



# Army Act 1955 (repealed)

1955 CHAPTER 18 3 and 4 Eliz 2

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

#### *Courts-martial: general provisions*

#### 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**

**F184** .....

#### Textual Amendments

- F1** S. 84 repealed (1.4.1997 subject to art. 3 of the commencing S.I.) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt.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>F2</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.]

*Status: Point in time view as at 31/03/2005.*

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#### Textual Amendments

**F2** 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>F3</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—
  - (a) a person who has a five year general qualification within the meaning of section 71 of the <sup>M1</sup>Courts and Legal Services Act 1990;
  - (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.
- (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

**F3** 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**)

#### Marginal Citations

**M1** 1990 c. 41.

#### <sup>F4</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>F5</sup>(cc) any warrant officers who are to be members of the court-martial;
  - (d) any other officers [<sup>F6</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.

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- (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>F7</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.

#### Textual Amendments

- F4** 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**)
- F5** 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**)
- F6** 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**)
- F7** 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>F8</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.

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- (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.
- (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;

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“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**

**F8** 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, [<sup>F9</sup>and, subject to section 85A below, to award] for any such offence any punishment authorised by this Act for that offence.

(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>F10</sup> . . . of imprisonment for a term exceeding two years [<sup>F11</sup>or make an order committing a person to be detained under section 71AA of this Act for a period exceeding two years].

<sup>F12</sup>(3) . . . . .

**Textual Amendments**

**F9** 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**)

**F10** Words in s. 85(2) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

**F11** Words inserted by **Criminal Justice Act 1982** (c. 48, SIF 39:1), s. 58, **Sch. 8 para.5(a)**

**F12** 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>F13</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.

(3) For the purposes of this section a court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the

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prosecuting authority has referred the charge back to the commanding officer under section 83BB of this Act.]

**Textual Amendments**

**F13** S. 85A inserted (2.10.2000) by 2000 c. 4, s. 12(1); S.I. 2000/2366, art. 2 (with Sch. para. 15)

**F14**<sup>86</sup> .....

**Textual Amendments**

**F14** 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)

**F15**<sup>87</sup> .....

**Textual Amendments**

**F15** 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)

**F16**<sup>88</sup> .....

**Textual Amendments**

**F16** 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)

**F17**<sup>89</sup> .....

**Textual Amendments**

**F17** 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)

**F18**<sup>90</sup> .....

**Textual Amendments**

**F18** 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)

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## **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>F19</sup>the United Kingdom]) as may be specified in the order convening the court; <sup>F20</sup> . . .
- (2) A court-martial sitting at any place [<sup>F21</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**

- F19** 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)
- F20** 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)
- F21** 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)

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