



# Naval Discipline Act 1957 (repealed)

1957 CHAPTER 53 5 and 6 Eliz 2

## PART II U.K.

### TRIAL AND PUNISHMENT OF OFFENCES

#### *Review of finding and sentence*

#### 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**F1** Act repealed (prosp.)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

#### 70 **Review by Admiralty of finding and sentence.** U.K.

- (1) Any finding of guilty under this Part of this Act, and any sentence awarded in respect of such a finding [<sup>F1</sup>or under section 38(3) of this Act][<sup>F2</sup>and any finding by a court-martial under section 63(1) of this Act that a person is unfit to stand his trial or is not guilty by reason of insanity], may be reviewed by [<sup>F3</sup>the Defence Council] at any time, and in the case of trial by court-martial shall be so reviewed as soon as practicable after [<sup>F3</sup>the Defence Council] have received the record of the proceedings.
- (2) Without prejudice to the foregoing subsection, a person convicted under this Part of this Act by a court-martial [<sup>F2</sup>[<sup>F4</sup>sentenced under section 38(3) of this Act or found under section 63(1) of this Act] to be unfit to stand his trial or to be not guilty by reason of insanity] may at any time present a petition to [<sup>F3</sup>the Defence Council] against the finding or sentence or both; and in any such case [<sup>F3</sup>the Defence Council] shall, as soon as practicable after the presentation of the petition and after consideration of the matters alleged therein, review the finding or sentence or both, as the case may be.
- (3) If an application for leave to appeal against a conviction by court-martial under this Part of this Act [<sup>F2</sup>or a finding of a court-martial under s. 63(1)][<sup>F5</sup>or a sentence of a court-martial] is received by the registrar of the Courts-Martial Appeal Court, or if the said registrar receives particulars of such an application furnished in pursuance of

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[<sup>F6</sup>section 9(4)(b) of the <sup>M1</sup>Courts-Martial (Appeals) Act 1968], so much of subsections (1) and (2) of this section as requires [<sup>F3</sup>the Defence Council] to review the finding [<sup>F5</sup>or sentence] of a court-martial shall cease to have effect in relation to that conviction [<sup>F2</sup>or finding][<sup>F5</sup>or sentence].

[<sup>F7</sup>(4) The functions of the Defence Council under this section and sections 71, 71A and 72 below may be discharged by the Admiralty Board or by any officer empowered in that behalf by that Board; and for the purposes of any enactment (including the provisions of this Act hereinbefore referred to) anything done, and any document purporting to be an order or direction made or given, by the Admiralty Board or by any such officer in or in connection with the discharge of any such functions shall be of the same effect as if done, or as if a document purporting to be an order or direction made or given, by the Defence Council.]

#### Textual Amendments

- F1** Words inserted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 1\(3\)\(a\)](#)  
**F2** Words inserted by [Criminal Procedure \(Insanity\) Act 1964 \(c. 84\)](#), [s. 8\(3\)](#) proviso (c), Sch. 2 Pt. II  
**F3** Words substituted by [S.I. 1964/488](#), [Sch. 1 Pt. I](#)  
**F4** Words substituted by [Armed Forces Act 1986 \(c. 21, SIF 7:1\)](#), s. 16(1), [Sch. 1 para. 1\(3\)\(b\)](#)  
**F5** Words inserted by [Armed Forces Act 1971 \(c. 33\)](#), [Sch. 2 para. 3](#)  
**F6** Words substituted by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\)](#), [Sch. 4](#)  
**F7** [S. 70\(4\)](#) added by [Armed Forces Act 1971 \(c. 33\)](#), [s. 51](#)

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

- C1** [S. 70](#) power to restrict conferred by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), [s. 50\(4\)\(b\)](#)

#### Marginal Citations

- M1** [1968 c. 20](#).

## 71 Power to quash or alter findings. **U.K.**

- (1) On the review of a finding under section seventy of this Act [<sup>F8</sup>the Defence Council] may—
- (a) in any case, quash the finding;
  - (b) where some other finding of guilty [<sup>F9</sup>or of not guilty by reason of insanity] could lawfully have been made by the court or officer before whom the trial took place, and it appears to [<sup>F8</sup>the Defence Council] that that court or officer must have been satisfied of facts necessary to justify that other finding, substitute that other finding.
  - [<sup>F10</sup>(c) where the finding is that the accused was unfit to stand his trial, and that question was determined at a time later than on the commencement of the trial, substitute a finding of not guilty (other than a finding of not guilty by reason of insanity), if the Defence Council are of opinion that the court should before that time have come to such a finding;
  - (d) substitute a finding that the accused was unfit to stand his trial, if the Defence Council are of opinion that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial.]
- (2) Where a finding is quashed by [<sup>F8</sup>the Defence Council] under this section, then—

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- (a) if the sentence passed in respect of that finding relates to that finding only, the sentence shall be quashed;
  - (b) if the sentence relates to that and any other finding or findings, [F8the Defence Council] may substitute such sentence authorised by this Act in respect of the other finding or findings as they think proper, not being a sentence of greater severity.
- (3) Where a finding is substituted by [F8the Defence Council] under this section, [F8the Defence Council] may substitute for the sentence passed in respect of the original finding such sentence authorised by this Act in respect of the substituted finding as they think proper, not being a sentence of greater severity.
- (4) Any finding or sentence substituted under this section shall be treated for all purposes as the finding or sentence of the court or officer before whom the trial took place.
- [F11](5) Where a finding of guilty of an offence is substituted by the Defence Council under this section for a finding of not guilty by reason of insanity, the Defence Council shall have the like powers of sentencing the accused and other powers as the court-martial would have had on the like finding of guilty, and the sentence shall be treated for all purposes as the sentence of the court-martial:

Provided that the Defence Council shall not have power by virtue of this subsection to impose a sentence of death, and where apart from this proviso a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

- (6) Where in pursuance of a finding of not guilty by reason of insanity a person is detained under [F12section 46 of the Mental Health Act 1983], [F13section 69 of the Mental Health (Scotland) Act 1984] or [F14Article 52 of the Mental Health (Northern Ireland) Order 1986], and the Defence Council quash the finding (without substituting another finding), then if the Defence Council are of opinion—
- (a) that the person in question is suffering from mental disorder ([F12within the meaning of the Mental Health Act 1983]) of a nature or degree which warrants his [F15detention in a hospital for assessment (or for assessment followed by medical treatment)] for at least a limited period; and
  - (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,

the Defence Council shall make an order for his continued detention under the Act [F16or Order], and the order shall be sufficient authority for him to be detained, and the Act [F16or Order] shall apply, as if on the date of the order he had been admitted to the hospital in pursuance of an application duly made under the Act [F16or Order] (being in England or Wales an application for [F15admission for assessment]).

In this subsection any reference to the Mental Health [F14(Northern Ireland) Order 1986] or any provision thereof includes any corresponding Act or provision for the time being in force in Northern Ireland.]

#### Textual Amendments

**F8** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

**F9** Words inserted by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. II

**F10** S. 71(1)(c)(d) added by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. II

**F11** S. 71(5)(6) added by Criminal Procedure (Insanity) Act 1964 (c. 84), s. 8(3) proviso (c), Sch. 2 Pt. II

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- F12** Words substituted by [Mental Health Act 1983 \(c. 20, SIF 85\), s. 148, Sch. 4 para. 13](#)  
**F13** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 7](#)  
**F14** Words substituted by [S.I. 1986/596, art. 4](#)  
**F15** Words substituted by [Mental Health \(Amendment\) Act 1982 \(c. 51, SIF 85\), ss. 65\(1\), 69\(6\), Sch. 3 para. 30, Sch. 5 para. 1](#)  
**F16** Words inserted by [S.I. 1986/596, art. 4](#)

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

- C2** [S. 71](#) power to restrict conferred by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 50\(4\)\(b\)](#)

[<sup>F17</sup>**71A Power to authorise retrial.** **U.K.**

- (1) The following provisions of the <sup>M2</sup>Courts-Martial (Appeals) Act 1968, that is to say,—  
 section 19,  
 section 20, and  
 Parts I 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 the Defence Council under section 70 of this Act of the findings of a courts-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 Defence Council shall be evidence of the making of the order or the giving of the direction, as the case may be, and of its contents.]

**Textual Amendments**

- F17** [S. 71A](#) added by [Courts-Martial \(Appeals\) Act 1968 \(c. 20\), Sch. 4](#)

**Marginal Citations**

- M2** [1968 c. 20.](#)

VALID FROM 28/02/2007

[<sup>F18</sup>**71AB Scope of section 71AC** **U.K.**

- (1) Section 71AC 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 42 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 civil offence is—

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- (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 71AC 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 a review under section 70 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]

#### Textual Amendments

**F18** Ss. 71AB, 71AC inserted (28.2.2007) by 2001 c. 19, ss. 21(2), 39(2); S.I. 2007/662, art. 2

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

**C3** S. 71AB(1)(a) applies (31.3.2007) by The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007 (S.I. 2007/711), art. 2, Sch.

VALID FROM 28/02/2007

#### [<sup>F19</sup>71AC] Review of sentences by Courts-Martial Appeal Court **U.K.**

- (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—

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- (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 70 of this Act; or
- (b) the sentence passed on the person was not that required by section 42(1B), (1E) or (1G) of this Act.

[ Where a reference under this section relates to an order under subsection (2) of <sup>F20</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.
- (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

**F19** Ss. 71AB, 71AC inserted (28.2.2007) by 2001 c. 19, ss. 21(2), 39(2); S.I. 2007/662, art. 2

**F20** S. 71AC(3A) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 272(2)(c)(3), 336(2)

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

- C4** S. 71AC applied (31.3.2007) by The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007 (S.I. 2007/711), **art. 2**, Sch. (with **art. 3**)

VALID FROM 01/04/1997

#### [<sup>F21</sup>71B Review of summary findings and awards. **U.K.**

- (1) This section applies where on a summary trial the accused has been found guilty of any offence.
- (2) The accused may at any time request a review of the finding or any sentence awarded (or both); and where he does so, the finding or sentence (or both) shall be reviewed.
- (3) The finding or any sentence awarded (or both) may be reviewed at any other time.
- (4) A review under this section shall be carried out in accordance with the provisions of Queen's Regulations.
- (5) A review under this section may be carried out by—
  - (a) the Defence Council;
  - (b) any naval officer superior in command to the officer who tried the charge summarily;
  - (c) a flag officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 71 of this Act shall apply to a review under this section by an authority mentioned in subsection (5) above as it applies to a review under section 70 of this Act by the reviewing authority.
- (7) In the application of section 71 to reviews under this section, that section shall have effect as if—
  - (a) references to the court-martial were references to the officer before whom the summary trial took place; and
  - (b) subsections (5)(a) and (6) were omitted.]

#### Textual Amendments

- F21** S. 71B inserted (1.4.1997 with savings) by 1996 c. 46, s. 16, **Sch. 5 para. 12**; S.I. 1997/304, **art. 2** (with **art. 3**)

#### 72 Power to remit or alter sentences. **U.K.**

- (1) On the review of a sentence under section seventy of this Act [<sup>F22</sup>the Defence Council] may, subject to the provisions of this section,—
  - (a) annul the sentence;
  - (b) remit the sentence in whole or in part;
  - (c) commute the sentence for a sentence of a punishment provided by this Act less than the punishment or the greatest of the punishments imposed by the sentence commuted;

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- (d) if the sentence is for any reason invalid, substitute such sentence as they think proper, being a sentence which could lawfully have been awarded in respect of the relevant finding or findings, not being a sentence of greater severity.

[<sup>F23</sup>(1A) Where it appears to the Defence Council that the court, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 58(2)(aa) of this Act to take other offences into consideration they shall, whether or not they remit or commute the sentence or substitute a different sentence, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where they do so, the offence or offences shall be treated for all purposes as not having been taken into consideration.]

(2) . . . <sup>F24</sup>

- (3) Any sentence having effect after remission or commutation under this section, or substituted under this section, shall be treated for all purposes as the sentence of the court or officer before whom the trial took place.
- (4) Nothing in this section shall enable [<sup>F22</sup>the Defence Council] to annul, remit or commute a sentence of death passed on a person found guilty under this Act of treason or murder.

#### Textual Amendments

**F22** Words substituted by S.I. 1964/488, Sch. 1 Pt. I

**F23** S. 72(1A) inserted by Armed Forces Act 1981 (c. 55), s. 5(5)

**F24** Ss. 53(4), 72(2) repealed by Armed Forces Act 1971 (c. 33), Sch. 4 Pt. II

## 73 Saving for functions of Judge Advocate of Her Majesty's Fleet. **U.K.**

Nothing in this Part of this Act shall prejudice the exercise by the Judge Advocate of Her Majesty's Fleet of his functions of considering and reporting on the proceedings of courts-martial and disciplinary courts, or any other of his functions in relation to such courts.



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