

SCHEDULES

SCHEDULE 3

Section 6.

STANDING CIVILIAN COURTS

Interpretation

- 1 (1) In this Schedule—
- "civilian" means a person who may be tried by a Standing Civilian Court;
 - "the court" means a Standing Civilian Court;
 - "the directing officer" means, in relation to a civilian sent for trial by the court, the higher authority who sent him or any officer for the time being discharging the functions of that authority ;
 - "prescribed" means prescribed by an order under paragraph 12 below;
 - and
 - "sentence" includes any order made by the court on finding a person guilty.
- (2) Any reference in this Schedule to a provision of the Army Act 1955 includes a reference to the corresponding provision of the Air Force Act 1955.

Sittings of the Court

- 2 (1) Subject to sub-paragraphs (2) and (3) below, the court shall sit at such places in its area as the directing officer may, after consultation with the Judge Advocate General or his deputy, direct.
- (2) The court shall adjourn from one such place to another if so directed by the directing officer and may so adjourn without any such direction if it appears to the court expedient in the interests of justice to sit at that other place.
- (3) If the directing officer thinks it expedient in the interests of justice, he may, after consultation with the Judge Advocate General or his deputy, direct the court to sit at such place outside its area and outside the United Kingdom for such purpose and upon such terms, if any, as he thinks fit.

Court to sit in public

- 3 (1) Subject to the provisions of this paragraph, the court shall sit in open court and in the presence of the accused.
- (2) The court may exclude members of the public from the trial of a person under 17 years of age or direct that the trial of such a person shall only be reported to such extent as may be specified in the direction.
- (3) The court may sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so ; and without prejudice to that power the court may order that, subject to any exceptions the court may specify, the public

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shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statements to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

- (4) The court may sit in closed court while deliberating on its finding or sentence or during any other deliberation among its members, but finding and sentence shall in all cases be announced in open court and in the presence of the accused.

Right to court-martial

- 4 (1) An accused person has a right to elect, before the court commences his trial, that the charges on which he is to be tried shall be tried by court-martial instead of by the court.
- (2) Before the court commences a trial, it shall inform the accused in the prescribed manner of the right conferred by sub-paragraph (1) above, whether or not he has already been informed of it.
- (3) The court shall proceed with the case unless the accused or, if more than one person is jointly charged, any of the accused, exercises the right so conferred.
- (4) If the accused, or any of the accused, exercises that right, the court shall adjourn, and report to the directing officer in the prescribed manner the fact that the election for trial by court-martial has been made.
- (5) The directing officer shall thereupon—
- (a) exercise any power conferred on higher authority by section 80 of the Army Act 1955 ; or
 - (b) take the prescribed steps with a view to the accused being tried by court-martial.

Assessors

- 5 The function of assessors at a trial shall be to advise the magistrate on matters, other than questions of law, arising at any stage during it.

Accused unfit

- 6 (1) Where it appears to the court that a person—
- (a) is unfit to stand his trial, or
 - (b) committed the acts or omissions constituting the offence with which he is charged, but was insane at the time when he committed them,
- the court shall adjourn the hearing and report the matter in the prescribed manner to the directing officer.
- (2) The directing officer shall—
- (a) exercise any power conferred on higher authority by section 80 of the Army Act 1955 ; or
 - (b) take the prescribed steps with a view to his being tried by court-martial; or
 - (c) where the hearing was adjourned by virtue of sub-paragraph (1)(a) above and it appears to the directing officer that the person in question is fit to stand his trial, refer the charge back to the court to continue the hearing.

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- (3) For purposes of this paragraph " unfit to stand his trial" means under any disability such as apart from the Criminal Procedure (Insanity) Act 1964 would constitute a bar to a trial on indictment in England or Wales.

Re-trial in interests of administration of justice

- 7 The directing officer may direct a re-trial before a Standing Civilian Court in any case where, after the commencement of a trial before such a court, it appears to him necessary or expedient in the interests of the administration of justice.

Re-trial where court ceases to be properly constituted

- 8 (1) Without prejudice to the generality of paragraph 7 above, the directing officer may in the prescribed manner direct a re-trial if after the commencement of a trial before a magistrate sitting alone the magistrate dies or is otherwise unable to attend.
- (2) Where the court for a trial to which section 6(13) above applies has two members in addition to the magistrate, the directing officer may in the prescribed manner direct a re-trial—
- (a) if after the commencement of the trial the magistrate dies or is otherwise unable to attend, or
 - (b) if after its commencement both the other members of the court die or are otherwise unable to attend.
- (3) Where the court for a trial to which section 6(13) above applies has one member in addition to the magistrate, the directing officer may in the prescribed manner direct a re-trial if after the commencement of the trial either of them dies or is otherwise unable to attend.
- (4) An assessor's death or inability to attend after the commencement of a trial shall not preclude the trial continuing.

Decisions of the Court etc.

- 9 (1) Subject to the provisions of this paragraph, every question to be determined by the court shall be determined—
- (a) by the magistrate, if he is sitting alone or with assessors, and
 - (b) where section 6(13) above applies, by a majority of the votes of the members of the court.
- (2) For a trial where section 6(13) above applies, the magistrate shall preside over the court and give rulings on any questions of law.
- (3) In case of an equality of votes on a finding, the court shall acquit the accused.
- (4) In case of an equality of votes on the sentence, or on any other question before the court, except a question of law or the finding, the magistrate shall have a second or casting vote.

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Privilege of witnesses and others

- 10 A witness before the court 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 a magistrates' court in England or Wales.

Rules of evidence

- 11 (1) Subject to the provisions of any order made under paragraph 12 below, the rules as to the admissibility of evidence to be observed in proceedings before Standing Civilian Courts shall be the same as those observed in magistrates' courts in England and Wales, and no person shall be required in proceedings before a Standing Civilian Court to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a magistrates' court in England or Wales.
- (2) A Standing Civilian Court shall take judicial notice of all matters of notoriety and of all other matters of which judicial notice would be taken in a magistrates' court in England or Wales,

Procedure etc. of court

- 12 (1) The Secretary of State may by order made by statutory instrument make provision with respect to all or any of the following matters, namely—
- (a) the trial of offences by Standing Civilian Courts ;
 - (b) the awarding of sentences by such courts ;
 - (c) the review of findings and sentences of such courts ; and
 - (d) appeals from such courts,
- and to such other matters relating to Standing Civilian Courts as he considers necessary or expedient.
- (2) An order under this paragraph shall confer a right on a person charged to elect to be tried by court-martial instead of by a Standing Civilian Court.
- (3) Any such order may apply, with or without exceptions or modifications, any provision of the Army Act 1955 or the Air Force Act 1955, and any enactment not contained in either of those Acts but relating to courts-martial.
- (4) Without prejudice to the generality of sub-paragraphs (1) and (3) above, an order under this paragraph may make provision with respect to all or any of the following matters, namely—
- (a) the procedure to be observed in the bringing of charges before a Standing Civilian Court (including the manner of election for trial by court-martial) ;
 - (b) requiring any person appointed a magistrate under subsection (4) of section 6 above or a member of a panel under subsection (6) or (8) of that section to take an oath upon his appointment in a prescribed form and manner;
 - (c) the exercise of their functions by assessors and their rights in relation to trials at which they sit;
 - (d) the sittings of Standing Civilian Courts ;
 - (e) the procedure to be observed in trials before them ;
 - (f) the representation of the accused at such trials;
 - (g) procuring the attendance of witnesses;

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- (h) empowering the court and the directing officer in such cases and to such extent as may be prescribed to amend a charge which is being tried by the court;
 - (j) empowering the court, where the particulars proved or admitted at a trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence ;
 - (k) determining the cases in which and the extent to which the court, in sentencing any person for an offence, may take into consideration at his request other offences against the Army Act 1955 or the Air Force Act 1955 committed by him ;
 - (l) applying section 99A of the Army Act 1955 (proof at courts-martial by written statement), section 1AAA of the Perjury Act (Northern Ireland) 1946 (false written statements at courts-martial) and sections 10 and 11 of the Criminal Justice Act 1967 (formal admission and notice of alibi) subject to any exceptions or modifications that appear to the Secretary of State to be necessary or proper for the purpose of the operation of those sections in relation to proceedings before Standing Civilian Courts ;
 - (m) directing that the powers conferred by section 7 of the 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 any trial before a Standing Civilian Court, either by the court or the directing officer ;
 - (n) the transfer of cases to courts-martial;
 - (o) the procedure to be observed in bringing appeals from Standing Civilian Courts ;
 - (p) the forms of orders and other documents to be made for the purposes of any provision of this Schedule or of the order ; and v
 - (q) any matter which by this Schedule is required or authorised to be prescribed.
- (5) The Secretary of State shall secure that any power to amend charges conferred by an order under this paragraph shall not be exercisable in circumstances substantially different from those in which charges which are being tried by court-martial may be amended.
- (6) The power to make an order conferred by this paragraph includes power to make provision for specified cases or classes of cases, and to make different provision for different classes of cases, and for the purposes of any such order classes of cases may be defined by reference to any circumstances specified in the order.
- (7) An order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Duration of sentences etc.

- 13 Where any sentence of the court is limited by reference to a period of time, that period shall begin to run from the beginning of the day on which the sentence is passed, except in a case where it is suspended under paragraph 20(4) below.

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- 14 Where the court passes any such sentence and the period of any previous sentence passed on the same person has not expired, the court may order that the new sentence shall begin to run from the expiry of the period.

Supplementary

- 15 (1) Section 57(1) of the Army Act 1955 (offences) shall have effect in relation to a Standing Civilian Court as it has effect in relation to a court-martial.
- (2) The magistrate sitting in such a court may direct the arrest of any person for an alleged offence under that section.
- (3) A person arrested by virtue of sub-paragraph (2) above may be released by the magistrate, if he thinks fit; and no further proceedings shall be taken in the matter in relation to a person so released.
- 16 Sections 133 and 134(1) and (2) of the Army Act 1955 (safeguards against repeated trial for the same offence) shall have effect, with any necessary modifications, as if any reference to a court-martial included a reference to a Standing Civilian Court.
- 17 Section 138 of that Act (restitution or compensation for theft, etc.) shall have effect as if—
- (a) the reference to a court-martial in subsection (1) included a reference to a Standing Civilian Court; and
- (b) the following subsection were substituted for subsection (9):
- “(9) The operation of an order under this section made by a Standing Civilian Court shall be suspended—
- (a) in any case until the end of the period within which notice of appeal may be given; and
- (b) if such notice is given, until the appeal is determined or abandoned.”.

Appeals

- 18 (1) Subject to the provisions of this paragraph and to paragraphs 5(4) and 14(8) of Schedule 5A to the Army Act 1955 and Schedule 5A to the Air Force Act 1955 (no appeal from absolute and conditional discharges, community supervision orders and recognisances entered into by parents or guardians), a person found guilty by the court may appeal to a court-martial—
- (a) if he pleaded guilty, against his sentence ;
- (b) if he did not, against his conviction or sentence or both.
- (2) A person sentenced by the court for an offence in respect of which an order for conditional discharge or a community supervision order has been previously made under Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957 may appeal to a court-martial against the sentence.
- (3) The right of appeal conferred by this paragraph shall not be exercisable unless within 21 days of the date of the court's sentence the accused lodges with the prescribed person a notice in the prescribed form and addressed to the directing officer stating his intention to appeal against his conviction or sentence or both.

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- (4) When the directing officer receives a notice of appeal lodged under sub-paragraph (3) above, he shall take the steps specified in Rules of Procedure under section 103 of the Army Act 1955 with a view to the appeal being heard by a court-martial.
- (5) An appeal against conviction on any charge shall take the form of a rehearing of that charge.
- (6) An appeal against sentence alone shall not take the form of a rehearing of the charge in respect of which the sentence was imposed.
- (7) The term of any sentence passed by a court-martial on such an appeal shall, unless the court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal was brought; and section 118 of the Army Act 1955 (commencement of sentences) shall accordingly not apply to any such sentence.
- (8) Subject to sub-paragraph (7) above, a sentence passed on such an appeal shall be treated for the purposes of any enactment as if it had been a sentence passed on a trial by court-martial.
- (9) Subject to sub-paragraphs (10) and (11) below, and to any order under paragraph 12 above, the provisions of the Army Act 1955 or the Air Force Act 1955 relating to courts-martial shall apply to appeals under this paragraph.
- (10) A person who sat in the Standing Civilian Court on the trial shall not attend the court-martial as a member thereof or as judge advocate.
- (11) Whether the appeal is against sentence or against conviction, the court-martial may only award a sentence which a Standing Civilian Court could award.

Review

- 19 At any time after a Standing Civilian Court has sentenced a person, but not later than the end of the prescribed period, he may present to the prescribed person a petition against finding or sentence or both in the prescribed form and addressed to a reviewing authority.
- 20 (1) A finding or sentence of a Standing Civilian Court may at any time be reviewed by a reviewing authority; and if a petition against finding or sentence is duly presented under paragraph 19 above, or notice is given of an appeal against a finding or sentence, the finding or sentence shall be reviewed by the reviewing authority as soon as may be after the presentation of the petition or notice and after consideration of the matters alleged in it.
 - (2) On a review the reviewing authority may—
 - (a) in so far as the review is of a finding, quash the finding, and if the sentence relates only to the finding quashed, the sentence; and
 - (b) in so far as the review is of a sentence, quash the sentence ; and
 - (c) in any case, subject to sub-paragraph (3) below, exercise the like powers of substituting findings, substituting sentences and remitting or commuting punishments as are conferred on a confirming officer in relation to the findings and sentences of courts-martial by subsections (2) to (4) of section 110 of the Army Act 1955 ;

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and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court.

- (3) Neither the power to substitute a different sentence for a sentence imposed by the court nor the power to commute such a sentence shall be exercisable so as to impose a sentence which the court could not have imposed.
- (4) Where a person is in custody under a sentence which falls to be reviewed in accordance with this paragraph, the reviewing authority may suspend the sentence.
- (5) Where the sentence of a person in custody is suspended under sub-paragraph (4) above, he shall thereupon be released.
- (6) Where, while any sentence is so suspended the person sentenced is sentenced by a Standing Civilian Court or a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 for a fresh offence, the suspension of the earlier sentence may be determined—
 - (a) by order of any such court on awarding the later sentence, or
 - (b) by order of the appropriate authority on the review of that sentence.
- (7) In sub-paragraph (6) above, " the appropriate authority" means—
 - (a) where the later sentence was awarded by a Standing Civilian Court, the reviewing authority, or
 - (b) where the later sentence was awarded by a court-martial, the authority conducting its review.
- (8) A sentence which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this sub-paragraph at the expiry of one year from the date on which the suspension took effect.
- (9) The reviewing authorities for the purposes of this paragraph and paragraph 19 above shall be the directing officer and any superior officer or authority.