



# Air Force Act 1955 (repealed)

1955 CHAPTER 19 3 and 4 Eliz 2

## PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

*[<sup>F1</sup> Review of proceedings of courts-martial]*

### Textual Amendments

- F1** Cross-heading and s. 112 substituted for s. 112 (1.4.1997) by [1996 c. 46, s. 16, Sch. 5 para. 3](#); [S.I. 1997/304, art. 2](#) (with [art. 3, Sch. 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](#)
- F1** Act repealed (1.1.2008 for the repeal of s. 180 only) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 17](#); [S.I. 2007/2913, art. 3](#) (with [art.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\(1\)\(2\)](#))

<sup>F2</sup>112 .....

### Textual Amendments

- F2** S. 112 repealed (11.5.2001) by [2001 c. 19, s. 38, Sch. 7 Pt. 4](#)

*Status: Point in time view as at 18/07/2008.*

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**[<sup>F3</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>F4</sup>(6) . . . . .]

**Textual Amendments**

**F3** Ss. 113, 113AA substituted for s. 113 (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

**F4** S. 113(6) repealed (11.5.2001) by 2001 c. 19, s. 38, **Sch. 7 Pt. 4**

**<sup>F5</sup>113AA 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—

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- (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>F6</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**

**F5** Ss. 113, 113AA substituted for s. 113 (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 4**; S.I. 1996/304, **art. 2** (with **art. 3, Sch. 2**)

**F6** 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)**

**[<sup>F7</sup>113A Power of reviewing authority to authorise retrial.**

—(1) The following provisions of the <sup>M1</sup>Courts-Martial (Appeals) Act 1968, that is to say,—

- section 19,
- section 20, and
- Parts III 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>F8</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>F9</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.]

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#### Textual Amendments

- F7** S. 113A inserted by Courts-Martial (Appeals) Act 1968 (c. 20), **Sch. 4**
- F8** Words in s. 113A(1) substituted (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 5(a)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)
- F9** Words in s. 113A(2) substituted (1.4.1997) by 1996 c. 46, s. 16, **Sch. 5 para. 5(b)**; S.I. 1997/304, **art. 2** (with **art. 3, Sch. 2**)

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

- C1** S. 113A excluded (1.4.1997) by S.I. 1997/172, **art. 86**

#### Marginal Citations

- M1** 1968 c. 20.

### [<sup>F10</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—
  - (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.

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#### Textual Amendments

**F10** 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)

**C2** 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.

[ Where a reference under this section relates to an order under subsection (2) of <sup>F11</sup>(3A) section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Courts-Martial Appeal Court shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.]

- (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 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.

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- (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**

**F10** 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

**F11** S. 113C(3A) inserted (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), **ss. 272(2)(b)(3)**, 336(2)

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

**C3** 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>F12</sup>114 .....

**Textual Amendments**

**F12** S. 114 repealed by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(2), **Sch. 2**

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