



# Army Act 1955 (repealed)

1955 CHAPTER 18 3 and 4 Eliz 2

## PART II

### DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

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

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#### **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**

#### **76 Investigation of charges by commanding officer.**

Before an allegation against a person subject to military law (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

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

- C1** S. 76 excluded by Courts-Martial (Appeals) Act 1968 (c. 20), s. 19(4)

*Status: Point in time view as at 23/03/1995. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Army Act 1955 (repealed), Cross Heading: Investigation of, and summary dealing with, charges. (See end of Document for details)*

VALID FROM 01/04/1997

**[<sup>F1</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 lieutenant-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**

- F1** 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. I para. 2**; S.I. 1997/304, **art. 2** (with transitional provisions in **Sch. 2**)

VALID FROM 02/10/2000

**[<sup>F2</sup>76AA 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

**F2** S. 76AA inserted (2.10.2000) by 2000 c. 4, s. 11(1); S.I. 2000/2366, art. 2

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

**C2** S. 76AA(1) amended (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 8(2)

**C3** S. 76AA(1) modified (2.10.2000) by S.I. 2000/2366, arts. 2, 3, Sch. para. 8(1)(b)

VALID FROM 01/04/1997

#### **[<sup>F3</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.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.

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- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) 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 record a finding that the charge has been proved and award punishment accordingly.
- (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 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

**F3** 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**)

VALID FROM 01/04/1997

#### **[<sup>F4</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;

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- (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.
- (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.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (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

- F4** 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**)

## 77 Charges to be dealt with summarily or by court-martial.

- (1) After investigation, a charge against an officer below the rank of lieutenant-colonel or against a warrant officer may, if an authority has power under the following provisions of this Part of this Act to deal with it summarily, be so dealt with by that authority (in

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this Act referred to as “the appropriate superior authority”) in accordance with those provisions.

- (2) After investigation, a charge against a non-commissioned officer or soldier may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.
- (3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.
- (4) Notwithstanding anything in the foregoing provisions of this section, where—
  - (a) the commanding officer has investigated a charge against an officer or warrant officer, or
  - (b) the commanding officer has investigated a charge against a non-commissioned officer or soldier which is not one which can be dealt with summarily,
 the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

[<sup>F5</sup>(4A) This section has effect subject to section 77A of this Act]

- (5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

#### Textual Amendments

**F5** S. 77(4A) inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(2\)](#)

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

**C4** S. 77 excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#)

#### [<sup>F6</sup>77A Power to stay further proceedings.

Where, in the course of investigating a charge, it appears to the accused’s 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 ought to be, taken against the accused otherwise than under this Act he may stay further proceedings on the charge.]

#### Textual Amendments

**F6** S. 77A inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(3\)](#)

#### 78 Further proceedings on charges against N.C.O.s and soldiers.

- (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or soldier [<sup>F7</sup>and has not stayed further proceedings thereon].
- (2) If—

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- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it, or
- (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,

he shall take the prescribed steps with a view to the charge being tried by court-martial.

[<sup>F8</sup>(3) Otherwise, the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty, he may award one or more of the following punishments—

- (a) if the accused is a soldier, detention for a period not exceeding [<sup>F9</sup>60] days,
- (b) fine,
- (c) if the accused is non-commissioned officer, severe reprimand or reprimand,
- (d) where the offence has occasioned any expense, loss or damage, stoppages, and
- (e) any minor punishment for the time being authorised by the Defence Council:

Provided that no fine or minor punishment shall be awarded for an offence for which detention is awarded:

And provided also that the amount of a fine that may be awarded—

- (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 <sup>F10</sup> twenty-eight days, and
- (b) in the said excepted case—
  - (i) in any case, shall not exceed the amount of the offender's pay for <sup>F10</sup> twenty-eight days, and
  - (ii) where the said civil offence is punishable by a civil court in England only on summary conviction, and is so punishable by any fine of a maximum amount less than the amount limited by sub-paragraph (i) above, shall not exceed that maximum, and
  - (iii) where the said civil offence is punishable by a civil court in England on indictment by a fine of a maximum amount less than the amount so limited (whether or not it is also punishable on summary conviction) shall not exceed that maximum,

a day's pay being taken for the purposes of this proviso, as regards a person found guilty of any offence, as the gross pay that is, or would (apart from any forfeiture) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.]

[<sup>F11</sup>(3a) Where the accused is a lance-corporal or lance-bombardier, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to be reduced to the ranks.]

(4) Where the accused is an acting warrant officer or non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank [<sup>F12</sup> or to assume an acting rank lower than that held by him but higher than his permanent rank] [<sup>F13</sup> or, where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks].

(5) Notwithstanding anything in subsection (3) of this section, where the commanding officer [<sup>F14</sup> considers] that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until

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after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with Queen's Regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

- (6) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference [<sup>F15</sup>the four last foregoing subsections] shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

#### **Textual Amendments**

- F7** Words added by [Armed Forces Act 1981 \(c. 55\), s. 3\(4\)](#)  
**F8** [S. 78\(3\)](#) substituted by [Armed Forces Act 1971 \(c. 33\), ss. 37\(1\), 78\(4\)](#)  
**F9** Word substituted by [Armed Forces Act 1976 \(c. 52\), s. 5\(1\)](#)  
**F10** Words repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)  
**F11** [S. 78\(3A\)](#) inserted by [Army and Air Force Act 1961 \(c. 52\), s. 37\(1\)\(2\)\(a\)](#)  
**F12** Words added by [Army and Air Force Act 1961 \(c. 52\), s. 22](#)  
**F13** Words added by [Armed Forces Act 1966 \(c. 45\), s. 30\(2\)\(a\)](#)  
**F14** Word substituted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 1](#)  
**F15** Words substituted by [Army and Air Force Act 1961 \(c. 52\), s. 37\(1\)\(2\)\(b\)](#)

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

- C5** [S. 78](#) excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#); amended by [Armed Forces Act 1976 \(c. 52\), s. 5\(2\)](#)

## **79 Further proceedings on charges against officers and warrant officers.**

- (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed [<sup>F16</sup>or stayed further proceedings on] the charge, or the case is one where he has power, and proposes, to direct trial by field general court-martial, submit it in the prescribed manner to higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following subsections.
- (2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.
- (3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.
- (4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.



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[<sup>F17</sup>(5) If the appropriate superior authority records a finding of guilty, the 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, and
- (d) where the offence has occasioned any expense, loss or damage, stoppages:

Provided that the appropriate superior authority may not award both forfeiture of seniority and a fine:

And provided also that the second proviso to section 78(3) of this Act shall have effect as respects fines awarded by virtue of this section as it has effect as respects fines awarded by virtue of the said section 78.]

- (6) Notwithstanding anything in subsection (4) of this section, where the appropriate superior authority [<sup>F18</sup>considers] that the accused is guilty and if the charge is dealt with summarily will award [<sup>F19</sup>any punishment other than severe reprimand or reprimand], or where a finding of guilty will involve a forfeiture of pay, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects [<sup>F20</sup>and does not subsequently in accordance with Queen's Regulations withdraw his election] the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

#### Textual Amendments

- F16** Words inserted by [Armed Forces Act 1981 \(c. 55\), s. 3\(5\)](#)
- F17** [S. 79\(5\)](#) substituted by [Armed Forces Act 1971 \(c. 33\), ss. 37\(2\), 78\(4\)](#)
- F18** Words substituted by [Armed Forces Act 1981 \(c. 55\), Sch. 2 para. 2](#)
- F19** Words substituted by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 1 para. 1\(3\)](#)
- F20** Words in [s. 79\(6\)](#) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 11\(1\); S.I. 1991/2719, art.2](#) (with [art. 3\(1\)](#))

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

- C6** [S. 79](#) excluded by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), s. 19\(4\)](#); amended by [Armed Forces Act 1976 \(c. 52\), s. 5\(2\)](#)

#### [<sup>F21</sup>80] Directions by higher authority for dismissal of charges or stay of proceedings.

- (1) Notwithstanding anything in section 78 or 79 of this Act, where a charge has been referred to higher authority with a view to its being tried by court-martial, or has been submitted to higher authority for determination how it is to be proceeded with, that authority may refer the charge back to the commanding officer of the accused with a direction to dismiss the charge or a direction to stay all further proceedings thereon; and the commanding officer shall deal with the charge accordingly.
- (2) The reference back of a charge under subsection (1) above shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.]

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#### Textual Amendments

**F21** S. 80 substituted by [Armed Forces Act 1971 \(c. 33\), s. 46](#)

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

**C7** S. 80 extended by [Armed Forces Act 1976 \(c. 52\), Sch. 3 paras. 4\(5\), 6\(2\)](#)

### 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>F22</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>F22</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>F23</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)
  - <sup>F24</sup>(b) for references to the date on which the offender was convicted there shall be substituted references to the date on which the direction was given.

#### Textual Amendments

**F22** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F23** Ss. 67, 75(3) and 81(3) repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

**F24** S. 81(4)(a) repealed by [Armed Forces Act 1971 \(c. 33\), s. 78\(4\), Sch. 4 Pt. I](#)

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

**C8** 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 an offence, means such officer having powers of command over that person as may be determined by or under regulations of [<sup>F25</sup>the Defence Council].
- (2) [<sup>F26</sup>The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say,—
  - (a) any general officer, flag officer, air officer or brigadier having power to convene general courts-martial; or

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- (b) such other general officer, flag officer, air officer or brigadier, or, where the Defence Council <sup>F27</sup> so direct, colonel or naval or air force officer of corresponding rank, as may be specified by or under regulations of the Defence Council]:

Provided that an officer under such rank as may be specified by regulations under this section shall not act as appropriate superior authority where the accused is above such rank as may be so specified.

- (3) Regulations under this section may confer on officers, or any class of officers, who by or under theregulations are authorised to exercise the functions of commanding officer power to delegate thosefunctions, in such cases and to such extent as may be specified in the regulations, to officers of a classso specified.

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**Textual Amendments**

**F25** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

**F26** Words substituted by [Armed Forces Act 1966 \(c. 45\), s. 23\(1\)](#)

**F27** Words repealed by [Armed Forces Act 1981 \(c. 55\), Sch. 5 Pt. II](#)

**83 Limitation on powers of summary dealing with charges.**

- (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations of [<sup>F28</sup>the Defence Council].
- (2) In such cases as may be specified in that behalf by regulations of [<sup>F28</sup>the Defence Council], the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

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**Textual Amendments**

**F28** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)

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