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*Changes to legislation: Naval Discipline Act 1957 (repealed), Cross Heading: Proceedings of courts-martial is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

## PART II

TRIAL AND PUNISHMENT OF OFFENCES

### *Proceedings of courts-martial*

#### Textual Amendments applied to the whole legislation

**F1** Act repealed (prosp.) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 17](#) and the repeal being partly in force, as to which see individual provisions

#### 58 General Orders as to procedure of courts-martial.

- (1) Subject to the provisions of this section, [<sup>F1</sup>the Secretary of State] may make General Orders for regulating the procedure and practice of courts-martial under this Act.
- (2) Without prejudice to the generality of the foregoing subsection, provision may be made by such General Orders—
  - (a) for authorising the receipt of evidence by statutory declaration and other documentary evidence in proceedings before courts-martial, subject to such conditions and restrictions as may be prescribed by the Orders;
  - [<sup>F2</sup>(aa) for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him [<sup>F3</sup>and for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as the offence of which he was in fact found guilty;]]
  - (b) for authorising the judge advocate appointed for the purposes of a court-martial to hear submissions and evidence, in the absence of the members of the

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court, on such matters as may be prescribed by the Orders, and for applying to the judge advocate, in respect of such proceedings, any enactment relating to such a court;

(c) for prescribing anything which is authorised or required by this Part of this Act to be prescribed by such Orders.

(3) General Orders under this section may direct that the powers conferred by section seven of the <sup>M1</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 court-martial (whether within or without the United Kingdom) by the authority by whom the court-martial is ordered, as well as by the court or a judge within the meaning of that Act.

[<sup>F4</sup>(4) The power to make General Orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

(5) General Orders under this section shall be of no effect so far as inconsistent with any provision of this Act.

#### Textual Amendments

- F1** Words substituted by [S.I. 1964/488, Sch. 1 Pt. I](#)  
**F2** [S. 58\(2\)\(aa\)](#) inserted by [Armed Forces Act 1971 \(c. 33\), s. 49\(2\)\(a\)](#)  
**F3** Words added by [Armed Forces Act 1976 \(c. 52\), s. 14, Sch. 7 para. 2](#)  
**F4** [S. 58\(4\)](#) substituted by [Armed Forces Act 1971 \(c. 33\), s. 49\(2\)\(b\)](#)

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

- C1** [S. 58](#) amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 146, Sch. 13 para. 7](#)

#### Marginal Citations

- M1** [1879 c. 11.](#)

VALID FROM 01/01/2008

#### [<sup>F5</sup>58A 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 58 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

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- 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.]

#### Textual Amendments

**F5** S. 58A inserted (1.1.2008) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 34](#); [S.I. 2007/2913](#), [art. 3](#)

## 59 Challenge by accused.

- (1) Before the members of a court-martial are sworn, the names of the officers constituting the court shall be read over in the presence of the accused, and he shall be asked whether he objects to being tried by any of those officers.
- (2) Every objection made by the accused in respect of any officer shall be considered by the other officers appointed members of the court.
- (3) If objection is made in respect of the president, and allowed by the other members of the court, the court shall adjourn and the authority by whom the court-martial was ordered shall appoint another president.
- (4) If objection is made in respect of any member of the court other than the president, and allowed by the members of the court entitled to vote, the member objected to shall retire, and the vacancy shall be filled by the first officer nominated as a spare member in accordance with the provisions of section fifty-four of this Act who is qualified to be and is not already a member of the court.
- (5) Without prejudice to the foregoing provisions of this section, the accused may, before the members of the court have been sworn, raise any other objection which he desires to make regarding the constitution of the court; and if it appears to the court that any such objection is well founded the court shall adjourn and report the objection to the authority by whom the court-martial was ordered.
- (6) After the members of a court-martial have been duly sworn, no question as to the constitution of the court shall be raised in the proceedings, but without prejudice to any power of the Courts-Martial Appeal Court or of [<sup>F6</sup>the Defence Council] in a case in which it appears that a substantial miscarriage of justice has occurred by reason of the court not having been duly constituted.

#### Textual Amendments

**F6** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)

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## 60 Administration of oaths.

- (1) An oath shall be administered separately to each member of a court-martial, to the judge advocate, the clerk of the court and any officer in attendance for instruction in the duties of judge advocate or clerk of the court, and to any person appointed to attend . . . <sup>F7</sup>as interpreter.
- [<sup>F8</sup>(2) A witness before a court-martial—
- (a) shall be examined on oath if he has attained the age of fourteen; and
  - (b) shall give evidence unsworn if he is under that age.
- (3) Unsworn evidence admitted by virtue of subsection (2)(b) above may corroborate evidence (sworn or unsworn) given by any other person.]
- [<sup>F9</sup>(3A) Unsworn evidence admitted by virtue of subsection (3) above may corroborate evidence (sworn or unsworn) given by any other person.]
- (4) A person shall be permitted to make a solemn affirmation instead of taking an oath under this section—
- (a) if he objects to being sworn, . . . <sup>F10</sup>; or
  - (b) if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief.
- (5) An oath or affirmation required to be administered under this section shall be in such form, and shall be administered at such time, by such person and in such manner, as may be prescribed by General Orders under section fifty-eight of this Act.
- [<sup>F11</sup>(6) 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

- F7** Words repealed by [Armed Forces Act 1976 \(c. 52\), Sch. 10](#)
- F8** [S. 60\(2\)\(3\)](#) substituted (1.10.1992 as regards England and Wales but otherwise *prosp.*) by [Criminal Justice Act 1991 \(c. 53\), ss. 71, 102\(2\)\(8\), Sch. 9 para. 7](#); [S.I. 1992/333, arts. 2\(2\), 3\(1\), Sch. 2](#).
- F9** [S. 60\(3A\)](#) inserted (1.1.1992) by [Armed Forces Act 1991 \(c. 62, SIF 7:1\), s. 26\(1\), Sch. 2 para. 3\(2\)\(b\)](#); [S.I. 1991/2719, art. 2](#) and repealed (1.10.1992 as regards England and Wales but otherwise *prosp.*) by [Criminal Justice Act 1991 \(c. 53\), ss. 101\(2\), 102\(2\)\(8\), Sch. 13](#); [S.I. 1992/333, arts. 2\(2\), 3\(1\), Sch. 2](#).
- F10** Words repealed by [Administration of Justice Act 1977 \(c. 38\) Sch. 5 Pt. II](#)
- F11** [S. 60\(6\)](#) added by [Oaths Act 1961 \(c. 21\), s. 1](#); saved by [Oaths Act 1978 \(c. 19\), s. 7\(4\)](#)

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

- (1) Subject to the provisions of this section and to any provisions of General Orders under section fifty-eight of this Act with respect to the deliberations of the court upon their finding and sentence or upon other matters specified in those Orders, a court-martial shall sit in open court and in the presence of the accused.
- (2) It is hereby declared that a court-martial has the like power to order the exclusion of the public from its proceedings as a civil court; and without prejudice to any such power, a court-martial may order that, subject to such exceptions, if any, as the court may specify, the public shall be excluded from all or any part of the proceedings of

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the court if it appears to the court that any evidence to be given or statement made in the course of the proceedings or of that part of the proceedings, 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.

## 62 Finding and sentence.

- (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court.
- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.
- (3) Without prejudice to the provisions of section sixty-one of this Act, the finding of a court-martial on each charge, and any sentence of the court, together with any recommendation to mercy, shall be announced in open court.
- (4) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where there is no such concurrence, but a majority of the members of the court are in favour of such a finding, the court shall be dissolved and the accused may be tried by another court.
- (5) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

VALID FROM 02/10/2000

### [<sup>F12</sup>62ZAPowers 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 officer who would have tried the preliminary charge summarily if the election had not been made.
- (2) In subsection (1) above, “the preliminary charge” means the charge which would have been tried summarily had the accused not elected court-martial trial.
- (3) Where regulations under section 52F of this Act would have prevented a punishment of a particular description awarded by the officer from taking effect without the approval of another person, it shall be assumed for the purposes of subsection (1) above that the approval would have been obtained.
- (4) 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 prosecuting authority has referred the charge back to the commanding officer under section 52II of this Act.]

#### Textual Amendments

**F12** S. 62ZA inserted (2.10.2000) by 2000 c. 4, s. 12(3); S.I. 2000/2366, art. 2

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### <sup>F13</sup>63 Special finding of insane at time of trial or offence.

- (1) Where, on the trial of any person by court-martial, it appears to the court—
- (a) that the accused is . . . <sup>F14</sup>unfit to stand his trial; or
  - (b) that the accused did the act or made the omission charged, but was insane at the time when the act was done or the omission made so as not to be responsible according to law for his actions.

the court shall so find, and shall order him to be kept in custody until effect is given to the directions of [<sup>F15</sup>the Defence Council]. [<sup>F16</sup>For purposes of this subsection “unfit to stand his trial” means under any disability such as apart from the <sup>M2</sup>Criminal Procedure (Insanity) Act 1964 would constitute a bar to a trial on indictment in England or Wales.]

- (2) In the case of any such finding, [<sup>F15</sup>the Defence Council] may give orders for the safe custody of the accused during Her Majesty’s pleasure in such place and manner as they think fit.

[<sup>F17</sup>(3) Where on the trial of a person by court martial the question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect:—

- (a) the court, if having regard to the nature of the supposed disability the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the question falls to be determined the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;
- (b) subject to paragraph (a) above, the question shall be determined as soon as it arises;
- (c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed.]

#### Textual Amendments

- F13** Ss. 62A-63D and preceding cross-heading substituted (31.3.2005) for s. 63 by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 26, 60, [Sch. 3 para. 3](#); S.I. 2005/579, [art. 3\(b\)](#)
- F14** Words repealed by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), [s. 8\(3\)](#) proviso (c), Sch. 2 Pt. II
- F15** Words substituted by S.I. 1964/488, [Sch. 1 Pt. I](#)
- F16** Words added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), [s. 8\(3\)](#) proviso (c), Sch. 2 Pt. II
- F17** S. 63(3) added by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), [s. 8\(3\)](#) proviso (c), Sch. 2 Pt. II

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

- C2** S. 63 extended by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\)](#), [s. 16\(2\)\(3\)](#)

#### Marginal Citations

- M2** 1964 c. 84.

### [<sup>F18</sup>62A 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.



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- (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 <sup>M3</sup>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 court is of opinion that it is expedient to do so and in the interests of the accused, it 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 court and—
  - (a) where it falls to be determined on the commencement of the trial and the trial proceeds, the accused shall be tried by a court-martial other than that which determined that question;
  - (b) where it falls to be determined at any later time, it shall be determined by a court-martial other than that by which the accused is being tried.
- (7) A court 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.]

#### Textual Amendments

**F18** Ss. 62A-63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

#### Marginal Citations

**M3** 1964 c. 84.

### [<sup>F19</sup>63 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.]

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#### Textual Amendments

**F19** Ss. 62A-63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

### [<sup>F20</sup>63A Powers to deal with persons not guilty by reason of insanity or unfit to stand trial.

- (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) Subject to subsections (3) and (4) below, the court shall make one of the following orders in respect of the accused, namely—
  - (a) an admission order;
  - (b) a guardianship order;
  - (c) a supervision and treatment order; or
  - (d) an order discharging him absolutely,
 as the court thinks most suitable in all the circumstances of the case.
- (3) The court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the finding relates is an offence the sentence for which is fixed by law.
- (4) The court shall not make a guardianship order or a supervision and treatment order unless it has power to do so by virtue of section 63C or section 63D below.
- (5) An order under subsection (2)(a), (b) or (c) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed.]

#### Textual Amendments

**F20** Ss. 62A-63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

### [<sup>F21</sup>63B Admission orders.

- (1) In this Act “admission order” means an order that the person in respect of whom it is made be admitted, in accordance with regulations under subsection (3) below, to such hospital as may be specified by the Secretary of State.
- (2) Where an admission order is made by a court-martial, the court may, in such circumstances as may be prescribed, direct the accused to be treated as if an order restricting his discharge had been made under the appropriate mental health legislation, either without limit of time or (if a civil court would have been permitted to do so under the legislation concerned) during such period as may be specified in the direction.



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- (3) 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 admission order has been made.
- (4) Regulations under subsection (3) above may in particular make provision—
  - (a) for a person in respect of whom an admission order has been made to be conveyed to, and detained in, a place of safety pending his admission to the hospital;
  - (b) for the period within which such a person is to be admitted to the hospital;
  - (c) for the appropriate mental health legislation to apply, with such modifications as may be prescribed, in relation to admission orders as the legislation concerned applies in relation to hospital orders;
  - (d) for a person in respect of whom an admission order has been made to be remitted for trial in such circumstances as may be prescribed.
- (5) In this section “hospital”, “hospital order” and “place of safety” have the same meanings as in the appropriate mental health legislation.]

#### Textual Amendments

**F21** Ss. 62A–63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by **Domestic Violence, Crime and Victims Act 2004 (c. 28)**, ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

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

**C3** S. 63B extended (1.10.1997) by 1997 c. 43, **s. 47(4)(a)**; S.I. 1997/2200, **art. 2(1)(i)**

### [<sup>F22</sup>63C Guardianship orders.

- (1) In this Act “guardianship order” means an order placing the accused under the guardianship of—
  - (a) in a case where the order is treated as if it had been made by a civil court in England and Wales, a local social services authority or such other person approved by a local social services authority as may be specified in the order;
  - (b) in a case where the order is treated as if it had been made by a civil court in Scotland, a local authority or such other person approved by a local authority as may be specified in the order;
  - (c) in a case where the order is treated as if it had been made by a civil court in Northern Ireland, a Board or an authorised HSS trust or such other person approved by a Board or an authorised HSS trust as may be specified in the order.
- (2) In subsection (1) above—

“authorised HSS trust” and “Board” have the same meanings as in the <sup>M4</sup>Mental Health (Northern Ireland) Order 1986;

“local authority” has the same meaning as in the <sup>M5</sup>Mental Health (Scotland) Act 1984; and

“local social services authority” has the same meaning as in the <sup>M6</sup>Mental Health Act 1983.
- (3) A court-martial shall not make a guardianship order unless—

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- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that—
    - (i) the accused is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; and
    - (ii) the mental disorder is of a nature or degree which warrants his reception into guardianship; and
  - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the accused and the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of a guardianship order.
- (4) A court-martial shall not make a guardianship order unless it is also satisfied that the authority or other person intended to be specified in the order is willing to receive the accused into guardianship.
- (5) A guardianship order shall specify the form or forms of mental disorder referred to in subsection (3)(a) above from which, upon the evidence taken into account under that subsection, the accused is found by the court to be suffering; and a guardianship order shall not be made unless the accused is described by each of the practitioners whose evidence is taken into account under that subsection as suffering from the same one of those forms of mental disorder, whether or not he is also described by either of them as suffering from another of those forms of mental disorder.
- (6) The appropriate mental health legislation shall apply, with such modifications as may be prescribed, in relation to guardianship orders under this section as it applies to guardianship orders under the legislation concerned.
- (7) In this section “mental disorder”, “mental impairment”, “psychopathic disorder” and “severe mental impairment” have the same meanings as in the Mental Health Act 1983.]

#### Textual Amendments

**F22** Ss. 62A–63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

#### Marginal Citations

**M4** S.I. 1986/595 (N.I. 4).  
**M5** 1984 c. 36.  
**M6** 1983 c. 20.

### [<sup>F23</sup>63D Supervision and treatment orders.

- (1) In this Act “supervision and treatment order” means an order requiring the person in respect of whom it is made (“the supervised person”)—
- (a) to be under the supervision of a person (“the supervising officer”) specified in the order for a period specified in the order of not more than two years;
  - (b) 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 at a place specified in the order with a view to the improvement of his mental condition; and

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- (c) to comply with such other requirements as may be specified in the order.
- (2) The Secretary of State may by order direct that subsection (1)(a) above shall be amended by substituting, for the period for the time being specified in that paragraph such other period as may be specified in the order.
- (3) A court-martial shall not make a supervision and treatment order unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused;
  - (b) on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly approved, that the mental condition of the accused—
    - (i) is such as requires and may be susceptible to treatment; but
    - (ii) is not such as to warrant the making of an admission order or a guardianship order.
- (4) The court shall not make a supervision and treatment order unless it is also satisfied—
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (b) that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the accused where he is to be required to submit to treatment as a resident patient).
- (5) The Secretary of State may by regulations make further provision in relation to supervision and treatment orders.
- (6) Regulations under subsection (5) above may in particular make provision—
- (a) as to the procedure to be followed by a court-martial making a supervision and treatment order;
  - (b) as to 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 and treatment order.]

#### Textual Amendments

**F23** Ss. 62A–63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

#### [<sup>F24</sup>63E Provisions supplementary to sections 62A to 63D.

- (1) In this section and sections 62A to 63D above—
- “the appropriate mental health legislation” means—
- (a) in a case where an order is treated as if it had been made by a civil court in England and Wales, the <sup>M7</sup>Mental Health Act 1983;
  - (b) in a case where an order is treated as if it had been made by a civil court in Scotland, the <sup>M8</sup>Mental Health (Scotland) Act 1984 and Part VI of the <sup>M9</sup>Criminal Procedure (Scotland) Act 1995;

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- (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the <sup>M10</sup>Mental Health (Northern Ireland) Order 1986; “duly approved” means—
- (a) 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);
- (b) approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act); or
- (c) appointed for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986 by the Mental Health Commission for Northern Ireland;
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 62A, 63, 63C and 63D 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 63A, 63B, 63C and 63D above, and orders under section 63D(2) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F24** Ss. 62A-63E substituted (prosp.) for s. 63 by 1996 c. 46, ss. 8, 36(2)(3), **Sch. 2 para. 4** (but the said Sch. 2 was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, **Sch. 11**; S.I. 2005/579, **art. 3(ix)**)

#### Marginal Citations

**M7** 1983 c. 20.  
**M8** 1984 c. 36.  
**M9** 1995 c. 43.  
**M10** S.I. 1986/595 (N.I. 4).

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## 64 Summoning of witnesses.

- (1) Any person, whether subject to this Act or not, who is required to give evidence before a court-martial may be summoned by notice in writing given by the clerk of the court.
- (2) Any person not subject to this Act who attends a court-martial in pursuance of a notice under this section shall be entitled to receive such expenses of his attendance as may be authorised in accordance with regulations made by [<sup>F25</sup>the Secretary of State].

### Textual Amendments

**F25** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

VALID FROM 01/04/1997

### [<sup>F26</sup>64A Rules of evidence

- (1) The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall, subject to Schedule 13 to the <sup>M11</sup>Criminal Justice Act 1988 (evidence before courts-martial etc) and to service modifications, be the same as those observed in 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 in a trial on indictment in England.
- (2) 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.
- (3) Regulations under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) 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 trial on indictment in England.]

### Textual Amendments

**F26** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, Sch. 1 Pt. III para. 63; S.I. 1996/304, art. 2 (with art. 3)

### Modifications etc. (not altering text)

**C4** S. 64A(1)(4) applied (with modifications) by S.I. 2000/2370, rule 27(a)

### Marginal Citations

**M11** 1988 c. 33.

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VALID FROM 01/04/1997

**F27X1 64B Proofs at courts-martial by written statement**

- (1) Without prejudice to section 64A 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 Parts I and II of this Act are applied by section 117 or section 118 of this Act, or to whom Part II of the <sup>M13</sup>Army Act 1955 or Part II of the <sup>M14</sup>Air Force Act 1955 is applied by section 208A or section 209 of the Army Act 1955 or the Air Force Act 1955 respectively,
 and the persons mentioned in this paragraph include persons to whom section 119 of this Act, section 131 of the Army Act 1955 or section 131 of the Air Force Act 1955 apply.
- (3) In subsection (1) above “service modifications” means—
  - (a) modifications made by any regulations under section 12 of the <sup>M15</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.

**Editorial Information**

- X1** The insertion of the new crossheading "Findings of unfitness to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

**Textual Amendments**

- F27** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with art. 3)

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

- C5** S. 64B(1)(2)(5) applied (with modifications) by S.I. 2000/2370, rule. 27(b)



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#### Marginal Citations

- M12 1967 c. 80.
- M13 1955 c. 18.
- M14 1955 c. 19.
- M15 1967 c. 80.

VALID FROM 01/04/1997

#### <sup>F28X2</sup>64CP **Proof of service facts and records.**

- (1) This section applies with respect to proceedings before a court-martial.
- (2) A letter, return or other document stating that any person—
  - (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces;
  - (b) was discharged from any part of those forces at or before any specified time;
  - (c) held or did not hold at any specified time any specified rank or appointment in any of those forces;
  - (d) had at or before any specified time been attached, posted or transferred to any part of those forces;
  - (e) at any specified time or during any specified time was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
  - (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem;shall if purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matter stated in the document.
- (3) A record—
  - (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval duty; and
  - (b) purporting to be signed by the commanding officer or by any person whose duty it was to make or keep the records,may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (4) A copy of a record (including the signature thereto) such as is mentioned in subsection (3) above, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the record, may be received without formal proof in all trials under this Act as prima facie evidence of the record.
- (5) A document purporting to be issued by order of the Defence Council and to contain instructions given or regulations made by the Defence Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.
- (6) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, and stating—
  - (a) that a decoration of a description specified in, or as annexed to, the certificate is a military, naval or air force decoration; or

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(b) that a badge or emblem of a description specified in, or as annexed to, the certificate is one supplied or authorised by the Defence Council;  
shall be evidence of the matters stated in the certificate.

(7) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any ship, train or aircraft;
- (b) any formation or unit or body of Her Majesty's forces; or
- (c) any command or other area, or place;

shall in proceedings against that person be evidence of the matters stated in the certificate.

(8) Any document which would be evidence in any proceedings under the <sup>M16</sup>Army Act 1955 or the <sup>M17</sup>Air Force Act 1955 shall in like manner, subject to the like conditions, and for the like purposes, be evidence in a court-martial under this Act.

#### Editorial Information

**X2** The insertion of the new crossheading "Findings of unfitnes to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

#### Textual Amendments

**F28** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with **art. 3**)

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

**C6** S. 64C applied (with modifications) by S.I. 2000/2370, **rule 27(c)**

#### Marginal Citations

**M16** 1955 c. 18.

**M17** 1955 c. 19.

VALID FROM 01/04/1997

#### <sup>F29X3</sup>**64D** 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.

#### Editorial Information

**X3** The insertion of the new crossheading "Findings of unfitnes to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

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#### Textual Amendments

**F29** Ss. 64A-64D inserted (1.4.1997 with savings) by 1996 c. 46, s. 5, **Sch. 1 Pt. III para. 63**; S.I. 1997/304, **art. 2** (with **art. 3**)

### 65 Contempt of court-martial by civilians.

- (1) Subject to the provisions of this section, if any person not subject to this Act (whether within the United Kingdom or elsewhere)—
- having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons;
  - is guilty in relation to a court-martial of any such act or default as is described in paragraphs (b) to (f) of subsection (1) of section thirty-eight of this Act; or
  - does any other act in relation to a court-martial which, if the court were a court of law having power to commit for contempt, would be punishable as contempt of that court,

the president of the court-martial may certify the offence to any court of law having jurisdiction in the place where it is alleged to have been committed or in the place where the offender is to be found, being a court having power to commit as aforesaid.

- (2) The court to which an offence is certified under this section may inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged therewith, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in or in relation to that court.
- (3) A person shall not be dealt with under this section in respect of failure to comply with a summons requiring him to attend as a witness before a court-martial unless any expenses to which he is entitled under this Act in respect of his attendance have been paid or tendered:

Provided that for the purposes of this subsection—

- the tender of a warrant or voucher entitling any person to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorised by the warrant or voucher; and
  - the tender of a written undertaking on behalf of [<sup>F30</sup>the Defence Council] to defray at the trial any other expenses to which such a person may be entitled under this Act in respect of his attendance shall be deemed to constitute tender of those expenses.
- (4) Without prejudice to the provisions of subsection (5) of section fifty of this Act, this section applies in relation to a disciplinary court as it applies in relation to a court-martial.

#### Textual Amendments

**F30** Words substituted by S.I. 1964/488, **Sch. 1 Pt. I**

### 66 Record of proceedings of courts-martial.

- (1) As soon as practicable after the conclusion of a court-martial, the judge advocate or the clerk of the court shall transmit to the Commander-in-Chief or senior naval officer

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the record of the proceedings; and the Commander-in-Chief or senior naval officer shall transmit it to <sup>F31</sup>the Defence Council].

- (2) Subject to the provisions of this section, a person who has been charged before a court-martial shall be entitled, on application made to <sup>F31</sup>the Defence Council] within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by <sup>F31</sup>the Defence Council].
- (3) Where a person charged as aforesaid dies within the period of five years mentioned in subsection (2) of this section, his personal representatives, or any person who in the opinion of <sup>F31</sup>the Defence Council] ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to <sup>F31</sup>the Defence Council] within one year after his death, have the like right to receive a copy of the record as that person would have had on application made under that subsection.
- <sup>F32</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 application made in pursuance of this section for a copy of the record of any proceedings, <sup>F31</sup>the Defence Council] certify that it is necessary 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.

#### Textual Amendments

**F31** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

**F32** S. 66(3A) inserted by Armed Forces Act 1981 (c. 55), s. 7(3)(4) except in relation to a record of proceedings commenced before 1.5.1982

#### <sup>F33X4</sup>66A 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 4A to this Act, the parent or guardian shall be entitled, on application made to the Defence Council within five years after the conclusion of the proceedings before the court-martial, to receive a copy of the relevant part of the record of the proceedings, subject to payment of such fee (if any), not exceeding the cost of making the copy, as may be required by the Defence Council.
- (2) Where the parent or guardian dies within the period of five years mentioned in subsection (1) of this section, his personal representatives, or any person who in the opinion of the Defence Council ought to be treated for the purposes of this subsection as his personal representative, shall, on application made to the Defence Council within one year after his death, have the like right to receive a copy of the relevant part of the record as that person would have had on application made under that subsection.
- (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 66(2) or (3) of this Act.
- (4) If, on application made in pursuance of this section for a copy of the record of any proceedings, the Defence Council certify that it is necessary for reasons of security

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that any part of the proceedings should not be disclosed, the applicant shall not be entitled to a copy of the part to which the certificate relates.

- (5) 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.]

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**Editorial Information**

- X4** The insertion of the new crossheading "Findings of unfitness to stand trial and insanity" into Pt. II on 31.3.2005 gives rise to a change in the structure of this piece of legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new crossheading.

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**Textual Amendments**

- F33** S. 66A inserted by [Armed Forces Act 1981 \(c. 55\), s. 8\(3\)](#)

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**Changes to legislation:**

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