



# Armed Forces Act 1976

## 1976 CHAPTER 52

### PART II

#### TRIAL AND PUNISHMENT OF OFFENCES

##### *Summary punishment*

#### **5 Increased powers of summary punishment**

- (1) The maximum period of detention that may be awarded to a soldier or airman by his commanding officer under section 78 of the Army Act 1955 or section 78 of the Air Force Act 1955 shall be 60 days; and accordingly, in subsection (3)(a) of section 78 of each Act, for the word "twenty-eight" there shall be substituted the word "60".
- (2) The maximum amount of a fine that may be awarded for an offence, whether or not committed on active service,—
  - (a) by virtue of section 78 of the Army Act 1955 or section 78 of the Air Force Act 1955 (without prejudice to paragraph (b) of the second proviso to subsection (3) of each section (fines for civil offences)), or
  - (b) to an officer (below the rank of lieutenant-colonel or wing-commander), or to a warrant officer, by virtue of section 79 of either Act (under which there is the same maximum),

shall not exceed the amount of the offender's pay for 28 days.

##### *Civilians*

#### **6 Establishment of Standing Civilian Courts**

- (1) Courts may be established for the trial outside the United Kingdom of persons (in this section and section 7 below referred to as "civilians") to whom Part II of the Army Act 1955 or Part II of the Air Force Act 1955 is applied by section 209 of either Act (including persons to whom Part II of either Act applies by virtue of

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section 131 (persons treated as continuing to be subject to Part II for purposes of trial and punishment of offences)).

- (2) Courts established under this section shall be known as Standing Civilian Courts.
- (3) The Secretary of State, with the approval of the Lord Chancellor, may by order direct that any area specified in the order shall be an area for which trials may be directed to be held before Standing Civilian Courts for offences committed in that area or elsewhere.
- (4) The Lord Chancellor shall appoint such number of the assistants to the Judge Advocate General appointed under section 30 of the Courts-Martial (Appeals) Act 1951 as he considers necessary to sit as magistrates in Standing Civilian Courts.
- (5) Subject to subsections (12) and (13) below, a trial held by virtue of this section shall be before such a magistrate.
- (6) The Secretary of State may direct such authority as appears to him to be appropriate in relation to an area for which trials may be directed to be held before Standing Civilian Courts to draw up and from time to time add to a panel of persons whom the authority considers suitable to act as assessors in trials before such courts under subsection (12) below.
- (7) If the Secretary of State is satisfied, after consultation with the Lord Chancellor, that there are in any area for which trials may be directed to be held before Standing Civilian Courts sufficient persons suitably qualified by training and experience to sit as members of Standing Civilian Courts, he may by order direct that subsection (13) below shall have effect in relation to trials before Standing Civilian Courts for that area.
- (8) If an order is made under subsection (7) above, the Secretary of State, with the approval of the Lord Chancellor, shall draw up and from time to time add to a panel of persons qualified as mentioned in that subsection to sit as members of Standing Civilian Courts for the area specified in the order.
- (9) Each member of a panel under subsection (6) or (8) above shall be—
  - (a) a civilian, or
  - (b) an officer of the Royal Navy, the regular forces or the regular air force as defined respectively in the Army Act 1955 and the Air Force Act 1955), Queen Alexandra's Royal Naval Nursing Service, or the Women's Royal Naval Service.
- (10) A person shall cease to be a member of such a panel if he ceases—
  - (a) to be a person such as is mentioned in subsection (9) above, or
  - (b) to reside in the area for which the panel is drawn up.
- (11) The Secretary of State may, if he thinks fit, remove a member of a panel under subsection (6) or (8) above from that panel on the ground of incapacity or misbehaviour, but shall not exercise the power conferred by this subsection in relation to a member of a panel under subsection (8) above without the approval of the Lord Chancellor.
- (12) For a trial where the person, or every person to be tried was under 17 years of age at the date of the alleged commission of the offence for which he is to be tried, and in relation to which subsection (13) below does not have effect, not more than two members of the appropriate panel under subsection (6) above may sit with the magistrate as assessors.

- (13) If this subsection applies, the court for such a trial shall consist of a magistrate and not more than two members of the appropriate panel under subsection (8) above.
- (14) The magistrate for any sitting or succession of sittings of a Standing Civilian Court shall be specified by or on behalf of the Judge Advocate General.
- (15) The persons to sit as assessors or members of the court under subsection (12) or (13) above shall be specified for a trial or succession of trials by the authority who directs the trial or trials to be held.
- (16) Any power to make an order 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.
- (17) Schedule 3 to this Act shall have effect.

## **7 Jurisdiction of Standing Civilian Courts**

- (1) The offences for which a civilian may be tried by a Standing Civilian Court are offences committed outside the United Kingdom for which a court-martial may try a civilian, other than—
  - (a) any offence under section 57 of the Army Act 1955 or the Air Force Act 1955 (offences in relation to courts), and
  - (b) any offence under section 70 of either of those Acts constituted by the commission of an offence which, if the person charged were alleged to have committed it in England or Wales, a magistrates' court would be unable to try.
- (2) No person may be tried by a Standing Civilian Court if he or any person jointly charged with him elects to be tried by court-martial in accordance with the provisions of this Act or of any order made under this Act.
- (3) Subject to subsection (4) below, no person shall be tried by a Standing Civilian Court unless the trial is begun within three years after the alleged commission of the offence with which he is charged.
- (4) No person shall be tried for an offence under section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 in any case where proceedings for the corresponding civil offence must be brought within a limited time, unless the trial is begun within that time.

## **8 Powers of courts in relation to civilians**

- (1) Subject to subsection (3) below and to section 71A of the Army Act 1955 and section 71A of the Air Force Act 1955, the punishments which may be awarded by sentence of a Standing Civilian Court are—
  - (a) imprisonment for a term not exceeding six months ; and
  - (b) a fine not exceeding £400.
- (2) Such a court may award consecutive terms of imprisonment, provided that their aggregate does not exceed 12 months.
- (3) Where a person is found guilty by a Standing Civilian Court of an offence under section 70 of the Army Act 1955 or of the Air Force Act 1955 (civil offences) the court

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may not award a term of imprisonment or impose a fine which a magistrates' court in England or Wales could not award or impose for the corresponding civil offence.

- (4) Without prejudice to any of the other powers of a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or of a Standing Civilian Court under this section—
- (a) on the trial of a person to whom the Schedule inserted in the Army Act 1955 and the Air Force Act 1955 by Schedule 4 below applies, a court-martial or Standing Civilian Court shall have the powers specified in the Schedule so inserted ; and
  - (b) on the trial of a person to whom that Schedule as inserted in the Naval Discipline Act 1957 by Schedule 4 below applies, a court-martial shall have the powers specified in the Schedule as so inserted.

## **9 Constitution of courts-martial for civilians**

- (1) After paragraph (f) of section 209(3) of the Army Act 1955 and section 209(3) of the Air Force Act 1955 (modifications of Acts in relation to civilians) there shall be inserted the following paragraphs:—

“(2fa) a court-martial for the trial of any such person as is mentioned in subsection (1) or (2) above may include in place of the corresponding number of officers—

- (i) if it is a general court-martial constituted under section 87 above, not more than two persons who are in the service of the Crown and are persons such as are mentioned in subsection (1) or (2) above, and
- (ii) if it is a district court-martial constituted under section 88 above, not more than one person who is in the service of the Crown and is himself a person such as is mentioned in either of those subsections,

but a person who is a member of a court-martial by virtue of this paragraph shall not be appointed the president of the court-martial;

(2fb) the reference to an officer under instruction in section 93(1) above shall include a reference to a person under instruction who is qualified for membership of courts-martial under paragraph (a) above;”.

- (2) After section 118(3) of the Naval Discipline Act 1957 there shall be inserted the following subsection:—

“(3A) A court-martial for the trial of any such person may include in place of the corresponding number of officers not more than two persons who are in the service of the Crown and are persons to whom this Act applies by virtue of this section, but a person who is a member of a court-martial by virtue of this subsection shall not be appointed the president of the court-martial.”.

### *Juveniles*

## **10 Powers of courts in relation to juveniles**

- (1) The following section shall be inserted after section 71 of the Army Act 1955 and section 71 of the Air Force Act 1955:—

**“71A Juveniles.**

- (1) A person under 17 years of age shall not be sentenced to imprisonment.
  - (2) A person under 21 years of age shall not be sentenced to imprisonment unless the court is of opinion that no other method of dealing with him is appropriate ; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.
  - (3) A person convicted of murder who was under 18 years of age when the offence was committed shall not be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against a person convicted of any offence who was under 18 years of age when the offence was committed ; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.
  - (4) A person under 17 years of age found guilty of a civil offence (other than one the sentence for which is fixed) which is punishable by a civil court in England or Wales on indictment by, in the case of an adult, a term of imprisonment for 14 years or more, may be sentenced by the court, if it is of opinion that none of the other methods in which the case may be legally dealt with is suitable, to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable by such a civil court in the case of an adult, as may be specified in the sentence; and where such a sentence has been passed, the person on whom it is passed shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.
  - (5) A sentence of detention under subsection (3) or (4) above shall be treated for the purposes of this Part of this Act as a punishment provided by this Act involving the same degree of punishment as a sentence of imprisonment; and section 71(3) and (4) above shall apply to such a sentence of detention as they apply to a sentence of imprisonment.
  - (6) A person detained pursuant to the directions of the Secretary of State under this section shall, while so detained, be deemed to be in legal custody.”.
- (2) The said section shall also be inserted after section 43 of the Naval Discipline Act 1957, and shall have effect as section 43A of that Act but with substitution in subsection (5)—
- (a) of the word " authorised " for the word " provided ", and
  - (b) of the words " 43(3) and (4) " for the words " 71(3) and (4)".
- (3) Accordingly—
- (a) in section 70(3) of the Army Act 1955 and section 70(3) of the Air Force Act 1955 (civil offences), there shall be inserted at the beginning the words " Subject to section 71A below, ";

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- (b) in section 71(1) of each of those Acts (punishments available to courts-martial) after the word " section " there shall be inserted the words " and section 71A below ";
- (c) in section 42(1) of the Naval Discipline Act 1957 (civil offences), after the word " shall " there shall be inserted the words " subject to section 43A below " ; and
- (d) in section 43(1) of that Act (punishments which may be awarded) after the word " section" there shall be inserted the words " and section 43A below " .

### *Court-martial procedure*

#### **11 Proof at courts-martial by written statement**

The amendments specified in Schedule 5 to this Act shall have effect for the purpose of rendering admissible as evidence at courts-martial under the Army Act 1955 and the Air Force Act 1955 written statements made by the persons mentioned in that Schedule.

#### **12 Exemption of certain persons from duty to take oath at court-martial**

- (1) In section 93(1) of the Army Act 1955 and section 93(1) of the Air Force Act 1955 (administration of oaths):—
  - (a) after the word " person " there shall be inserted the words " , other than an exempted person, " ; and
  - (b) the words " shorthand writer " shall cease to have effect.
- (2) The following subsection shall be added after each of those subsections:—
 

“(1A) In subsection (1) above " exempted person " means any person appointed under section 30 of the Courts-Martial (Appeals) Act 1951 (assistants to Judge Advocate General) who is acting as judge advocate at the court-martial and was appointed so to act either by or on behalf of the Judge Advocate General or by the convening officer.”.
- (3) In section 60(1) of the Naval Discipline Act 1957 (administration of oaths) the words " for the purpose of reporting or transcribing the proceedings or " shall cease to have effect.

### *Powers of court-martial etc.*

#### **13 Imprisonment in default of payment of fines**

The amendments specified in Schedule 6 to this Act shall have effect for the purpose of enabling a court-martial which imposes a fine on a person convicted of an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 to impose, in certain circumstances, a term of imprisonment not exceeding 12 months in default of payment of that fine.

## **14 Restitution and compensation**

The amendments specified in Schedule 7 to this Act shall have effect for the purpose of enabling orders for restitution or compensation under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 to be made in relation to offences taken into consideration and of removing the limit on the amount of compensation imposed by section 76 of the said Act of 1957.

### *Naval Offences*

## **15 Territorial scope of certain offences**

- (1) In sections 93 and 94 of the Naval Discipline Act 1957 (offences by civilians of spying and seduction from duty in ships or naval establishments outside Her Majesty's Dominions) for the words " Her Majesty's Dominions " there shall be substituted the words " the United Kingdom and Colonies ".
- (2) In sections 96, 97(1) and 98(1) of that Act (offences relating to desertion etc. and to purchase of naval property) for the words " Her Majesty's Dominions " there shall be substituted the words " the United Kingdom ".

### *Powers of civil courts*

## **16 Enforcement by civil courts of financial penalties awarded under Services Acts**

Schedule 8 to this Act shall have effect for the purpose of enabling financial penalties awarded under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 to be enforced by certain civil courts in the United Kingdom.

### *Rehabilitation*

## **17 Rehabilitation of civilians found guilty in service disciplinary proceedings**

- (1) In the application of section 2 of the Rehabilitation of Offenders Act 1974 (by virtue of which that Act extends to persons found guilty in Service disciplinary proceedings) to persons to whom Part II of the Army Act 1955 or the Air Force Act 1955 is applied by section 209 of either of those Acts, or to whom Parts I and II of the Naval Discipline Act 1957 are applied by section 118 of that Act, subsections (2) to (4) shall be omitted.
- (2) Subject to subsection (1) above, the said section shall have effect in relation to persons found guilty in proceedings before Standing Civilian Courts and in relation to orders made under Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or under Schedule 4A to the Naval Discipline Act 1957.