



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

*Courts-martial: provisions relating to trial*

### 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](#)
- F1** Act repealed (1.1.2008 for the repeal of s. 180 only) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 17](#); S.I. 2007/2913, art. 3 (with [art. 4\(1\)\(2\)](#))

## 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>F1</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>F2</sup>the officers appointed members][<sup>F3</sup>, and any officers so appointed,] are sworn, and he shall be asked whether he objects to any of [<sup>F4</sup>the members].
- (3) Every objection made by an accused to any [<sup>F5</sup>member] shall be [<sup>F6</sup>determined by the judge advocate].
- (4) If [<sup>F7</sup>an objection to the president is allowed], the court shall adjourn and the [<sup>F8</sup>court administration] officer shall appoint another president.

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(5) If [<sup>F9</sup>an objection to any other officer appointed a member of the court [<sup>F10</sup>or to any warrant officer so appointed]is allowed], the [<sup>F11</sup>officer [<sup>F12</sup>or warrant officer]] objected to shall retire and the vacancy may, and if otherwise the number of [<sup>F13</sup>members who are officers or warrant officers] would be reduced below the legal minimum shall, be filled in the prescribed manner by [<sup>F14</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>F15</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**

- F1 Word in s. 92(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(2)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F2 Words in s. 92(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(3)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F3 Words in s. 92(2) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(2)**; S.I. 2002/345, **arts. 2, 3**
- F4 Words in s. 92(2) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(3)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F5 Word in s. 92(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(4)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F6 Words in s. 92(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(4)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F7 Words in s. 92(4) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(5)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F8 Words in s. 92(4) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(5)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F9 Words in s. 92(5) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(6)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F10 Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(a)**; S.I. 2002/345, **arts. 2, 3**
- F11 Word in s. 92(5) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(6)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F12 Words in s. 92(5) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(b)**; S.I. 2002/345, **arts. 2, 3**
- F13 Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(c)**; S.I. 2002/345, **arts. 2, 3**
- F14 Words in s. 92(5) substituted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 10(3)(d)**; S.I. 2002/345, **arts. 2, 3**
- F15 S. 92(6) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 39(7)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**93 Administration of oaths.**

(1) An oath shall be administered to every [<sup>F16</sup>officer [<sup>F17</sup>or warrant officer] appointed a] member of a court-martial and to any person, <sup>F18</sup> . . . , in attendance on a court-martial as <sup>F18</sup> . . . , officer [<sup>F19</sup>or other person] under instruction, <sup>F20</sup> . . . or interpreter.

<sup>F21</sup>(1A) . . . . .

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<sup>F22</sup>(1B) .....

<sup>F22</sup>(2) .....

<sup>F23</sup>(2A) .....

- (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

- F16** Words in s. 93(1) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 40(2)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F17** Words in s. 93(1) inserted (28.2.2002) by 2001 c. 19, ss. 19, 39(2), **Sch. 2 para. 11**; S.I. 2002/345, **arts. 2, 3**
- F18** Words in s. 93(1) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 4(2)(b), Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F19** Words inserted by **Armed Forces Act 1981 (c. 55), Sch. 2 para. 5(1)**
- F20** Words repealed by **Armed Forces Act 1976 (c. 52), Sch. 10**
- F21** S. 93(1A) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 40(3), Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F22** 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)**
- F23** S. 93(2A) (which was 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**) repealed (1.10.1992) by **Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), Sch. 13**; S.I. 1992/333, **art. 2(2), Sch. 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.
- (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>F24</sup>(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.

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- (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.
- (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

**F24** S. 94(6)-(8) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 41**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

## 95 Dissolution of courts-martial.

- (1) Where, [<sup>F25</sup>before] the commencement of the trial, it appears to the [<sup>F26</sup>court administration] officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the [<sup>F26</sup>court administration] officer may by order dissolve the court-martial.
- <sup>F27</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 flight lieutenant or corresponding rank or is of higher rank, the [<sup>F28</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>F29</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

- F25** Words in s. 95(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(2)(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F26** Words in s. 95(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(2)(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F27** S. 95(1A) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(3)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F28** Words in s. 95(3) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 42(4)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F29** S. 95(4) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 42(5), Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

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## 96 Decisions of courts-martial.

(1) Subject to the provisions of this section, [<sup>F30</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>F31</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>F32</sup>(3) .....

<sup>F32</sup>(4) .....

(5) In the case of an equality of votes on the sentence, <sup>F33</sup> . . . , the president shall have a second or casting vote.

### Textual Amendments

**F30** Words in s. 96(1) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 43(2)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**F31** S. 96(1A) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 43(3)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**F32** S. 96(3)(4) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

**F33** Words in s. 96(5) repealed (1.4.1997) by 1996 c. 46, ss. 5, 35(2), **Sch. 1 Pt. III para. 43(5), Sch. 7 Pt. I**; S.I. 1997/304, **art. 2** (with **art. 3, 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>F34</sup>(2) .....

(3) Any sentence of a court-martial, together with any recommendation to mercy [<sup>F35</sup>and any reasons for the sentence], shall be announced in open court, <sup>F36</sup> . . .

### Textual Amendments

**F34** S. 97(2) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**F35** Words in s. 97(3) inserted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 44**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**F36** Words in s. 97(3) repealed (1.4.1997) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. II**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

### Modifications etc. (not altering text)

**C1** S. 97 applied (with modifications) (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

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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>F37</sup>, subject to section 99A below <sup>F38</sup>to Schedule 13 to the Criminal Justice Act 1988 (evidence before courts-martial etc.)<sup>F39</sup>to Schedules 6 and 7 to the Criminal Justice Act 2003<sup>F40</sup>and to service modifications<sup>F41</sup>, be the same as those observed in <sup>F41</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>F42</sup>in a trial on indictment in England.

<sup>F43</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.
- (1C) Regulations under subsection (1A) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

<sup>F44</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>F45</sup>trial on indictment in England.

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### Textual Amendments

- F37** Words inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 11, [Sch. 5 para. 3\(a\)](#)
- F38** 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](#)
- F39** 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. 82; [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\(I\)](#))
- F40** Words inserted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(1), [Sch. 6 Pt. II para. 29\(2\)\(a\)](#)
- F41** Words in s. 99(1) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. III para. 45\(2\)\(a\)](#); [S.I. 1997/304](#), [art. 2](#) (with [art. 3, Sch. 2](#))
- F42** Words in s. 99(1) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. III para. 45\(2\)\(b\)](#); [S.I. 1997/304](#), [art. 2](#) (with [art. 3, Sch. 2](#))
- F43** S. 99(1A)–(1C) inserted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(1), [Sch. 6 Pt. II para. 29\(2\)\(b\)](#)
- F44** 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](#)
- F45** Words in s. 99(3) substituted (1.4.1997) by [1996 c. 46, s. 5, Sch. 1 Pt. III para. 45\(3\)](#); [S.I. 1997/304](#), [art. 2](#) (with [art. 3, Sch. 2](#))

### Modifications etc. (not altering text)

- C2** S. 99(1)(3) applied (with modifications) (2.10.2000) by [S.I. 2000/2372](#), [rule 27\(1\)\(a\)\(2\)\(a\)](#)

### [<sup>F46</sup>99A Proof at courts-martial by written statement.

- (1) [<sup>F47</sup>Without prejudice to section 99 above, section] 9 of the <sup>M1</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—
- in the United Kingdom by any person, and
  - outside the United Kingdom by any person who at the time of making the statement was—
    - a person subject to service law, or
    - a person to whom Part II of this Act or Part II of the <sup>M2</sup>Army Act 1955 is applied by section 208A or section 209 of this Act or that Act respectively, or to whom Parts I and II of the <sup>M3</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>M4</sup>Army Act 1955 or section 119 of the <sup>M5</sup>Naval Discipline Act 1957 apply.
- (3) In subsection (1) above “service modifications” means—
- modifications made by any regulations under section 12 of the <sup>M6</sup>Criminal Justice Act 1967 in force on the coming into force of this section, and



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- (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

- F46** S. 99A inserted by [Armed Forces Act 1976 \(c. 52\)](#), s. 11, Sch. 5 paras. 1, 2
- F47** Words substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(1), Sch. 6 Pt. II para. 29(3)

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

- C3** S. 99A(1)(2)(5) applied (with modifications) (2.10.2000) by [S.I. 2000/2372](#), [rule 27\(1\)\(b\)\(2\)\(b\)](#)

#### Marginal Citations

- M1** 1967 c. 80.
- M2** 1955 c. 18.
- M3** 1957 c. 53.
- M4** 1955 c. 18.
- M5** 1957 c. 53.
- M6** 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>F48</sup>[<sup>F49</sup>(1)] Where in the United Kingdom or in any colony any person not subject to air-force 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
- (c) refuses to produce any [<sup>F50</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 [<sup>F51</sup>or is so attending], or wilfully insults



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- any such person as aforesaid while that person <sup>F52</sup> . . . 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>F53</sup>the Defence Council] or any officer authorised by them.

[<sup>F49</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>F54</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

- F48** S. 101: s. 101 is 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 transitional provisions in art. 3, **Sch. para. 14**)
- F49** S. 101(2) inserted (2.10.2000) by 2000 c. 4, s. 10, **Sch. 1 para. 3**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, **Sch. para. 14**)
- F50** Words in s. 101(1)(c) substituted (28.2.2002) by 2001 c. 19, **ss. 24(2)(d)**, 39(2); S.I. 2002/345, **arts. 2, 3**
- F51** Words inserted by **Army and Air Force Act 1961 (c. 52)**, **Sch. 2**
- F52** Words repealed by **Army and Air Force Act 1961 (c. 52)**, **Sch. 2**
- F53** Words substituted by **S.I. 1964/488**, **Sch. 1 Pt. I**
- F54** S. 101(3) inserted (2.10.2000) by 2000 c. 4, s. 25, **Sch. 3 para. 6**; S.I. 2000/2366, **art. 2** (with transitional provisions in art. 3, **Sch. para. 14**)

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

*Changes to legislation: There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Courts-martial: provisions relating to trial. (See end of Document for details)*

## **[<sup>F55</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 air-force 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,
- (b) that he will not voluntarily attend as a witness or 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 air-force 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.

(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;

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

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- (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

**F55** S. 101A inserted (1.1.2008) by [Armed Forces Act 2001 \(c. 19\)](#), **ss. 25(2), 39(2)**; S.I. 2007/3434, 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>F56</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,
- he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

[<sup>F57</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

**F56** Words repealed by [Administration of Justice Act 1977 \(c. 38\)](#), **Sch. 5 Pt. III**

**F57** S. 102(2) added by [Oaths Act 1961 \(c. 21\)](#), **s. 1**; saved by [Oaths Act 1978 \(c. 19\)](#), **s. 7(4)(5)**

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Air Force Act 1955 (repealed), Cross Heading: Courts-martial: provisions relating to trial.