent to steal searches, the person of anyone [<sup>F10</sup>killed, wounded or captured in the course of warlike operations, or killed, injured or detained in the course of operations undertaken by Her Majesty’s forces for the preservation of law and order or otherwise in aid of the civil authorities], or
- (b) steals any property which has been left exposed or unprotected in consequence of [<sup>F10</sup>any such operations as are mentioned in paragraph (a) above], or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

**Textual Amendments**

**F10** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 6(1)**, 78(4)

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

**C3** S. 30 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), **s. 2(3)(a)**

*Mutiny and insubordination*

**31 Mutiny.**

<sup>F11</sup>(1) .....

- (2) Any person subject to military law who <sup>F12</sup> . . ., takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) In this Act the expression “mutiny” means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—
  - (a) to overthrow or resist lawful authority in Her Majesty’s forces or any forces co-operating therewith in any part of any of the said forces,
  - (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy, or
  - (c) to impede the performance of any duty or service in Her Majesty’s forces or in any forces co-operating therewith or in any part of any of the said forces;<sup>F13</sup>

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#### Textual Amendments

- F11** S. 31(1) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**  
**F12** Words in s. 31(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**  
**F13** Words repealed by **Armed Forces Act 1971** (c. 33), ss. 78(4), **Sch. 4 Pt. I**

### 32 Failure to suppress mutiny.

Any person subject to military law who, knowing that a mutiny is taking place or is intended,—

- (a) fails to use his utmost endeavours to suppress or prevent it, or
- (b) fails to report without delay that the mutiny is taking place or is intended,

shall on conviction by [<sup>F14</sup>court-martial be liable to imprisonment or any less punishment provided by this Act].

#### Textual Amendments

- F14** Words in s. 32 substituted (11.5.2001) by 2001 c. 19, s. 34, **Sch. 6 Pt. 4 para. 17**

### 33 Insubordinate behaviour.

(1) Any person subject to military law who—

- (a) <sup>F15</sup> uses violence to, or offers violence to, his superior officer, or
- (b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

[<sup>F16</sup>Provided that it shall be a defence for any person charged under this subsection to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was his superior officer.]

(2) In the foregoing provisions of this section the expression “superior officer”, in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular forces of superior rank, and includes an officer, warrant officer or non-commissioned officer of those forces of equal rank but greater seniority while exercising authority as the said person’s superior.

#### Textual Amendments

- F15** Words repealed by **Armed Forces Act 1986** (c. 21, SIF 7:1), ss. 4(1), 16(2), **Sch. 2**  
**F16** Proviso substituted by **Armed Forces Act 1971** (c. 33), ss. **8(1)**, 78(4)

### [<sup>F17</sup>34 Disobedience to lawful commands.

Any person subject to military law who, whether wilfully or, through neglect, disobeys any lawful command (by whatever means communicated to him) shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.]

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### Textual Amendments

F17 S. 34 substituted by [Armed Forces Act 1971 \(c. 33\), ss. 8\(2\), 78\(4\)](#)

### [<sup>F18</sup>34A Failure to provide a sample for drug testing.

(1) Any person subject to military law who, when requested to do so by a drug testing officer, fails to provide a sample of his urine for [<sup>F19</sup>the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body] shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.

[ A drug testing officer may not request a person to provide a sample under <sup>F20</sup>(1A) subsection (1) above if—

- (a) he is that person's commanding officer, or
- (b) the commanding officer of that person is also his commanding officer.

(1B) A request under subsection (1) above may not be made if the sample is sought in connection with—

- (a) an investigation under this Act of an offence, or
- (b) an investigation of such an incident as is referred to in section 32(1)(a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).

(1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—

- (a) that person, or
- (b) any other person,

in proceedings before a court-martial, commanding officer or appropriate superior authority.

(1D) Nothing in this section—

- (a) limits the powers conferred by—
  - (i) sections 6 and 7 of the Road Traffic Act 1988 (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
  - (ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or
- (b) affects the admissibility in any proceedings of evidence obtained under those powers.]

(2) For the purposes of this section—

“drug” means any drug which is a controlled drug for the purposes of the <sup>M3</sup>Misuse of Drugs Act 1971; and

“drug testing officer” means an officer, warrant officer or non-commissioned officer who is authorised by or in accordance with Queen's Regulations for the purpose of supervising the conduct of tests for the presence of drugs.]



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#### Textual Amendments

- F18** S. 34A inserted (1.10.1996 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 32(1); S.I. 1996/2474, art. 2 (with art. 3)
- F19** Words in s. 34A(1) substituted (4.3.2006) by Armed Forces Act 2001 (c. 19), s. 39(2), Sch. 5 para. 1(2); S.I. 2006/235, art. 2
- F20** Ss. 34A(1A)-(1D) inserted (4.3.2006) by Armed Forces Act 2001 (c. 19), s. 39(2), Sch. 5 para. 1(3); S.I. 2006/235, art. 2

#### Marginal Citations

- M3** 1971 c. 38.

### [<sup>F21</sup>34B Failure to provide sample after serious incident

Any person subject to military law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.]

#### Textual Amendments

- F21** S. 34B inserted (4.3.2006) by Armed Forces Act 2001 (c. 19), s. 39(2), Sch. 5 para. 2; S.I. 2006/235, art. 2 (with art. 3)

### 35 Obstruction of provost officers.

Any person subject to military law who—

- (a) obstructs, or
- (b) when called on, refuses to assist,

[<sup>F22</sup>any provost officer, or any person] (whether subject to military law or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

[<sup>F23</sup>Provided that it shall be a defence for any person charged under this section to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was a provost officer or, as the case may be, a person legally exercising authority under or on behalf of a provost officer.]

#### Textual Amendments

- F22** Words substituted by Armed Forces Act 1971 (c. 33), ss. 9(1)(a), 78(4)
- F23** Proviso inserted by Armed Forces Act 1971 (c. 33), ss. 9(1)(b), 78(4)



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### **36 Disobedience to standing orders.**

- (1) Any person subject to military law who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or [<sup>F24</sup>body of Her Majesty's forces], or for any command or other area, garrison or place, or for any ship, train or aircraft.

#### **Textual Amendments**

**F24** Words substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 10(1)**, 78(4)

*Desertion, absence without leave, etc.*

### **[<sup>F25</sup>37 Desertion.**

- (1) Any person subject to military law who deserts shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (2) For the purposes of this Act a person deserts who—
  - (a) leaves or fails to attend at his unit, ship or place of duty with the intention of remaining permanently absent from duty without lawful authority, or, having left or failed to attend at his unit, ship or place of duty, thereafter forms the like intention, or
  - (b) absents himself without leave with intent to avoid serving at any place overseas, or to avoid service or any particular service when before the enemy, and references in this Act to desertion shall be construed accordingly.]

#### **Textual Amendments**

**F25** S. 37 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 11(1)**, 78(4)

### **[<sup>F26</sup>38 Absence without leave.**

Any person subject to military law who—

- (a) absents himself without leave, or
- (b) improperly leaves his ship,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### **Textual Amendments**

**F26** S. 38 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 12(1)**, 78(4)

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**[<sup>F27</sup>39 Failure to report or apprehend deserters or absentees.**

Any person subject to military law who, knowing that any other person so subject has committed an offence, or is attempting to commit an offence, under section 37(1) or section 38 of this Act—

- (a) fails to report the fact without delay, or
- (b) fails to take any steps within his power to cause that other person to be apprehended,

shall be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

**Textual Amendments**

**F27** S. 39 substituted by [Armed Forces Act 1971 \(c. 33\), ss. 13\(1\), 78\(4\)](#)

**40, 41. ....<sup>F28</sup>**

**Textual Amendments**

**F28** Ss. 40, 41, 53 and 58 repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

*Malingering and drunkenness*

**42 Malingering.**

- (1) Any person subject to military law who—
- (a) falsely pretends to be suffering from sickness or disability, or
  - (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, or
  - (c) injures another person subject to [<sup>F29</sup>service law], at the instance of that person, with intent thereby to render that person unfit for service, or
  - (d) with intent to render or keep himself unfit for service, does or fails to do any thing (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,
- shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) In this section the expression “unfit” includes temporarily unfit.

**Textual Amendments**

**F29** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 14, 78\(4\)](#)

*Status: Point in time view as at 01/10/2008.*

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### 43 Drunkenness.

(1) Any person subject to military law who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act <sup>F30</sup>

<sup>F31</sup>(2) For the purposes of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which [<sup>F32</sup>he might reasonably expect to be called upon to perform], or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty's service.

#### Textual Amendments

- F30** Words repealed by [Armed Forces Act 1966 \(c. 45\), s. 37\(3\), Sch. 5](#)  
**F31** Proviso repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)  
**F32** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 15\(1\), 78\(4\)](#)

#### *Disorderly conduct*

### [<sup>F33</sup>43A Fighting, threatening words, etc.

Any person subject to military law who, without reasonable excuse—

- (a) fights with any other person, whether subject to military law or not, or
- (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### Textual Amendments

- F33** S. 43A inserted by [Armed Forces Act 1971 \(c. 33\), ss. 16\(1\), 78\(4\)](#)

#### *Offences relating to property*

### [<sup>F34</sup>44 Damage to, and loss of, public or service property, etc.

(1) Any person subject to military law who—

- (a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any public or service property, or any property belonging to another person so subject, or
- (b) by wilful neglect causes or allows damage to, or the loss of, any public or service property or property so belonging,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law who—

- (a) by any negligent act or omission causes or allows damage to, or the loss of, any public or service property, or

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- (b) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any such property, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### Textual Amendments

**F34** Ss. 44, 44A-46 substituted for ss. 44-46 by [Armed Forces Act 1971 \(c. 33\)](#), [ss. 17\(1\)](#), 78(4)

#### **44A Damage to, and loss of, Her Majesty's aircraft or aircraft material.**

- (1) Without prejudice to the generality of section 44 above, a person subject to military law shall be guilty of an offence against this section if he—
- (a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any of Her Majesty's aircraft or aircraft material, or
  - (b) by wilful neglect causes or allows damage to, or the loss of, any of Her Majesty's aircraft or aircraft material, or
  - (c) without lawful authority disposes of any of Her Majesty's aircraft or aircraft material, or
  - (d) by any negligent act or omission causes or allows damage to, or the loss of, any of Her Majesty's aircraft or aircraft material,
  - (e) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any of Her Majesty's aircraft or aircraft material, or
  - (f) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration by or under the authority of a neutral state, or the destruction in a neutral state, of any of Her Majesty's aircraft.
- (2) A person guilty of an offence against this section shall, on conviction by court-martial, be liable—
- (a) if his offence consisted in an act or omission falling within paragraph (a), (b) or (c) of subsection (1), or if it consisted in an act or omission falling within paragraph (f) of that subsection and it is proved that he acted wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act;
  - (b) in any other case, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **[<sup>F35</sup>44B Interference etc. with equipment, messages or signals.**

- (1) Any person subject to military law who by any conduct of his—
- (a) intentionally impairs the efficiency or effectiveness of any equipment which is public or service property; or
  - (b) intentionally interferes with or modifies any message or other signal which is being transmitted, by means of [<sup>F36</sup>an electronic communications network], directly or indirectly to or from any such equipment,
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (2) Any person subject to military law who is guilty of any conduct which is likely to have the effect—
- (a) of impairing the efficiency or effectiveness of any such equipment; or

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (b) of interfering with or modifying any such message or signal, shall (whether or not that conduct has that effect) be liable, on conviction by court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (3) It shall be a defence for a person charged with an offence under subsection (2) of this section in respect of any conduct likely to have a particular effect that, in the circumstances, his conduct was in all respects consistent with the exercise of reasonable care to avoid producing that effect.
- (4) For the purposes of this section the efficiency or effectiveness of any equipment is impaired if, whether or not it is damaged, the equipment is made temporarily or permanently less efficient or effective either for all purposes or for a particular purpose for which it has been designed, adapted, adjusted or programmed.
- (5) In this section—  
“conduct” includes any act or omission;  
“equipment” includes any apparatus, any computer and any vessel, aircraft or vehicle;<sup>F37</sup> ...  
<sup>F37</sup> ...<sup>M4</sup>

#### Textual Amendments

- F35** S. 44B inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 2\(1\)](#)
- F36** Words in s. 44B(1)(b) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 23](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#)
- F37** Words in s. 44B(5) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\) Note 1](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#)

#### Marginal Citations

- M4** [1984 c.12\(96\)](#).

## 45 Misapplication and waste of public or service property.

Any person subject to military law who misapplies or wastefully expends any public or service property shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

- C4** S. 45 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\), s. 2\(3\)\(a\)](#)

## 46 Offences relating to issues and decorations.

- (1) Any person subject to military law who makes away with (whether by pawning, selling, destroying or in any other way), or loses, or by negligence damages or allows to be damaged—

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (a) any clothing, arms, ammunition or other equipment issued to him for his use for military purposes, or
  - (b) any military, air-force or naval decoration granted to him,
- shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) It shall be a defence for a person charged under this section with losing any property that he took reasonable steps for its care and preservation.

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

C5 S. 46 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), s. 2(3)(a)

*Offences relating to billeting and requisitioning of vehicles*

**47 Billeting Offences.**

Any person subject to military law who—

- (a) knowing that no billeting requisition is in force under Part IV of this Act authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under Part IV of this Act any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or
- [<sup>F38</sup>(c) wilfully or by wilful neglect damages, or causes or allows to be damaged, any premises in which he is billeted in pursuance of such a requisition, or any property being in such premises],

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Textual Amendments**

F38 S. 47(c) substituted by [Armed Forces Act 1971 \(c. 33\)](#), ss. 18, 78(4)

**48 Offences in relation to requisitioning of vehicles.**

(1) Any person subject to military law who—

- (a) knowing that no requisitioning order is in force under Part IV of this Act authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions, or
- (b) in purported exercise of powers conferred by a requisitioning order under Part IV of this Act takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under the said Part IV under which the taking possession of the vehicle could be authorised,

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

or that the taking possession thereof is otherwise not authorised under such an order, or

- (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under Part IV of this Act,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) The last foregoing subsection shall apply in relation to horses, mules, food, forage and stores (within the meaning of Part IV of this Act) as it applies in relation to vehicles.

*Flying etc. offences*

[<sup>F39</sup> **48A Loss or hazarding of ship.**

Any person subject to military law who, either wilfully or by negligence, causes or allows to be lost, stranded or hazarded any of Her Majesty's ships shall, on conviction by court-martial, be liable—

- (a) if he acts wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act,  
(b) in any other case, to imprisonment for a term not exceeding two years or any less punishment so provided.]

**Textual Amendments**

**F39** S. 48A inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 19(1), 78(4)**

**49 Dangerous flying, etc.**

Any person subject to military law who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

[<sup>F40</sup> **50 Inaccurate certification.**

Any person subject to military law who makes or signs, without having ensured its accuracy,—

- (a) a certificate relating to any matter affecting the seagoing or fighting efficiency of any of Her Majesty's ships, or  
(b) any certificate relating to any of Her Majesty's aircraft or aircraft material,  
shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]



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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F40** S. 50 substituted by [Armed Forces Act 1971 \(c. 33\), ss. 20\(1\), 78\(4\)](#)

**51 Low flying.**

Any person subject to military law who, being the pilot of one of Her Majesty’s aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of [<sup>F41</sup>the Defence Council], <sup>F42</sup>, except—

- (a) while taking off or alighting, or
- (b) in such other circumstances as may be so provided,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

[<sup>F43</sup>Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.]

**Textual Amendments**

**F41** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F42** Words repealed by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F43** Proviso inserted by [Armed Forces Act 1971 \(c. 33\), ss. 21\(1\), 78\(4\)](#)

**52 Annoyance by flying.**

Any person subject to military law who, being the pilot of one of Her Majesty’s aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to [<sup>F44</sup>dismissal from Her Majesty’s service] or any less punishment provided by this Act:

[<sup>F45</sup>Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.]

**Textual Amendments**

**F44** Words substituted by [Armed Forces Act 1971 \(c. 33\), ss. 21\(2\), 78\(4\)](#)

**F45** Proviso inserted by [Armed Forces Act 1971 \(c. 33\), ss. 21\(1\), 78\(4\)](#)

*Offences relating to, and by, persons in custody*

**53** ..... <sup>F46</sup>

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

**F46** Ss. 40, 41, 53 and 58 repealed by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), [Sch. 4 Pt. I](#)

### 54 Permitting escape, and unlawful release of prisoners.

- (1) Any person subject to military law who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (2) Any person subject to military law who—
  - (a) without proper authority releases any person who is committed to his charge, or
  - (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### 55 Resistance to arrest.

- (1) Any person subject to military law who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or <sup>F47</sup> uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.
- (2) Any person subject to military law who <sup>F47</sup> uses violence to, or offers violence to, any person, whether subject to military law or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### Textual Amendments

**F47** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), ss. 4(1), 16(2), [Sch. 2](#)

### 56 Escape from confinement.

Any person subject to military law who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences in relation to courts-martial and civil authorities*

### 57 Offences in relation to courts-martial.

- (1) Any person subject to military law who—

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order, or
- (b) refuses to swear an oath when duly required by a court-martial to do so, or
- (c) refuses to produce any [<sup>F48</sup>document or other thing which is in his custody or under his control and] which a court-martial has lawfully required him to produce, or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) Notwithstanding anything in the last foregoing subsection, where an offence against <sup>F49</sup> that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president [<sup>F50</sup> sentence the offender—
- (a) if he is an officer, to imprisonment for a term not exceeding twenty-one days, or to a fine not exceeding the amount of his pay for twenty-eight days <sup>F51</sup> . . . ,
  - (b) in any other case, to imprisonment or detention for such a term as aforesaid, or to such a fine as aforesaid.]

[<sup>F52</sup>(2A) If the offender has attained seventeen years of age but is under twenty-one years of age, subsection (2) above shall have effect in relation to him as if the power to impose a sentence of imprisonment were a power to make an order under section 71AA below.]

[<sup>F53</sup>(2B) For the purposes of subsection (2) above, a day's pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the order is made;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

<sup>F53</sup>(2C) In subsection (2B)(b) above "special member" and "ordinary member" have the same meaning as in the Reserve Forces Act 1996.]

- (3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial <sup>F54</sup> . . . held in pursuance of [<sup>F55</sup> the <sup>M5</sup> Naval Discipline Act 1957], [<sup>F56</sup> and to a court-martial held in pursuance of] the <sup>M6</sup> Air Force Act 1955, or the law of any colony.

[<sup>F57</sup>(4) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial or to a member of a court-martial include references to a judicial officer or a person appointed under section 75L of the Air Force Act 1955 or section 47M of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to a judicial

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officer or any person so appointed, that subsection shall have effect as if the words “other than the court in relation to which the offence was committed” were omitted.

(5) In relation to an offence committed in relation to a judicial officer, subsection (2) of this section shall have effect as if—

- (a) the references to a court-martial held in pursuance of this Act were references to the judicial officer,
- (b) for “another court-martial” there were substituted “a court-martial”, and
- (c) the words “under the hand of the president” were omitted.]

[<sup>F58</sup>(6) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial include references to the summary appeal court, the court established by section 83ZA of the Air Force Act 1955 or the court established by section 52FF of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to any of those courts, that subsection shall have effect as if the words “other than the court in relation to which the offence was committed” were omitted.

(7) In relation to an offence committed in relation to the summary appeal court, subsection (2) of this section shall have effect as if—

- (a) the reference to a court-martial held in pursuance of this Act were a reference to the summary appeal court,
- (b) for “another court-martial” there were substituted “a court-martial”, and
- (c) for “the president” there were substituted “the judge advocate”.]

#### Textual Amendments

- F48** Words in s. 57(1)(c) inserted (28.2.2002) by 2001 c. 19, s. 24(2)(a); S.I. 2002/345, art. 2 (subject to transitional provisions in art. 3)
- F49** Words repealed by Armed Forces Act 1971 (c. 33), s. 78(4), Sch. 4 Pt. I
- F50** Words substituted by Armed Forces Act 1971 (c. 33), ss. 23(2), 78(4)
- F51** Words in s. 57(2)(a) omitted (1.1.1999) by virtue of S.I. 1998/3086, reg. 4(1)(a)
- F52** S. 57(2A) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch. 8 para.1(1)
- F53** S. 57(2B)(2C) inserted (1.1.1999) by S.I. 1998/3086, reg. 4(2)
- F54** Words in s. 57(3) repealed (28.2.2002) by 2001 c. 19, s. 38, Sch. 7 Pt. 1; S.I. 2002/345, art. 2 (subject to transitional provisions in art. 3)
- F55** Words substituted by virtue of Naval Discipline Act 1957 (c. 53), s. 137(2)
- F56** Words inserted by Naval Discipline Act 1957 (c. 53), Sch. 5
- F57** S. 57(4)(5) inserted (2.10.2000) by 2000 c. 4, s. 10, Sch. 1 para. 1(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)
- F58** S. 57(6)(7) inserted (2.10.2000) by 2000 c. 4, s. 25, Sch. 3 para. 1; S.I. 2000/2366, art. 2 (with Sch. para. 13)

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

- C6** S. 57(1) extended by Armed Forces Act 1976 (c. 52), Sch. 3 para. 15(1)

#### Marginal Citations

- M5** 1957 c. 53.
- M6** 1955 c. 19.

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F59** Ss. 40, 41, 53 and 58 repealed by [Armed Forces Act 1971 \(c. 33\)](#), s. 78(4), **Sch. 4 Pt.I**

**59** ..... **F60**

**Textual Amendments**

**F60** S. 59 repealed by [Armed Forces Act 1966 \(c. 45\)](#), s. 37(3), **Sch. 5**

*Miscellaneous offences*

**[<sup>F61</sup>60 Unauthorised disclosure of information.**

- (1) Any person subject to military law who without lawful authority discloses or purports to disclose, whether orally, in writing, by signal or by any other means whatsoever, information relating to any matter upon which information would or might be useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) It shall be a defence for a person charged with an offence under this section that he did not know and had no reasonable cause to believe that the information disclosed related to a matter upon which information would or might be directly or indirectly useful to an enemy.]

**Textual Amendments**

**F61** S. 60 substituted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 24(1)**, 78(4)

**61 Making of false statements on enlistment.**

Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part I of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall if he has since become and remains subject to military law be liable, on conviction by court-martial, to the like imprisonment as on summary conviction of an offence against section nineteen of this Act or to any less punishment provided by this Act.

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

**C7** S. 61 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\)](#), **s. 2(3)(a)**

**[<sup>F62</sup>62 Making of false documents.**

- (1) A person subject to military law who—

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (a) makes an official document which is to his knowledge false in a material particular, or
  - (b) makes in any official document an entry which is to his knowledge false in a material particular, or
  - (c) tampers with the whole or any part of an official document (whether by altering it, destroying it, suppressing it, removing it or otherwise), or
  - (d) with intent to deceive, fails to make an entry in an official document,
- is liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) For the purposes of this section—
- (a) a document is official if it is or is likely to be made use of, in connection with the performance of his functions as such, by a person who holds office under, or is in the service of, the Crown; and
  - (b) a person who has signed or otherwise adopted as his own a document made by another shall be treated, as well as that other, as the maker of the document.
- (3) In this section “document” means anything in which information of any description is recorded.]

#### Textual Amendments

**F62** S. 62 substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 1** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**

### **63 Offences against civilian population.**

Any person subject to military law who, in any country or territory outside the United Kingdom, commits any offence against the person or property of any member of the civil population shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### [<sup>F63</sup>**63A Offences against morale.**

Any person subject to military law who spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of Her Majesty’s forces, of any forces co-operating therewith, or of any part of any of those forces, being reports likely to create despondency or unnecessary alarm, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

#### Textual Amendments

**F63** S. 63A inserted by **Armed Forces Act 1971 (c. 33), ss. 28(1), 78(4)**

### [<sup>F64</sup>**64 Scandalous conduct by officers.**

Every officer subject to military law who behaves in a scandalous manner unbecoming the character of an officer shall, on conviction by court-martial, be liable to dismissal from Her Majesty’s service with or without disgrace.]

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F64** S. 64 substituted by [Armed Forces Act 1971 \(c. 33\), ss. 29\(1\), 78\(4\)](#)

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

**C8** S. 64 extended (E.W.) (S.) by [Rehabilitation of offenders Act 1974 \(c. 53\), s. 2\(3\)\(a\)](#)

**65 Ill-treatment of officers or men of inferior rank.**

If—

- (a) any officer subject to military law <sup>F65</sup> ill-treats any officer subject thereto of inferior rank or less seniority or any warrant officer, non-commissioned officer or soldier subject to military law, or
- (b) any warrant officer or non-commissioned officer subject to military law <sup>F65</sup> ill-treats any person subject to military law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a soldier,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Textual Amendments**

**F65** Words repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), ss. 4\(1\), 16\(2\), Sch. 2](#)

**66 Disgraceful conduct.**

Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

**C9** S. 66 extended (E.W.) (S.) by [Rehabilitation of Offenders Act 1974 \(c. 53\), s. 2\(3\)\(a\)](#)

**67** ..... <sup>F66</sup>

**Textual Amendments**

**F66** Ss. 67, 75(3) and 81(3) repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt.I](#)

**68 Attempts to commit military offences.**

Any person subject to military law who attempts to commit an offence against any of the foregoing provisions of this Part of this Act [<sup>F67</sup> or against section 69 below] shall, on conviction by court-martial, be liable to the like punishment as for that offence:

<sup>F68</sup> . . . .



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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

- F67** Words inserted by [Armed Forces Act 1971 \(c. 33\), ss. 32\(1\), 78\(4\)](#)  
**F68** Words in s. 68 proviso repealed (11.5.2001) by [2001 c. 19, s. 38, Sch. 7 Pt. 4](#)

### [<sup>F69</sup> 68A Aiding and abetting etc., and inciting.

- (1) Any person subject to military law who aids, abets, counsels or procures the commission by another person of an offence against any of the foregoing provisions of this Part of this Act, or against section 69 below, or who incites another person to commit any such offence, shall himself be guilty of the offence in question, and shall be liable to be charged, tried and punished accordingly.
- (2) A person may be guilty by virtue of subsection (1) above of an offence against section 62 of this Act whether or not he knows the nature of the document in question.]

#### Textual Amendments

- F69** S. 68A inserted by [Armed Forces Act 1971 \(c. 33\), ss. 32\(2\), 78\(4\)](#)

### 69 Conduct to prejudice of military discipline.

Any person subject to military law who is guilty [<sup>F70</sup>, whether by any act or omission or otherwise, of conduct] to the prejudice of good order and military discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### Textual Amendments

- F70** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 4\(2\)](#)

### *Civil offences*

### 70 Civil offences.

- (1) Any person subject to military law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this section.
- (2) In this Act the expression “civil offence” means any act or omission punishable by the law of England or which, if committed in England, would be punishable by that law; and in this Act the expression “the corresponding civil offence” means the civil offence the commission of which constitutes the offence against this section.

[<sup>F71</sup>(2A) For the purpose of determining under this section whether an attempt to commit an offence is a civil offence, subsection (4) of section 1 of the <sup>M7</sup>Criminal Attempts Act 1981 (which relates to the offence of attempt) shall have effect as if for the words “offence which, if it were completed, would be triable in England and Wales as an indictable offence” there were substituted the words “civil offence consisting of an act punishable by the law of England and Wales as an indictable offence or an act which, if committed in England or Wales, would be so punishable by that law”.]

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- (3) [<sup>F72</sup>Subject to section 71A below,] a person convicted by court-martial of an offence against this section shall—
- <sup>F73</sup>(a) . . . . .
- <sup>F74</sup>(aa) if the corresponding civil offence is one for which the sentence is fixed by law as life imprisonment, be sentenced to imprisonment for life;]
- (b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in England, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:
- <sup>F75</sup>[<sup>F76</sup>(3A) Where the corresponding civil offence is one to which [<sup>F77</sup>section 109, 110 or 111 of the Powers of Criminal Courts (Sentencing) Act 2000] would apply, the court-martial shall impose the sentence required by subsection (2) of that section unless it is of the opinion that there are exceptional circumstances which justify its not doing so.]
- (4) A person shall not be charged with an offence against this section committed in the United Kingdom if the corresponding civil offence is treason, murder, manslaughter, treason-felony <sup>F78</sup>... [<sup>F79</sup>or an offence under section 1 of the Geneva Conventions Act 1957]. . . [<sup>F80</sup>or an offence under section 1 of the <sup>M8</sup>Biological Weapons Act 1974 [<sup>F81</sup>or an offence under section 2 or 11 of the Chemical Weapons Act 1996].][<sup>F79</sup>or an offence under section 51 or 52 of the International Criminal Court Act 2001 [<sup>F82</sup>or an offence under section 1 of the Sexual Offences Act 2003 (rape)]]
- [<sup>F83</sup>In this and the following subsection the references to murder shall apply also to aiding, abetting, counselling or procuring suicide.]
- (5) Where the corresponding civil offence is murder or manslaughter [<sup>F79</sup>, or an offence under section 1 of the Geneva Conventions Act 1957 or section 51 of the International Criminal Court Act 2001 consisting of the killing of a person,]. . . an offence against this section shall be deemed, for the purposes of the last foregoing subsection, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.
- [<sup>F84</sup>(6) A person subject to military law may be charged with an offence against this section notwithstanding that he could on the same facts be charged with an offence against any other provision of this Part of this Act.]

#### Textual Amendments

- F71** S. 70(2A) inserted by [Criminal Attempts Act 1981 \(c. 47\), s. 7\(1\)](#)
- F72** Words inserted by [Armed Forces Act 1976 \(c. 52\), s. 10\(3\)\(a\)](#)
- F73** S. 70(3)(a) repealed (11.5.2001) by [2001 c. 19, s. 38, Sch. 7 Pt. 4](#)
- F74** S. 70(3)(aa) substituted for s. 70(3)(aa)(ab) (1.10.2001) by [2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 33\(2\); S.I. 2001/3234, art. 2](#)
- F75** Proviso repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F76** S. 70(3A) inserted (1.10.1997 for certain purposes and otherwise *prosp.*) by [1997 c. 43, ss. 55, 57\(2\), Sch. 4 para. 1\(1\); S.I. 1997/2200, art. 2\(1\)\(1\)\(2\)\(a\)](#) (subject to art. 5)
- F77** Words in s. 70(3A) substituted (25.8.2000) by [2000 c. 6, s. 165, Sch. 9 para. 8](#)
- F78** Words in s. 70(4) repealed (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\), s. 141, Sch. 6 para. 9\(a\), Sch. 7; S.I. 2004/874, art. 2](#)
- F79** Words in s. 70(4)(5) inserted (13.6.2001 for certain purposes and 1.9.2001 otherwise) by [2001 c. 17, ss. 74\(2\)\(3\); S.I. 2001/2161, arts. 2, 3](#) (as amended by [S.I. 2001/2304, art. 2](#))

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- F80** Words inserted by [Biological Weapons Act 1974 \(c. 6\), s. 5\(1\)](#)
- F81** Words in s. 70(4) inserted (16.9.1996) by [1996 c. 6, s. 35\(a\)](#) (with s. 37); S.I. 1996/2054, [art. 2](#)
- F82** Words in s. 70(4) inserted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\), s. 141, Sch. 6 para. 9\(b\)](#); S.I. 2004/874, [art. 2](#)
- F83** Words added by [Suicide Act 1961 \(c. 60\), Sch. 1 Pt. II](#)
- F84** S. 70(6) added by [Armed Forces Act 1971 \(c. 33\), ss. 34\(1\)\(b\), 78\(4\)](#)

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

- C10** S. 70 amended by [Armed Forces Act 1976 \(c. 52\), s. 7\(4\)](#)
- C11** S. 70 modified (1.10.1997) by [1997 c. 43, s. 7\(1\)](#); S.I. 1997/2200, [art. 2\(1\)\(1\)\(2\)\(a\)](#) (subject to [art. 5](#))

**Marginal Citations**

- M7** [1981 c. 47.](#)
- M8** [1974 c. 6.](#)

*Punishments available to courts-martial*

**[<sup>F85</sup>71 Scale of punishments, and supplementary provisions.**

- (1) The punishments which may be awarded by sentence of a court-martial under this Act are, subject to the following provisions of this section [<sup>F86</sup>and section 71A below] and to the limitations hereinafter provided on the powers of certain courts-martial, as follows—
- (a) <sup>F87</sup> . . .
  - (b) imprisonment,
  - <sup>F88</sup>(bb) [ detention by virtue of a custodial order made under section 71AA of this Act;]
  - <sup>F89</sup>(bc) [ order that the convicted person be disqualified from working with children]
  - (c) dismissal with disgrace from Her Majesty’s service,
  - (d) dismissal from Her Majesty’s service,
  - (e) detention for a term not exceeding two years,
  - (f) forfeiture of seniority for a specified term or otherwise,
  - (g) reduction to the ranks or any less reduction in rank,
  - (h) fine,
  - (i) severe reprimand,
  - (j) reprimand,
  - (k) in the case of an offence which has occasioned any expense [<sup>F90</sup>personal injury] , loss or damage, stoppages, and
  - (l) such minor punishments as may from time to time be authorised by the Defence Council;

and references in this Act to any punishment provided by this Act are, subject to the limitation imposed in any particular case by the addition of the word “less”, references to any one or more of the said punishments.

For the purposes of this Part of this Act a punishment specified in any of the above paragraphs shall be treated as less than the punishments specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it:

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[<sup>F91</sup>Provided that a punishment such as is mentioned in paragraph (e) of this subsection shall not be treated as a less punishment than a punishment such as is mentioned in paragraph (b) or (bb) if the term of detention is longer than the term of imprisonment or, as the case may be, than the term of detention by virtue of the custodial order.]

(2) Subsection (1) above shall have effect—

- (a) in relation to a convicted person who is an officer, with the omission of paragraphs (e), (g) and (l),
- (b) in relation to a convicted person who is a warrant officer, with the omission of paragraphs (f) and (l),
- (c) in relation to a convicted person who is a non-commissioned officer, with the omission of paragraph (f), and
- (d) in relation to a convicted person who is a soldier, with the omission of paragraphs (f), (g), (i) and (j).

(3) A person [<sup>F92</sup>who, otherwise than under section 57(2) of this Act, is] sentenced by a court-martial to imprisonment shall also be sentenced either to dismissal with disgrace from Her Majesty's service or to dismissal from Her Majesty's service:

Provided that, if the court-martial fail to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of dismissal from Her Majesty's service.

(4) A warrant officer or non-commissioned officer [<sup>F92</sup>who, otherwise than under section 57(2) of this Act, is] sentenced by a court-martial to imprisonment, to dismissal from Her Majesty's service (whether or not with disgrace), or to detention, shall also be sentenced to be reduced to the ranks:

Provided that, if the court-martial fail to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of reduction to the ranks.

(5) The amount of a fine that may be awarded by a court-martial—

- (a) except in the case of an offence against section 70 of this Act, shall not exceed the amount of the offender's pay for twenty-eight days or, where the offence was committed on active service, fifty-six days, and
- (b) in the said excepted case—
  - (i) where the civil offence constituting an offence against that section is punishable by a civil court in England only on summary conviction, and is so punishable by a fine, shall not exceed the maximum amount of that fine, and
  - (ii) where the said civil offence is punishable by a civil court in England on indictment (whether or not it is also punishable on summary conviction) by a fine, shall not exceed the maximum amount of that fine;

<sup>F93</sup> . . .

[ For the purposes of subsection (5) above, a day's pay shall be taken to be—

- <sup>F94</sup>(5A)
- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
  - (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

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<sup>F94</sup>(5B) In subsection (5A)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.]

<sup>F95</sup>[ Unless the Secretary of State by order provides that this subsection shall no longer (6) apply, the stoppages awarded by a court-martial in respect of any offence occasioning personal injury of which a person is convicted or any other such offence which is taken into consideration in determining sentence shall not exceed such sum as is for the time being specified by an order made by the Secretary of State.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]]

#### Textual Amendments

- F85** S. 71 substituted for ss. 71-73 by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 36**, 78(4)
- F86** Words inserted by [Armed Forces Act 1976 \(c. 52\)](#), **s. 10(3)(b)**
- F87** S. 71(1)(a) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**
- F88** S. 71(1)(bb) inserted by [Armed Forces Act 1981 \(c. 55\)](#), **s. 2(3)(a)**
- F89** S. 71(1)(bc) inserted (11.1.2001) by 2000 c. 43, s. 74, **Sch. 7 para. 14**; S.I. 2000/3302, **art. 2(b)**
- F90** Words in s. 71(1)(k) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 7(1)(a)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)
- F91** Proviso substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s.16(1), **Sch. 1 para. 4**
- F92** Words inserted (*retrospectively*) by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), Sch. 1 para. 1(1) (a)
- F93** Words in s. 71(5) omitted (1.1.1999) by virtue of S.I. 1998/3086, **reg. 3(1)** (with transitional provisions in Sch.)
- F94** S. 71(5A)(5B) inserted (1.1.1999) by S.I. 1998/3086, **reg. 3(2)** (with transitional provisions in Sch.)
- F95** S. 71 (6)(7) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 7(1)(b)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)

#### [<sup>F96</sup>71A Juveniles.

(1) A person under [<sup>F97</sup>18] years of age shall not be sentenced to imprisonment.

[ Where—

- <sup>F98</sup>(1A) (a) a person under 21 years of age is convicted of murder or any other civil offence the sentence for which is fixed by law as imprisonment for life; or
- (b) a person under that age is convicted of any civil offence to which [<sup>F99</sup>section 109 of the Powers of Criminal Courts (Sentencing) Act 2000] would apply and the court is not of the opinion mentioned in subsection (2) of that section,

the court shall sentence him to custody for life unless he is liable to be detained under subsection (3) below.]

[ Where a person aged [<sup>F101</sup>18 years] or over but under 21 years of age is convicted of any <sup>F100</sup>(1B) other offence for which a person aged 21 years or over would be liable to imprisonment for life [<sup>F102</sup>then, subject to subsection (1E) below], the court shall sentence him to custody for life if—

- <sup>F103</sup>(a) . . . . .
- (b) it considers that a custodial sentence for life would be appropriate.

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- (1C) For the purpose of determining whether any method of dealing with a person to whom subsection (1B) of this section applies, other than sentencing him to custody for life, is appropriate, the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.]
- <sup>F104</sup> [ Subject to subsections (3) and (4) below, the only custodial sentences that a court may (1D) award where a person under [<sup>F97</sup>18]] years of age is convicted or found guilty of an offence are—
- (a) a custodial order under section 71AA of this Act or under paragraph 10 of Schedule 5A to this Act; and
  - (b) a sentence of custody for life under subsection (1A) or (1B) above.
- (1E) A court may not—
- (a) make a custodial order under section 71AA of this Act; or
  - (b) pass a sentence of custody for life under subsection (1B) above;
- unless it is satisfied—
- (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged [<sup>F97</sup>18] or over the court would pass a sentence of imprisonment; and
  - (ii) that he qualifies for a custodial sentence.
- (1F) An offender qualifies for a custodial sentence if—
- (a) he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them; or
  - (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
  - (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.
- (2)
- <sup>F105</sup>(3) A person convicted of murder [<sup>F106</sup>or any other offence the sentence for which is fixed by law as life imprisonment]who was under 18 years of age when the offence was committed shall not be sentenced to imprisonment for life <sup>F107</sup>. . . ; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty’s pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.
- (4) [<sup>F108</sup>In any case where—
- (a) a person aged 14 or over but under [<sup>F101</sup>18 years] of age is]found guilty of a civil offence (other than one the sentence for which is fixed) which is punishable by a civil court in England or Wales on indictment by, in the case of [a person who has attained 18 years of age], a term of imprisonment for 14 years or more, [<sup>F108</sup>or
  - (b) a person under 14 years of age is found guilty of manslaughter, and, in either case, the court] is of opinion that none of the other methods in which the case may be legally dealt with is suitable, [<sup>F109</sup>the court may sentence that person] to be detained for suchperiod, not exceeding the maximum term of imprisonment with which the offence is punishable by such a civil court in the case of an adult, as may be specified in the sentence; and where such a sentence has been passed, the person on whom it is passed shall during that

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period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

- (5) A sentence of [<sup>F110</sup>custody for life or]detention under subsection (3) or (4) above shall be treated for the purposes of this Part of this Act as a punishment provided by this Act involving the same degree of punishment as a sentence of imprisonment; and section 71(3) and (4) above shall apply to such a sentence of detention [<sup>F110</sup>and to a sentence of custody for life] as they apply to a sentence of imprisonment.
- (6) A person detained pursuant to the directions of the Secretary of State under this section shall, while so detained, be deemed to be in legal custody.]
- <sup>F111</sup>[(7) A sentence of detention under section 71(1)(e) of this Act shall be treated for the purposes of this section as a non-custodial sentence and references in this section to a custodial sentence shall be construed accordingly.]

#### Textual Amendments

- F96** S. 71A inserted by [Armed Forces Act 1976 \(c. 52\), s 10\(1\)](#)
- F97** Words in s. 71A(1)(1D)(1E)(i) substituted (*prosp.*) by 2000 c. 43, ss. 74, 80, **Sch. 7 para. 15(1)(a)**
- F98** S. 71A(1A) substituted (1.10.1997) by 1997 c. 43, s. 55(2), **Sch. 4 para. 1(2)**; S.I. 1997/2200, **art. 2(1)(2)(a)** (subject to **art. 5**)
- F99** Words in s. 71A(1A)(b) substituted (25.8.2000) by 2000 c. 6, s. 165, **Sch. 9 para. 9**
- F100** S. 71A(1B)–(1C) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, **Sch. 8 para. 2(b)**
- F101** Words in s. 71A(1B)(4)(a) substituted (1.10.1992 (E.W.)) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 71, 102(2), **Sch. 9, para. 1**; S.I. 1992/333, **art. 2(2)**, **Sch. 2**
- F102** Words in s. 71A(1B) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 2(2)(a)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)
- F103** S. 71A(1B)(a) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), ss. 2(2)(b), 26(2), **Sch. 3**; S.I. 1991/2719, **art. 2 Sch.** (with **art. 3(1)**)
- F104** S. 71A(1D)(1E)(1F) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 2(3)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)
- F105** S. 71A(2) repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 78, **Sch. 16**
- F106** Words in s. 71A(3) inserted (30.11.2000 with effect as mentioned in **Sch. 7 para. 15(2)**) by 2000 c. 43, s. 74, **Sch. 7 para. 15(1)(e)**
- F107** Words in s. 71A(3) repealed (11.5.2001) by 2001 c. 19, **s. 38 Sch. 7 Pt. 4**
- F108** Words in s. 71A(4) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 2(4)(a)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)  
Words in s. 71A(4) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 2(4)(b)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)
- F109** Words in s. 71A(4) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **s. 2(4)(c)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)
- F110** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, **Sch. 8 para. 2(d)**
- F111** S. 71A(7) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), **ss. 2(5)**; S.I. 1991/2719, **art. 2** (with **art. 3(1)**)

#### <sup>F112</sup>71A Young service offenders: custodial orders.

- (1) Where a person who has attained seventeen years of age but is under twenty-one years of age is found guilty by a court-martial of an offence punishable under this Act with imprisonment, the court shall have power, <sup>F113</sup> . . . , to make an order (in this section referred to as a “custodial order”) committing him to be detained in accordance



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with the provisions of this section for a <sup>F114</sup>period to be specified in the order <sup>F115</sup>. . .  
<sup>F116</sup>which—

- (a) shall be not less than the appropriate minimum period, that is to say—
  - (i) in the case of an offender who has attained eighteen years of age, the period of 21 days; or
  - (ii) in the case of an offender who is under that age, the period of two months; and
- (b) shall not exceed] the maximum period for which he could have been sentenced to imprisonment if he had attained the age of twenty-one years.]

<sup>F117</sup>(1A) . . . . .

<sup>F118</sup>[ The court shall not make a custodial order committing an offender aged 17 to be  
 (1AA) detained for a period exceeding twelve months or for a period such that the continuous period for which he is committed to be detained under that order and any one or more other custodial orders exceeds twelve months.]

<sup>F119</sup>(1B) [ For the purposes of determining whether <sup>F120</sup>it is satisfied as mentioned in sub-paragraphs (i) and (ii) of subsection (1E) of section 71A of this Act with respect to any person] the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.]

- (2) If a person is outside the United Kingdom at the time a custodial order is made in respect of him, he shall as soon as practicable <sup>F121</sup>. . . be removed to the United Kingdom.
- (3) A person in respect of whom a custodial order has been made shall be detained in such appropriate institution as the Secretary of State may direct, and any enactment applying to persons detained in any such institution shall apply to a person so detained under this section.
- (4) A custodial order shall be sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State’s direction.

[ The following provisions of this Act shall apply in the case of a sentence under a  
<sup>F122</sup>(5) custodial order as they apply in the case of a sentence of imprisonment, that is to say—

- (a) sections 71(3) and (4), 118(1), 118A(1) and (3) 119A(3) and 145; and
- (b) for the period before a person sentenced under a custodial order is received into the institution where he is to be detained (or for the currency of the sentence if its term ends before he is so received), sections 119(2), (4) and (5), 122, 123, 129, 142 and 190B;

and, accordingly, references in those provisions to a sentence of imprisonment shall include for the purposes of this subsection references to a sentence under a custodial order.]

(6) In this section “appropriate institution” means—

- <sup>F123</sup>(a) [ where the offender is in or removed to England or Wales, any institution in which a person sentenced to detention in a young offender institution could be detained, <sup>F124</sup>section 98 of the Powers of Criminal Courts (Sentencing) Act 2000] having effect in relation to the offender as it has effect in relation to an offender sentenced to detention in a young offender institution;]

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[ where the offender is in or removed to Scotland, a young offenders  
F125(b) institution;]

(c) where the offender is in or removed to Northern Ireland, a young offenders  
centre.

[ [F127 Sections 16 and 17 of the Crime (Sentences) Act 1997 (as modified by section 19  
F126(6A) of that Act)](release of young offenders) shall apply to persons released from a term  
of detention under a custodial order as it applies to persons released from a term of  
detention under a detention centre order or a term of youth custody.]

F128(6B) . . . . .

(7) This section does not apply to offenders who are civilians (as regards whom similar  
provision is made by paragraph 10 of Schedule 5A to this Act)]

#### Textual Amendments

- F112** S. 71AA inserted by [Armed Forces Act 1981 \(c. 55\), s. 2\(1\)](#)
- F113** Words in s. 71AA(1) (which were substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch. 8 para. 3(a)) repealed (1.10.1992 (E.W.)) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), ss. 71, 101\(2\), 102\(2\), Sch. 9, para. 2\(b\), Sch. 13](#) ; S.I. 1992/333, art. 2(2), Sch. 2; and repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), ss. 3\(1\), 26\(2\), Sch. 3](#); S.I. 1991/2719, art. 2, [Sch.](#) (with art. 3(1))
- F114** Words in s. 71AA(1) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 3\(a\)](#)
- F115** Words in s. 71AA(1) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 3\(1\)](#); S.I. 1991/2719, [art. 2](#) (with art. 3(1)) and repealed (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), ss. 101\(2\), Sch. 13](#); S.I. 1992/333, art. 2(2), [Sch. 2](#)
- F116** Words in s. 71AA(1) substituted (1.10.1992 (E.W.)) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), ss. 71, 102\(2\), Sch. 9 para. 2\(a\)](#); S.I. 1992/333, art. 2(2), [Sch. 2](#)
- F117** S. 71AA(1A) (which was inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para. 3\(b\)](#)) repealed (1.10.1992 (E.W.)) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), ss. 71, 101\(2\), 102\(2\), Sch. 9, para. 2\(b\), Sch. 13](#); S.I. 1992/333, art. 2(2), [Sch. 2](#); and repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), ss. 3\(2\), 26\(2\), Sch. 3](#); S.I. 1991/2719, art. 2, [Sch.](#) (with art. 3(1))
- F118** S. 71AA(1AA) inserted (1.10.1992 (E.W.)) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), ss. 71, 102\(2\), Sch. 9, para. 2\(c\)](#); S.I. 1992/333, art. 2(2), [Sch. 2](#)
- F119** S. 71AA(1B) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8, para. 3\(b\)](#)
- F120** Words in s. 71AA(1B) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 3\(3\)](#); S.I. 1991/2719, [art. 2](#) (with art. 3(1))
- F121** Words in s. 71AA(2) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), ss. 26\(1\)\(2\), Sch. 2 para. 1, Sch. 3](#); S.I. 1991/2719, art. 2, [Sch.](#) (with art. 3(1))
- F122** S. 71AA(5) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para.5\(2\)](#)
- F123** S. 71AA(6)(a) substituted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s.123\(6\), Sch. 8 para. 4\(a\)](#)
- F124** Words in s. 71AA(6)(a) substituted (25.8.2000) by [2000 c. 6, ss. 165, 168\(1\), Sch. 9 para. 10](#)
- F125** S. 71AA(6)(b) substituted (S.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 124\(4\)](#), Sch. 9 para. 2(a)
- F126** S. 71AA(6A) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 58, Sch. 8 para.3\(d\)](#)
- F127** Words in s. 71AA(6A) substituted (1.10.1997) by [1997 c. 43, s. 55\(2\), Sch. 4 para. 1\(3\)](#); S.I. 1997/2200, [art. 2\(1\)\(2\)\(a\)](#) (subject to art. 5)
- F128** S. 71AA(6B) repealed (1.10.1993) by [1993 c. 9, s. 47\(3\), Sch. 7 Pt. I](#); S.I. 1993/2050, [art. 3\(4\)](#)

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**[71AB <sup>F129</sup>Reasons to be given where custodial sentence awarded to young offender.**

- (1) This section applies where a court—
  - (a) makes a custodial order under section 71AA of this Act, or
  - (b) passes a sentence of custody for life under section 71A(1B) of this Act.
- (2) It shall be the duty of the court—
  - (a) to state in open court and to record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence under one or more of the paragraphs of subsection (1F) of section 71A of this Act, the paragraph or paragraphs in question, and why it is so satisfied; and
  - (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (3) Where a court makes a custodial order and, in accordance with its duty under subsection (2) above, makes the statement required by paragraph (a) of that subsection, the matters stated shall be specified in the order (made under Imprisonment and Detention Rules) pursuant to which the offender is committed into custody.]

**Textual Amendments**

**F129** S. 71AB inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), [s. 4\(1\)](#); [S.I. 1991/2719, art. 2](#)

**[<sup>F130</sup>71B Power to impose imprisonment for default in payment of fines.**

- (1) Subject to the provisions of this section, if a court-martial imposes a fine on a person found guilty of any offence—
  - (a) who is sentenced to imprisonment on the same occasion for the same or another offence or,
  - (b) who is already serving or otherwise liable to serve a term of imprisonment, <sup>F131</sup>or
  - (c) in respect of whom the court makes an order under section 71AA above on the same occasion for the same or another offence, or
  - (d) who is already serving or otherwise liable to serve a period of detention under such an order,]

it may make an order fixing a further consecutive term of imprisonment [<sup>F132</sup>or detention] which the said person is to undergo if any part of the fine is not duly paid or recovered on or before the date on which he could otherwise be released.

[ Subject to subsections (4) and (5) below, the Table in [<sup>F134</sup>section 139(4) of the Powers <sup>F133</sup>(2) of Criminal Courts (Sentencing) Act 2000] (maximum periods of imprisonment for default in payment of fines etc.), as [<sup>F135</sup>for the time being in force], shall have effect for the purpose of determining the maximum periods of further imprisonment or detention that may be specified under subsection (1) above for fines of the amounts set out in that Table.]

- (3) Where the whole amount of the said fine is paid or recovered in the prescribed manner the order under subsection (1) above shall cease to have effect, and the person subject to it shall be released unless he is in custody for some other cause.
- (4) Where part of the said amount is paid or recovered in the prescribed manner, the period of the further term of imprisonment [<sup>F136</sup>or detention] specified under subsection (1)

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above shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid or recovered bears to the amount of the said fine.

- (5) In calculating the reduction required under the last preceding subsection any fraction of a day shall be left out of account.

[ An order imposing a term of detention under this section shall be given effect as if it <sup>F137</sup>(5A) were a custodial order under section 71AA above.]

- (6) In this section, references to the due recovery of any amount include references to deductions from pay under Part III of this Act, but do not include references to amounts forfeited under the said Part III.]

#### Textual Amendments

**F130** S. 71B inserted by [Armed Forces Act 1976 \(c. 52\)](#), [Sch. 6 para. 1](#)

**F131** S. 71B(1)(c)(d) and word “or” immediately preceding it inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, [Sch. 8 para. 4\(1\)\(a\)](#)

**F132** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, [Sch. 8 para. 4\(1\)\(b\)](#)

**F133** S. 71B(2) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 5

**F134** Words in s. 71B(2) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), [Sch. 9 para. 11](#)

**F135** Words in s. 71B(2) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(1), [Sch. 2 para. 2](#); [S.I. 1991/2719](#), [art. 2](#)

**F136** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, [Sch. 8 para. 4\(1\)\(b\)](#)

**F137** S. 71B(5A) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 58, [Sch. 8 para. 4\(1\)\(c\)](#)

#### Arrest

#### [<sup>F138</sup>74 Power to arrest offenders.

- (1) A person who is reasonably suspected of being engaged in committing, or of having committed, an offence against any provision of this Act may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to military or air-force law or to the Naval Discipline Act 1957 (c. 53).

- (2) An officer may be arrested under subsection (1)—

- (a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;
- (b) by a service policeman; or
- (c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.

- (3) A person of or below the rank of warrant officer may be arrested under subsection (1)

- (a) by an officer;
- (b) by a warrant officer or non-commissioned officer of superior rank or rate;
- (c) by a service policeman;
- (d) by a person who is lawfully exercising authority on behalf of a provost officer; or
- (e) if a member of a ship’s company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.

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- (4) A person to whom any provisions of Part 2 of this Act apply by virtue of section 208A or 209 of this Act (application of Act to passengers in HM ships and aircraft and to civilians) may be arrested under subsection (1)—
- (a) by an officer;
  - (b) by a service policeman; or
  - (c) by a person who is lawfully exercising authority on behalf of a provost officer.
- (5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.
- (6) The power of arrest conferred on any person by this section may be exercised—
- (a) personally;
  - (b) by giving orders for the arrest of the person who is to be arrested; or
  - (c) where that person is subject to military or air-force law or to the Naval Discipline Act 1957, by ordering him into arrest.]

**Textual Amendments**

**F138** Ss. 74, 74A substituted for s. 74 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, 3

**[<sup>F138</sup>74A] Power of arrest in anticipation of commission of offence**

- (1) A service policeman may arrest a person whom he reasonably suspects of being about to commit an offence against any provision of this Act.
- (2) Subsection (6) of section 74 of this Act applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.
- (3) Where a person is arrested under this section—
- (a) the arrest must be reported as soon as practicable to his commanding officer; and
  - (b) he may be kept in military, air-force or naval custody until such time as a service policeman is satisfied that the risk of his committing the offence concerned has passed.]

**Textual Amendments**

**F138** Ss. 74, 74A substituted for s. 74 (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, 3

*[<sup>F139</sup> Custody*

**Textual Amendments**

**F139** S. 75-75E and the preceding cross heading substituted (2.10.2000) for s. 75 by [2000 c. 4, s. 1\(1\)](#); [S.I. 2000/2366](#), art. 2

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**F140 75 Limitations on custody without charge.**

- (1) A person arrested under section 74 of this Act shall not be kept in military custody without being charged except in accordance with sections 75A to 75C of this Act.
- (2) If at any time the commanding officer of a person who is kept in military custody without being charged—
  - (a) becomes aware that the grounds for keeping that person in military custody have ceased to apply; and
  - (b) is not aware of any other grounds on which continuing to keep that person in military custody could be justified under the provisions of this Act,it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from military custody.
- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 75A to 75K of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 76(1) of this Act.]

**Textual Amendments**

**F140** Ss. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(1); S.I. 2000/2366, art. 2

**F141 75A Authorisation of custody without charge.**

- (1) Where a person is arrested under section 74 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in military custody without being charged,shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in military custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in military custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;and the person to whom the report relates may be kept in military custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—

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- (a) that keeping him in military custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously,
- he may authorise the keeping of that person in military custody.
- (5) An authorisation under subsection (4) above—
- (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  - (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.
- (6) A person shall not be kept in military custody later than 48 hours after the relevant time without being charged except in accordance with section 75C of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 74 of this Act means the time of the arrest.

#### **Textual Amendments**

**F141** Ss. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by [2000 c. 4, s. 1\(1\)](#); [S.I. 2000/2366, art. 2](#)

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

**C12** S. 75A(1)(3)(5)(6) modified (2.10.2000) by [S.I. 2000/2366, arts. 2, 3](#), [Sch. para. 2](#)

#### **<sup>F142</sup>75B Review of custody by commanding officer.**

- (1) The commanding officer of a person kept in military custody in accordance with section 75A of this Act shall, subject to subsection (3) below, review the keeping of that person in military custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 75A of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under subsection (4) of that section, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in military custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—



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- (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 75A(4) of this Act, and
- (b) the keeping in military custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

#### **Textual Amendments**

**F142** S. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by [2000 c. 4, s. 1\(1\)](#); S.I. [2000/2366, art. 2](#)

#### **<sup>F143</sup>75C Extension of custody without charge.**

- (1) If, on an application by the commanding officer of a person arrested under section 74 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in military custody is justified, the judicial officer may by order authorise the keeping of that person in military custody.
- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in military custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in military custody is justified only if—
  - (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 75B of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and

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- (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period, the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in military custody is justified, he shall—
- (a) refuse the application, or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in military custody during the adjournment.
- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in military custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.
- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from military custody.
- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from military custody.

#### **Textual Amendments**

**F143** S. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by [2000 c. 4, s. 1\(1\)](#); S.I. [2000/2366, art. 2](#)

#### **<sup>F144</sup>75D Custody without charge: other cases.**

- (1) Sections 75 to 75C of this Act apply—
- (a) where a person is delivered into military custody under section 187(2) or (3), 188(2) or 190A(3) of this Act or under Schedule 2 to the <sup>M9</sup>Reserve Forces Act 1996, and
  - (b) in any other case where a person arrested by a constable is delivered into military custody,
- as they apply where a person is arrested under section 74 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.
- (2) In those cases references to the relevant time are—
- (a) in relation to a person delivered into military custody following arrest under section 186 or 190A of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into military custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.

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- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F144** S. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(1); S.I. 2000/2366, art. 2

**Marginal Citations**

**M9** 1996 c. 14.

**<sup>F145</sup>75E Custody without charge: supplementary.**

- (1) The Defence Council may by regulations make provision with respect to—
- (a) the delegation by the commanding officer of a person in military custody of any of the commanding officer's functions under sections 75 to 75C of this Act;
  - (b) circumstances in which a person kept in military custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) the keeping of written records relating to compliance with any requirement of sections 75 to 75C of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 75A to 75C of this Act to a period of time is to be treated as approximate only.

**Textual Amendments**

**F145** S. 75-75E and the preceding cross-heading substituted (2.10.2000) for s. 75 by 2000 c. 4, s. 1(1); S.I. 2000/2366, art. 2

**[<sup>F146</sup>75F Custody after charge.**

- (1) Where a person subject to military law (“the accused”) is kept in military custody after being charged with an offence against any provision of this Part of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in military custody, but only if—
- (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from military custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in military custody for his own protection or, if he is under 17 years of age, for his own welfare; [<sup>F147</sup>or]

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- (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence;  
F148 ...
- F148(d) .....
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
- (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused's behaviour on previous occasions while charged with an offence and released from military custody or while on bail in criminal proceedings,
  - (d) the strength of the evidence that the accused committed the offence,
- as well as to any others which appear to be relevant.
- (4) If—
- (a) the accused is charged with an offence to which this subsection applies;
  - (b) representations are made as to any of the matters mentioned in subsection (2) (a) above; and
  - (c) the judicial officer decides not to authorise the keeping of the accused in military custody,
- the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.
- (5) Subsection (4) above applies to any offence under section 70 of this Act where the corresponding civil offence is—
- (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in military custody shall be such period, ending (subject to section 75G(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in military custody—
- (a) if the accused is subsequently released from military custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary dealing with the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in military custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.]

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

- F146** S. 75F inserted (2.10.2000) by 2000 c. 4, s. 2(1); S.I. 2000/2366, art. 2
- F147** Word in s. 75F(2)(b) inserted (18.7.2008) by The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, 16(a)
- F148** S. 75F(2)(d) and word omitted (18.7.2008) by virtue of The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, 16(b)

#### [<sup>F149</sup>75G Review of custody after charge.

- (1) Where the keeping of the accused in military custody is authorised by an order under section 75F(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused's commanding officer that the grounds on which such an order was made have ceased to exist, he shall—
  - (a) release the accused from military custody, or
  - (b) request a review.
- (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.
- (4) Subsections (2) to (6) of section 75F of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
- (5) At the first review the accused may support an application for release from military custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
- (6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in military custody for a period of not more than 28 clear days.
- (8) In this section “review” means a review under subsection (1) above.]

#### Textual Amendments

- F149** S. 75G inserted (2.10.2000) by 2000 c. 4, s. 3(1); S.I. 2000/2366, art. 2

#### [<sup>F150</sup>75H Custody during court-martial proceedings.

- (1) Where the accused is kept in military custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by court-martial, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
- (2) In relation to a review before the announcement of the court-martial's finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.

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- (3) In section 75F(2), after paragraph (d) there shall be inserted— “;or
- (e) the accused’s case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in military custody. ”
- (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 75F(2) does not authorise the keeping of the accused in military custody after he is sentenced by the court-martial.
- (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.]

**Textual Amendments**

**F150** S. 75H inserted (2.10.2000) by [2000 c. 4, s. 4\(1\)](#); S.I. 2000/2366, [art. 2](#)

**[<sup>F151</sup>75J Release from custody after charge or during proceedings.**

- (1) This section applies where, at a hearing under section 75F(1) of this Act or on a review under section 75G(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in military custody.
- (2) Where this section applies, the accused—
- (a) subject to paragraph (b) below, shall be released from military custody forthwith, but
- (b) if he is subject to military law only by virtue of section 131 or 205(1)(ea), (eb), (g) or (h) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.
- (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
- (4) A person guilty of an offence under this section shall be liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.]

**Textual Amendments**

**F151** S. 75J inserted (2.10.2000) by [2000 c. 4, s. 5\(1\)](#); S.I. 2000/2366, [art. 2](#)

**[<sup>F152</sup>75K Arrest during proceedings.**

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to military law (“the accused”) who—
- (a) has been charged with, or is awaiting sentence for, an offence against any provision of this Part of this Act, and
- (b) is not in military custody,

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may, if satisfied that taking the accused into military custody is justified, give orders for his arrest.

- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial's finding on the charge or every charge against the accused.
- (3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into military custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.
- (5) For the purposes of this section, taking the accused into military custody is justified if there are substantial grounds for believing that, if not taken into military custody, he would—
  - (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (6) Taking the accused into military custody is also justified for the purposes of this section if—
  - (a) the accused is subject to military law only by virtue of section 131 of this Act, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in military custody—
  - (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 75G(1) of this Act.
- (8) A person arrested under subsection (3) above—
  - (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him), and shall be dealt with by him as on a review under section 75G(1) of this Act.]

**Textual Amendments**

F152 S. 75K inserted (2.10.2000) by 2000 c. 4, s. 6(1); S.I. 2000/2366, art. 2

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

C13 S. 75K(1)(7) modified (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 5



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**[<sup>F153</sup>75L Judicial officers.**

- (1) Judicial officers shall be appointed for the purposes of this Act by the Judge Advocate General.
- (2) No person shall be appointed under this section unless—
  - (a) he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial, <sup>F154</sup> . . .
  - (b) he has, and has had for at least five years, in any Commonwealth country or any colony 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 [<sup>F155</sup>or
  - (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Judge Advocate General to be appropriate.]

[ In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth <sup>F156</sup>(3) country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates’ Courts).]]

**Textual Amendments**

**F153** S. 75L inserted (2.10.2000) by 2000 c. 4, s. 7(1); S.I. 2000/2366, art. 2

**F154** Word in s. 75L(2)(a) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 6 para. 35(2), Sch. 7 Pt. 7; S.I. 2001/3234, art. 2

**F155** S. 75L(2)(c) and word inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 35(2); S.I. 2001/3234, art. 2

**F156** S. 75L(3) inserted (1.10.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 6 para. 35(3); S.I. 2001/3234, art. 2

**[<sup>F157</sup>75MCustody rules.**

- (1) The Secretary of State may make rules with respect to proceedings—
  - (a) on an application under section 75C of this Act;
  - (b) under section 75F(1) of this Act;
  - (c) on a review under section 75G(1) of this Act.
- (2) Rules under this section may in particular make provision with respect to—
  - (a) arrangements preliminary to the proceedings;
  - (b) the representation of the person to whom the proceedings relate;
  - (c) the admissibility of evidence;
  - (d) procuring the attendance of witnesses;
  - (e) the immunities and privileges of witnesses;
  - (f) the administration of oaths;
  - (g) circumstances in which a review under section 75G(1) of this Act may be carried out without a hearing;
  - (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 75C(2)(b), 75F(1) or 75K(7)(b) or (8)



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- (b) of this Act for a person to be brought before a judicial officer or judge advocate;
- (i) the appointment of persons to discharge administrative functions under the rules.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

**F157** S. 75M inserted (2.10.2000) by 2000 c. 4, s. 8(1); S.I. 2000/2366, art. 2

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

**C14** S. 75M modified (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 5

### *Investigation of, and summary dealing with, charges*

#### **[<sup>F158</sup>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.
- (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.]

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

**F158** Ss. 76, 76A-76C substituted (1.4.1997 subject to art. 3 of the commencing S.I.) for s. 76 by 1996 c. 46, s. 5, **Sch. 1 Pt. 1 para. 2**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

#### [<sup>F159</sup>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 [<sup>F160</sup>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.]

#### Textual Amendments

**F159** Ss. 76, 76A-76C substituted (1.4.1997 subject to art. 3 of three commencing S.I.) for s. 76 by 1996 c. 46, s. 5, **Sch. 1 Pt. 1 para. 2**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F160** Word in s. 76A(4) substituted (28.2.2002) by 2001 c. 19, s. 17, **Sch. 1 para. 1**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)

#### [<sup>F161</sup>76A Right to elect for court-martial trial.

- (1) Before dealing summarily with a charge, the commanding officer or appropriate superior authority shall afford the accused the opportunity of electing court-martial trial in relation to that charge.
- (2) Where in accordance with regulations under section 83 of this Act two or more charges are together to be dealt with summarily, any election for court-martial trial must relate to all the charges concerned.
- (3) If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority shall refer to higher authority the charge to which the election relates, with a view to the trial of the accused by court-martial.

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- (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—
  - (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 deal summarily with the charge.
- (5) Subsection (1) above does not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the appropriate superior authority or commanding officer under subsection (4) above.
- (6) Where under section 76B(3) of this Act a charge is amended or one charge is substituted for another, subsection (1) above applies in relation to the amended or substituted charge.]

**Textual Amendments**

**F161** S. 76AA inserted (2.10.2000) by 2000 c. 4, s. 11(1); S.I. 2000/2366, art. 2

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

**C15** S. 76AA(1) amended (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 8(2)

**C16** S. 76AA(1) modified (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 8(1)(b)

**[<sup>F162</sup>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.

<sup>F163</sup>(5) .....

<sup>F163</sup>(6) .....

- (7) [<sup>F164</sup>If the commanding officer or appropriate superior authority determines that the charge has been proved, he] shall record a finding that the charge has been proved and award punishment accordingly.

<sup>F163</sup>(8) .....

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (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 [<sup>F165</sup>or 76AA] above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.]

#### **Textual Amendments**

- F162** Ss. 76, 76A-76C substituted (1.4.1997 subject to art. 3 of the commencing S.I.) for s. 76 by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 2**; S.I. 1997/304, **art. 2**
- F163** S. 76B(5)(6)(8) repealed (2.10.2000) by 2000 c. 4, ss. 11(3)(a), 27, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 8(2)**)
- F164** Words in s. 76B(7) substituted (2.10.2000) by 2000 c. 4, s. 11(3)(b); S.I. 2000/2366, **art. 2**
- F165** Words in s. 76B(10) inserted (2.10.2000) by 2000 c. 4, s. 11(3)(c); S.I. 2000/2366, **art. 2**

#### **[<sup>F166</sup>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;
  - (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.

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- (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.

[ For the purposes of subsections (6) to (8) above, a day’s pay shall be taken to be—

- <sup>F167</sup>(9) (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

<sup>F167</sup>(9A) In subsection (9)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.]

(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.]

**Textual Amendments**

**F166** Ss. 76, 76A-76C substituted (1.4.1997 subject to art. 3 of the commencing S.I.) for s. 76 by 1996 c. 46, s. 5, **Sch. 1 Pt. 1 para. 2**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F167** S. 76C(9)(9A) substituted (1.1.1999) for s. 76C(9) by S.I. 1998/3086, **reg. 3(4)**

<sup>F168</sup>77 .....

**Textual Amendments**

**F168** S. 77 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. 1 para. 3**, **Sch. 7 Pt. 1**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

<sup>F169</sup>77A .....

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F169** S. 77A repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 3, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F170</sup>**78** .....

**Textual Amendments**

**F170** S. 78 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 3, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F171</sup>**79** .....

**Textual Amendments**

**F171** S. 79 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 3, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F172</sup>**80** .....

**Textual Amendments**

**F172** S. 80 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. I para. 3, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

**81 Confession of desertion by warrant officer, non-commissioned officer or soldier.**

- (1) Where in accordance with Queen’s Regulations a warrant officer, non-commissioned officer or soldier signs a written confession that he has been guilty of desertion, his commanding officer may, notwithstanding anything in the foregoing provisions of this Part of this Act, submit the confession for the consideration of [<sup>F173</sup>the Defence Council] or such officer not below the rank of brigadier as may be provided by Queen’s Regulations.
- (2) After considering any such confession [<sup>F173</sup>the Defence Council] or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.

(3)

<sup>F174</sup>(4) Subsections (2) to (7) of section seventeen of this Act shall apply in relation to the forfeiture of service by virtue of this section subject to the following modifications:—

(a)

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- <sup>F175</sup>(b) for references to the date on which the offender was convicted there shall be substituted referenceto the date on which the direction was given.

**Textual Amendments**

**F173** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F174** Ss. 67, 75(3) and 81(3) repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt.I](#)

**F175** S. 81(4)(a) repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

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

**C17** S. 81(2) extended by [Armed Forces Act 1981 \(c. 55\), s. 4\(1\)](#)

**82 Officers who are to act as commanding officers and appropriate superior authorities.**

(1) In this Act the expression “commanding officer”, in relation to a person charged with [<sup>F176</sup>, or in custody in connection with,]an offence, means such officerhaving powers of command over that person as may be determined by or under regulations of [<sup>F177</sup>the Defence Council].

[<sup>F178</sup>(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 commodore], or
- (b) where the Defence Council so direct, he is a colonel or a naval or air force officer of corresponding rank.]

(3) .....

**Textual Amendments**

**F176** Words in s. 82(1) inserted (2.10.2000) by [2000 c. 4, s. 10, Sch. 1 para. 2; S.I. 2000/2366, art. 2](#)

**F177** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F178** S. 82(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 5, Sch. 1 Pt. I para. 4\(2\); S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

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

**C18** Words in s. 82(2)(a) substituted (28.2.2002) by [2001 c. 19, s. 17, Sch. 2 para. 2; S.I. 2002/345, art. 2](#) (subject to transitional provisions in [art. 3](#))

[<sup>F179</sup>**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;



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- (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;
  - <sup>F180</sup> [ the procedure for making elections under section 118ZA(2) of this Act and withdrawing such elections;]
  - (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.]

#### Textual Amendments

**F179** S. 83 substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. I para. 5**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F180** S. 83(2)(gg) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)

<sup>F181</sup> *The summary appeal court*

#### Textual Amendments

**F181** S. 83ZA and the preceding cross-heading inserted (2.10.2000) by 2000 c. 4, s. 14(1); S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)

#### <sup>F182</sup> **83ZA** The summary appeal court.

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded by commanding officers and appropriate superior authorities on dealing summarily with charges.
- (2) The court shall consist of—
  - (a) judge advocates appointed under section 83ZB of this Act, <sup>F183</sup> ...
  - (b) officers qualified under section 83ZC of this Act to be members of the court<sup>F184</sup>, and
  - (c) warrant officers qualified under an order made by virtue of section 20 of the Armed Forces Act 2001 to be members of the court.]



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- (3) The court—
  - (a) may sit in two or more divisions, and
  - (b) may sit in any place, whether within or outside the United Kingdom.
- (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
- (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
- (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 83ZJ of this Act.

#### Textual Amendments

- F182** S. 83ZA and the preceding cross-heading inserted (2.10.2000) by 2000 c. 4, s. 14(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)
- F183** Word in s. 83ZA(2)(a) omitted (19.8.2004) by virtue of The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), arts. 1, 5(2)(a)
- F184** S. 83ZA(2)(c) and word inserted (19.8.2004) by The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), arts. 1, 5(2)(b)

#### Judge advocates.

[<sup>F185</sup>83ZB

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the Judge Advocate General.
- (2) No person shall be appointed under this section unless he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial.]

#### Textual Amendments

- F185** S. 83ZB inserted (2.10.2000) by 2000 c. 4, s. 15(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

#### Officers qualified for membership of summary appeal court.

[<sup>F186</sup>83ZC

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a military officer who has held a commission in any of Her Majesty's naval, military, or air forces for a period of not less than two years or periods amounting in the aggregate to not less than two years.
- (2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other military officer or a naval or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
  - (a) the court administration officer,
  - (b) an officer under the command of the court administration officer,
  - (c) the prosecuting authority,

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- (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
  - (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
  - (f) a member of the Bar of Northern Ireland,
  - (g) a person who has in any Commonwealth country 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, or
  - (h) any person who is, or has at any time during the preceding five years been, a provost officer.
- (4) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
  - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.]

#### Textual Amendments

**F186** S. 83ZC inserted (2.10.2000) by 2000 c. 4, s. 16(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

#### **Constitution of summary appeal court for appeals.**

**F187** **83ZD**

- (1) For the purpose of hearing an appeal, the summary appeal court shall consist of—
- (a) one of the judge advocates appointed under section 83ZB of this Act, and
  - F188**(b) an officer qualified under section 83ZC of this Act for membership of the court, and]
    - F188** [ a third person who is either—
      - (i) an officer qualified under that section, or
      - (ii) a warrant officer qualified under an order made by virtue of section 20 of the Armed Forces Act 2001,
 

for membership of the court.]
- (2) Subsection (1) above has effect subject to any provision made by virtue of section 83ZJ of this Act [**F189** or section 20 of the Armed Forces Act 2001 (eligibility of warrant officers to be members of summary appeal courts)] .
- (3) The judge advocate for any appeal shall be specified by or on behalf of the Judge Advocate General.
- (4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.]

#### Textual Amendments

**F187** S. 83ZD inserted (2.10.2000) by 2000 c. 4, s. 17(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

**F188** S. 83ZD(1)(b)(c) substituted for s. 83ZD(1)(b) (19.8.2004) by The Summary Appeal Courts (Warrant Officers) Order 2004 (S.I. 2004/1937), arts. 1, 5(3)(a)

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**F189** Words in s. 83ZD(2) inserted (19.8.2004) by [The Summary Appeal Courts \(Warrant Officers\) Order 2004 \(S.I. 2004/1937\)](#), arts. 1, **5(3)(b)**

### **Right of appeal.**

[**F190**

**83ZE**

- (1) Any person in respect of whom—
  - (a) a charge has been dealt with summarily, and
  - (b) a finding that the charge has been proved has been recorded,may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).
- (2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.
- (3) The court may at any later time give leave for an appeal to be brought.
- (4) On any appeal under this section, the respondent shall be the prosecuting authority.]

#### **Textual Amendments**

**F190** S. 83ZE inserted (2.10.2000) by [2000 c. 4, s. 18\(1\)](#); [S.I. 2000/2366, art. 2](#) (with [Sch. para. 13](#))

### **Hearing of appeals.**

[**F191**

**83ZF**

- (1) An appeal under section 83ZE of this Act against a finding shall be by way of a rehearing of the charge.
- (2) An appeal under section 83ZE of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.
- (3) Except in such cases as may be prescribed by rules under section 83ZJ of this Act, appeals shall be heard in open court.
- (4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.
- (5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (6) Any directions given by the judge advocate shall be binding on the court.]

#### **Textual Amendments**

**F191** S. 83ZF inserted (2.10.2000) by [2000 c. 4, s. 19\(1\)](#); [S.I. 2000/2366, art. 2](#) (with [Sch. para. 13](#))

### **Powers of summary appeal court.**

[**F192**

**83ZG**

- (1) On an appeal against a finding that a charge has been proved, the summary appeal court—
  - (a) may confirm or quash the finding, or

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- (b) in a case where the commanding officer or appropriate superior authority could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.
- (2) Where the court quashes a finding—
  - (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
  - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
    - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding that a charge has been proved, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded by the commanding officer or appropriate superior authority so as to award any punishment which—
  - (a) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
  - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
  - (a) may confirm the punishment awarded by the commanding officer or appropriate superior authority, or
  - (b) may substitute any other punishment which—
    - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    - (ii) in the opinion of the court, is no more severe than that originally awarded.
- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on dealing with the charge summarily.
- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been made or awarded by the officer who dealt summarily with the charge.]

**Textual Amendments**

**F192** S. 83ZG inserted (2.10.2000) by 2000 c. 4, s. 20(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

**[<sup>F193</sup>83ZH Making of, and appeals from, decisions of court.**

- (1) Subject to section 83ZF(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 83ZD(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.]

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### Textual Amendments

**F193** S. 83ZH inserted (2.10.2000) by 2000 c. 4, s. 21(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

### Rules of summary appeal court.

**F194** **83ZJ**

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
  - (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 83ZE of this Act;
  - (b) as to the bringing and abandonment of appeals;
  - (c) as to the procedure for applying for leave under section 83ZE(2) or (3) of this Act;
  - (d) as to the procedure for applying for leave, or making a reference, under section 115(5A) or (5B) of this Act;
  - (e) as to consultation by the court administration officer with the Judge Advocate General before specifying where the court is to sit;
  - (f) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 83ZB of this Act sitting alone;
  - (g) enabling an uncontested appeal to be determined without a hearing;
  - (h) as to the convening and constitution of the court to hear any appeal;
  - (i) as to circumstances in which officers otherwise qualified under section 83ZC of this Act are ineligible to hear particular appeals;
  - (j) enabling the appellant to object to members of the court;
  - (k) as to the representation of the appellant on the hearing of appeals under section 83ZE of this Act and at any preliminary proceedings;
  - (l) as to the admissibility of evidence;
  - (m) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
  - (n) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
  - (o) as to the administration of oaths;
  - (p) as to the recording of the proceedings of the court and custody of records of the proceedings;
  - (q) as to making copies of the records of proceedings available and as to the fees payable for such copies;
  - (r) as to the procedure for applying to have a case stated under section 83ZH(2) of this Act.
- (3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.
- (4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F194** S. 83ZJ inserted (2.10.2000) by 2000 c. 4, s. 22(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

**<sup>F195</sup>83ZK Administration of oaths to members of summary appeal court.**

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.
- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F195** S. 83ZK inserted (2.10.2000) by 2000 c. 4, s. 23(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

**<sup>F196</sup>83ZL Privileges of witnesses and others.**

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

**Textual Amendments**

**F196** S. 83ZL inserted (2.10.2000) by 2000 c. 4, s. 24(1); S.I. 2000/2366, art. 2 (with Sch. para. 13)

*<sup>F197</sup> The prosecuting authority*

**Textual Amendments**

**F197** Ss. 83A-83C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, Sch. 1 Pt. II para. 14; S.I. 1997/304, art. 2 (with transitional provisions in Sch. 2)

**<sup>F198</sup>83A The prosecuting authority.**

- (1) Her Majesty may appoint a qualified officer belonging to Her military forces to be the prosecuting authority for the Army; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
  - (a) a person who has a ten year general qualification within the meaning of section 71 of the <sup>M10</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland of at least ten years’ standing; or

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- (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years' standing.

#### Textual Amendments

**F198** S. 83A-83C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 14**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

#### Marginal Citations

**M10** 1990 c. 41.

### <sup>F199</sup>**83B Functions of the prosecuting authority.**

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
  - (a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;
  - (b) if the accused is a non-commissioned officer or soldier, refer the case to the commanding officer of the accused,  
for the appropriate superior authority or commanding officer [<sup>F200</sup>to deal summarily with the preliminary charge].
- (3) In subsection (2) above “the preliminary charge” means the charge [<sup>F201</sup>which would have been dealt with summarily had the accused not elected court-martial trial].
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—
  - (a) determine any charge to be preferred and (subject to [<sup>F202</sup>subsection (5) below <sup>F203</sup>...]) whether any such charge is to be tried by general court-martial or district court-martial; and
  - (b) <sup>F204</sup>... prefer any charge so determined by him.
- (5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.
- (6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—
  - (a) amend, or substitute another charge or charges for, any charge preferred;
  - (b) prefer an additional charge, or additional charges, against the accused;
  - (c) discontinue proceedings on any charge.



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- (9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- [<sup>F205</sup>(9A) If the case has been referred to the prosecuting authority as a result of an election for court-martial trial, the prosecuting authority may not—
- (a) determine under subsection (4)(a) above that a charge which is not capable of being dealt with summarily is to be preferred,
  - (b) substitute, before the commencement of the trial, any charge which is not capable of being dealt with summarily for any charge preferred against the accused, or
  - (c) prefer any additional charge against the accused before the commencement of the trial,
- unless the accused has given his written consent.]
- (10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (11) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in subsection (8) (b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.
- (12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- [ If the prosecuting authority—
- <sup>F206</sup>(13) (a) decides not to prefer any charge referred to him, or
- (b) before the commencement of the trial of any charge preferred by him, discontinues proceedings on that charge,
- he may direct that, for the purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.]
- (14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

#### Textual Amendments

- F199** Ss. 83A-83C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 14**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F200** Words in s. 83B(2) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(1)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 8(3)**)
- F201** Words in s. 83B(3) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(2)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 8(3)**)
- F202** Words in s. 83B(4)(a) substituted (2.10.2000) by virtue of 2000 c. 4, s. 13, **Sch. 2 para. 1(3)(a)**; S.I. 2000/2366, **art. 2**



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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- F203** Words in s. 83B(4)(a) omitted (18.7.2008) by virtue of [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **17(2)(a)**
- F204** Words in s. 83B(4)(b) omitted (18.7.2008) by virtue of [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **17(2)(b)**
- F205** S. 83B(9A) substituted (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **17(3)**
- F206** S. 83B(13) substituted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 1(5)**; S.I. 2000/2366, **art. 2**

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

- C19** S. 83B(2) modified (1.1.2008) by [The Courts-Martial \(Army\) Rules 2007 \(S.I. 2007/3442\)](#), **rules 1, 5**
- C20** S. 83B(2) modified (2.10.2000) by [S.I. 1997/169](#), **rule 4A** (as inserted (2.10.2000) by [S.I. 2000/2374](#), **rule 2(4)**)

[<sup>F208</sup> **Referral of case to commanding officer.**]

- [<sup>F207</sup> **83BB**  
<sup>F209</sup> (1) .....  
<sup>F209</sup> (2) .....

[ Where—

- <sup>F210</sup>(2A) (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,  
(b) the prosecuting authority—  
(i) in respect of the case or part of the case, does not determine any charge to be preferred, or  
(ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and  
(c) the accused is below the rank of colonel,

the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.]

[<sup>F211</sup>(3) Where a case is referred to a commanding officer under this section, he shall deal with such charge as he considers appropriate in relation to the case as if it had been reported to him under section 76(1) of this Act.

(4) Where part of a case is referred to a commanding officer under this section, he shall deal with such charge as he considers appropriate in relation to that part of the case as if it had been reported to him under section 76(1) of this Act.]]

**Textual Amendments**

- F207** S. 83BB inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 3**; S.I. 2000/2366, **art. 2**
- F208** S. 83BB sidenote substituted (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **18(2)**
- F209** S. 83BB(1)(2) omitted (18.7.2008) by virtue of [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **18(3)**
- F210** S. 83BB(2A) inserted (28.2.2002) by 2001 c. 19, s. 17, **Sch. 1 para. 3(2)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in [art. 3](#))
- F211** S. 83BB(3)(4) substituted for s. 83BB(3) (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **18(4)**

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

- C21** S. 83BB(1) modified (1.1.2008) by [The Courts-Martial \(Army\) Rules 2007 \(S.I. 2007/3442\)](#), rules 1, **16**
- C22** S. 83BB(1) modified (1.1.2008) by [The Courts-Martial \(Army\) Rules 2007 \(S.I. 2007/3442\)](#), rules 1, **8**
- C23** S. 83BB(1) modified (2.10.2000) by [S.I. 1997/169](#), **rules 6A, 13A** (as inserted (2.10.2000) by [S.I. 2000/2374](#), **rule 2(5)(6)**)

#### **[<sup>F212</sup>83BC] Power of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following—
- (a) the Royal Military Police;
  - (b) the Royal Navy Regulating Branch;
  - (c) the Royal Air Force Police;
  - (d) the Ministry of Defence Police;
  - (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
  - (f) the metropolitan police force;
  - (g) the City of London police force;
  - (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
  - (i) the Police Service of Northern Ireland;
  - (j) the British Transport Police;
  - <sup>F213</sup>(k) .....]

#### **Textual Amendments**

- F212** S. 83BC inserted (28.2.2002) by [2001 c. 19, s. 17, Sch. 1 para. 4](#); [S.I. 2002/345, art. 2](#) (subject to transitional provisions in [art. 3](#))
- F213** S. 83BC(2)(k) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), s. 178\(8\), Sch. 4 para. 3, Sch. 17 Pt. 2](#); [S.I. 2006/378, art. 4\(1\), Sch. paras. 10, 13\(a\)](#)

#### **[<sup>F214</sup>83C] Prosecuting officers.**

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
- (a) a person who has a general qualification within the meaning of section 71 of the <sup>M11</sup>Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland; or
  - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.]

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F214** Ss. 83A-83C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. II para. 14**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**Marginal Citations**

**M11** 1990 c. 41.

*Courts-martial: general provisions*

<sup>F215</sup>**84** .....

**Textual Amendments**

**F215** S. 84 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 18**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

[<sup>F216</sup>**84A Court administration officers.**

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.]

**Textual Amendments**

**F216** S. 84A-84D inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 19**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

<sup>F217</sup>**84B Judge advocates.**

(1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.

(2) No person shall be appointed as the judge advocate unless he is—

- [<sup>F218</sup>(a) a person who satisfies the judicial-appointment eligibility condition on a 5-year basis;]
- (b) an advocate in Scotland of at least five years’ standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
- (c) a member of the Bar of Northern Ireland of at least five years’ standing.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

#### **Textual Amendments**

**F217** S. 84A-84D inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 19**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F218** S. 84B(2)(a) substituted (21.7.2008) by **Tribunals, Courts and Enforcement Act 2007 (c. 15)**, s. 148, **Sch. 10 para. 47(2)** (with **Sch. 10 para. 45**); S.I. 2008/1653, art. 2(d) (with arts. 3, 4)

#### **<sup>F219</sup>84C Convening of general and district courts-martial.**

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
  - (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial;
  - <sup>F220</sup>(cc) any warrant officers who are to be members of the court-martial;
  - (d) any other officers [<sup>F221</sup>or warrant officers] appointed for the purpose of filling vacancies,

and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
  - (a) the court administration officer;
  - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
  - (c) the higher authority to whom the preliminary charge against the accused was referred;
  - (d) any other officer who has investigated the subject matter of the charge against the accused;
  - (e) any other officer [<sup>F222</sup>or warrant officer] who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### Textual Amendments

- F219** S. 84A-84D inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 19**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F220** S. 84C(2)(cc) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 1(2)(a)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F221** Words in s. 84C(2)(d) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 1(2)(b)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F222** Words in S. 84C(4)(e) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 1(3)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)

### [<sup>F223</sup>84D Constitution of general and district courts-martial

- (1) A general court-martial shall consist of—
  - (a) the president, who shall be a military officer,
  - (b) the judge advocate, and
  - (c) at least four other persons of whom—
    - (i) two shall each be either a military officer or a military warrant officer, and
    - (ii) the rest shall be military officers.
- (2) A district court-martial shall consist of—
  - (a) the president, who shall be a military officer,
  - (b) the judge advocate, and
  - (c) at least two other persons of whom—
    - (i) one shall be either a military officer or a military warrant officer, and
    - (ii) the rest shall be military officers.
- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless—
  - (a) he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above “the qualifying period” means—
  - (a) in relation to a general court-martial, three years, and
  - (b) in relation to a district court-martial, two years.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of captain; and, in the case of a general court-martial for the trial of an officer above the rank of captain, all the members so appointed shall be of or above the rank of captain.
- (10) If, in the opinion of the court administration officer, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—
- (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or
  - (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.
- (11) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
- “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
- “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
- “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
- “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;
- “naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.]

#### **Textual Amendments**

**F223** S. 84D substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 2**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)

## **85 Powers of different descriptions of court-martial.**

- (1) A general court-martial shall have power to try any person subject to military law for any offence which under this Act is triable by court-martial, [F224 and, subject to section 85A below, to award] for any such offence any punishment authorised by this Act for that offence.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

(2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, discharge with ignominy, dismissal or detention, and shall not award the punishment <sup>F225</sup> . . . of imprisonment for a term exceeding two years [<sup>F226</sup> or make an order committing a person to be detained under section 71AA of this Act for a period exceeding two years].

<sup>F227</sup>(3) . . . . .

**Textual Amendments**  
**F224** Words in s. 85(1) substituted (2.10.2000) by 2000 c. 4, s. 12(2); S.I. 2000/2366, art. 2 (with Sch. para. 15)  
**F225** Words in s. 85(2) repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4  
**F226** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 58, Sch. 8 para.5(a)  
**F227** S. 85(3) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 20, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with transitional provisions in Sch. 2)

<sup>F228</sup>**85A Powers of court-martial where accused elected court-martial trial.**

(1) Where a court-martial tries a person in pursuance of an election for court-martial trial, the court shall not award any punishment which could not have been awarded by the commanding officer or appropriate superior authority who would have dealt summarily with the preliminary charge if the election had not been made.

(2) In subsection (1) above “the preliminary charge” means the charge which would have been dealt with summarily had the accused not elected court-martial trial.

<sup>F229</sup>(3) . . . . .]

**Textual Amendments**  
**F228** S. 85A inserted (2.10.2000) by 2000 c. 4, s. 12(1); S.I. 2000/2366, art. 2 (with Sch. para. 15)  
**F229** S. 85A(3) omitted (18.7.2008) by virtue of The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694), arts. 1, 19

<sup>F230</sup>**86** . . . . .

**Textual Amendments**  
**F230** S. 86 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 21, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with transitional provisions in Sch. 2)

<sup>F231</sup>**87** . . . . .



*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Textual Amendments**

**F231** S. 87 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 21, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F232</sup>**88** .....

**Textual Amendments**

**F232** S. 88 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 21, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F233</sup>**89** .....

**Textual Amendments**

**F233** S. 89 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 21, Sch. 7 Pt. I; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

<sup>F234</sup>**90** .....

**Textual Amendments**

**F234** S. 90 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 21, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

**91 Place for sitting of courts-martial and adjournment to other places.**

- (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without [<sup>F235</sup>the United Kingdom]) as may be specified in the order convening the court; <sup>F236</sup> . . .
- (2) A court-martial sitting at any place [<sup>F237</sup>may] if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

**Textual Amendments**

**F235** Words in s. 91(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 22(1)(2)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

**F236** Words in s. 91(1) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. III para. 22(1)(2)(b), **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

**F237** Words in s. 91(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 22(1)(3)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

## <sup>F238</sup>Preliminary hearings as to plea

### Textual Amendments

**F238** S. 91A and cross-heading inserted (1.1.2008) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 20](#); [S.I. 2007/2913](#), art. 3

## 91A Preliminary hearings as to plea

- (1) Subsections (2) to (4) apply in relation to a charge against a person (“the accused”) preferred by the prosecuting authority.
- (2) The accused shall be arraigned at a hearing before a judge advocate.
- (3) That hearing may take place at any time before the time when the court-martial that is to try the charge first sits.
- (4) The arraignment is to be treated as having occurred before the court-martial.
- (5) Rules under section 103 may make provision for and in connection with the making of orders and rulings by a judge advocate at a hearing at which the accused is arraigned, including in particular—
  - (a) provision corresponding to any provision of, or that may be made by virtue of, sections 31, 33, 34 and 37 of the Criminal Procedure and Investigations Act 1996, subject to such modifications as the Secretary of State considers appropriate;
  - (b) provision for the variation or discharge of such orders and rulings.
- (6) The reference in subsection (1) to a charge preferred by the prosecuting authority includes—
  - (a) a charge substituted by the prosecuting authority; and
  - (b) where a charge is amended by the prosecuting authority before the accused is arraigned in respect of it, the charge as so amended.
- (7) Nothing in this section applies in relation to a charge preferred or substituted after the time when the court-martial first sits.]

### *Courts-martial: provisions relating to trial*

## 92 Challenges by accused.

- (1) An accused about to be tried by any court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another [<sup>F239</sup>member].
- (2) For the purpose of enabling the accused to avail himself of the right conferred by the last foregoing subsection, the names of the members of the court shall be read over in the presence of the accused before [<sup>F240</sup>the officers appointed members [<sup>F241</sup>, and any warrant officers so appointed,]] are sworn, and he shall be asked whether he objects to any of [<sup>F242</sup>the members].
- (3) Every objection made by an accused to any [<sup>F243</sup>member] shall be [<sup>F244</sup>determined by the judge advocate].

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (4) If [<sup>F245</sup>an objection to the president is allowed], the court shall adjourn and the [<sup>F246</sup>court administration] officer shall appoint another president.
- (5) If [<sup>F247</sup>an objection to any other officer appointed a member of the court [<sup>F248</sup>or to any warrant officer so appointed] is allowed], the [<sup>F249</sup>officer][<sup>F250</sup>or warrant officer] objected to shall retire and the vacancy may, and if otherwise the number of [<sup>F251</sup>members who are officers or warrant officers] would be reduced below the legal minimum shall, be filled in the prescribed manner by [<sup>F252</sup>another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)].
- [<sup>F253</sup>(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.]

#### Textual Amendments

- F239** Word in s. 92(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(2)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F240** Words in s. 92(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(3)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F241** Words in s. 92(2) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 3(2)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F242** Words in s. 92(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(3)(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F243** Word in s. 92(3) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(4)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F244** Words in s. 92(3) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(4)(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F245** Words in s. 92(4) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(5)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F246** Words in s. 92(4) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(5)(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F247** Words in s. 92(5) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(6)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F248** Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 3(a)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F249** Words in s. 92(5) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(6)(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F250** Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 3(b)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F251** Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 3(c)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F252** Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 3(d)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F253** S. 92(6) added (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 23(1)(7)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### 93 Administration of oaths.

- (1) An oath shall be administered to every [<sup>F254</sup>officer [<sup>F255</sup>or warrant officer] appointed a] member of a court-martial and to any person, <sup>F256</sup> . . . , in attendance on a court-martial as <sup>F256</sup> . . . , officer [<sup>F257</sup>or other person] under instruction, <sup>F258</sup> . . . or interpreter.

<sup>F259</sup>(1A) . . . . .

<sup>F260</sup>(1B) . . . . .

<sup>F260</sup>(2) . . . . .

- [<sup>F261</sup>(2A) Unsworn evidence admitted by virtue of the proviso to subsection (2) above may corroborate evidence (sworn or unsworn) given by any other person.]

- (3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

#### Textual Amendments

- F254** Words in s. 93(1) inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 24(1)(2)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F255** Words in s. 93(1) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 4**; S.I. 2002/345, **art. 2** (subject to transitional provisions in art. 3)
- F256** Words in s. 93(1) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 24(1)(2)(b)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F257** Words inserted by **Armed Forces Act 1981 (c. 55)**, **Sch. 2 para. 5(1)**
- F258** Words repealed by **Armed Forces Act 1976 (c. 52)**, **Sch. 10**
- F259** S. 93(1A) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 24(1)(3)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F260** S. 93(1B)(2) repealed (6.12.2006) by **Youth Justice and Criminal Evidence Act 1999 (c. 23)**, s. 68(3)(4), **Sch. 6** (with Sch. 7); S.I. 2006/2885, art. 2(b)
- F261** S. 93(2A) inserted (1.1.1992) by **Armed Forces Act 1991 (c. 62, SIF 7:1)**, s. 26(1), **Sch. 2 para. 3(1)(b)**; S.I. 1991/2719, **art. 2**

### 94 Courts-martial to sit in open court.

- (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.
- (2) Nothing in the last foregoing subsection shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.
- (3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.
- (4) A court-martial may sit in closed court on any other deliberation amongst the members.

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- (5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.
- [<sup>F262</sup>(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- <sup>F262</sup>(7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- <sup>F262</sup>(8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.]

#### Textual Amendments

**F262** S. 94(6)-(8) added (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 25**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

## 95 Dissolution of courts-martial.

- (1) Where, [<sup>F263</sup>before] the commencement of the trial, it appears to the [<sup>F264</sup>court administration] officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the [<sup>F264</sup>court administration] officer may by order dissolve the court-martial.
- [<sup>F265</sup>(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may by order dissolve the court-martial.]
- (2) Without prejudice to the generality of the last foregoing subsection, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.
- (3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then—
- (a) if the senior member of the court is of the rank of captain or corresponding rank or is of higher rank, the [<sup>F266</sup>judge advocate] may appoint him president and the trial shall proceed accordingly; but
  - (b) if he is not, the court shall be dissolved.
- <sup>F267</sup>(4) . . . . .
- (5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court.

#### Textual Amendments

**F263** Words in s. 95(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 26(1)(2)(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F264** Words in s. 95(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 26(1)(2)(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

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- F265** S. 95(1A) inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 26(1)(3)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F266** Words in s. 95(3)(a) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 26(1)(4)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F267** S. 95(4) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 26(1)(5)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provision in **Sch. 2**)

## 96 Decisions of courts-martial.

- (1) Subject to the provisions of this section, [<sup>F268</sup>the finding of a court-martial and any sentence awarded] shall be determined by a majority of the votes of the members of the court.

[<sup>F269</sup>(1A) The judge advocate shall not be entitled to vote on the finding.]

- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.

<sup>F270</sup>(3) .....

<sup>F270</sup>(4) .....

- (5) In the case of an equality of votes on the sentence, <sup>F271</sup>. . . , the president shall have a second or casting vote.

### Textual Amendments

- F268** Words in s. 96(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 27(1)(2)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F269** S. 96(1A) inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 27(1)(3)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F270** S. 96(3)(4) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**
- F271** Words in s. 96(5) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III, para. 27(1)(5)**, **Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

## 97 Finding and sentence.

- (1) Without prejudice to the provisions of section ninety-four of this Act, the finding of a court-martial on each charge shall be announced in open court.

<sup>F272</sup>(2) .....

- (3) Any sentence of a court-martial, together with any recommendation to mercy [<sup>F273</sup>and any reasons for the sentence], shall be announced in open court, <sup>F274</sup>. . .

### Textual Amendments

- F272** S. 97(2) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F273** Words in s. 97(3) inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 28**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F274** Words in s. 97(3) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)



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

C24 S. 97 modified (1.4.1997) by S.I. 1997/172, art. 86

**98 Power to convict of offence other than that charged.**

- (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.
- (2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.
- (3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.
- (4) Where an accused is charged before a court-martial under section seventy of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.
- (5) Where an accused is charged before a court-martial with an offence against section seventy of this Act, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in England, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section seventy of this Act in respect of the commission of that other civil offence.
- (6) An accused charged before a court-martial with an offence specified in the first column of the Third Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that schedule.

**99 Rules of evidence.**

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall <sup>[F275]</sup>, subject to section 99A below <sup>[F276]</sup> to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.) <sup>[F277]</sup> to Schedules 6 and 7 to the Criminal Justice Act 2003 <sup>[F278]</sup> and to service modifications, be the same as those observed in <sup>[F279]</sup> trials on indictment in England, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings <sup>[F280]</sup> in a trial on indictment in England.
- <sup>[F281]</sup>(1A) In this section “service modifications” means such modifications as the Secretary of State may by regulations made by statutory instrument prescribe, being modifications which appear to him to be necessary or proper for the purposes of proceedings before a court-martial; and it is hereby declared that in this section—
- “rules” includes rules contained in or made by virtue of an enactment; and
- “enactment” includes an enactment contained in an Act passed after this Act.
- (1B) Regulations under subsection (1A) above may not modify section 99A below.



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(1C) Regulations under subsection (1A) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

<sup>F282</sup>(2) . . . . .

(3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a [<sup>F283</sup>trial on indictment] in England.

#### Textual Amendments

- F275** Words inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 11, [Sch. 5 para. 3\(a\)](#)
- F276** Words in s. 99(1) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62\)](#), SIF 7:1, s. 26(1), [Sch. 2 para. 4\(1\)](#); S.I. 1991/2719, [art. 2](#)
- F277** Words in s. 99(1) inserted (1.1.2005 for specified purposes, 4.4.2005 in so far as not already in force) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 36 para. 81](#); S.I. 2004/3033, [art. 4\(1\)\(2\)\(c\)](#); S.I. 2005/950, [art. 2\(1\)](#), [Sch. 1 para. 43\(b\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, [art. 2](#); and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); S.I. 2008/1586, [Sch. 1 paras. 48\(s\)](#), [50\(2\)\(d\)](#); (30.11.2009) by S.I. 2009/3111, [art. 2](#); (3.12.2012) by S.I. 2012/2905, [art. 4](#); (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); S.I. 2012/2906, [art. 2\(l\)](#))
- F278** Words inserted by [Police and Criminal Evidence Act 1984 \(c. 60\)](#), SIF 95), s. 119(1), [Sch. 6 Pt. II para. 28\(2\)\(a\)](#)
- F279** Words in s. 99(1) substituted (1.4.1997 subject to [art. 3](#) of the commencing S.I.) by [1996 c. 46](#), s. 5, [Sch. 1 Pt. III para. 29\(1\)\(2\)\(a\)](#); S.I. 1997/304, [art. 2](#) (with transitional provisions in [Sch. 2](#))
- F280** Words in s. 99(1) substituted (1.4.1997 subject to [art. 3](#) of the commencing S.I.) by [1996 c. 46](#), s. 5, [Sch. 1 Pt. III para. 29\(1\)\(2\)\(b\)](#); S.I. 1997/304, [art. 2](#) (with transitional provisions in [Sch. 2](#))
- F281** S. 99(1A)–(1C) inserted by [Police and Criminal Evidence Act 1984 \(c. 60\)](#), SIF 95), s. 119(1), [Sch. 6 Pt. II para. 28\(2\)\(b\)](#)
- F282** S. 99(2) repealed by [Criminal Justice Act 1967 \(c. 80\)](#), [Sch. 7 Pt. I](#) and [Armed Forces Act 1981 \(c. 55\)](#), [Sch. 5 Pt. II](#)
- F283** Words in s. 99(3) substituted (1.4.1997 subject to [art. 3](#) of the commencing S.I.) by [1996 c. 46](#), s. 5, [Sch. 1 Pt. III para. 29\(1\)\(3\)](#); S.I. 1997/304, [art. 2](#) (with transitional provisions in [Sch. 2](#))

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

- C25** S. 99(1)(3) applied (with modifications) (2.10.2000) by S.I. 2000/2371, [rule 27\(1\)\(a\)\(2\)](#)

#### [<sup>F284</sup>99A Proof at courts-martial by written statement.

- (1) [<sup>F285</sup>Without prejudice to section 99 above, section] 9 of the <sup>M12</sup>Criminal Justice Act 1967 (proof by written statement) shall apply subject to subsection (2) below and to service modifications, for the purposes of proceedings before courts-martial (whether held in the United Kingdom or not) as it applies to proceedings on indictment.
- (2) The statements rendered admissible by this section are statements made—
- (a) in the United Kingdom by any person, and
  - (b) outside the United Kingdom by any person who at the time of making the statement was—
    - (i) a person subject to service law, or
    - (ii) a person to whom Part II of this Act or Part II of the <sup>M13</sup>Air Force Act 1955 is applied by section 208A or section 209 of this Act or that Act

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respectively, or to whom Parts I and II of the <sup>M14</sup>Naval Discipline Act 1957 are applied by section 117 or section 118 of that Act.

and the persons mentioned in this paragraph include persons to whom section 131 of this Act, section 131 of the <sup>M15</sup>Air Force Act 1955 or section 119 of the <sup>M16</sup>Naval Discipline Act 1957 apply.

- (3) In subsection (1) above “service modifications” means—
- (a) modifications made by any regulations under section 12 of the <sup>M17</sup>Criminal Justice Act 1967 in force on the coming into force of this section, and
  - (b) such modifications in the said section 9, as applied by subsection (1) above, as the Secretary of State may by regulations made by statutory instrument prescribe thereafter, being modifications which appear to him to be necessary or proper for the purpose of the operation of that section in relation to proceedings before a court-martial.
- (4) Regulations under subsection (3)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Section 89 of the said Act of 1967 (punishment of making false statements tendered under section 9) shall apply to any statement rendered admissible by this section.]

#### Textual Amendments

**F284** S. 99A inserted by [Armed Forces Act 1976 \(c. 52\), s. 11, Sch. 5 para. 1](#)

**F285** Words substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\), s. 119\(1\)](#), Sch. 6 Pt. II para. 28(3)

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

**C26** S. 99A(1)(2)(5) applied (with modifications) (2.10.2000) by [S.I. 2000/2371, rule 27\(1\)\(b\)\(2\)](#)

#### Marginal Citations

**M12** 1967 c. 80.

**M13** 1955 c. 19.

**M14** 1957 c. 53.

**M15** 1955 c. 19.

**M16** 1957 c. 53.

**M17** 1967 c. 80.

## 100 Privilege of witnesses and others at courts-martial.

A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England.

## 101 Offences by civilians in relation to courts-martial.

[<sup>F286</sup>(1)] Where in the United Kingdom or in any colony any person not subject to military law—

- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons, or
- (b) refuses to swear an oath when duly required by a court-martial to do so, or

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- (c) refuses to produce any [<sup>F287</sup>document or other thing which is in his custody or under his control and] which a court-martial has lawfully required him to produce, or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer, or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court, or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court, or
- (g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in the part of the United Kingdom or in the colony, as the case may be, where the offence is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified:

Provided that where the offence is alleged to have been committed in the United Kingdom and the court-martial was held outside the United Kingdom, the certifying of the offence may be done by [<sup>F288</sup>the Defence Council] or any officer authorised by them.

[<sup>F289</sup>(2) In subsection (1) of this section references in paragraphs (a) to (g) to a court-martial or to a member of a court-martial include references to a judicial officer and, in relation to an offence committed in relation to a judicial officer—

- (a) the reference to the president of the court-martial is a reference to the judicial officer, and
- (b) the reference to a court-martial held outside the United Kingdom is a reference to the judicial officer sitting outside the United Kingdom.]

[<sup>F290</sup>(3) In subsection (1) of this section references in paragraphs (a) to (g) to a court-martial include references to the summary appeal court and, in relation to an offence committed in relation to that court—

- (a) the reference to the president of the court-martial is a reference to the judge advocate in relation to the summary appeal court, and
- (b) the reference to a court-martial held outside the United Kingdom is a reference to the summary appeal court sitting outside the United Kingdom.]

#### Textual Amendments

**F286** S. 101 renumbered as s. 101(1) (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 3**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)

**F287** Words in s. 101(1)(c) substituted (28.2.2002) by 2001 c. 19, s. 24(2)(b); S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)

**F288** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

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**F289** S. 101(2) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 3**; S.I. 2000/2366, **art. 2** (with Sch. para. 13)

**F290** S. 101(3) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 6**; S.I. 2000/2366, **art. 2** (with Sch. para. 13)

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

**C27** S. 101(1) modified (21.7.2008) by **Criminal Evidence (Witness Anonymity) Act 2008 (c. 15), s. 8(4)(5), 13** (with ss. 1(3), 9(1))

**[<sup>F291</sup>101A Powers to compel attendance of witnesses**

(1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—

(a) that a person not subject to military law who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,

[<sup>F292</sup>(b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or other thing, and]

(c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,

the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.

(2) For the purposes of subsection (1) above the appropriate person is, at any time before the commencement of the trial by court-martial, a judicial officer and, thereafter, the judge advocate.

(3) Where—

(a) a person not subject to military law (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,

(b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,

(c) it is proved on oath or in such manner as may be prescribed by rules under section 103 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of rules made under that section), and

(d) it appears to the judge advocate that there is no just excuse for the defaulter’s failure to attend,

the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.

(4) A warrant under subsection (1) or (3) above must be addressed to a constable.

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- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
- (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 75M of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
- (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
    - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 83ZB of this Act, and
    - (ii) thereafter, the summary appeal court;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 83ZJ of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.]

#### Textual Amendments

**F291** S. 101A inserted (1.1.2008) by [Armed Forces Act 2001 \(c. 19\)](#), **ss. 25(1)**, 39(2); S.I. 2007/3434, art. 2

**F292** S. 101A(1)(b) substituted (1.6.2008) by virtue of [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 170(2)**, 178(8); S.I. 2008/1325, art. 2

## 102 Affirmations.

- (1) If—
- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, <sup>F293</sup> or
  - (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

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he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

[<sup>F294</sup>(2) A person who may be permitted under this section to make his solemn affirmation may also be required to do so, and for the purposes of this section “reasonably practicable” means reasonably practicable without inconvenience or delay.]

#### **Textual Amendments**

**F293** Words repealed by [Administration of Justice Act 1977 \(c. 38\)](#), **Sch. 5 Pt. III**

**F294** S. 102(2) added by [Oaths Act 1961 \(c. 21\)](#), **s. 1**; saved by [Oaths Act 1978 \(c. 19\)](#), **s.7(4)(5)**

### *Offences: procedure*

#### [<sup>F295</sup>**103 Rules.**

- (1) The Secretary of State may make rules with respect to—
  - (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
  - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
  - (a) proceedings preliminary to trials by general or district courts-martial;
  - (b) the appointment of a judge advocate for any preliminary proceedings;
  - [<sup>F296</sup>(ba) appeals against orders or rulings made in preliminary proceedings;]
  - (c) the delegation by court administration officers of any of their functions;
  - (d) the convening and constitution of general and district courts-martial;
  - (e) the sittings, adjournment and dissolution of general and district courts-martial;
  - (f) the procedure to be followed in trials by general and district courts-martial;
  - (g) the representation of the accused at such trials and any preliminary proceedings;
  - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
  - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
  - (j) enabling a general or district court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
  - (k) directing that the powers conferred by section 7 of the <sup>M18</sup>Bankers’ Books Evidence Act 1879 (which enables orders to be made for the inspection of bankers’ books for the purposes of legal proceedings) may be exercised for the purposes of a general or district court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;



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- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
  - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
  - <sup>F297</sup>(mm) [ enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;]
  - <sup>F298</sup>(mn) [ appeals against any orders (including directions) of courts-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings;]
  - (n) the recording of the proceedings of a general or district court-martial;
  - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- <sup>F299</sup>(2A) [ In subsection (2)(a), (b) and (ba), the references to proceedings preliminary to trials include hearings at which the accused is arraigned.
- (2B) Rules made by virtue of subsection (2)(ba) or (mn) may confer jurisdiction on the Courts-Martial Appeal Court, and rules under section 49 of the Courts-Martial (Appeals) Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of subsection (2)(ba) or (mn).]
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- <sup>F300</sup>(3A) [ Rules under this section may make provision as to the application of sections 83B and 83BB of this Act in relation to cases where an election for court-martial trial relates to two or more charges.]
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F295** S. 103 substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 30**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)
- F296** S. 103(2)(ba) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 21(2)(a)**; S.I. 2007/2913, **art. 3**
- F297** S. 103(2)(mm) inserted (14.10.2005) by **Armed Forces Act 2001 (c. 19)**, **ss. 28(4)**, 39(2); S.I. 2005/2861, **art. 2**
- F298** S. 103(2)(mn) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 21(2)(b)**; S.I. 2007/2913, **art. 3**
- F299** S. 103(2A)(2B) inserted (1.1.2008) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 21(3)**; S.I. 2007/2913, **art. 3**
- F300** S. 103(3A) inserted (2.10.2000) by 2000 c. 4, s. 13, **Sch. 2 para. 5**; S.I. 2000/2366, **art. 2** (with Sch. para. 13)



*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### Marginal Citations

**M18** 1879 c. 11.

### <sup>F301</sup> *Field General Courts-Martial*

### Textual Amendments

**F301** Ss. 103A-103C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 31**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

### <sup>F302</sup> **103A Field general courts-martial.**

- (1) Where an officer to whom this subsection applies—
- (a) is commanding a body of the regular forces on active service; and
  - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,
- he may direct that the charge be tried by a field general court-martial.

- (2) Subsection (1) above applies to—
- (a) the commanding officer who has investigated the charge;
  - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
  - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.

- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.

- (4) The order convening the field general court-martial shall specify—
- (a) the date, time and place at which the court-martial is to sit;
  - (b) the officers who are to be members of the court-martial;
  - (c) which of those officers is to be president of the court-martial.
- <sup>F303</sup> [ any warrant officer who is to be a member of the court-martial.]

- <sup>F304</sup> (4A) [ Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial.]

- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.

- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.

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- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

#### Textual Amendments

- F302** S. 103A-103C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 31**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F303** S. 103A(4)(d) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 5(2)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F304** S. 103A(4A) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 5(3)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)

#### <sup>F305</sup>**103B Constitution of field general courts-martial.**

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall <sup>F306</sup>consist of-
- (a) the president, who shall be a military officer, and
  - (b) at least two persons appointed under this paragraph, of whom—
    - (i) one shall be either a military officer or a military warrant officer, and
    - (ii) the rest shall be military officers.]
- (2) If the officer who convened the field general court-martial is of opinion that <sup>F307</sup>three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above] without serious detriment to the public service, the field general court-martial shall consist of the president and one other military officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—  
<sup>F308</sup>(a) a person who is a barrister or solicitor in England and Wales;]  
(b) an advocate or solicitor in Scotland; or  
(c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of captain.
- [ A field general court-martial shall not include any warrant officer unless the court-  
<sup>F309</sup>(6A) martial is for the trial of a person of a rank below that of the warrant officer concerned.]
- [ If a field general court-martial is to be convened at any place where, in the opinion of  
<sup>F310</sup>(7) the officer convening it, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service,

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available for appointment under subsection (1)(b) above, he may appoint under that provision—

- (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or
  - (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.]
- (8) A field general court-martial shall have the powers of a general court-martial except that where [<sup>F311</sup>only two persons, apart from any judge advocate (as defined by subsection (4) above),] are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—

“air force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

[<sup>F312</sup>“air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;]

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

[<sup>F313</sup>“military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;]

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the <sup>M19</sup>Naval Discipline Act 1957.

[<sup>F314</sup>“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.]

#### Textual Amendments

- F305** Ss. 103A-103C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 31**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F306** Words in s. 103B(1) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(2)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F307** Words in s. 103B(2) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(3)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F308** S. 103B(5)(a) substituted (21.7.2008) by **Tribunals, Courts and Enforcement Act 2007** (c. 15), s. 148, **Sch. 10 para. 47(3)** (with **Sch. 10** para. 45); S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)
- F309** S. 103B(6A) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(4)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F310** S. 103B(7) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(5)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F311** Words in s. 103B(8) substituted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(6)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F312** Words in s. 103B(9) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(7)(a)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F313** Words in s. 103B(9) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(7)(b)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)
- F314** Words in s. 103B(9) inserted (28.2.2002) by 2001 c. 19, s. 19, **Sch. 2 para. 6(7)(c)**; S.I. 2002/345, **art. 2** (subject to transitional provisions in **art. 3**)

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Marginal Citations**

M19 1957 c. 53.

**F315 103C Field General Court-Martial Rules.**

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
  - (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;
  - (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.]

**Textual Amendments**

**F315** S. 103A-103C and cross-heading inserted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 31**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F316 104** .....

**Textual Amendments**

**F316** S. 104 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 32, Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F317 105** .....

**Textual Amendments**

**F317** S. 105 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 32, Sch. 7 Pt. I** (with transitional provisions in **Sch. 2**)

**F318 106** .....

**Textual Amendments**

**F318** S. 106 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 32, Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

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*Confirmation, revision and review of proceedings of courts-martial*

F319 **107** .....

**Textual Amendments**

**F319** S. 107 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

F320 **108** .....

**Textual Amendments**

**F320** S. 108 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 16, 35(2), **Sch. 5 para. 2, Sch. 7 Pt. III** (with transitional provisions in **Sch. 2**)

F321 **109** .....

**Textual Amendments**

**F321** S. 109 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

F322 **110** .....

**Textual Amendments**

**F322** S. 110 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **art. 4**)

F323 **111** .....

**Textual Amendments**

**F323** S. 111 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

*[<sup>F324</sup> Review of proceedings of courts-martial]*

**Textual Amendments**

**F324** S. 112 and cross-heading substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 16, **Sch. 5 para. 3**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

<sup>F325</sup>**112** .....

**Textual Amendments**

**F325** S. 112 repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

<sup>F326</sup>**113 Review of findings and sentences of courts-martial.**

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review under this section shall (if it does not begin sooner) begin as soon as is practicable after—
  - (a) in a case where a petition has been presented under this section, the presentation of the petition;
  - (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review under this section of the finding or sentence has been completed—
  - (a) the reviewing authority shall complete the review as soon as is practicable; but
  - (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
- (5) For the purposes of this Act the reviewing authority is—
  - (a) the Defence Council; or
  - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.

<sup>F327</sup>(6) .....

**Textual Amendments**

**F326** Ss. 113, 113AA substituted (1.4.1997 subject to art. 3 of the commencing S.I.) for s. 113 by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F327** S. 113(6) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**F328 113A Powers of the reviewing authority.**

- (1) On a review under section 113 of this Act of a finding or sentence of a court-martial the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—
  - (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
  - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to a court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
  - (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
  - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
  - <sup>F329</sup>(a) .....
  - (b) remit in whole or part any punishment awarded by the court;
  - (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
  - (a) shall be treated for all purposes as having been made or passed by the court;
  - (b) shall be promulgated and shall have effect as from the date of promulgation.

**Textual Amendments**

**F328** Ss. 113, 113AA substituted (1.4.1997 subject to art. 3 of the commencing S.I.) for s. 113 by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F329** S. 113AA(5)(a) omitted (18.7.2008) by virtue of **The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694)**, arts. 1, **33(2)**



*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### [<sup>F330</sup> 113A] Power of reviewing authority to authorise retrial.

- (1) The following provisions of the <sup>M20</sup>Courts-Martial (Appeals) Act 1968, that is to say,—  
section 19,  
section 20, and  
Parts II and IV of Schedule 1,  
(power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised) shall apply with any necessary modifications in relation to the review by [<sup>F331</sup>the reviewing authority] under section 113 of this Act of the findings of a court-martial, as they apply in relation to an appeal to the Courts-Martial Appeal Court.
- (2) Any document purporting to be an order or direction made or given by virtue of the foregoing subsection by the [<sup>F332</sup>reviewing authority] shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.]

#### Textual Amendments

**F330** S. 113A inserted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**

**F331** Words in s. 113A(1) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 16, **Sch. 5 para. 5(a)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

**F332** Words in s. 113A(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 16, **Sch. 5 para. 5(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

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

**C28** S. 113A excluded (1.4.1997) by S.I. 1997/172, **art. 86**

#### Marginal Citations

**M20** 1968 c. 20.

### [<sup>F333</sup> 113B] Scope of section 113C

- (1) Section 113C of this Act applies to any case—
  - (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or
  - (b) in which a sentence is passed by a court-martial on a person—
    - (i) in respect of an offence against section 70 of this Act which satisfies the condition in subsection (2) below, or
    - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the corresponding civil offence is—
  - (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 113C of this Act—

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- (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following any review under section 113 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

**F333** Ss. 113B, 113C inserted (28.2.2007) by [Armed Forces Act 2001 \(c. 19\)](#), **ss. 21(1)**, 39(2); S.I. 2007/662, art. 2

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

**C29** S. 113B(1)(a) applied (31.3.2007) by [The Courts-Martial \(Review of Sentencing\) \(Categories of Offences\) Order 2007 \(S.I. 2007/711\)](#), arts. 1, 2, **Sch.** (with art. 3)

### **113C Review of sentences by Courts-Martial Appeal Court**

- (1) If it appears to the Attorney General—
- (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,
- he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may—
- (a) quash the sentence passed by the court-martial on the person; and
  - (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
- (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that—
- (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 113 of this Act; or
  - (b) the sentence passed on the person was not that required by section 70(3B), (3E) or (3G) of this Act.
- (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House shall

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.

- (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
- (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
- (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
- (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

**F333** Ss. 113B, 113C inserted (28.2.2007) by [Armed Forces Act 2001 \(c. 19\)](#), **ss. 21(1)**, 39(2); S.I. 2007/662, art. 2

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

**C30** S. 113C applied (31.3.2007) by [The Courts-Martial \(Review of Sentencing\) \(Categories of Offences\) Order 2007 \(S.I. 2007/711\)](#), arts. 1, 2, **Sch.** (with art. 3)

<sup>F334</sup>**114** .....

**Textual Amendments**

**F334** S. 114 repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), **Sch. 2**

*Review of summary findings and awards*

[<sup>F335</sup>**115 Review of summary findings and awards**

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.

<sup>F336</sup>(2) .....

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (3) The finding or any punishment awarded (or both) may be reviewed at any <sup>F337</sup> . . . time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen’s Regulations.
- (5) A review under this section may be carried out by—
  - (a) the Defence Council;
  - (b) any military, naval or air-force officer superior in command to the officer who dealt summarily with the charge;
  - (c) a general officer or brigadier appointed by the Defence Council to carry out the review or any class of review which includes the review.

[ Where—

- <sup>F338</sup>(5A) (a) the period of fourteen days referred to in subsection (2) of section 83ZE of this Act has expired, and
- (b) no appeal has been brought under that section,

the authority carrying out a review under this section may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both) to that court to be considered by it as on an appeal.

- <sup>F338</sup>(5B) Where an appeal has been brought under section 83ZE of this Act and it appears to the authority carrying out a review under this section, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both), including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal.

- <sup>F338</sup>(5C) A reference to the summary appeal court under subsection (5A) or (5B) of this section shall for the purposes of this Act be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.

- <sup>F338</sup>(5D) In a case where exceptionally the authority carrying out a review under this section of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment relates only to that finding, quash the punishment awarded in consequence of that finding.

- <sup>F338</sup>(5E) The powers conferred by subsection (5D) of this section are exercisable whether or not the conditions in subsection (5A)(a) and (b) are satisfied.]

(6) . . . . .

<sup>F336</sup>(7) . . . . .]

**Textual Amendments**

- F335** S. 115 substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 16, **Sch. 5 para. 6**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)
- F336** S. 115(2)(6)(7) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 19(2)(5)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)
- F337** Word in s. 115(3) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 19(3)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)
- F338** S. 115(5A)-(5E) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 19(4)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)

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

**C31** S. 115(5A)(5B) modified (2.10.2000) by [S.I. 2000/2371](#), [rule 13\(7\)](#)

*f<sup>F339</sup> Findings of fitness to stand trial and insanity*

#### **Textual Amendments**

**F339** Ss. 115A-116D substituted for s. 116 (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), s. 60, [Sch. 3 para. 1](#) (with [Sch. 3 paras. 7, 10](#), [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b)

### **115A Fitness to stand trial**

- (1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused 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 it would constitute a bar to his being tried on indictment in England and Wales.
- (3) If, having regard to the nature of the supposed disability, the judge advocate is of opinion that it is expedient to do so and in the interests of the accused, 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.
- (4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the judge advocate sitting alone.
- (7) A judge advocate shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

### **115B Finding that the accused did the act or made the omission charged**

- (1) This section applies where in accordance with section 115A(6) above it is determined by a judge advocate that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
  - (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 by the judge advocate under this section to put the case for the defence,whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.

*Status: Point in time view as at 01/10/2008.*

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- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) Where the question of fitness to stand trial was determined after arraignment of the accused, the determination under subsection (2) above shall be made by the court-martial by whom he was being tried.

## **116 Findings of insanity**

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

## **116A Powers to deal with person unfit to stand trial or not guilty by reason of insanity**

- (1) This section applies where, on a trial of a person by a court-martial—
  - (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
  - (b) the accused is found not guilty by reason of insanity.
- (2) The court shall make in respect of the accused—
  - (a) a hospital order (with or without a restriction order);
  - (b) a supervision order; or
  - (c) an order for his absolute discharge.
- (3) Where—
  - (a) the offence to which the finding relates is an offence the sentence for which is fixed by law, and
  - (b) the court has power to make a hospital order,
 the court shall make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).
- (4) The functions of the court under this section shall be exercised by the judge advocate (or, where subsection (5) below applies, the judicial officer) sitting alone, and section 95(2) and (3) above shall not apply.
- (5) Any function of the court under this section exercisable after an adjournment or an appeal shall be exercisable by a judicial officer if—
  - (a) the court ordering the adjournment, or (as the case may be) the Courts-Martial Appeal Court, so orders; or
  - (b) the Judge Advocate General so directs.

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(6) In this Act—

“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“restriction order” has the meaning given to it by section 41 of that Act;

“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 (“the supervising officer”) for a period specified in the order of not more than two years.

## **116B Orders under the Mental Health Act**

(1) In relation to the making of an order by virtue of subsection (2)(a) of section 116A above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—

- (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies;
- (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
- (c) for subsections (4) and (5) there were substituted—

“(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”

(2) In relation to a case where section 116A above applies but the court has not yet made one of the disposals mentioned in subsection (2) of that section—

- (a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
- (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);
- (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
- (d) section 38 of that Act (interim hospital orders) shall have effect as if—
  - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies; and
  - (ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.

(3) In relation to the making of any order under the 1983 Act by virtue of this Act, that Act shall apply—

- (a) as if references to the Crown Court were references to a court-martial;
- (b) as if references to an offender were references to a person in whose case section 116A above applies (references to an offence being construed accordingly); and
- (c) with such further modifications as may be prescribed.



*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (4) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an order is made under the 1983 Act by virtue of this Act.

Regulations under this subsection may in particular make provision for a person in respect of whom such an order has been made to be conveyed to, and detained in, a place of safety pending his admission to hospital.

- (5) Where—

- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 116A(1)(a) above, and
- (b) the court also made a restriction order, and that order has not ceased to have effect,

the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may either remit the person for trial before a court-martial or direct that he be tried before a civil court.

In this subsection “responsible medical officer” means the registered medical practitioner in charge of the person’s treatment.

- (6) The Secretary of State may by regulations make provision supplementing subsection (5) above, including in particular—
- (a) provision for a person in whose case that subsection applies to be conveyed to a court or place of detention and to be detained in such a place;
  - (b) provision for the hospital order and the restriction order to cease to have effect at such time as may be prescribed.

## **116C Supervision orders**

- (1) The court shall not make an order under section 116A(2)(b) above unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of a supervision order is the most suitable means of dealing with the accused;
  - (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 (2) below) is intended to be specified in the order.
- (2) An order under section 116A(2)(b) above may, in accordance with regulations under subsection (3) below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- (3) The Secretary of State may—
- (a) by order direct that the definition of “supervision order” in section 116A(6) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order under this subsection;
  - (b) by regulations make further provision in relation to supervision orders.
- (4) Regulations under subsection (3) above may in particular make provision—

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- (a) as to the procedure to be followed by a court-martial making a supervision order;
- (b) as the requirements which may be specified in such an order;
- (c) as to the descriptions of supervising officer who may be so specified;
- (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
- (e) for the amendment and revocation of any supervision order.

#### **116D Provisions supplementary to sections 115A to 116C**

- (1) In this section and sections 115A to 116C above—
- “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 and treatment of mental disorder (within the meaning of that Act);
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 115A and 116 of this Act which permit a court to act on the written evidence of a registered medical practitioner or 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 (3) below, 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; but the court may require the signatory of any such report to be called to give oral evidence.
- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
  - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 116A to 116C above, and orders under section 116C(3) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

*Saving for functions of Judge Advocate General*

#### **117 Saving for functions of Judge Advocate General.**

Nothing in the foregoing provisions of this Part of this Act shall prejudice the exercise of the functions conferred (whether by Queen’s Regulations or otherwise) on the Judge Advocate General of considering and reporting on the proceedings of courts-martial or any other functions so conferred on him in relation to such courts.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

### Commencement, suspension and duration of sentences

#### 118 Commencement of sentences.

- (1) A military sentence of imprisonment or detention [<sup>F340</sup>awarded by a court-martial]<sup>F341</sup> . . . shall, subject to the [<sup>F342</sup>following provisions of this Part of this Act and to]<sup>F343</sup> section 11(2) of the <sup>M21</sup>Courts-Martial (Appeals) Act 1968] (which empowers the Court in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender <sup>F344</sup> . . . .
- (2) A sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer or soldier which is suspended in pursuance of section one hundred and twenty of this Act before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

<sup>F345</sup> . . . . .

#### Textual Amendments

- F340** Words in s. 118(1) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 8(a)**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)
- F341** Words repealed by **Armed Forces Act 1971** (c. 33), s. 78(4), **Sch. 4 Pt. I**
- F342** Words substituted by **Armed Forces Act 1971** (c. 33), s. 78(4), **Sch. 1 para. 1(4)**
- F343** Words substituted by **Courts-Martial (Appeals) Act 1968** (c. 20), **Sch. 4**
- F344** Words in s. 118(1) repealed (2.10.2000) by 2000 c. 4, ss. 25, 27, **Sch. 3 para. 8(b)**, **Sch. 4**; S.I. 2000/2366, **art. 2** (with **Sch. para. 13**)
- F345** Words in s. 118(2) omitted (18.7.2008) by virtue of **The Armed Forces (Alignment of Service Discipline Acts) Order 2008** (S.I. 2008/1694), arts. 1, **23**

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

- C32** S. 118 excluded by **Armed Forces Act 1976** (c. 52), **Sch. 3 para. 18(7)**

#### Marginal Citations

- M21** 1968 c. 20.

#### <sup>F346</sup>118ZC Commencement of sentence of detention awarded by commanding officer.

- (1) Subject to the following provisions of this Part of this Act, subsections (2) to (4) below apply to a sentence of detention awarded by the offender's commanding officer.
- (2) If the offender so elects at the time of the award, his sentence shall begin to run from the day on which it is awarded.
- (3) If the offender does not make an election under subsection (2) above or, having made such an election, withdraws it during the appeal period, his sentence or, in the case of withdrawal, the remainder of his sentence shall be suspended by virtue of this subsection—
- (a) until the end of the appeal period, or
  - (b) where an appeal is brought within the appeal period, until the determination of the appeal.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (4) Where an appeal is brought—
- (a) within the appeal period, by an offender who has made an election under subsection (2) above which has not been withdrawn, or
  - (b) after the end of the appeal period, by any offender,
- the remainder of his sentence shall be suspended by virtue of this subsection until the determination of the appeal.
- (5) In this section “the appeal period” means the period within which an appeal may be brought under section 83ZE(2) of this Act.]

#### Textual Amendments

**F346** S. 118ZA inserted (2.10.2000) by 2000 c. 4, s. 25, Sch. 3 para. 9; S.I. 2000/2366, art. 2 (with Sch. para. 13)

#### [<sup>F347</sup>118A] Consecutive terms of imprisonment and detention.

- (1) Where any person who is serving a sentence of imprisonment, whether passed under this Act or otherwise, is awarded a military sentence of imprisonment, or where a person who is awarded a military sentence of imprisonment is further sentenced to imprisonment under section 57(2) of this Act, the court-martial by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiry of the first-mentioned sentence.
- (2) Where any person who is serving a military sentence of detention, or a sentence of detention passed on him under the <sup>M22</sup>Air Force Act 1955 or the <sup>M23</sup>Naval Discipline Act 1957, is found guilty under this Act of another offence for which he is awarded a military sentence of detention, or where a person who is awarded a military sentence of detention is further sentenced to detention under section 57(2) of this Act, the court-martial or officer by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiry of the first-mentioned sentence.

[ Where on awarding a sentence of detention (“the subsequent sentence”) the offender’s <sup>F348</sup>(2A) commanding officer orders under subsection (2) of this section that the subsequent sentence is to begin to run from the expiry of another sentence (“the current sentence”) ]

- (a) section 118ZA of this Act shall have effect in relation to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were a reference to the expiry of the current sentence, and
  - (b) where the suspension of a sentence by virtue of subsection (3) or (4) of that section would end before the expiry of the current sentence, the sentence shall run from the expiry of the current sentence.]
- (3) Where a person is convicted by a general court-martial or a field general court-martial of two or more offences against section 70 of this Act consisting in the commission of a civil offence for which a civil court in England could award imprisonment, the court-martial may by its sentence award, for any of the said offences, a term of imprisonment which is to run from the expiry of a term awarded by that sentence for any other of those offences.]

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

#### Textual Amendments

**F347** S. 118A inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 39(1)**, 78(4)

**F348** S. 118A(2A) inserted (2.10.2000) by [2000 c. 4, s. 25](#), **Sch. 3 para. 12**; [S.I. 2000/2366](#), **art. 2** (with [Sch. para. 13](#))

#### Marginal Citations

**M22** [1955 c. 19](#).

**M23** [1957 c. 53](#).

### 119 Duration of sentences of imprisonment and detention.

(1) Where a warrant officer, non-commissioned officer or soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended [<sup>F349</sup>in pursuance of section 120 of this Act] after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with [<sup>F349</sup>the provisions of the said section 120] until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into naval, military or air force custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was—

- (a) in the custody of a civil authority, or
- (b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any military, naval or air-force authority of any country or territory outside the United Kingdom as respects which arrangements have been made under section one hundred and twenty-six of this Act,

the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(3) In the last foregoing subsection the expression “civil authority” means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable.

(4) Without prejudice to subsection (2) of this section, where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Rules been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

*Status: Point in time view as at 01/10/2008.*

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- (5) A person who for any period is released as mentioned in the last foregoing subsection or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out of any military establishment or otherwise out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) of this section as being unlawfully at large.
- (6) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.
- (7) References in the last foregoing subsection to release or recall under civil law are references to release or recall in pursuance of rules made under subsection (5) of section forty-seven of the <sup>M24</sup>Prison Act 1952, subsection (6) of section thirty-five of the <sup>M25</sup>Prisons (Scotland) Act 1952, or paragraph (c) of subsection (1) of section thirteen of the <sup>M26</sup>Prisons Act (Northern Ireland) 1953, or (in the case of a person serving his sentence outside the United Kingdom) in pursuance of any corresponding provision of the law of the country or territory in which he is serving his sentence.

#### Textual Amendments

**F349** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 1 para.1\(5\)](#)

#### Marginal Citations

**M24** 1952c. 52.

**M25** 1952 c. 61.

**M26** 1953 c. 18(N.I.)

#### [<sup>F350</sup>**119A** Limitation of total period of sentences of detention.

- (1) Notwithstanding anything in this Part of this Act, no offender shall be kept continuously in detention for a period exceeding two years in pursuance of two or more sentences of detention.
- (2) Subsection (1) above shall not affect the validity of any order or direction under this Part of this Act that a sentence of detention shall begin to run from the expiry of another such sentence; but so much of any term of detention to which any such order or direction relates as would prolong the total term of detention beyond two years shall be remitted by virtue of the order or direction.

[ Where the whole or part of a sentence of detention is suspended by virtue of <sup>F351</sup>(2A) section 118ZA(3) or (4) of this Act, any period of detention ending with the beginning of the suspension shall be taken for the purposes of subsection (1) above to be continuous with any period of detention beginning with the end of the suspension.]

- (3) Where any person who has been sentenced by a court-martial (whether under this Act, the <sup>M27</sup>Air Force Act 1955 or the <sup>M28</sup>Naval Discipline Act 1957) to detention is subsequently sentenced by a court-martial under this Act to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.]

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#### Textual Amendments

**F350** S. 119A inserted by [Armed Forces Act 1971 \(c. 33\)](#), **ss. 40**, 78(4)

**F351** S. 119A(2A) inserted (2.10.2000) by [2000 c. 4, s. 25](#), **Sch. 3 para. 14**; [S.I. 2000/2366](#), **art. 2** (with [Sch. para. 13](#))

#### Marginal Citations

**M27** [1955 c.19](#).

**M28** [1957 c. 53](#).

## 120 Suspension of sentences.

- (1) The following provisions of this section shall have effect as respects the suspension of a sentence of imprisonment or detention passed by a court martial on a warrant officer, non-commissioned officer or soldier.
- (2) [<sup>F352</sup>On passing such a sentence, the court] may order that the sentence shall be suspended.
- [<sup>F353</sup>(3) On the review of a sentence which is not for the time being suspended, the reviewing authority may order that the balance of the sentence be suspended.]
- <sup>F354</sup>(4) . . . . .
- [<sup>F355</sup>(5) Where, while a sentence is suspended under this section, the person sentenced commits a fresh offence and is convicted of that offence by a court-martial, then (unless the balance of the earlier sentence is remitted by virtue of section 119A(3) of this Act) the court may determine the suspension of the sentence by an order committing the person sentenced to imprisonment or detention, as the case may be.
- (5A) Subsections (5B) to (5E) apply where a court-martial makes an order under subsection (5).
- (5B) The court may direct that the sentence in respect of which the order is made shall begin to run from the end of another term of imprisonment or detention which—
  - (a) has been passed on the person on a previous occasion; or
  - (b) the court passes on him on the same occasion.
- (5C) In subsection (5B) the reference to another term of imprisonment does not include a term from which the person has been released early under Part 2 of the Criminal Justice Act [1991 \(c. 53\)](#) or Chapter 6 of Part 12 of the Criminal Justice Act [2003 \(c. 44\)](#).
- (5D) Subsection (5B) is subject to section 119A of this Act (limitation of total period of sentences of detention).
- (5E) For the purposes of sections 113 and 113AA of this Act (review) and subsection (3) above, the order is to be treated as a sentence passed on the offender for the earlier offence.]
- <sup>F356</sup>(6) Without prejudice to the further suspension of the earlier sentence, [<sup>F357</sup>an order under subsection (5)] shall not be affected by the later sentence <sup>F358</sup>. . . being quashed.
- (7) Where the sentence of a person in custody is suspended, he shall thereupon be released [<sup>F359</sup>and a sentence which has been suspended shall, unless the suspension has been



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sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect].

[<sup>F360</sup>(7A) Subsection (5) does not apply if the person was tried by court-martial for the fresh offence in pursuance of an election for court-martial trial.]

<sup>F361</sup>(8) . . . . .

#### Textual Amendments

- F352** Words in s. 120(2) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(1)(a)**; S.I. 1997/304, **arts. 2, 3** (with transitional provisions in Sch. 2)
- F353** S. 120(3) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(1), **Sch. 6 para. 4(1)(b)**; S.I. 1997/304, **arts. 2, 3** (with transitional provisions in Sch. 2)
- F354** S. 120(4) omitted (18.7.2008) by virtue of **The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694)**, arts. 1, **24(2)**
- F355** S. 120(5)-(5E) substituted for s. 120(5) (18.7.2008) by **The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694)**, arts. 1, **24(3)** (with Sch. paras. 4, 5)
- F356** Proviso repealed by **Armed Forces Act 1971 (c. 33)**, s. 78(4), **Sch. 4 Pt. I**
- F357** Words in s. 120(6) substituted (18.7.2008) by **The Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694)**, arts. 1, **24(4)**
- F358** Words in s. 120(6) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **arts. 2, 3** (with transitional provisions in Sch. 2)
- F359** Words added by **Armed Forces Act 1971 (c. 33)**, s. **54(2)**
- F360** S. 120(7A) inserted (15.10.2007) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 22**; S.I. 2007/2913, art. 2
- F361** Ss. 120(8), 152(3), and 153(2) repealed by **Armed Forces Act 1971 (c. 33)**, **Sch. 4 Pt. II**

#### [<sup>F362</sup>120ZA] **Activation of suspended sentence: appeals**

- (1) Subsections (2) to (4) apply where a court-martial makes an order under section 120(5) of this Act.
- (2) For the purposes of the Courts-Martial (Appeals) Act 1968 (c. 20) (“the 1968 Act”)—
  - (a) the order is to be treated as a sentence passed on the offender for the offence for which the sentence was passed;
  - (b) any appeal, or application for leave to appeal, against the sentence passed in respect of the new offence is to be treated as also being an appeal or application for leave to appeal against the order; and
  - (c) any appeal, or application for leave to appeal, against the order is to be treated as also being an appeal or application for leave to appeal against the sentence passed in respect of the new offence.
- (3) In relation to any appeal against the order, section 16A of the 1968 Act (powers on appeals against sentence) is to be read as conferring power—
  - (a) to quash the order; or
  - (b) if the court-martial gave a direction under section 120(5B) of this Act, to quash that direction.
- (4) Where the Appeal Court quashes the order, or any direction under section 120(5B) of this Act, then in relation to any appeal against the sentence passed in respect of the new offence—

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- (a) section 16A of the 1968 Act has effect as if the words “and which is not of greater severity than that for which it is substituted” were omitted; but
  - (b) the Appeal Court may not exercise its powers under that section in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (5) Subsections (6) and (7) apply where a court-martial has power to make an order under section 120(5) of this Act in respect of a sentence (“the suspended sentence”) but does not do so.
- (6) On any appeal against the sentence passed in respect of the new offence, the Appeal Court’s power under section 16A of the 1968 Act to pass a sentence in substitution for the sentence of the court-martial includes—
- (a) power to make an order under section 120(5) of this Act in respect of the suspended sentence; and
  - (b) if the court makes such an order, power to give a direction under section 120(5B) of this Act in relation to the order.
- (7) But the Appeal Court may not exercise its powers under subsection (6) in such a way that, taking the case as a whole, the appellant is dealt with more severely on appeal than he was dealt with by the court-martial.
- (8) In this section—
- (a) “the new offence” means the offence mentioned in section 120(5) of this Act; and
  - (b) “the Appeal Court” means the Courts-Martial Appeal Court.]

**Textual Amendments**  
**F362** S. 120ZA inserted (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **25** (with Sch. paras. 6, 7)

<sup>F363</sup>**120A** Postponement of sentences.

.....

**Textual Amendments**  
**F363** S. 120A omitted (18.7.2008) by virtue of [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, **33(3)**

*Execution of sentences of death, imprisonment and detention*

<sup>F364</sup>**121** .....

**Textual Amendments**  
**F364** S. 121 repealed (11.5.2001) by [2001 c. 19, s. 38, Sch. 7 Pt. 4](#)

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## 122 Imprisonment and Detention Rules.

- (1) Subject to the provisions of this Act, the Secretary of State may make rules (in <sup>F365</sup> . . . this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters, that is to say—
- (a) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them;
  - (b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;
  - (c) the provision, classification, regulation and management of military establishments;
  - (d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;
  - (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence <sup>F366</sup> . . . ;
  - (f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of military establishments.
- (2) Imprisonment and Detention Rules shall not authorise the infliction of corporal punishment.
- (3) Imprisonment and Detention Rules may apply with the necessary modifications all or any of the provisions of sections thirty-nine to forty-two of the <sup>M29</sup>Prison Act 1952 (which relate to offences by persons other than prisoners).
- (4) Imprisonment and Detention Rules may, to such extent as may be provided by the Rules, be made so as to apply to persons detained in military establishments while serving sentences of imprisonment or detention awarded under [<sup>F367</sup> the <sup>M30</sup>Naval Discipline Act 1957] or the <sup>M31</sup>Air Force Act, 1955, notwithstanding that such persons are not for the time being subject to military law.
- (5) The Secretary of State may as respects any area in which persons subject to military law are on active service delegate his power to make Imprisonment and Detention Rules to the officer commanding the command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Secretary of State may think fit.

### Textual Amendments

**F365** Words in s. 122(1) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(2), [Sch. 3](#); [S.I. 1991/2719](#), art. 2, [Sch.](#)

**F366** Words in s. 122(1)(e) repealed (1.10.1996 subject to art. 3 of the commencing S.I.) by [1996 c. 46](#), s. 35(1)(2), [Sch. 6 para. 5](#), [Sch. 7 Pt. III](#); [S.I. 1996/2474](#), art. 2, [Sch.](#)

**F367** Words substituted by virtue of [Naval Discipline Act 1957 \(c. 53\)](#), s. 137(2)

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

**C33** S. 122 amended by Courts-Martial (Appeals) Act 1968 (c. 20), s. 52

**C34** S. 122(3) amended (E.W.) by Criminal Justice Act 1961 (c. 39), s. 22(3)

**Marginal Citations**

**M29** 1952 c. 52.

**M30** 1957 c. 53.

**M31** 1955 c. 19.

**123 Supplementary provisions relating to regulations and rules under ss. 121 & 122.**

- (1) <sup>F368</sup> . . . Imprisonment and DetentionRules may contain such incidental and supplementary provisions as appear to the Secretary of State to berequisite for the purposes of the <sup>F368</sup> . . . rules.
- (2) Any such <sup>F368</sup> . . . rules as aforesaid made by the Secretary of State shall be made by statutoryinstrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**

**F368** Words in s. 123(1)(2) repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4

**124 Restrictions on serving of sentences of detention in prisons.**

A person shall not be required to serve any part of a military sentence of detention in a military orcivil prison:

Provided that in such cases and subject to such conditions as may be specified by or underImprisonment and Detention Rules a person serving such a sentence may be temporarily detained in a militaryor civil prison for any period not exceeding seven days.

**125 Special provisions as to civil prisons in the United Kingdom.**

- (1) A person sentenced to <sup>F369</sup> . . . imprisonment and committed or transferred to a civil prison in pursuanceof <sup>F369</sup> . . . Imprisonment and Detention Rulesshall while in that prison be confined and otherwise dealt with in the same manner as a person confinedtherein under a like sentence of a civil court.

<sup>F370</sup>(2) . . . . .

**Textual Amendments**

**F369** Words in s. 125(1) repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4

**F370** S. 125(2) repealed (11.5.2001) by 2001 c. 19, s. 38, Sch. 7 Pt. 4

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## 126 Special provisions as to carrying out or serving of sentences outside the United Kingdom otherwise than in military establishments.

- (1) A Secretary of State may from time to time make arrangements with the authorities of any country or territory outside the United Kingdom whereby <sup>F371</sup> . . . military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in [<sup>F372</sup> establishments under the control of those authorities] .
- (2) The powers conferred on the Secretary of State by sections [<sup>F373</sup> section one hundred and twenty-two of this Act.] shall extend to the making of such provision as appears to the Secretary of State necessary or expedient for giving effect to any arrangements made under the last foregoing subsection.
- (3) The said powers shall be so exercised as to secure that <sup>F374</sup> . . . no military sentence of imprisonment or detention shall be served, in an establishment in any country or territory outside the United Kingdom not being a military establishment, except in accordance with arrangements made as respects that country or territory.

### Textual Amendments

- F371** Words in s. 126(1) repealed (11.5.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 4 para. 18(2)(a), Sch. 7 Pt. 4
- F372** Words in s. 126(1) substituted (11.5.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 4 para. 18(2)(b)
- F373** Words in s. 126(2) substituted (11.5.2001) by 2001 c. 19, s. 34, Sch. 6 Pt. 4 para. 18(3)
- F374** Words in s. 126(3) repealed (11.5.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 4 para. 18(2)(a), Sch. 7 Pt. 4

## 127 Country in which sentence of imprisonment or detention to be served.

- (1) A person who is serving a military sentence of imprisonment or detention in the United Kingdom may (in so far as may be specified by or under Imprisonment and Detention Rules) be removed out of the United Kingdom—
  - (a) to any colony in which he was enlisted; or
  - (b) to any place out of the United Kingdom where the corps or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.
- (2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months shall as soon as practicable <sup>F375</sup> . . . be removed to the United Kingdom.
- (3) The last foregoing subsection shall not apply in relation to any person belonging to a class of persons specified by or under Imprisonment and Detention Rules as persons whose removal to the United Kingdom would for reasons of climate, place of birth or place of enlistment or any other reason not be beneficial.
- (4) Where a person has been sentenced under this Act, by a court-martial held out of the United Kingdom, to imprisonment or detention for more than twelve months, the <sup>F376</sup> . . . reviewing authority may notwithstanding anything in subsection (2) of this section direct that he shall not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding (in the case of a sentence of

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more than two years' imprisonment) two years, as may be specified in the direction; and indetermining whether or not to exercise the powers conferred by this subsection a <sup>F376</sup> . . . reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

<sup>F377</sup>(5) . . . . .

(6) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(7) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

#### Textual Amendments

- F375** Words in s. 127(2) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(1)(2), [Sch. 2 para. 1](#), [Sch. 3](#); [S.I. 1991/2719](#), art. 2, [Sch.](#)
- F376** Words in s. 127(4) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46](#), s. 35(2), [Sch. 7 Pt. II](#); [S.I. 1997/304](#), [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F377** S. 127(5) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46](#), s. 35(2), [Sch. 7 Pt. II](#); [S.I. 1997/304](#), [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))

## 128 Application of enactments relating to coroners.

<sup>F378</sup>(1) . . . . .

(2) [<sup>F379</sup>The Coroners Act 1887 to 1926][<sup>F379</sup>The Coroners Act 1988] shall apply in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as those Acts apply in relation to a prison.

#### Textual Amendments

- F378** S. 128(1) repealed (11.5.2001) by [2001 c. 19](#), s. 38, [Sch. 7 Pt. 4](#)
- F379** Words "The Coroners Act 1988" substituted (E.W.) for "The Coroners Acts 1887 to 1926" by [Coroners Act 1988 \(c. 13, SIF 33\)](#), s. 36(1), [Sch. 3 para. 6](#)

## 129 Duties of governors of prisons and others to receive prisoners.

(1) It shall be the duty of the governor of a civil prison, or, in so far as <sup>F380</sup> . . . Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being a military prison) in a colony, to receive any person duly sent to that prison in pursuance of the <sup>F380</sup> . . . rules and to confine him until <sup>F380</sup> . . . the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such governor, superintendent or other person as aforesaid, of the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined (whether the station or place is in the United Kingdom or in a

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colony) to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

#### Textual Amendments

**F380** Words in S. 129(1) repealed (11.5.2001) by 2001 c. 19, s. 38 Sch. 7 Pt. 4

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

**C35** S. 129 extended by Guyana Independence Act 1966 (c. 14), s. 5(2)

### 130 Application to air-force establishments and custody.

- (1) In section one hundred and eighteen of this Act, the reference in subsection (2) to a military establishment shall include a reference to an air-force establishment (within the meaning of the <sup>M32</sup>Air Force Act 1955).
- (2) In section one hundred and nineteen of this Act references to a military establishment and to Imprisonment and Detention Rules shall include respectively references to such an air-force establishment as aforesaid and to Imprisonment and Detention Rules made under the <sup>M33</sup>Air Force Act 1955, and the reference in subsection (5) to military custody shall include a reference to air-force custody.
- (3) In section one hundred and twenty-four of this Act the reference to a military prison shall include a reference to an air-force prison (within the meaning of the <sup>M34</sup>Air Force Act 1955).
- (4) In subsection (3) of section one hundred and twenty-six of this Act the reference to a military establishment shall include a reference to an air-force establishment (within the meaning of the <sup>M35</sup>Air Force Act 1955).

#### Marginal Citations

**M32** 1955c. 19.

**M33** 1955 c. 19.

**M34** 1955 c. 19.

**M35** 1955c. 19.

*Trial of persons ceasing to be subject to military law and time limits for trials*

### 131 Trial and punishment of offences under military law notwithstanding offender ceasing to be subject to military law.

- (1) Subject to the provisions of the next following section, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to military law, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to <sup>F381</sup>... keeping in custody, investigation of charges, [<sup>F382</sup>summary dealing with charges][<sup>F383</sup>(including appeals against findings recorded, or punishments awarded, on summary dealing)] trial and punishment by court-martial (including <sup>F384</sup>..., review, <sup>F385</sup>... and suspension) and execution of sentences as continuing subject to military law notwithstanding his ceasing at any time to be subject thereto.



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- (2) Where, while a person is in military or air-force custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in the last foregoing subsection <sup>F386</sup> ..., as having been subject to military law when the offence was committed or is suspected of having been committed and as continuing subject to military law thereafter.
- (3) Where by virtue of either of the two last foregoing subsections a person is treated as being at any time subject to military law for the purpose of any provision of this Act, that provision shall apply to him—
- (a) if he holds any military rank, as to a person having that rank;
  - (b) if he holds any naval or air-force rank or rating, as to a person having the corresponding military rank;
  - (c) otherwise as to a person having the rank which he had when last actually subject to military law:

Provided that as respects any time after he has been sentenced for the offence in question <sup>F387</sup> ... the said provision shall apply to him (in any case) as to a soldier.

- (4) Where apart from this subsection any provision of this Act would under the last foregoing subsection apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

#### Textual Amendments

- F381** Word in s. 131(1) omitted (18.7.2008) by virtue of [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\)](#), arts. 1, 5
- F382** Words inserted by [Armed Forces Act 1981 \(c. 55\)](#), s. 6(2)
- F383** Words in s. 131(1) inserted (2.10.2000) by 2000 c. 4, s. 25, [Sch. 3 para. 16](#); S.I. 2000/2366, [art. 2](#) (with [Sch. para. 13](#))
- F384** Word in s. 131(1) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [art. 2](#) (with transitional provisions in [Sch. 2](#))
- F385** Word in s. 131(1) repealed (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\)](#), s. 26(1)(2), [Sch. 2 para. 11\(1\)](#), [Sch. 3](#); S.I. 1991/2719, art. 2, [Sch.](#)
- F386** Words repealed by [Armed Forces Act 1981 \(c. 55\)](#), [Sch. 5 Pt. II](#)
- F387** S. 131(3): words in proviso repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [art. 2](#) (with transitional provisions in [Sch. 2](#))

### 132 Limitation of time for trial of offences under military law.

- [<sup>F388</sup>(1) Where by virtue of any enactment proceedings on indictment for any civil offence must be brought within a limited period, no proceedings shall be taken against any person for an offence against section 70 of this Act corresponding to that civil offence unless the trial or proceedings on a summary dealing with the charge is or are begun before the end of that period.]
- (2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular forces

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continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

[<sup>F389</sup>(3) Except in relation to the offences specified in subsection (3A) below, no proceedings shall be taken against a person by virtue of subsection (1) of section 131 of this Act unless—

- (a) in a case where the charge is one which may be dealt with summarily, the proceedings on the summary dealing with the charge are begun within three months or the trial by court-martial is begun within six months after he ceases to be subject to military law;
- (b) in a case where the charge is one which cannot be dealt with summarily, the trial is begun within six months after he ceases to be subject to military law.

(3A) Subsection (3) above does not apply to an offence against section 31 or 32 of this Act or desertion or to an offence against section 70 where the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the proceedings.]

(4) A person shall not be arrested [<sup>F390</sup>under section 74 of this Act] or kept in custody by virtue of subsection (1) of the last foregoing section for an offence at any time after he has ceased to be triable for the offence.

#### Textual Amendments

**F388** S. 132(1) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 7\(1\)\(6\)](#)

**F389** S. 132(3)(3A) substituted for s. 132(3) by [Armed Forces Act 1981 \(c. 55\), s. 6\(3\)\(c\)](#)

**F390** Words in s. 132(4) inserted (18.7.2008) by [The Armed Forces \(Alignment of Service Discipline Acts\) Order 2008 \(S.I. 2008/1694\), arts. 1, 6](#)

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

**C36** S. 132 excluded (1.4.1997) by [S.I. 1997/172, art. 86](#)

### [<sup>F391</sup>133 Jurisdiction of civil courts

(1) Where a person subject to military law—

- (a) has been tried for an offence by a court-martial or has had an offence committed by him taken into consideration by a court-martial in sentencing him, or
- (b) has been charged with an offence under this Act and has had the charge dealt with summarily by his commanding officer or the appropriate superior authority,

a civil court shall be debarred from trying him subsequently for [<sup>F392</sup>the same, or substantially the same offence] ; but except as aforesaid nothing in this Act shall be construed as restricting the jurisdiction of any civil court to try a person subject to this Act for an offence.

(2) For the purposes of this section—

- <sup>F393</sup>(a) . . . . .
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if <sup>F394</sup>. . . the sentence is quashed [<sup>F395</sup>(as well as in a case where the taking into consideration of the offence has been annulled by the <sup>F394</sup>. . . reviewing authority)];

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- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding [F396 or award] of that officer or authority has been quashed, [F397 on review or quashed or varied by the summary appeal court.]].

#### Textual Amendments

- F391** S. 133 substituted by [Armed Forces Act 1966 \(c. 45\), s. 25\(1\)](#)
- F392** Words in s. 133(1) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 26\(1\), Sch. 2 para. 5\(2\)](#); [S.I. 1991/2719, art. 2](#)
- F393** Words in s. 133(2)(a) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II](#); [S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F394** Words in s. 133(2)(b) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II](#); [S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F395** Words added by [Armed Forces Act 1981 \(c. 55\), s. 5\(4\)\(a\)](#)
- F396** Words in s. 133(2)(c) inserted (2.10.2000) by [2000 c. 4, s. 25, Sch. 3 para. 21\(a\)](#); [S.I. 2000/2366, art. 2](#) (with [Sch. para. 13](#))
- F397** Words in s. 133(2)(c) substituted (2.10.2000) by [2000 c. 4, s. 25, Sch. 3 para. 21\(b\)](#); [S.I. 2000/2366, art. 2](#) (with [Sch. para. 13](#))

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

- C37** S. 133 extended with modifications by [Armed Forces Act 1976 \(c. 52\), Sch. 3 para. 16](#)

#### [F398] 133A Financial penalty enforcement orders.

- (1) If—
- (a) a financial penalty has been awarded against any person under this Act, and [ the penalty was—
  - [F399] (b)
    - (i) a fine awarded in respect of a qualifying offence (or in respect of such an offence together with other offences) on the conviction of a qualifying offence either of that person or of the person as whose parent or guardian that person is to pay the penalty; or
    - (ii) stoppages or a compensation order awarded in respect of a qualifying offence, (whether on the conviction of any person of the offence or on a request by any person for the offence to be taken into consideration); and]
  - (c) no term of imprisonment was imposed in default of payment, and
  - (d) no appeal is outstanding and the time provided for the giving of notice of appeal against the award has expired, and
  - (e) the whole or any part of the penalty remains unpaid or unrecovered, and
  - (f) the person against whom the award was made is a person to whom this section applies,
- the Defence Council or an officer authorised by them may make an order (in this section referred to as a “financial penalty enforcement order”) for the registration of the penalty by the relevant court.
- (2) This section applies to a person who
- [F400] (a) is, or would be but for section 131 above, neither subject to service law nor a civilian to whom Part II of this Act is applied by section 209 below, Part II of

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the <sup>M36</sup>Air Force Act 1955 is applied by section 209 of that Act or Parts I and II of the <sup>M37</sup>Naval Discipline Act 1957 are applied by section 118 of that Act.

[<sup>F401</sup>, or

(b) is subject to service law because he is a special member of a reserve force within the meaning of the Reserve Forces Act 1996.]

(3) In this section “qualifying offence” means

- (a) an offence under section 36 above committed outside the United Kingdom and consisting of or including acts or omissions that would constitute a comparable foreign offence or a local road traffic offence;
- (b) an offence under section 70 above;
- (c) an offence under any provision of this Act other than section 70 above consisting of or including acts or omissions which would also constitute an offence under section 70 above;

and for the purposes of this definition—

“comparable foreign offence” means an offence under the civil law of any place outside the United Kingdom which is comparable to an offence under the law of England and Wales; and

“local road traffic offence” means an offence under the civil law of any place outside the United Kingdom relating to road traffic.

(4) A financial penalty enforcement order shall contain a certificate issued on behalf of the Defence Council or by an officer authorised by them and stating—

- (a) that a financial penalty has been awarded against the person named in the order;
- (b) that the conditions specified in paragraphs (b) to (f) of subsection (1) above are satisfied;
- (c) the nature and amount of the penalty;
- (d) the date on which and the [<sup>F402</sup> offence or offences] in respect of which it was awarded;
- (e) if it was awarded against the person named in the order as the parent or guardian of some other person, the fact that it was so awarded and the name of that other person;
- (f) sufficient particulars of the case (including particulars of any offences taken into consideration at the trial);
- (g) the date of any payment or recovery of a sum on account of the penalty;
- (h) the sum outstanding; and
- (j) the authority to whom and address to which any stoppages or compensation included in the penalty will fall, on recovery, to be remitted under subsection (7) below.

(5) A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by an officer authorised by them shall be deemed to be such an order unless the contrary is proved, and a certificate under subsection (4) above shall be evidence of the matters stated.

(6) Subject to subsection (7) below, upon registration of a financial penalty enforcement order—

- (a) service enforcement procedures shall cease to be available for the recovery of the sum certified as outstanding, and

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- (b) that sum shall be treated for all purposes as if it had been a fine imposed upon a conviction by the relevant court.
- (7) Stoppages or compensation recovered under this section shall be remitted to the authority at the address specified in the certificate under subsection (4) above.
- (8) Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one offence, it shall be deemed for the purposes of enforcement to be a single penalty only.
- (9) Where—
- (a) a financial penalty enforcement order has been made against any person, and
  - (b) he ceases to be a person to whom this section applies at a time when the whole or any part of the certified sum is still outstanding,
- service enforcement procedures shall apply to the amount outstanding as if it were a sum payable by way of a fine imposed by a civil court.
- (10) In this section—
- “financial penalty” means—
- (a) a fine, including a fine imposed by virtue of paragraph 13 of Schedule 5A below;
  - (b) stoppages;
  - (c) a compensation order imposed by virtue of paragraph 11 or 13 of Schedule 5A below; <sup>F403</sup>
  - (d) <sup>F403</sup>“the relevant court” means—
- (a) the magistrates’ court in England or Wales,
  - (b) the sheriff court in Scotland, or
  - (c) the court of summary jurisdiction in Northern Ireland,
- within whose jurisdiction the person against whom a financial penalty enforcement order is made appears to the Defence Council or an officer authorised by them to reside or to be likely to reside;
- “service enforcement procedures” means any procedure available by virtue of any of the following enactments, namely—
- (a) sections 144, 146 and 209(4) and (4A) below and sections 144, 146 and 209(4) and (4A) of the <sup>M38</sup>Air Force Act 1955, and
  - (b) sections 128A and 128B of the <sup>M39</sup>Naval Discipline Act 1957; and “stoppages” does not include sums awarded by virtue of section 147 or 148 below.

[ Where a fine has been awarded together with stoppages or a compensation order, this <sup>F404</sup>(11) section shall have effect in relation to the fine and to the stoppages or compensation order as if they were separate penalties. ]

#### Textual Amendments

**F398** S. 133A inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 16, **Sch. 8 para. 1**

**F399** S. 133A(1)(b) substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), **Sch. 1 para. 7(2)**

**F400** S. 133A(2): word “(a)” inserted (1.1.1999) by [S.I. 1998/3086, reg. 5\(1\)](#)

**F401** Word “or” and s. 133A(2)(b) inserted (1.1.1999) by [S.I. 1998/3086, reg. 5\(1\)](#)

**F402** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), **Sch. 1 para. 7(3)**

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**F403** Para. (d) in the definition of “financial penalty” and the word “or” immediately preceding it repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(2\), Sch. 2](#)

**F404** S. 133A(11) inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\), s. 16\(1\), Sch. 1 para.7\(4\)](#)

**Marginal Citations**

**M36** 1955 c. 19.

**M37** 1957 c. 53.

**M38** 1955c. 19.

**M39** 1957 c. 53

**134 Persons not to be tried under this Act for offences already disposed of.**

(1) Where a person subject to military law—

- [<sup>F405</sup>(a) has been tried for an offence by a competent civil court, wherever situated, or a court-martial (whether held under this Act, the <sup>M40</sup>Air Force Act 1955 or the <sup>M41</sup>Naval Discipline Act 1957), or
- (aa) has had an offence committed by him taken into consideration when being sentenced by a competent civil court in the United Kingdom or any such court-martial as is referred to in the foregoing paragraph; or]
- (b) has been charged with an offence under this Act, [<sup>F406</sup>the <sup>M42</sup>Naval Discipline Act 1957] or the <sup>M43</sup>Air Force Act 1955, and has had the charge dismissed, or has [<sup>F407</sup>had a finding that the charge has been proved recorded against him], by his commanding officer or the appropriate superior authority, or
- (c) has had an offence condoned by his commanding officer (whether military, naval or air-force),

he shall not be liable in respect of [<sup>F408</sup>the same, or substantially the same offence] to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section—

- <sup>F409</sup>(a) .....
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial insentencing him if [<sup>F410</sup>confirmation of the sentence of the court is withheld or] the sentence is quashed [<sup>F411</sup>(as well as in a case where the taking into consideration of the offence has been annulled by the <sup>F412</sup> . . . reviewing authority)];
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding [<sup>F413</sup>or award] of that officer or authority has been quashed, [<sup>F414</sup>on review or quashed or varied by the summary appeal court;]
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;
- (e) a person ordered under subsection (2) of section fifty-seven of this Act or the corresponding provision of the <sup>M44</sup>Air Force Act 1955, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

<sup>F415</sup>(3) .....

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- (4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

**Textual Amendments**

- F405** S. 134(1)(a)(aa) substituted for s. 134(1)(a) by [Armed Forces Act 1966 \(c. 45\), s. 26](#)
- F406** Words substituted by virtue of [Naval Discipline Act 1957 \(c. 53\), s. 137\(2\)](#)
- F407** Words in s. 134(1)(b) substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, [Sch. 1 Pt. IV para. 67](#); S.I. 1997/304, [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F408** Words in s. 134(1) substituted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 26\(1\), Sch. 2 para. 5\(3\)](#); S.I. 1991/2719, [art. 2](#)
- F409** S. 134(2)(a) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F410** By 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#)) it is provided that in s. 134(2)(b) the words “confirmation of the sentence is withheld or” are repealed (1.4.1997 subject to art. 3 of the commencing S.I.)
- F411** Words added by [Armed Forces Act 1981 \(c. 55\), s. 5\(4\)\(b\)](#)
- F412** Words in s. 134(2)(b) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F413** Words in s. 134(2)(c) inserted (2.10.2000) by 2000 c. 4, s. 25, [Sch. 3 para. 22\(a\)](#); S.I. 2000/2366, [art. 2](#) (with [Sch. para. 13](#))
- F414** Words in s. 134(2)(c) substituted (2.10.2000) by 2000 c. 4, s. 25, [Sch. 3 para. 22\(b\)](#); S.I. 2000/2366, [art. 2](#) (with [Sch. para. 13](#))
- F415** S. 134(3) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. II](#); S.I. 1997/304, [arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))

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

- C38** S. 134 excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(2\)](#)
- C39** S. 134 modified (1.4.1997) by S.I. 1997/172, [art. 86](#)
- C40** S. 134(1)(2) extended with modification by [Armed Forces Act 1976 \(c. 52\), Sch. 3 para.16](#)

**Marginal Citations**

- M40** 1955 c. 19.
- M41** 1957 c. 53.
- M42** 1957 c. 53.
- M43** 1955 c. 19.
- M44** 1955 c. 19.

*Inquiries*

**<sup>F416</sup>135 Boards of inquiry.**

.....

**<sup>F416</sup>136 Inquiries into absence.**

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<sup>F416</sup>**137 Regimental inquiries.**

.....

*Miscellaneous provisions*

**138 Restitution or compensation for theft, etc.**

- (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, [<sup>F417</sup>handling it], <sup>F418</sup> or otherwise [<sup>F419</sup> or where a person has been convicted of any offence by a court-martial and the court has taken such an offence of unlawfully obtaining property into consideration in sentencing him.].
- (2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.
- (3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.
- (4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.
- (5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.
- (6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.
- (7) An order under this section may be made by the court-martial by whom the offender is convicted, <sup>F420</sup> . . . , or by any reviewing authority; and in this section the expression “appearing” means appearing to the court, <sup>F420</sup> . . . or authority making the order.
- (8) <sup>F421</sup> . . . the provisions of this Part of this Act as to the <sup>F421</sup> . . . review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.
- (9) The operation of any order under this section shall be suspended—
  - (a) in any case, until the expiration of the period prescribed under [<sup>F422</sup>Part II of the <sup>M45</sup>Courts-Martial (Appeals) Act 1968], as the period within which

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- an application for leave to appeal to the Courts-Martial Appeal Court against [F423 a relevant conviction] must be lodged; and
- (b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;
- and where the operation of such an order as aforesaid is suspended under this section—
- (c) it shall not take effect if the conviction is quashed on appeal;
- (d) the Courts-Martial Appeal Court may by order annul or vary the order although the conviction is not quashed;
- (e) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under [F422 Part II of the said Act of 1968].
- (10) Notwithstanding anything in the last foregoing subsection, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, F424 . . . or authority making the order directs to the contrary in any case in which, in the opinion of the court, F424 . . . or authority, the title to the property is not in dispute.
- (11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.
- [F425 (12) In this section “relevant conviction” means—
- (a) where an order under this section was made as a result of a conviction of such an offence of unlawfully obtaining property as is mentioned in subsection (1) above, that conviction; or
- (b) where an order under this section was made as a result of such an offence of unlawfully obtaining property having been taken into consideration in determining sentence, the conviction or, if more than one, each conviction in respect of which the sentence fell to be determined.]

#### Textual Amendments

- F417** Words substituted by [Theft Act 1968 \(c. 60\), Sch. 2 Pt. II](#)
- F418** Words repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)
- F419** Words added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(1\)](#)
- F420** Words in s. 138(7) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F421** Words in s. 138(8) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F422** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), Sch. 4](#)
- F423** Words substituted by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(2\)](#)
- F424** Words in s. 138(10) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, arts. 2, 3](#) (with transitional provisions in [Sch. 2](#))
- F425** S. 138(12) added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 1\(3\)](#)

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

- C41** S. 138 extended with modifications by [Armed Forces Act 1976 \(c. 52\), Sch. 3 para. 17](#)
- C42** S. 138(9) modified by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 46\(1\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

**Marginal Citations**

M45 1968 c. 20.

<sup>F426</sup>139 .....

**Textual Amendments**

**F426** S. 139 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), Sch. 1 Pt. IV para. 68, Sch. 7 Pt. I; S.I. 1997/304, art. 2 (with transitional provisions in Sch. 2)

**140 Promulgation.**

Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by Queen's Regulations or as the <sup>F427</sup> . . . reviewing authority, <sup>F427</sup> . . . , may direct.

**Textual Amendments**

**F427** Words in s. 140 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 35(2), Sch. 7 Pt. II; S.I. 1997/304, art. 2 (with transitional provisions in Sch. 2)

**141 Custody of proceedings of courts-martial and right of accused to a copy thereof.**

- (1) The record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General for not less than the prescribed period being a period sufficient to ensure that the rights conferred by the two next following subsections [<sup>F428</sup> and by subsection 141A below] shall be capable of being exercised.
- (2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate [<sup>F429</sup> as the Judge Advocate General may determine] a copy of the record of the proceedings of the court.
- (3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at [<sup>F429</sup> the rate determined under subsection (2) above] a copy of the record of the proceedings of the court.
- <sup>F430</sup>(3A) The right of a person or his representatives to obtain a copy of the record under this section does not extend to so much of the record as relates only to a charge of which he was found not guilty.]
- (4) If, on an application in pursuance of [<sup>F431</sup> this section] for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (5) In this section the expression “the relevant period”, in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence <sup>F432</sup> . . . .

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon <sup>F432</sup> . . . .

<sup>F433</sup>(6) . . . . .

#### Textual Amendments

**F428** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(2\)](#)

**F429** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 58](#)

**F430** S. 141(3A) inserted by [Armed Forces Act 1981 \(c. 55\) s. 7\(2\)\(a\)\(4\)](#) except in relation to a record of proceedings commenced before 1.5.1982

**F431** Words substituted by [Armed Forces Act 1981 \(c. 55\), s. 7\(2\)\(b\)\(4\)](#) except in relation to a record of proceedings commenced before 1.5.1982

**F432** Words in s. 141(5) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

**F433** S. 141(6) repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, s. 35\(2\), Sch. 7 Pt. II; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

#### <sup>F434</sup>**141A Right of penalised parent or guardian to copy of record of court-martial proceedings.**

- (1) Subject to the provisions of this section, where a court-martial imposes a fine on or makes a compensation order against a parent or guardian under paragraph 13 of Schedule 5A to this Act, the parent or guardian shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period and on payment therefor at such rate as the Judge Advocate General may determine a copy of the relevant part of the record of the proceedings of the court.
- (2) Where the parent or guardian dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Judge Advocate General on demand at any time within the period of twelve months from the death and on payment therefor at the rate determined under subsection (1) above a copy of the relevant part of the record of the proceedings of the court.
- (3) In a case where this section applies, any entitlement conferred by subsection (1) or (2) above is in addition to any entitlement conferred by section 141(2) or (3) of this Act.
- (4) If, on an application in pursuance of this section for a copy of the record of any proceedings, the Secretary of State certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.
- (5) In this section “the relevant period” means the period of five years beginning with the date of the promulgation of the findings and sentence.

*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

- (6) In this section “the relevant part of the record” means so much of the record as relates to compliance with the requirements of the said paragraph 13 or to any matters taken into account by the court in deciding to impose the fine or make the compensation order.
- (7) Subsection (6) of section 141 of this Act applies for the purposes of this section as it applies for the purposes of that section.]

#### Textual Amendments

**F434** S. 141A inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(1\)](#)

### 142 Indemnity for prison officers, etc.

No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

#### *Interpretation*

### 143 Interpretation of Part II.

- (1) In this Part of this Act:—

“civil prison” means a prison in the United Kingdom in which a person sentenced by a civil court to imprisonment can for the time being be confined;

<sup>F435</sup> . . .

“military establishment” means a military prison or any other establishment under the control of the Secretary of State where persons may be required to serve military sentences of imprisonment or detention;

“military prison” means separate premises under the control of the Secretary of State and primarily allocated for persons serving military sentences of imprisonment;

references to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial;

references to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender’s commanding officer;

“prescribed” means prescribed by [<sup>F436</sup>rules under section 103 of this Act].

- (2) References in this Part of this Act to warrant officers do not include references to acting warrant officers.
- (3) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

#### Textual Amendments

**F435** S. 143(1): definition of “convening officer” repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by [1996 c. 46, ss. 5, 35\(2\), Sch. 1 Pt. IV para. 69\(a\), Sch. 7 Pt. I; S.I. 1997/304, art. 2](#) (with transitional provisions in [Sch. 2](#))

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*Status: Point in time view as at 01/10/2008.*

*Changes to legislation: There are currently no known outstanding effects  
for the Army Act 1955 (repealed), Part II. (See end of Document for details)*

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**F436** S. 143(1): words in definition of “prescribed” substituted (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, s. 5, **Sch. 1 Pt. IV para. 69(b)**; S.I. 1997/304, **art. 2** (with transitional provisions in Sch. 2)

**Status:**

Point in time view as at 01/10/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Army Act 1955 (repealed), Part II.