

SCHEDULES

SCHEDULE 1

Section 5.

PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS.

PART I

SUMMARY DISPOSAL OF OFFENCES

Army Act 1955 (c. 18)

- 1 The Army Act 1955 shall be amended as follows.
2 For section 76 there shall be substituted the following sections—

“76 Investigation of charges by commanding officer

- (1) An allegation that a person subject to military law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
 - (a) the accused is an officer or warrant officer; or
 - (b) the charge is not capable of being dealt with summarily.

Status: This is the original version (as it was originally enacted).

- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76A Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or soldier and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of lieutenant-colonel or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.
- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76B Summary dealings

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the

Status: This is the original version (as it was originally enacted).

charge has been proved, afford the accused an opportunity of electing court-martial trial.

- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
 - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or soldier, refer the charge back to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

76C Punishments available on summary dealings

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
 - (a) if the offender is a soldier, detention for a period not exceeding 60 days;
 - (b) fine;
 - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages;
 - (e) any minor punishment for the time being authorised by the Defence Council.
- (3) The appropriate superior authority may award one or more of the following punishments—
 - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
 - (b) fine;
 - (c) severe reprimand or reprimand;

Status: This is the original version (as it was originally enacted).

- (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.
- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to the offender in respect of the day on which punishment is awarded in respect of the offence.
- (10) If the offender is a lance-corporal or lance-bombardier, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender to be reduced to the ranks.
- (11) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
 - (a) to revert to his permanent rank;
 - (b) to assume an acting rank lower than that held by him but higher than his permanent rank; or
 - (c) where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks."

3 Sections 77 to 80 shall cease to have effect.

4 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

“(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—

- (a) he is a general officer, flag officer, air officer or brigadier, or

Status: This is the original version (as it was originally enacted).

- (b) where the Defence Council so direct, he is a colonel or a naval or air force officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

5 For section 83 there shall be substituted the following section—

“83 Regulations as to summary dealings etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
- (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the delegation by the commanding officer of any of his functions;
 - (d) the charges which are capable of being dealt with summarily;
 - (e) the amendment or substitution of charges;
 - (f) the procedure on summary dealings;
 - (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
 - (l) who is to act as the higher authority and the appropriate superior authority in any particular case.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

Air Force Act 1955 (c. 19)

6 The Air Force Act 1955 shall be amended as follows.

7 For section 76 there shall be substituted the following sections—

“76 Investigation of charges by commanding officer

- (1) An allegation that a person subject to air-force law (“the accused”) has committed an offence against any provision of this Part of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.

Status: This is the original version (as it was originally enacted).

- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) deal summarily with the charge.
- (6) The commanding officer may not deal summarily with a charge if—
 - (a) the accused is an officer or warrant officer; or
 - (b) the charge is not capable of being dealt with summarily.
- (7) This section has effect subject to any power of the commanding officer under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76A Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.
- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a non-commissioned officer or airman and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with.
- (4) If the charge is against an officer below the rank of wing commander or a warrant officer and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority to be so dealt with.
- (5) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or (as the case may be) to the appropriate superior authority, to be dealt with summarily.
- (6) This section has effect subject to any power of the higher authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.

76B Summary dealings

- (1) This section applies where a charge is to be dealt with summarily by a commanding officer or appropriate superior authority.
- (2) References in this Act to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment.
- (3) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4) If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority.
- (5) If he determines that the charge has been proved, the commanding officer or appropriate superior authority shall, before recording a finding that the charge has been proved, afford the accused an opportunity of electing court-martial trial.
- (6) If the accused so elects, the commanding officer or appropriate superior authority shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (7) If the accused does not so elect, or so elects but subsequently withdraws his election with leave, the commanding officer or appropriate superior authority shall record a finding that the charge has been proved and award punishment accordingly.
- (8) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall—
 - (a) if the accused is an officer or warrant officer, refer the charge back to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or airman, refer the charge back to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the charge has been proved and award punishment accordingly.
- (9) This section has effect subject to any power of the commanding officer or appropriate superior authority under section 103A(1) below to direct that the charge be tried by a field general court-martial.
- (10) Nothing in this section or section 76A above shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.

Status: This is the original version (as it was originally enacted).

76C Punishments available on summary dealings

- (1) This section applies where a commanding officer or appropriate superior authority records a finding that a charge against an accused has been proved.
- (2) The commanding officer may award one or more of the following punishments—
 - (a) if the offender is an airman, detention for a period not exceeding 60 days;
 - (b) fine;
 - (c) if the offender is a non-commissioned officer, severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages;
 - (e) any minor punishment for the time being authorised by the Defence Council.
- (3) The appropriate superior authority may award one or more of the following punishments—
 - (a) except in the case of a warrant officer, forfeiture of seniority for a specified term or otherwise;
 - (b) fine;
 - (c) severe reprimand or reprimand;
 - (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (4) The commanding officer may not award a fine or minor punishment for an offence for which he awards detention.
- (5) The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority.
- (6) Except in the case of an offence against section 70 of this Act, the amount of a fine shall not exceed the amount of the offender's pay for twenty-eight days.
- (7) In the case of an offence against section 70 of this Act where the corresponding civil offence is a summary offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on summary conviction.
- (8) In the case of an offence against section 70 of this Act where the corresponding civil offence is an indictable offence, the amount of a fine shall not exceed—
 - (a) the amount of the offender's pay for twenty-eight days; or
 - (b) (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment.
- (9) A day's pay shall be taken, for the purposes of subsections (6) to (8) above, to be the gross pay that is, or would (apart from any forfeiture) be, issuable to

Status: This is the original version (as it was originally enacted).

the offender in respect of the day on which punishment is awarded in respect of the offence.

- (10) If the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender—
- (a) to revert to his permanent rank; or
 - (b) to assume an acting rank lower than that held by him but higher than his permanent rank.”

8 Sections 77 to 80 shall cease to have effect.

9 (1) Section 82 (officers who are to act as commanding officers and appropriate superior authorities) shall be amended as follows.

(2) For subsection (2) there shall be substituted the following subsection—

- “(2) A person may act as appropriate superior authority in relation to a person charged with an offence if—
- (a) he is an air officer, flag officer, general officer or brigadier, or
 - (b) where the Defence Council so direct, he is a group captain or a naval or military officer of corresponding rank.”

(3) Subsection (3) shall cease to have effect.

10 For section 83 there shall be substituted the following section—

“83 Regulations as to summary dealings etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary dealings by commanding officers and appropriate superior authorities.
- (2) Regulations under this section may in particular make provision with respect to—
- (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the delegation by the commanding officer of any of his functions;
 - (d) the charges which are capable of being dealt with summarily;
 - (e) the amendment or substitution of charges;
 - (f) the procedure on summary dealings;
 - (g) limitations on the punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority of a specified description;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;

Status: This is the original version (as it was originally enacted).

(l) who is to act as the higher authority and the appropriate superior authority in any particular case.

(3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.”

Naval Discipline Act 1957 (c. 53)

11 The Naval Discipline Act 1957 shall be amended as follows.

12 Sections 49, 50 and 52A shall cease to have effect.

13 After section 52A there shall be inserted the following sections—

“Investigation and summary trial

52B Investigation of charges by commanding officer

- (1) An allegation that a person subject to this Act (“the accused”) has committed an offence against any provision of this Act shall be reported, in the form of a charge, to his commanding officer.
- (2) A commanding officer shall investigate a charge reported to him under subsection (1) above.
- (3) If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him under subsection (1) above.
- (4) If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act he may stay further proceedings with respect to the charge.
- (5) After investigating a charge, the commanding officer may, subject to subsection (6) below—
 - (a) dismiss the charge;
 - (b) refer the charge to higher authority; or
 - (c) try the accused summarily.
- (6) The commanding officer may not try summarily—
 - (a) any charge against an officer; or
 - (b) any charge which is not capable of being tried summarily.
- (7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than an offence punishable by sentence of death or an offence of murder.

52C Powers of higher authority

- (1) Where a charge is referred to higher authority, the higher authority shall refer the case to the prosecuting authority unless he takes one of the steps mentioned in this section in relation to the charge.

- (2) The higher authority may refer the charge back to the commanding officer of the accused with a direction to dismiss it or to stay all further proceedings in relation to it; and the commanding officer shall deal with the charge accordingly.
- (3) If the charge is against a rating and is capable of being tried summarily, the higher authority may, subject to subsection (4) below, refer it back to the commanding officer of the accused to be so tried.
- (4) If the charge has been referred to the higher authority as a result of an election for court-martial trial, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) This section has effect subject to any power of the higher authority under section 52G(1) below to order a disciplinary court.

52D Summary trial

- (1) This section applies where a charge is to be tried summarily.
- (2) If the commanding officer considers that, if the charge were proved, he would award a punishment—
 - (a) in the case of a warrant officer, of disrating, a fine or stoppages;
 - (b) in the case of any other rating, of dismissal from Her Majesty's service, detention or disrating,he shall afford the accused an opportunity of electing court-martial trial.
- (3) If the accused so elects and does not withdraw his election with leave, the commanding officer shall refer the charge to higher authority with a view to the trial of the accused by court-martial.
- (4) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall refer the charge back to the commanding officer of the accused to be tried summarily.
- (5) If, in the course of trying the charge, the commanding officer considers that it should not be tried summarily, he may refer the charge to higher authority.
- (6) If the commanding officer determines that the charge has not been proved, he shall acquit the accused.
- (7) If the commanding officer determines that the charge has been proved, he shall record a finding of guilt and award punishment accordingly.
- (8) A commanding officer shall not have power on a summary trial to award a sentence of dismissal with disgrace from Her Majesty's service, a sentence of imprisonment or a sentence of detention for any term exceeding three months.

52E Commanding officers

- (1) In this Act “the commanding officer”, in relation to a person charged with an offence, means the officer in command of the ship or naval establishment

Status: This is the original version (as it was originally enacted).

to which he belongs at the time of the commission of the offence or at the time of its investigation or summary trial.

- (2) The Defence Council may by regulations make provision—
 - (a) enabling the powers conferred by this Act on the commanding officer of an accused to be exercised by other persons of such descriptions as may be specified;
 - (b) with respect to the delegation by the commanding officer, or other person exercising the powers of a commanding officer by virtue of regulations under paragraph (a) above, of any of his powers to any officer not below the rank of lieutenant or corresponding rank.
- (3) An officer to whom any powers are delegated by virtue of subsection (2) (b) above shall not have power to award any punishment other than a fine, stoppages or those described in section 43(1)(m) of this Act.
- (4) The reference in subsection (3) above to stoppages does not include a reference to stoppages for personal injury.

52F Regulations as to summary trial etc

- (1) The Defence Council may make regulations with respect to the investigation of charges by commanding officers and summary trial.
- (2) Regulations under this section may in particular make provision with respect to—
 - (a) the reporting of a charge to a commanding officer;
 - (b) the procedure to be followed by a commanding officer investigating a charge;
 - (c) the amendment or substitution of charges;
 - (d) the procedure on summary trial;
 - (e) limitations on the punishments which may be awarded on summary trial by a specified description of commanding officer;
 - (f) limitations on the punishments which may be so awarded to a specified description of accused;
 - (g) requirements for punishments to be approved before taking effect;
 - (h) the information to be provided to a person afforded an opportunity of electing court-martial trial;
 - (i) the procedure for electing court-martial trial, including any period within which any such election may be made;
 - (j) the procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election;
 - (k) who may act as the higher authority.
- (3) A regulation under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Disciplinary courts

52G Disciplinary courts

- (1) If an officer of Her Majesty's naval forces below the rank of commander is charged with an offence to which this section applies at a time when the force to which he belongs is on active service, the higher authority to whom the charge was referred may order a disciplinary court.
- (2) A disciplinary court shall have power, subject to the provisions of this section and of any rules made under it, to try and punish the offence accordingly.
- (3) This section applies to any offence triable by court-martial under this Act other than an offence under the following provisions—
 - (a) sections 2 to 4, 6, 9, 10, 23 and 24, section 29(1) so far as relating to public or service property, section 29A, and sections 34 to 37 and 42;
 - (b) sections 40 and 41, so far as applicable to an offence under any of the provisions mentioned in paragraph (a) of this subsection.
- (4) A disciplinary court shall consist of not less than three nor more than five officers, at least one of whom is not below the rank of commander.
- (5) An officer shall not be a member of a disciplinary court unless he is an officer of Her Majesty's naval forces and is subject to this Act.
- (6) The officer who orders a disciplinary court shall not be a member of the court.
- (7) A disciplinary court shall not have power to award any punishment greater than dismissal from Her Majesty's service.
- (8) The Secretary of State may by statutory instrument make rules as to the assembling, constitution, procedure and practice of disciplinary courts.
- (9) Rules under subsection (8) above may apply in relation to disciplinary courts and to proceedings of such courts, with the necessary modifications, any provisions of this Part of this Act or of rules under section 58 of this Act relating to courts-martial and proceedings of courts-martial.”

PART II

THE PROSECUTING AUTHORITY

Army Act 1955 (c. 18)

- 14 After section 83 of the Army Act 1955 there shall be inserted the following sections—

Status: This is the original version (as it was originally enacted).

“The prosecuting authority

83A The prosecuting authority

- (1) Her Majesty may appoint a qualified officer belonging to Her military forces to be the prosecuting authority for the Army; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
 - (a) a person who has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland of at least ten years' standing; or
 - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years' standing.

83B Functions of the prosecuting authority

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
 - (a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or soldier, refer the case to the commanding officer of the accused,for the appropriate superior authority or commanding officer to record a finding that the preliminary charge has been proved and award punishment accordingly.
- (3) In subsection (2) above “the preliminary charge” means the charge for which punishment would have been awarded had the accused not elected court-martial trial.
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—
 - (a) determine any charge to be preferred and (subject to subsection (5) below) whether any such charge is to be tried by general court-martial or district court-martial; and
 - (b) prefer any charge so determined by him.
- (5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.
- (6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.

Status: This is the original version (as it was originally enacted).

- (7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—
 - (a) amend, or substitute another charge or charges for, any charge preferred;
 - (b) prefer an additional charge, or additional charges, against the accused;
 - (c) discontinue proceedings on any charge.
- (9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (11) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in subsection (8)(b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.
- (12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (13) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that, for the purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.
- (14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

83C Prosecuting officers

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or

Status: This is the original version (as it was originally enacted).

- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

Air Force Act 1955 (c. 19)

- 15 After section 83 of the Air Force Act 1955 there shall be inserted the following sections—

“The prosecuting authority

83A The prosecuting authority

- (1) Her Majesty may appoint a qualified officer belonging to Her air forces to be the prosecuting authority for the Royal Air Force; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
 - (a) a person who has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland of at least ten years' standing; or
 - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least ten years' standing.

83B Functions of the prosecuting authority

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall—
 - (a) if the accused is an officer or warrant officer, refer the case to the appropriate superior authority;
 - (b) if the accused is a non-commissioned officer or airman, refer the case to the commanding officer of the accused,
 for the appropriate superior authority or commanding officer to record a finding that the preliminary charge has been proved and award punishment accordingly.
- (3) In subsection (2) above “the preliminary charge” means the charge for which punishment would have been awarded had the accused not elected court-martial trial.
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall—
 - (a) determine any charge to be preferred and (subject to subsection (5) below) whether any such charge is to be tried by general court-martial or district court-martial; and
 - (b) prefer any charge so determined by him.

Status: This is the original version (as it was originally enacted).

- (5) The prosecuting authority shall not determine that a charge against an officer be tried by district court-martial.
- (6) The prosecuting authority shall, in accordance with rules under section 103 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (7) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (8) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 103 of this Act—
 - (a) amend, or substitute another charge or charges for, any charge preferred;
 - (b) prefer an additional charge, or additional charges, against the accused;
 - (c) discontinue proceedings on any charge.
- (9) The powers mentioned in subsection (8)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (10) The prosecuting authority may not exercise any power mentioned in subsection (8)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (11) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in subsection (8)(b) above, he may, in accordance with rules under section 103 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (6) above shall apply with such exceptions and modifications as may be prescribed.
- (12) The prosecuting authority may not exercise the power mentioned in subsection (8)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (13) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that, for the purposes of section 134 of this Act, the accused is to be deemed to have been tried by court-martial for the offence charged.
- (14) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (13) above.

Status: This is the original version (as it was originally enacted).

83C Prosecuting officers

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

Naval Discipline Act 1957 (c. 53)

- 16 After section 52G of the Naval Discipline Act 1957 there shall be inserted the following sections—

“The prosecuting authority

52H The prosecuting authority

- (1) Her Majesty may appoint a qualified officer of Her naval forces to be the prosecuting authority for the Royal Navy; and in this Act “the prosecuting authority” means the officer so appointed.
- (2) An officer shall not be qualified to be appointed as the prosecuting authority unless he is—
 - (a) a person who has a five year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;.
 - (b) an advocate or solicitor in Scotland of at least five years' standing; or
 - (c) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least five years' standing.

52I Functions of the prosecuting authority

- (1) This section applies where a case has been referred to the prosecuting authority.
- (2) If the case has been referred to him as a result of an election for court-martial trial, and that election is withdrawn with leave, the prosecuting authority shall refer the case to the commanding officer of the accused for the preliminary charge to be tried summarily.
- (3) In subsection (2) above “the preliminary charge” means the charge which would have been tried summarily had the accused not elected court-martial trial.
- (4) If the prosecuting authority considers that court-martial proceedings under this Act should be instituted, he shall determine any charge to be preferred and prefer any such charge.

Status: This is the original version (as it was originally enacted).

- (5) The prosecuting authority shall, in accordance with rules under section 58 of this Act, notify the commanding officer of the accused and a court administration officer of any charge preferred; and the commanding officer shall, in accordance with any such rules, inform the accused accordingly.
- (6) The prosecuting authority shall have the conduct of any court-martial proceedings under this Act against the accused.
- (7) Without prejudice to any other power of his in relation to the conduct of the proceedings, the prosecuting authority may, in accordance with rules under section 58 of this Act—
 - (a) amend, or substitute another charge or charges for, any charge preferred;
 - (b) prefer an additional charge, or additional charges, against the accused;
 - (c) discontinue proceedings on any charge.
- (8) The powers mentioned in subsection (7)(a) above may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority.
- (9) The prosecuting authority may not exercise any power mentioned in subsection (7)(a) or (c) above in relation to any charge against the accused after the commencement of the trial of that charge unless the court-martial gives him leave to do so.
- (10) If, before the commencement of the trial of a charge against the accused (“the original charge”), the prosecuting authority exercises the power mentioned in subsection (7)(b) above, he may, in accordance with rules under section 58 of this Act, direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, subsection (5) above shall apply with such exceptions and modifications as may be prescribed.
- (11) The prosecuting authority may not exercise the power mentioned in subsection (7)(b) above after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred.
- (12) If, before the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, he may direct that the accused shall not be liable to be tried summarily or by court-martial for the offence charged.
- (13) If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in subsection (12) above.

52J Prosecuting officers

- (1) The prosecuting authority may delegate any of his functions to officers appointed by him as prosecuting officers.
- (2) An officer shall not be appointed as a prosecuting officer unless he is—

Status: This is the original version (as it was originally enacted).

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) an advocate or solicitor in Scotland; or
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.”

PART III

TRIAL OF OFFENCES BY COURT-MARTIAL

Army Act 1955 (c. 18)

- 17 The Army Act 1955 shall be amended as follows.
- 18 Section 84 shall cease to have effect.
- 19 After section 84 there shall be inserted the following sections—

“84A Court administration officers

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

84B Judge advocates

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
 - (a) a person who has a five year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
 - (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

84C Convening of general and district courts-martial

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.
- (2) The order convening the court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies, and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
 - (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

84D Constitution of general and district courts-martial

- (1) A general court-martial shall consist of the president, not less than four other military officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other military officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air

Status: This is the original version (as it was originally enacted).

forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of captain.
- (6) A general court-martial for the trial of an officer above the rank of captain shall not include any member below the rank of captain.
- (7) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.
- (8) If, in the opinion of the court administration officer, the necessary number of military officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.
- (9) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

20 Section 85(3) shall cease to have effect.

21 Sections 86 to 90 shall cease to have effect.

22 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.

(2) In subsection (1)—

(a) for the words “Her Majesty’s dominions” there shall be substituted the words “the United Kingdom”; and

(b) the words from “and the convening officer” to the end shall cease to have effect.

(3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “may”.

23 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.

(2) In subsection (1), for the word “officer” there shall be substituted the word “member”.

(3) In subsection (2)—

(a) for the word “they” there shall be substituted the words “the officers appointed members”; and

(b) for the words “those officers” there shall be substituted the words “the members”.

- (4) In subsection (3)—
- (a) for the word “officer” there shall be substituted the word “member”; and
 - (b) for the words from “considered” to the end there shall be substituted the words “determined by the judge advocate”.
- (5) In subsection (4)—
- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to the president is allowed”; and
 - (b) for the word “convening” there shall be substituted the words “court administration”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to any other officer appointed a member of the court is allowed”; and
 - (b) for the word “member” in the second place it appears there shall be substituted the word “officer”; and
 - (c) for the word “members” in the second place it appears there shall be substituted the word “officers”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 24 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “officer appointed a”; and
 - (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 25 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- (6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
 - (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
 - (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 26 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and

Status: This is the original version (as it was originally enacted).

- (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may by order dissolve the court-martial.”
- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “judge advocate”.
- (5) Subsection (4) shall cease to have effect.
- 27 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 28 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.
- 29 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “trials on indictment”; and
- (b) for the words “before a civil court” there shall be substituted the words “in a trial on indictment”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “trial on indictment”.
- 30 For section 103 there shall be substituted the following section—
- “103 Rules**
- (1) The Secretary of State may make rules with respect to—
- (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
- (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—

Status: This is the original version (as it was originally enacted).

- (a) proceedings preliminary to trials by general or district courts-martial;
 - (b) the appointment of a judge advocate for any preliminary proceedings;
 - (c) the delegation by court administration officers of any of their functions;
 - (d) the convening and constitution of general and district courts-martial;
 - (e) the sittings, adjournment and dissolution of general and district courts-martial;
 - (f) the procedure to be followed in trials by general and district courts-martial;
 - (g) the representation of the accused at such trials and any preliminary proceedings;
 - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (j) enabling a general or district court-martial, where the particulars proved or admitted at the 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) 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 a general or district court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
 - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
 - (n) the recording of the proceedings of a general or district court-martial;
 - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Status: This is the original version (as it was originally enacted).

- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

31 After section 103 there shall be inserted the following sections—

“Field General Courts-Martial

103A Field general courts-martial

- (1) Where an officer to whom this subsection applies—
- (a) is commanding a body of the regular forces on active service; and
 - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,
- he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
- (a) the commanding officer who has investigated the charge;
 - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
 - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.
- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
- (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.
- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

103B Constitution of field general courts-martial

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other military officers.

Status: This is the original version (as it was originally enacted).

- (2) If the officer who convened the field general court-martial is of opinion that three military officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other military officer.
- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of captain.
- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of military officers having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or air-force officer of corresponding rank to that required for a military officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—
 - “air force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
 - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.

103C Field General Court-Martial Rules

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
 - (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply

Status: This is the original version (as it was originally enacted).

to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;

- (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

32 Sections 104 to 106 shall cease to have effect.

Air Force Act 1955 (c. 19)

33 The Air Force Act 1955 shall be amended as follows.

34 Section 84 shall cease to have effect.

35 After section 84 there shall be inserted the following sections—

“84A Court administration officers

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform such other functions as may be prescribed; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who convened the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

84B Judge advocates

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
- (a) a person who has a five year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
 - (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

84C Convening of general and district courts-martial

- (1) On being notified by the prosecuting authority of the charge preferred and the description of court-martial by which the charge is to be tried, a court administration officer shall by order convene a court-martial of that description.

Status: This is the original version (as it was originally enacted).

- (2) The order convening the court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies,and shall state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial.
- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 103 of this Act, amend or withdraw the order convening the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
 - (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.

84D Constitution of general and district courts-martial

- (1) A general court-martial shall consist of the president, not less than four other air-force officers and the judge advocate.
- (2) A district court-martial shall consist of the president, not less than two other air-force officers and the judge advocate.
- (3) An officer shall not be appointed a member of a general court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (4) An officer shall not be appointed a member of a district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.
- (5) Not less than four of the members of a general court-martial shall be of a rank not below that of flight lieutenant.
- (6) A general court-martial for the trial of an officer above the rank of flight lieutenant shall not include any member below the rank of flight lieutenant.

Status: This is the original version (as it was originally enacted).

(7) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.

(8) If, in the opinion of the court administration officer, the necessary number of air-force officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.

(9) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

36 Section 85(3) shall cease to have effect.

37 Sections 86 to 90 shall cease to have effect.

38 (1) Section 91 (place for sitting of court-martial and adjournment to other places) shall be amended as follows.

(2) In subsection (1)—

(a) for the words “Her Majesty’s dominions” there shall be substituted the words “the United Kingdom”; and

(b) the words from “and the convening officer” to the end shall cease to have effect.

(3) In subsection (2), for the words from “shall” to “direction” there shall be substituted the word “may”.

39 (1) Section 92 (challenges by accused to members of court-martial) shall be amended as follows.

(2) In subsection (1), for the word “officer” there shall be substituted the word “member”.

(3) In subsection (2)—

(a) for the word “they” there shall be substituted the words “the officers appointed members”; and

(b) for the words “those officers” there shall be substituted the words “the members”.

(4) In subsection (3)—

(a) for the word “officer” there shall be substituted the word “member”; and

(b) for the words from “considered” to the end there shall be substituted the words “determined by the judge advocate”.

(5) In subsection (4)—

Status: This is the original version (as it was originally enacted).

- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to the president is allowed”; and
 - (b) for the word “convening” there shall be substituted the words “court administration”.
- (6) In subsection (5)—
- (a) for the words from “objection” to “it” there shall be substituted the words “an objection to any other officer appointed a member of the court is allowed”;
 - (b) for the word “member” in the second place it appears there shall be substituted the word “officer”; and
 - (c) for the word “members” in the second place it appears there shall be substituted the word “officers”.
- (7) After subsection (5) there shall be added the following subsection—
- “(6) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Judge Advocate General.”
- 40 (1) Section 93 (administration of oaths) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “every” there shall be inserted the words “officer appointed a”; and
 - (b) the words “other than an exempted person” and “judge advocate” shall cease to have effect.
- (3) Subsection (1A) shall cease to have effect.
- 41 In section 94 (courts-martial to sit in open court), after subsection (5) there shall be added the following subsections—
- “(6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
 - (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
 - (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction.”
- 42 (1) Section 95 (dissolution of courts-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “whether before or after” there shall be substituted the word “before”; and
 - (b) for the word “convening” in both places it appears there shall be substituted the words “court administration”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that

Status: This is the original version (as it was originally enacted).

a court-martial should be dissolved, he may by order dissolve the court-martial.”

- (4) In subsection (3), for the words “convening officer” there shall be substituted the words “judge advocate”.
- (5) Subsection (4) shall cease to have effect.
- 43 (1) Section 96 (decisions of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- (5) In subsection (5), the words from “or on” to “finding” shall cease to have effect.
- 44 In section 97(3) (sentence of court-martial to be announced in open court) after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.
- 45 (1) Section 99 (rules of evidence) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “civil courts” there shall be substituted the words “trials on indictment”; and
- (b) for the words “before a civil court” there shall be substituted the words “in a trial on indictment”.
- (3) In subsection (3), for the words “civil court” there shall be substituted the words “trial on indictment”.
- 46 For section 103 there shall be substituted the following section—

“103 Rules

- (1) The Secretary of State may make rules with respect to—
- (a) the investigation, prosecution and trial of, and awarding of punishment for, offences cognizable by courts-martial;
- (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by general or district courts-martial;
- (b) the appointment of a judge advocate for any preliminary proceedings;
- (c) the delegation by court administration officers of any of their functions;
- (d) the convening and constitution of general and district courts-martial;

Status: This is the original version (as it was originally enacted).

- (e) the sittings, adjournment and dissolution of general and district courts-martial;
 - (f) the procedure to be followed in trials by general and district courts-martial;
 - (g) the representation of the accused at such trials and any preliminary proceedings;
 - (h) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (i) enabling a general or district court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (j) enabling a general or district court-martial, where the particulars proved or admitted at the 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) 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 a general or district court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate as well as by the court or a judge within the meaning of that Act;
 - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (m) the cases in which, and extent to which, offences may be taken into consideration by a general or district court-martial and the powers of the court in relation to any offences taken into consideration;
 - (n) the recording of the proceedings of a general or district court-martial;
 - (o) the procedure to be followed on review of findings and sentences of general or district courts-martial.
- (3) Rules made by virtue of paragraph (i) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.
- (4) A rule under this section which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Status: This is the original version (as it was originally enacted).

“Field General Courts-Martial

103A Field general courts-martial

- (1) Where an officer to whom this subsection applies—
 - (a) is commanding a body of the regular air force on active service; and
 - (b) is of opinion that it is not possible without serious detriment to the public service for a charge against a member of that body to be tried by a general or district court-martial,he may direct that the charge be tried by a field general court-martial.
- (2) Subsection (1) above applies to—
 - (a) the commanding officer who has investigated the charge;
 - (b) the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved, in a case where the accused has elected court-martial trial and that election has not been withdrawn;
 - (c) where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer.
- (3) If an officer to whom subsection (1) above applies directs that a charge be tried by a field general court-martial, he shall by order convene a field general court-martial.
- (4) The order convening the field general court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial.
- (5) At any time before the commencement of the trial, the officer who convened the field general court-martial may, in accordance with rules under section 103C of this Act, amend or withdraw the order convening the court-martial.
- (6) Subject to subsection (7) below, the officer convening the field general court-martial shall not be a member of the court-martial.
- (7) The officer convening the field general court-martial may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president.

103B Constitution of field general courts-martial

- (1) Subject to subsections (2) and (3) below, a field general court-martial shall consist of the president and not less than two other air-force officers.
- (2) If the officer who convened the field general court-martial is of opinion that three air-force officers having suitable qualifications are not available without serious detriment to the public service, the field general court-martial shall consist of the president and one other air-force officer.

Status: This is the original version (as it was originally enacted).

- (3) Unless the officer convening the field general court-martial is of opinion that a judge advocate is not available without serious detriment to the public service, a judge advocate shall be a member of the court-martial.
- (4) In subsection (3) above, “a judge advocate” means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the field general court-martial is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer.
- (5) An officer is “qualified” for the purposes of subsection (4) above if he is—
 - (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland; or
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland.
- (6) The president of a field general court-martial shall not be below the rank of flight lieutenant.
- (7) If a field general court-martial is to be convened at any place where in the opinion of the officer convening it the necessary number of air-force officers having suitable qualifications is not available to form the court, and cannot be made available without serious detriment to the public service, the officer may appoint as any member of the court (but not as its president) any naval or military officer of corresponding rank to that required for an air-force officer.
- (8) A field general court-martial shall have the powers of a general court-martial except that where less than three officers are members of the court the sentence shall not exceed imprisonment for a term of two years or detention under section 71AA of this Act for a period of two years.
- (9) In this section—
 - “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
 - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and
 - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.

103C Field General Court-Martial Rules

- (1) The Secretary of State may by statutory instrument make rules with respect to field general courts-martial.
- (2) Rules under this section may in particular—
 - (a) provide for any provision of this Act relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications;
 - (b) make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under section 103 of this Act.”

Status: This is the original version (as it was originally enacted).

48 Sections 104 to 106 shall cease to have effect.

Naval Discipline Act 1957 (c. 53)

49 The Naval Discipline Act 1957 shall be amended as follows.

50 Section 53 shall cease to have effect.

51 After section 53 there shall be inserted the following sections—

“53A Court administration officers

In this Act—

“court administration officer” means an officer (or other person) appointed by the Defence Council to order courts-martial and perform such other functions as may be prescribed by rules under section 58 of this Act; and

“the court administration officer”, in relation to a court-martial, means the court administration officer who ordered the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions.

53B Judge advocates

- (1) In this Act “the judge advocate”, in relation to a court-martial, means the judge advocate appointed by or on behalf of the Chief Naval Judge Advocate to be a member of the court-martial.
- (2) No person shall be appointed as the judge advocate unless he is—
 - (a) a person who has a five year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or
 - (c) a member of the Bar of Northern Ireland of at least five years' standing.
- (3) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (4) Any directions given by the judge advocate shall be binding on the court.

53C Ordering of courts-martial

- (1) On being notified by the prosecuting authority of the charge preferred, a court administration officer shall order a court-martial.
- (2) The order assembling the court-martial shall specify—
 - (a) the date, time and place at which the court-martial is to sit;
 - (b) the officers who are to be members of the court-martial;
 - (c) which of those officers is to be president of the court-martial;
 - (d) any other officers appointed for the purpose of filling vacancies,

Status: This is the original version (as it was originally enacted).

and shall state that a judge advocate appointed by or on behalf of the Chief Naval Judge Advocate is to be a member of the court-martial.

- (3) At any time before the commencement of the trial, the court administration officer may, in accordance with rules under section 58 of this Act, amend or withdraw the order assembling the court-martial.
- (4) The following shall not be eligible to be members of a court-martial for the trial of a charge—
 - (a) the court administration officer;
 - (b) an officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of the trial has been the commanding officer of the accused;
 - (c) the higher authority to whom the preliminary charge against the accused was referred;
 - (d) any other officer who has investigated the subject matter of the charge against the accused;
 - (e) any other officer who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused.
- (5) In subsection (4) above “the preliminary charge” means the charge referred to higher authority by the commanding officer of the accused.”

52 For section 54 there shall be substituted the following section—

“54 Composition of courts-martial

- (1) A court-martial shall consist of the president, not less than four nor more than eight other naval officers and the judge advocate.
- (2) An officer shall not be appointed a member of a court-martial unless he is of or above the rank of lieutenant and he has been an officer of any of Her Majesty’s naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years.
- (3) The officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (4) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (5) A court-martial for the trial of an officer of flag rank shall not include any member below the rank of captain.
- (6) A court-martial for the trial of a commodore or captain shall not include any member below the rank of commander.
- (7) A court-martial for the trial of a commander shall include at least two members, in addition to the president, who are not below the rank of commander.
- (8) If, in the opinion of the court administration officer, the necessary number of naval officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but

Status: This is the original version (as it was originally enacted).

not as its president) any military or air-force officer of corresponding rank to that required for a naval officer.

(9) In this section—

“air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act.”

53 Section 55 shall cease to have effect.

54 (1) Section 56 (place and time of sittings of courts-martial) shall be amended as follows.

(2) In subsection (1), for the words from “appointed” to the end there shall be substituted the words “specified in the order assembling the court”.

(3) In subsection (2), the words from “and shall” to the end shall cease to have effect.

(4) In subsection (3), for the word “prosecutor” there shall be substituted the words “prosecuting authority”.

55 After section 56 there shall be inserted the following section—

“56A Dissolution of courts-martial

(1) Where, before the commencement of the trial, it appears to the court administration officer necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.

(2) Where, after the commencement of the trial, it appears to the judge advocate necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve the court-martial.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend, the court-martial shall be dissolved.

(4) Where a court-martial is dissolved the accused may be tried by another court.”

56 (1) Section 57 (quorum) shall be amended as follows.

(2) Subsections (1) and (3) shall cease to have effect.

(3) In subsection (2)—

(a) for the word “members” in both places it appears there shall be substituted the word “officers”; and

(b) after the word “that” there shall be inserted the words “an officer appointed”.

57 For section 58 there shall be substituted the following section—

“58 Rules

(1) The Secretary of State may make rules with respect to—

Status: This is the original version (as it was originally enacted).

- (a) the investigation, prosecution and trial of, and the awarding of punishment for, offences cognizable by courts-martial;
 - (b) the review of findings and sentences of courts-martial.
- (2) Rules under this section may in particular make provision with respect to—
- (a) proceedings preliminary to trials by courts-martial;
 - (b) the appointment of a judge advocate for any preliminary proceedings;
 - (c) the delegation by court administration officers of any of their functions;
 - (d) the ordering and composition of courts-martial;
 - (e) the sittings, adjournment and dissolution of courts-martial;
 - (f) the procedure to be followed in trials by courts-martial;
 - (g) the functions of the clerk of the court and the exercise by him of those functions;
 - (h) the representation of the accused at trials by courts-martial and any preliminary proceedings;
 - (i) procuring the attendance of witnesses at such trials and any preliminary proceedings;
 - (j) enabling a court-martial, in such cases and to such extent as may be prescribed by the rules, to amend a charge which is being tried by the court;
 - (k) enabling a court-martial, where the particulars proved or admitted at the 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;
 - (l) 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 a court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate, as well as by the court or a judge within the meaning of that Act;
 - (m) the forms of orders and other documents to be made for the purposes of any provision of this Act or of rules under this section;
 - (n) the cases in which, and extent to which, offences may be taken into consideration by a court-martial and the powers of the court in relation to any offences taken into consideration;
 - (o) the recording of the proceedings of a court-martial;
 - (p) the procedure to be followed on review of findings and sentences of courts-martial.
- (3) Rules made by virtue of paragraph (j) of subsection (2) above shall secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable.

Status: This is the original version (as it was originally enacted).

- (4) Rules under this section which are inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 58 (1) Section 59 (challenges by accused to members of court-martial) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the words “Before the” there shall be inserted the words “officers appointed”;
 - (b) for the words “officers constituting” there shall be substituted the words “members of”; and
 - (c) for the words from “being” to the end there shall be substituted the words “any of those members”.
- (3) In subsection (2)—
- (a) for the word “officer” there shall be substituted the word “member”; and
 - (b) for the words from “considered” to the end there shall be substituted the words “determined by the judge advocate”.
- (4) For subsection (3) there shall be substituted the following subsection—
- “(3) If an objection to the president is allowed, the court shall be dissolved.”
- (5) In subsection (4)—
- (a) for the words from “objection” to “the member” there shall be substituted the words “an objection to any other officer appointed a member of the court is allowed”;
 - (b) for the word “nominated” there shall be substituted the word “appointed”; and
 - (c) for the words “section fifty-four” there shall be substituted the words “section 53C”.
- (6) After subsection (4) there shall be inserted the following subsection—
- “(4A) If an objection to the judge advocate is allowed, the judge advocate shall retire and another judge advocate shall be appointed by or on behalf of the Chief Naval Judge Advocate.”
- (7) Subsection (5) shall cease to have effect.
- (8) In subsection (6)—
- (a) after the words “After the” there shall be inserted the words “officers appointed”; and
 - (b) for the words “Defence Council” there shall be substituted the words “reviewing authority”.
- 59 (1) Section 60 (administration of oaths) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—

Status: This is the original version (as it was originally enacted).

- “(1) An oath shall be administered separately to each member of a court-martial, to the clerk of the court and any officer or other person in attendance for instruction, and to any person appointed to attend as interpreter.”
- (3) In subsection (5), for the words “General Orders” there shall be substituted the word “rules”.
- 60 In section 61 (courts-martial to sit in open court), after subsection (2) there shall be added the following subsections—
- “(3) A court-martial shall sit in closed court while deliberating on their finding and sentence on any charge.
- (4) A court-martial may sit in closed court on any other deliberation amongst the members.
- (5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed by rules under section 58 of this Act.
- (6) The judge advocate shall not be present while the other members of the court are deliberating on their finding on any charge.
- (7) Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) shall be given in open court.
- (8) The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court.”
- 61 (1) Section 62 (findings and sentences of courts-martial) shall be amended as follows.
- (2) In subsection (1), for the words from “every” to “court-martial” there shall be substituted the words “the finding of a court-martial and any sentence awarded”.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) The judge advocate shall not be entitled to vote on the finding.”
- (4) In subsection (3), after the word “mercy” there shall be inserted the words “and any reasons for the sentence”.
- (5) In subsection (4)—
- (a) after the word “court” in the second place it appears there shall be inserted the words “entitled to vote on the finding”; and
- (b) for the words “the members” in the second place they appear there shall be substituted the words “those members”.
- 62 In section 64(1) (summoning of witnesses), for the words “clerk of the court” there shall be substituted the words “court administration officer”.
- 63 After section 64 there shall be inserted the following sections—

“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 Criminal Justice Act 1988 (evidence before courts-martial etc) and to service modifications,

Status: This is the original version (as it was originally enacted).

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.

64B Proofs at courts-martial by written statement

- (1) Without prejudice to section 64A above, section 9 of the 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 Army Act 1955 or Part II of the 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 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

Status: This is the original version (as it was originally enacted).

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.

64C 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—

Status: This is the original version (as it was originally enacted).

- (a) that a decoration of a description specified in, or as annexed to, the certificate is a military, naval or air force decoration; or
- (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 Army Act 1955 or the 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.

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.”

PART IV

MINOR AND CONSEQUENTIAL AMENDMENTS

Courts-Martial (Appeals) Act 1951 (c. 46)

- 64 In section 28(2) of the Courts-Martial (Appeals) Act 1951 (qualification for appointment as Judge Advocate of Her Majesty's Fleet), in paragraph (b), for the words from “been” to “and” there shall be substituted the words “had a right of audience in the Court of Session or”.

- 65 In section 31 of that Act (qualification for appointment as Judge Advocate General and his assistants), in paragraph (b) in each of subsections (1), (2) and (3), for the words from “been” to “and” there shall be substituted the words “had a right of audience in the Court of Session or”.

Army Act 1955 (c. 18)

- 66 The Army Act 1955 shall be amended as follows.

- 67 In section 134 (persons not to be tried under Act for offences already disposed of), in subsection (1)(b), for the words “been found guilty on the charge” there shall be substituted the words “had a finding that the charge has been proved recorded against him”.

Status: This is the original version (as it was originally enacted).

- 68 Section 139 shall cease to have effect.
- 69 In section 143(1) (interpretation of Part II)—
- (a) the definition of “convening officer” shall cease to have effect; and
 - (b) in the definition of “prescribed”, for the words “Rules of Procedure” there shall be substituted the words “rules under section 103 of this Act”.
- 70 In section 198 (general provisions as to evidence), in subsection (9), after the words “that Act” there shall be inserted the words “, or in any proceedings under the Naval Discipline Act 1957, by virtue of section 64C of that Act,”.
- 71 In section 209(3) (modifications of Act in relation to trial of civilians by courts-martial)—
- (a) paragraph (d) shall cease to have effect;
 - (b) in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above” shall cease to have effect; and
 - (c) after paragraph (fa) there shall be inserted the following paragraph—
 - “(faa) references to the officers appointed members of a court-martial shall be construed as including references to persons who are members of a court-martial by virtue of paragraph (fa) above;”.
- 72 (1) Section 209(3B) (modifications of Act in its application to any area for which Standing Civilian Courts are established) shall be amended as follows.
- (2) After paragraph (a) there shall be inserted the following paragraph—
- “(aa) section 83 above shall have effect as if after subsection (1) there were inserted the following subsection—
 - “(1A) Regulations under this section may provide for sections 76 to 76C of this Act to have effect subject to such modifications as may be specified in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try.”;
- (3) For paragraph (b) there shall be substituted the following paragraph—
- “(b) section 103(1) above shall have effect as if the following paragraph were inserted after paragraph (b)—
 - “(c) the hearing by courts-martial of appeals against findings and sentences of Standing Civilian Courts.”;
- (4) In paragraph (c)—
- (a) for “77, 79 and 80” there shall be substituted “to 76C”; and
 - (b) for the words from “consequential” to “Procedure” there shall be substituted the words “as may be specified by regulations under section 83 of this Act”.
- 73 In section 211 (application of Act to reserve forces), in subsection (7), for the words “subsection (3) of section seventy-eight” there shall be substituted the words “section 76C(2)”.
- 74 In section 225(1) (general provisions as to interpretation of Act)—
- (a) in the definition of “appropriate superior authority” for the words from “has” to “and” there shall be substituted the words “means a person who may act as an appropriate superior authority by virtue of”;

Status: This is the original version (as it was originally enacted).

(b) after the definition of “corresponding rank” there shall be inserted the following definition—

““court administration officer” and “the court administration officer” have the meanings assigned to them by section 84A of this Act;”;

(c) after the definition of “Her Majesty’s air forces”, “Her Majesty’s military forces” and “Her Majesty’s naval forces” there shall be inserted the following definition—

““the judge advocate” has the meaning assigned to it by section 84B(1) of this Act;”;

(d) after the definition of “property” there shall be inserted the following definition—

““the prosecuting authority” has the meaning assigned to it by section 83A(1) of this Act;”;

(e) the definition of “Rules of Procedure” shall cease to have effect.

75 In Schedule 5A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “Rules of Procedure” there shall be substituted the word “rules”.

Air Force Act 1955 (c. 19)

76 The Air Force Act 1955 shall be amended as follows.

77 In section 134 (persons not to be tried under Act for offences already disposed of), in subsection (1)(b), for the words “been found guilty on the charge” there shall be substituted the words “had a finding that the charge has been proved recorded against him”.

78 Section 139 shall cease to have effect.

79 In section 143(1) (interpretation of Part II)—

(a) the definition of “convening officer” shall cease to have effect; and

(b) in the definition of “prescribed”, for the words “Rules of Procedure” there shall be substituted the words “rules under section 103 of this Act”.

80 In section 198 (general provisions as to evidence), in subsection (9), after the words “that Act” there shall be inserted the words “, or in any proceedings under the Naval Discipline Act 1957, by virtue of section 64C of that Act,”.

81 In section 209(3) (modifications of Act in relation to trial of civilians by courts-martial)—

(a) paragraph (d) shall cease to have effect;

(b) in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above” shall cease to have effect; and

(c) after paragraph (fa) there shall be inserted the following paragraph—

“(faa) references to the officers appointed members of a court-martial shall be construed as including references to persons who are members of a court-martial by virtue of paragraph (fa) above;”.

82 (1) Section 209(3B) (modifications of Act in its application to any area for which Standing Civilian Courts are established) shall be amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) After paragraph (a) there shall be inserted the following paragraph—
- “(aa) section 83 above shall have effect as if after subsection (1) there were inserted the following subsection—
- “(1A) Regulations under this section may provide for sections 76 to 76C of this Act to have effect subject to such modifications as may be specified in relation to charges which may be tried by Standing Civilian Courts and which are brought against persons whom such courts may try.””
- (3) For paragraph (b) there shall be substituted the following paragraph—
- “(b) section 103(1) above shall have effect as if the following paragraph were inserted after paragraph (b)—
- “(c) the hearing by courts-martial of appeals against findings and sentences of Standing Civilian Courts.””
- (4) In paragraph (c)—
- (a) for “77, 79 and 80” there shall be substituted “to 76C”; and
- (b) for the words from “consequential” to “Procedure” there shall be substituted the words “as may be specified by regulations under section 83 of this Act”.
- 83 In section 210 (application of Act to reserve forces), in subsection (7), for the words “subsection (3) of section seventy-eight” there shall be substituted the words “section 76C(2)”.
- 84 In section 223(1) (general provisions as to interpretation of Act)—
- (a) in the definition of “appropriate superior authority” for the words from “has” to “and” there shall be substituted the words “means a person who may act as an appropriate superior authority by virtue of”;
- (b) after the definition of “corresponding rank” there shall be inserted the following definition—
- ““court administration officer” and “the court administration officer” have the meanings assigned to them by section 84A of this Act;”;
- (c) after the definition of “Her Majesty’s air forces”, “Her Majesty’s military forces” and “Her Majesty’s naval forces” there shall be inserted the following definition—
- ““the judge advocate”, in relation to a court-martial, has the meaning assigned to it by section 84B(1) of this Act;”;
- (d) after the definition of “property” there shall be inserted the following definition—
- ““the prosecuting authority” has the meaning assigned to it by section 83A(1) of this Act;”;
- and
- (e) the definition of “Rules of Procedure” shall cease to have effect.
- 85 In Schedule 5A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “Rules of Procedure” there shall be substituted the word “rules”.

Status: This is the original version (as it was originally enacted).

Naval Discipline Act 1957 (c. 53)

- 86 The Naval Discipline Act 1957 shall be amended as follows.
- 87 In section 65(4) (contempt of court-martial by civilians), for the words
“subsection (5) of section fifty” there shall be substituted the words
“section 52G(9)”.
- 88 In section 66(1) (record of proceedings of court-martial) for the words from “judge”
to “it” there shall be substituted the words “court administration officer shall
transmit the record of the proceedings”.
- 89 In section 76 (restitution or compensation on conviction of larceny etc.)—
- (a) in subsection (6)(a), the words from “by the officer” to the end shall cease
to have effect; and
 - (b) in subsection (6)(b), for the words “section forty-nine” there shall be
substituted the words “section 52D”.
- 90 In section 81 (place of imprisonment or detention)—
- (a) in subsection (3)(c) for the words “officer who ordered the court-martial”
there shall be substituted the words “court-martial by which he is tried”; and
 - (b) in subsection (3)(d) for the words “section forty-nine” there shall be
substituted the words “section 52D”.
- 91 In section 85(2) (commencement of sentences) for the words “section forty-nine”
there shall be substituted the words “section 52D”.
- 92 In section 103(1) (arrest under warrants of naval authorities) for the words from
“subsection (4)” to the end there shall be substituted the words “regulations under
section 52E(2)(a) above may exercise the powers of that person’s commanding
officer”.
- 93 In section 129(1) (jurisdiction of civil courts) for the words “section forty-nine”
there shall be substituted the words “section 52D”.
- 94 In section 135(1) (general provisions as to interpretation of Act)—
- (a) after the definition of “civil prison” there shall be inserted the following
definition—

““the commanding officer”, in relation to a person charged with an
offence, has the meaning assigned to it by section 52E(1) of this
Act;”;
 - (b) after the definition of “constable” there shall be inserted the following
definition—

““court administration officer” and “the court administration
officer” have the meanings assigned to them by section 53A of this
Act;”;
 - (c) after the definition of “Her Majesty’s forces” there shall be inserted the
following definition—

““the judge advocate”, in relation to a court-martial, has the
meaning assigned to it by section 53B(1) of this Act;”;
 - (d) after the definition of “property” there shall be inserted the following
definition—

Status: This is the original version (as it was originally enacted).

“the prosecuting authority” has the meaning assigned to it by section 52H(1) of this Act;”.

95 In Schedule 1 (application of Act to marine forces), in paragraph 3, for the words “section forty-nine” there shall be substituted the words “section 52D”.

96 In Schedule 2 (application of Act to attached military and air forces)—
(a) in paragraph 6, for the words “section forty-nine” there shall be substituted the words “section 52D”; and
(b) in paragraph 7, for the words “section fifty” there shall be substituted the words “section 52G” and for the words “subsection (3)” there shall be substituted the words “subsection (5)”.

97 In Schedule 4 (application of Act to certain civilians), in paragraph 4—
(a) for the words “section forty-nine” in both places there shall be substituted the words “section 52D”; and
(b) the words from “and subsections” to “not apply” shall cease to have effect.

98 In Schedule 4A (powers of court on trial of civilian), in paragraphs 13(2)(a) and 14(6)(a), for the words “General Orders” there shall be substituted the word “rules”.

Criminal Justice Act 1967 (c. 80)

99 In section 12 of the Criminal Justice Act 1967 (application to courts-martial of certain provisions relating to admissibility of evidence)—
(a) after the words “Air Force Act 1955” in the first place they appear there shall be inserted the words “, or section 64A(1) of the Naval Discipline Act 1957,”; and
(b) for paragraphs (a) and (b) there shall be substituted the words “sections 10 and 11 above shall apply to proceedings before courts-martial”.

Civil Evidence Act 1968 (c. 64)

100 In section 11 of the Civil Evidence Act 1968 (convictions as evidence in civil proceedings), in subsection (6), for the words “section 50” there shall be substituted the words “section 52G”.

Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))

101 In section 7 of the Civil Evidence Act (Northern Ireland) 1971 (convictions as evidence in civil proceedings), in subsection (6), for the words “section 50” there shall be substituted the words “section 52G”.

Armed Forces Act 1976 (c. 52)

102 In section 6 of the Armed Forces Act 1976 (establishment of Standing Civilian Courts), in subsection (15), for the words “authority who directs the trial or trials” there shall be substituted the words “court administration officer notified by the prosecuting authority that the trial or trials are”.

103 (1) Schedule 3 to that Act (Standing Civilian Courts) shall be amended as follows.

(2) In paragraph 1 (interpretation)—

Status: This is the original version (as it was originally enacted).

- (a) after the definition of “the court” there shall be inserted the following definitions—

““court administration officer” has the same meaning as in the Army Act 1955;

“the court administration officer”, in relation to a civilian, means the court administration officer notified by the prosecuting authority that the civilian is to be tried by the court and includes his successor or any person for the time being exercising his or his successor’s functions;

“the higher authority”, in relation to a civilian, means the higher authority who referred his case to the prosecuting authority;”;

- (b) the definition of “the directing officer” shall cease to have effect; and
 (c) after the definition of “prescribed” there shall be inserted the following definition—

““the prosecuting authority”—

(a) in the case of a civilian to whom Part II of the Army Act 1955 applies, has the same meaning as in that Act;

(b) in the case of a civilian to whom Part II of the Air Force Act 1955 applies, has the same meaning as in that Act;”.

- (3) In paragraph 2 (sittings of the Standing Civilian Court)—

- (a) in sub-paragraphs (1) and (3), for the word “directing” there shall be substituted the words “court administration”; and
 (b) in sub-paragraph (2), for the word “shall” there shall be substituted the word “may” and the words from “if so” to “direction” shall cease to have effect.

- (4) In paragraph 4 (right of accused to elect trial by court-martial)—

- (a) in sub-paragraph (4), for the words from “report” to the end there shall be substituted the words “shall refer the case to the prosecuting authority”; and
 (b) sub-paragraph (5) shall cease to have effect.

- (5) For paragraph 6 there shall be substituted the following paragraph—

“Unfitness to stand trial and insanity

- 6 (1) Where on a trial by the court the question arises (whether at the instance of the defence or otherwise)—

- (a) whether the accused is fit to stand trial, or
 (b) where it appears to the court that the accused did the act or made the omission constituting the offence with which he is charged, whether he was insane at the time of the act or omission concerned,

the court shall adjourn the hearing and refer the case to the prosecuting authority.

- (2) For the purposes of this paragraph a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.”

Status: This is the original version (as it was originally enacted).

- (6) Paragraph 7 shall cease to have effect.
- (7) In paragraph 8 (re-trial where Standing Civilian Court ceases to be properly constituted)—
- (a) in sub-paragraph (1), for the words from the beginning to “directing” there shall be substituted the words “The court administration”;
 - (b) in sub-paragraphs (2) and (3), for the word “directing” there shall be substituted the words “court administration”.
- (8) In paragraph 12 (procedures etc. of Standing Civilian Court)—
- (a) in sub-paragraph (1), after the word “namely” there shall be inserted the following paragraph—
 - “(aa) the prosecution of offences which may be tried by Standing Civilian Courts;”;
 - (b) after sub-paragraph (4)(b) there shall be inserted the following paragraphs—
 - “(ba) proceedings preliminary to trials by Standing Civilian Courts;
 - (bb) the appointment of a magistrate for any preliminary proceedings;”;
 - (c) in sub-paragraph (4)(f), after the word “trials” there shall be inserted the words “and any preliminary proceedings”;
 - (d) in sub-paragraph (4)(h), the words “and the directing officer” shall cease to have effect; and
 - (e) sub-paragraph (4)(m) shall cease to have effect.
- (9) In paragraph 18 (appeals to courts-martial)—
- (a) in sub-paragraphs (3) and (4), for the words “directing officer” there shall be substituted the words “higher authority”;
 - (b) in sub-paragraph (4), for the words “Rules of Procedure” there shall be substituted the word “rules”; and
 - (c) in sub-paragraph (10), the words “or as judge advocate” shall cease to have effect.
- (10) In paragraph 20 (review of findings and sentences of Standing Civilian Court), in sub-paragraph (9), for the words “directing officer” there shall be substituted the words “higher authority”.

Police and Criminal Evidence Act 1984 (c. 60)

- 104 The Police and Criminal Evidence Act 1984 shall be amended as follows.
- 105 In section 67(12)(a), the definition of “court-martial” in section 82(1) and section 113(11)(a), for the words “section 50” there shall be substituted the words “section 52G”.
- 106 In section 72(1) (meaning of certain expressions used in Part VII), in the definition of “proceedings”—
- (a) in paragraph (a), for the words “or the Air Force Act 1955” there shall be substituted the words “, the Air Force Act 1955 or the Naval Discipline Act 1957”; and
 - (b) in paragraph (b)(i), the words from “or from” to “1957” shall cease to have effect.

Status: This is the original version (as it was originally enacted).

- 107 In section 82(1) (meaning of certain expressions used in Part VIII), in the definition of “proceedings”—
- (a) in paragraph (a), for the words “or the Air Force Act 1955” there shall be substituted the words “, the Air Force Act 1955 or the Naval Discipline Act 1957”; and
 - (b) in paragraph (b)(i), the words from “or from” to “1957” shall cease to have effect.

Criminal Justice Act 1988 (c. 33)

- 108 In section 146 of the Criminal Justice Act 1988 (evidence before courts-martial etc.) for the words “section 50” there shall be substituted the words “section 52G”.
- 109 (1) Schedule 13 to that Act (evidence before courts-martial etc.) shall be amended as follows.
- (2) In paragraph 1 (interpretation)—
 - (a) for the words “Rules of Procedure” there shall be substituted the word “rules”;
 - (b) for the words “General Orders” there shall be substituted the word “rules”; and
 - (c) for the words “section 50” there shall be substituted the words “section 52G”.
 - (3) In paragraph 4 (application of section 26 of the Act of 1988)—
 - (a) for the words “section 77” in both places they appear there shall be substituted the words “section 76B”; and
 - (b) for the words “section 49” there shall be substituted the words “section 52D”.
 - (4) In paragraph 7 (forms of evidence and glossaries)—
 - (a) for the words “section 50” there shall be substituted the words “section 52G”;
 - (b) for the words “Rules of Procedure” there shall be substituted the word “rules”; and
 - (c) for the words “General Orders” there shall be substituted the word “rules”.

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

- 110 In Article 66(11)(a) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (codes of practice supplementary), for the words “section 50” there shall be substituted the words “section 52G”.

Criminal Justice and Public Order Act 1994 (c. 33)

- 111 In section 39 of the Criminal Justice and Public Order Act 1994 (power to apply sections 34 to 38 to armed forces), in subsection (2)(g), for the words “section 50” there shall be substituted the words “section 52G”.

SCHEDULE 2

Section 8.

FINDINGS OF UNFITNESS TO STAND TRIAL AND INSANITY

The 1955 Acts

- 1 For section 116 of each of the 1955 Acts (provisions where accused found insane) there shall be substituted the following sections—

“Findings of unfitness to stand trial and insanity

115A 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.
- (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 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.

115B Finding that the accused did the act or made the omission charged against him

- (1) This section applies where in accordance with section 115A(6) above it is determined by a court-martial that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
 - (a) on the evidence (if any) already given in the trial; and

Status: This is the original version (as it was originally enacted).

- (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,
 whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) above shall be made—
- (a) where the question of fitness to stand trial was determined on the commencement of the trial, by a court-martial other than that which determined that question; and
 - (b) where that question was determined at any later time, by the court-martial by whom the accused was being tried.

116 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.

116A Powers to deal with persons unfit to stand trial or not guilty by reason of insanity

- (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 116C or section 116D 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.

116B 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.
- (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.

116C 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;

Status: This is the original version (as it was originally enacted).

- (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 Mental Health (Northern Ireland) Order 1986;
 - “local authority” has the same meaning as in the Mental Health (Scotland) Act 1984; and
 - “local social services authority” has the same meaning as in the Mental Health Act 1983.
 - (3) A court-martial shall not make a guardianship order unless—
 - (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.

116D 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”)—

Status: This is the original version (as it was originally enacted).

- (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
 - (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.

116E Provisions supplementary to sections 115A to 116D

- (1) In this section and sections 115A to 116D above—

Status: This is the original version (as it was originally enacted).

“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 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 Mental Health (Scotland) Act 1984 and Part VI of the Criminal Procedure (Scotland) Act 1995;
- (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the 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 115A, 116, 116C and 116D 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 116A, 116B, 116C and 116D above, and orders under section 116D(2) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- 2 In section 225(1) of the Army Act 1955 (general provisions as to interpretation)—
 - (a) after the definition of “active service” there shall be inserted the following definition—

Status: This is the original version (as it was originally enacted).

- ““admission order” has the meaning assigned to it by section 116B(1) of this Act;”;
- (b) after the definition of “Governor” there shall be inserted the following definition—
- ““guardianship order” has the meaning assigned to it by section 116C(1) of this Act;”;
- (c) after the definition of “stoppages” there shall be inserted the following definition—
- ““supervision and treatment order” has the meaning assigned to it by section 116D(1) of this Act;”.
- 3 In section 223(1) of the Air Force Act 1955 (general provisions as to interpretation)
-
- (a) after the definition of “active service” there shall be inserted the following definition—
- ““admission order” has the meaning assigned to it by section 116B(1) of this Act;”;
- (b) after the definition of “Governor” there shall be inserted the following definition—
- ““guardianship order” has the meaning assigned to it by section 116C(1) of this Act;”;
- (c) after the definition of “stoppages” there shall be inserted the following definition—
- ““supervision and treatment order” has the meaning assigned to it by section 116D(1) of this Act;”.

The 1957 Act

- 4 For section 63 of the 1957 Act (special finding of insane at time of trial or offence) there shall be substituted the following sections—

“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.
- (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 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.

Status: This is the original version (as it was originally enacted).

- (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.

62B Finding that the accused did the act or made the omission charged against him

- (1) This section applies where in accordance with section 62A(6) above it is determined by a court-martial that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—
 - (a) on the evidence (if any) already given in the trial; and
 - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,
 whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that charge or any of those charges the court is satisfied as mentioned in subsection (2) above, it shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that charge or any of those charges the court is not so satisfied, the court shall find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) above shall be made—
 - (a) where the question of fitness to stand trial was determined on the commencement of the trial, by a court-martial other than that which determined that question; and
 - (b) where that question was determined at any later time, by the court-martial by whom the accused was being tried.

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.

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.

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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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.

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 Mental Health (Northern Ireland) Order 1986;
 - “local authority” has the same meaning as in the Mental Health (Scotland) Act 1984; and
 - “local social services authority” has the same meaning as in the Mental Health Act 1983.
- (3) A court-martial shall not make a guardianship order unless—
- (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.

Status: This is the original version (as it was originally enacted).

- (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.

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
 - (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—

Status: This is the original version (as it was originally enacted).

- (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.

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 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 Mental Health (Scotland) Act 1984 and Part VI of the Criminal Procedure (Scotland) Act 1995;
 - (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the 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

Status: This is the original version (as it was originally enacted).

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.”.

- 5 In section 135(1) of the 1957 Act (general provisions as to interpretation)—
- (a) before the definition of “aircraft” there shall be inserted the following definition—

““admission order” has the meaning assigned to it by section 63B(1) of this Act;”;
 - (b) after the definition of “Governor” there shall be inserted the following definition—

““guardianship order” has the meaning assigned to it by section 63C(1) of this Act;”;

and
 - (c) after the definition of “steals” there shall be inserted the following definition—

““supervision and treatment order” has the meaning assigned to it by section 63D(1) of this Act;”.

The Courts-Martial (Appeals) Act 1968 (c. 20)

- 6 For section 16 of the Courts-Martial (Appeals) Act 1968 (“the 1968 Act”) there shall be substituted the following section—

“16 Substitution of finding of insanity or findings of unfitness to plead etc

- (1) This section applies where, on an appeal against conviction, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
- (a) that the proper finding would have been one of not guilty by reason of insanity; or
 - (b) that the case is not one where there should have been a finding of not guilty, but that there should have been findings that the accused

Status: This is the original version (as it was originally enacted).

was unfit to stand trial and that he did the act or made the omission charged against him.

- (2) Subject to subsections (3) and (4) below, the Appeal Court shall make one of the following orders in respect of the appellant, namely—
- (a) an admission order;
 - (b) a guardianship order;
 - (c) a supervision and treatment order; or
 - (d) an order discharging him absolutely,
- as they think most suitable in all the circumstances of the case.
- (3) The Appeal Court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the appeal relates is an offence the sentence for which is fixed by law.
- (4) 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 Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (5) The provisions of, or made under, the relevant Service Act in relation to admission orders, guardianship orders and supervision and treatment orders shall apply to the Appeal Court as if—
- (a) references to a court-martial were references to the Appeal Court;
 - (b) references to the accused were references to the appellant,
- and with such other modifications as may be prescribed by regulations made by the Secretary of State.
- (6) The power of the Secretary of State under subsections (4) and (5) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

7 In section 21(1) of the 1968 Act (appeal against finding of not guilty by reason of insanity), after the word “except” there shall be inserted the words “section 8(2) and”.

8 In section 22(4) of the 1968 Act (consequences where appeal under section 21 allowed), at the beginning there shall be inserted the words “Subject to section 23 below,”.

9 For section 23 of the 1968 Act there shall be substituted the following sections—

“23 Substitution of findings of unfitness to plead etc

- (1) This section applies where, on an appeal under section 21 of this Act, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—
- (a) the case is not one where there should have been a finding of not guilty; but

Status: This is the original version (as it was originally enacted).

- (b) there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) Subject to subsections (3) and (4) below, the Appeal Court shall make one of the following orders in respect of the appellant, namely—
- (a) an admission order;
 - (b) a guardianship order;
 - (c) a supervision and treatment order; or
 - (d) an order discharging him absolutely,
- as they think most suitable in all the circumstances of the case.
- (3) The Appeal Court may not make an order under subsection (2)(b), (c) or (d) above if the offence to which the appeal relates is an offence the sentence for which is fixed by law.
- (4) 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 Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (5) The provisions of, or made under, the relevant Service Act in relation to admission orders, guardianship orders and supervision and treatment orders shall apply to the Appeal Court as if—
- (a) references to a court-martial were references to the Appeal Court;
 - (b) references to the accused were references to the appellant,
- and with such other modifications as may be prescribed by regulations made by the Secretary of State.
- (6) The power of the Secretary of State under subsections (4) and (5) above to make regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

23A Substitution of finding of not guilty

- (1) This section applies where, in accordance with section 22(4) of this Act, the Appeal Court substitute a finding of not guilty and the Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
- (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention 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.
- (2) The Appeal Court shall—
- (a) in the case of an appellant detained pursuant to an admission order made by a court-martial, make an order for his continued detention;

Status: This is the original version (as it was originally enacted).

- (b) in any other case, make an order that the appellant be admitted for assessment, in accordance with regulations made by the Secretary of State, to such hospital as may be specified by the Secretary of State.
- (3) An order under subsection (2) above shall be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Appeal Court may direct, and the appropriate mental health legislation shall apply accordingly with such modifications as may be prescribed by regulations made by the Secretary of State.
- (4) The power of the Secretary of State under subsections (2)(b) and (3) above to make regulations shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “hospital” and “mental disorder” have the same meanings as in the appropriate mental health legislation.”.
- 10 (1) Section 24 of the 1968 Act (appeal against finding of unfitness to stand trial) shall be amended as follows.
 - (2) In subsection (1)—
 - (a) for the words “his trial” there shall be substituted the words “trial and to have done the act or made the omission charged against him”; and
 - (b) for the words “the finding” there shall be substituted the words “either or both of those findings”.
 - (3) In subsection (2), after the word “except” there shall be inserted the words “section 8(2) and”.
- 11 For section 25 of the 1968 Act there shall be substituted the following section—

“25 Disposal of appeal under section 24

 - (1) This section applies to appeals under section 24 of this Act.
 - (2) Where the Appeal Court allow an appeal against a finding that the appellant is unfit to stand trial—
 - (a) the appellant may be tried accordingly for the offence with which he was charged; and
 - (b) the Court may make such orders as appear to them necessary or expedient pending any such trial for the custody, release or continued detention of the appellant.
 - (3) Where, otherwise than in a case falling within subsection (2) above, the Appeal Court allow an appeal against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a finding of not guilty to be recorded (but not a finding of not guilty by reason of insanity).”
- 12 (1) Section 57 of the 1968 Act (interpretation) shall be amended as follows.
 - (2) In subsection (1)—
 - (a) before the definition of “the Air Force Act” there shall be inserted the following definition—

Status: This is the original version (as it was originally enacted).

- ““admission order” has the same meaning as in the relevant Service Act;”;
- (b) after the definition of “appellant” there shall be inserted the following definition—
- ““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 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 Mental Health (Scotland) Act 1984 and Part VI of the Criminal Procedure (Scotland) Act 1995;
- (c) in a case where an order is treated as if it had been made by a civil court in Northern Ireland, the Mental Health (Northern Ireland) Order 1986;”;
- (c) after the definition of “army court-martial” there shall be inserted the following definition—
- ““civil court” has the same meaning as in the relevant Service Act;”;
- (d) after the definition of “court-martial;” there shall be inserted the following definition—
- ““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;”;
- (e) after the definition of “enactment” there shall be inserted the following definition—
- ““guardianship order” has the same meaning as in the relevant Service Act;”;
- (f) at the end there shall be inserted the following definition—
- ““supervision and treatment order” has the same meaning as in the relevant Service Act.”
- (3) After subsection (2) there shall be inserted the following subsections—
- “(2A) For the purposes of the provisions of sections 16, 23 and 23A of this Act which permit the Appeal 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 (2B) below, be received in evidence without proof of

Status: This is the original version (as it was originally enacted).

the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the Appeal Court may require the signatory of any such report to be called to give oral evidence.

- (2B) Where, in pursuance of a direction of the Appeal Court, any such report is tendered in evidence otherwise than by or on behalf of the appellant, then—
- (a) if the appellant is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the appellant is not so represented, the substance of the report shall be disclosed to him; and
 - (c) the appellant 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 appellant or on his behalf.”

SCHEDULE 3

Section 10.

COMMUNITY SUPERVISION ORDERS

The 1955 Acts

- 1 (1) Paragraph 4 of Schedule 5A to each of the 1955 Acts (power of court to impose community supervision order on trial of civilian) shall be amended as follows.
 - (2) In sub-paragraph (1), for the words “12 months” there shall be substituted the words “three years”.
 - (3) After sub-paragraph (7) there shall be inserted the following sub-paragraphs—
 - “(7A) Without prejudice to any other power of arrest, a person found committing an offence under sub-paragraph (6) above or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested by a provost officer, by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces.
 - (7B) The power of arrest given to any person by sub-paragraph (7A) above may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person’s arrest.
 - (7C) A person shall not be arrested by virtue of sub-paragraph (7A) above after the end of a period of 6 months beginning with the end of the supervision period.
 - (7D) No proceedings shall be taken against a person for an offence under sub-paragraph (6) above unless the trial is begun within 6 months after the end of the supervision period.”
 - (4) In sub-paragraph (10), for “£50” there shall be substituted “£1,000”.
- 2 In section 209 of each of the 1955 Acts (application to civilians), after subsection (3B) there shall be inserted the following subsection—

“(3C) In its application to a person subject to a community supervision order under paragraph 4 of Schedule 5A to this Act, section 132 of this Act shall have effect as if subsections (3) and (3A) were omitted.”

The 1957 Act

- 3 (1) Paragraph 4 of Schedule 4A to the 1957 Act (power of court to impose community supervision order on trial of civilian) shall be amended as follows.
- (2) In sub-paragraph (1), for the words “12 months” there shall be substituted the words “three years”.
- (3) After sub-paragraph (7) there shall be inserted the following sub-paragraphs—
- “(7A) Without prejudice to any other power of arrest, a person found committing an offence under sub-paragraph (6) above or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested by a provost officer, by any officer or person legally exercising authority under a provost officer or on his behalf, or by or on the orders of any officer subject to this Act.
- (7B) The power of arrest given to any person by sub-paragraph (7A) above may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person’s arrest.
- (7C) A person shall not be arrested by virtue of sub-paragraph (7A) above after the end of a period of 6 months beginning with the end of the supervision period.
- (7D) No proceedings shall be taken against a person for an offence under sub-paragraph (6) above unless the trial is begun within 6 months after the end of the supervision period.”
- (4) In sub-paragraph (10), for “£50” there shall be substituted “£1,000”.
- 4 In the Fourth Schedule to the 1957 Act (application to civilians), after paragraph 4A there shall be inserted the following paragraph—
- “4B In its application to a person subject to a community supervision order under paragraph 4 of Schedule 4A to this Act, section 52 of this Act shall have effect as if subsection (2) was omitted.”

SCHEDULE 4

Section 13.

SCHEDULE TO BE INSERTED IN THE REHABILITATION OF OFFENDERS ACT 1974

“SCHEDULE

SECTION 6(4): SERVICE DISCIPLINARY CONVICTIONS

- 1 Any conviction for an offence mentioned in this Schedule is a conviction referred to in section 6(6)(bb) of this Act (convictions to be disregarded for the purposes of extending a period of rehabilitation following subsequent conviction).

Status: This is the original version (as it was originally enacted).

Provisions of the Army Act 1955 and the Air Force Act 1955

2 Any offence under any of the provisions of the Army Act 1955 or the Air Force Act 1955 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 29	Offences by or in relation to sentries, persons on watch etc.
Section 29A	Failure to attend for duty, neglect of duty etc.
Section 33	Insubordinate behaviour.
Section 34	Disobedience to lawful commands.
Section 34A	Failure to provide a sample for drug testing.
Section 35	Obstruction of provost officers.
Section 36	Disobedience to standing orders.
Section 38	Absence without leave.
Section 39	Failure to report or apprehend deserters or absentees.
Section 42	Malingering.
Section 43	Drunkenness.
Section 43A	Fighting, threatening words etc.
Section 44	Damage to, and loss of, public or service property etc.
Section 44A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 44B	Interference etc. with equipment, messages or signals.
Section 45	Misapplication and waste of public or service property.
Section 46	Offences relating to issues and decorations.
Section 47	Billeting offences.
Section 48	Offences in relation to requisitioning of vehicles.
Section 50	Inaccurate certification.
Section 51	Low flying.
Section 52	Annoyance by flying.
Section 54	Permitting escape, and unlawful release of prisoners.
Section 55	Resistance to arrest.

<i>Provision</i>	<i>Subject-matter</i>
Section 56	Escape from confinement.
Section 57	Offences in relation to courts-martial.
Section 61	Making of false statements on enlistment.
Section 62	Making of false documents.
Section 63	Offences against civilian population.
Section 69	Conduct to prejudice of military discipline or air-force discipline.

3 Any offence under section 68 (attempt to commit military offence) or 68A (aiding and abetting etc., and inciting, military offence) of the Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

4 Any offence under section 68 (attempt to commit air-force offence) or 68A (aiding and abetting etc., and inciting, air-force offence) of the Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

Provisions of the Naval Discipline Act 1957

5 Any offence under any of the provisions of the Naval Discipline Act 1957 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 6	Offences by or in relation to sentries, persons on watch etc.
Section 7	Failure to attend for duty, neglect of duty etc.
Section 11	Insubordinate behaviour.
Section 12	Disobedience to lawful commands.
Section 12A	Failure to provide a sample for drug testing.
Section 13	Fighting, threatening words etc.
Section 14	Obstruction of provost officers.
Section 14A	Disobedience to standing orders.
Section 17	Absence without leave etc.
Section 18	Failure to report deserters and absentees.
Section 21	Low flying.
Section 22	Annoyance by flying.
Section 25	Inaccurate certification.
Section 27	Malingering.

Status: This is the original version (as it was originally enacted).

<i>Provision</i>	<i>Subject-matter</i>
Section 28	Drunkenness.
Section 29	Damage to, and loss of, public or service property etc.
Section 29A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 29B	Interference etc. with equipment, messages or signals.
Section 30	Misapplication and waste of public or service property.
Section 31	Offences relating to issues and decorations.
Section 32	Billeting offences.
Section 33	Offences in relation to the requisitioning of vehicles etc.
Section 33A	Permitting escape, and unlawful release of prisoners.
Section 33B	Resistance to arrest.
Section 33C	Escape from confinement.
Section 34A	False statements on entry.
Section 35	Falsification of documents.
Section 35A	Offences against civilian population.
Section 38	Offences in relation to courts-martial.
Section 39	Conduct to the prejudice of naval discipline.

- 6 Any offence under section 40 (attempt to commit naval offence) or 41 (aiding and abetting etc., and inciting, naval offence) of the Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.

SCHEDULE 5

Section 16.

REVIEW OF FINDINGS AND SENTENCE

The 1955 Acts

- 1 The 1955 Acts shall be amended as follows.
- 2 Section 108 (power of accused to present petition against finding or sentence at any time after finding or sentence) shall cease to have effect.
- 3 For section 112 (approval required for death sentences) there shall be substituted the following section—

Status: This is the original version (as it was originally enacted).

“Review of proceedings of courts-martial

112 Approval required for death sentences

(1) A sentence of death passed by a court-martial shall not be carried out until it has been reviewed under section 113 of this Act and has not been quashed or replaced by another sentence on the review.

(2) A sentence of death passed by a court-martial shall not be carried out in a colony unless it is also approved by the Governor of the colony.”

4 For section 113 (review of findings and sentences of courts-martial) there shall be substituted the following sections—

“113 Review of findings and sentences of courts-martial

(1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.

(2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.

(3) The review under this section shall (if it does not begin sooner) begin as soon as is practicable after—

- (a) in a case where a petition has been presented under this section, the presentation of the petition;
- (b) in any other case, the end of the period within which a petition under this section may be presented.

(4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review under this section of the finding or sentence has been completed—

- (a) the reviewing authority shall complete the review as soon as is practicable; but
- (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.

(5) For the purposes of this Act the reviewing authority is—

- (a) the Defence Council; or
- (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.

(6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.

113AA Powers of the reviewing authority

(1) On a review under section 113 of this Act of a finding or sentence of a court-martial the reviewing authority has the following powers.

Status: This is the original version (as it was originally enacted).

- (2) In so far as the review is of a finding of guilt, the authority may—
- (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
 - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;
- and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to a court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
- (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
 - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
- (a) revoke an order made by the court under section 120A(1) of this Act;
 - (b) remit in whole or part any punishment awarded by the court;
 - (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
- (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
- (a) shall be treated for all purposes as having been made or passed by the court;
 - (b) shall be promulgated and shall have effect as from the date of promulgation.”
- 5 In section 113A (power of reviewing authority to authorise retrial)—
- (a) in subsection (1), for the words “Her Majesty or the Defence Council” there shall be substituted the words “the reviewing authority”; and
 - (b) in subsection (2), for the words “Defence Council” there shall be substituted the words “reviewing authority”.

- 6 For section 115 of the Army Act 1955 (review of summary findings and awards) there shall be substituted the following section—

“115 Review of summary findings and awards

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.
- (2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.
- (3) The finding or any punishment 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 military, naval or air-force officer superior in command to the officer who dealt summarily with the charge;
 - (c) a general officer or brigadier appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 113AA 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 113 of this Act by the reviewing authority.
- (7) In the application of section 113AA to reviews under this section, that section shall have effect as if—
 - (a) references to the court-martial were references to the officer who dealt summarily with the charge;
 - (b) references to a finding of guilt were references to a finding that the charge has been proved;
 - (c) references to a sentence passed were references to a punishment awarded; and
 - (d) subsections (5)(a) and (6) were omitted.”

- 7 For section 115 of the Air Force Act 1955 (review of summary findings and awards) there shall be substituted the following section—

“115 Review of summary findings and awards

- (1) This section applies where a charge has been dealt with summarily and a finding has been recorded that the charge has been proved.
- (2) The accused may at any time request a review of the finding or any punishment awarded (or both); and where he does so, the finding or punishment (or both) shall be reviewed.
- (3) The finding or any punishment awarded (or both) may be reviewed at any other time.

Status: This is the original version (as it was originally enacted).

- (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 air-force, naval or military officer superior in command to the officer who dealt summarily with the charge;
 - (c) an air officer appointed by the Defence Council to carry out the review or any class of review which includes the review.
- (6) Section 113AA 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 113 of this Act by the reviewing authority.
- (7) In the application of section 113AA to reviews under this section, that section shall have effect as if—
 - (a) references to the court-martial were references to the officer who dealt summarily with the charge;
 - (b) references to a finding of guilt were references to a finding that the charge has been proved;
 - (c) references to a sentence passed were references to a punishment awarded; and
 - (d) subsections (5)(a) and (6) were omitted.”

The 1957 Act

- 8 The 1957 Act shall be amended as follows.
- 9 For section 70 (review of findings and sentences) there shall be substituted the following section—

“70 Review of findings and sentences of courts-martial

- (1) Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period after sentence is passed, present a petition to the Defence Council against finding or sentence or both.
- (2) The reviewing authority shall, in accordance with subsections (3) and (4) below, review any finding of guilt made, and sentence passed, by a court-martial.
- (3) The review shall (if it does not begin sooner) begin as soon as is practicable after—
 - (a) in a case where a petition has been presented under this section, the presentation of the petition;
 - (b) in any other case, the end of the period within which a petition under this section may be presented.
- (4) Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review of the finding or sentence has been completed—
 - (a) the reviewing authority shall complete the review as soon as is practicable; but

- (b) if leave to appeal is granted before the review has been completed, the authority shall cease considering the review.
 - (5) For the purposes of this Act the reviewing authority is—
 - (a) the Defence Council; or
 - (b) any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated by the Defence Council.
 - (6) A sentence of death and the finding of guilty in consequence of which it was passed may not be reviewed by an officer to whom powers are delegated under subsection (5)(b) above.
 - (7) This section and section 71 of this Act apply to disciplinary courts as they apply to courts-martial.
 - (8) In this section “prescribed” means prescribed by rules under section 58 of this Act.”
- 10 For section 71 (power to quash or alter findings) there shall be substituted the following section—

“71 Powers of the reviewing authority

- (1) On a review under section 70 of this Act the reviewing authority has the following powers.
- (2) In so far as the review is of a finding of guilt, the authority may—
 - (a) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding;
 - (b) substitute a finding mentioned in subsection (3) below if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding;

and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to the court-martial on making such a finding as appears proper.
- (3) The findings referred to in subsection (2) above are—
 - (a) any finding of guilt which could have been validly made by the court-martial on the charge before it;
 - (b) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge.
- (4) In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial.
- (5) In reviewing a sentence, the authority may—
 - (a) revoke an order made by the court under section 89A(1) of this Act;
 - (b) remit in whole or part any punishment awarded by the court;

Status: This is the original version (as it was originally enacted).

- (c) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
 - (6) Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority shall (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent thereon; and where the authority does so the offence or offences shall be treated for all purposes as not having been taken into consideration.
 - (7) Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment—
 - (a) shall be treated for all purposes as having been made or passed by the court;
 - (b) shall be promulgated and shall have effect as from the date of promulgation.”.
- 11 In section 71A (power to authorise retrial), for the words “Defence Council” in both places where they appear there shall be substituted the words “reviewing authority”.
- 12 After section 71A there shall be inserted the following section—

“71B Review of summary findings and awards

- (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.”.

- 13 Section 72 (power to remit or alter sentences) shall cease to have effect.

SCHEDULE 6

Section 35(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Naval Medical Compassionate Fund

- 1 In section 1 of the Naval Medical Compassionate Fund Act 1915 (power by Order in Council to regulate fund), in subsection (1)(f) (eligibility for benefits), after the word “widows” there shall be inserted the word “, widowers”.

Affidavits and declarations outside the United Kingdom

- 2 In section 204(1) of the Army Act 1955 (officers entitled to take affidavits and declarations outside the United Kingdom) after the words “the legal” there shall be inserted the words “services branch of any”.

Enlistment in the Royal Air Force

- 3 For section 3 of the Air Force Act 1955 (enlistment for general or corps service) there shall be substituted the following section—

“3 Enlistment for general service

Recruits shall be enlisted for general service.”

Suspension of sentences

- 4 (1) In section 120 of each of the 1955 Acts (suspension of sentences of imprisonment and detention)—
- (a) in subsection (2), for the words from the beginning to “officer” there shall be substituted the “On passing such a sentence, the court”;
 - (b) for subsection (3) there shall be substituted the following subsection—

“(3) On the review of a sentence which is not for the time being suspended, the reviewing authority may order that the balance of the sentence be suspended.”; and
 - (c) in subsection (5)(c), for the words from “neither” to “said powers” there shall be substituted the words “the court does not exercise the powers conferred by paragraph (a) above”.
- (2) In section 118 (commencement of sentences of imprisonment and detention), in the proviso to subsection (2), for the words “the confirming officer” there shall be substituted the words “a court-martial”.

Remission of sentences

- 5 In section 122 of each of the 1955 Acts (Imprisonment and Detention Rules), in subsection (1)(e) (rules about remission of part of sentences), the words “for good conduct and industry” shall cease to have effect.

Status: This is the original version (as it was originally enacted).

- 6 In section 82 of the 1957 Act (Naval Detention Quarters Rules), in subsection (1) (d) (rules about remission of part of sentences), the words “for good conduct and industry” shall cease to have effect.

Reviews

- 7 In Schedule 5A to each of the 1955 Acts (powers of court on trial of civilians), in paragraph 13(3), for the words “section 108” in both places they appear there shall be substituted the words “section 113”.
- 8 In Schedule 4A to the 1957 Act (powers of court on trial of civilians), in paragraph 13(3), for the words “section 70(2)” there shall be substituted the words “section 70(1)”.
- 9 In Schedule 3 to the Armed Forces Act 1976 (Standing Civilian Courts)—
- (a) in paragraph 19 (petitions for reviews), the words from “but” to “period” shall cease to have effect; and
 - (b) in paragraph 20 (reviews of findings and sentences), in sub-paragraph (2) (c), for the words from “a confirming” to “section 110” there shall be substituted the words “an authority carrying out a review under section 115”.

Removal or amendment of spent expressions

- 10 In section 111(1) of the 1957 Act (persons subject to Act) for the words from “, Queen Alexandra's” to “Women’s Royal Naval Service” there shall be substituted the words “and Queen Alexandra’s Royal Naval Nursing Service”.
- 11 In section 6(9)(b) of the Armed Forces Act 1976 (membership of Standing Civilian Courts) for the words from “Queen Alexandra's” to “Women’s Royal Naval Service” there shall be substituted the words “or Queen Alexandra’s Royal Naval Nursing Service”.

Queen’s Regulations for the Royal Navy

- 12 In section 135(1) of the 1957 Act (general interpretation), after the definition of “public or service property” there shall be inserted the following definition—
- ““Queen’s Regulations” means the Queen’s Regulations for the Royal Navy;”.

Meaning of “protected prisoner of war”

- 13 In paragraph 1 of Schedule 3 to the Courts-Martial (Appeals) Act 1968 (meaning of “protected prisoner of war”) for the words from “means” (in the first place it appears) to “Schedule 3 to” there shall be substituted the words “has the same meaning as in section 7(1) of”.

Abolition of confirmation

- 14 In section 82(2) of the Police and Criminal Evidence Act 1984 (meaning of references to conviction before a Service court in Part VIII), for the words from “references” (in the second place it appears) to “and” there shall be substituted the words “references to a finding of guilty which is, or falls to be treated as, the finding of the court; and”.

- 15 In Article 70(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (meaning of references to conviction before a Service court in Part IX), for the words from “references” (in the second place it appears) to the end there shall be substituted the words “references to a finding of guilty which is, or falls to be treated as, the finding of the court.”

SCHEDULE 7

Section 35(2).

REPEALS

PART I

REPEALS RELATING TO CHANGES TO PROCEDURE FOR DEALING WITH OFFENCES UNDER SERVICES ACTS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1933 c. 6.	Visiting Forces (British Commonwealth) Act 1933.	In section 4(4)(b) the words from “and may” to “courts martial”.
1955 c. 18.	Army Act 1955.	Sections 77 to 80. Section 82(3). Section 84. Section 85(3). Sections 86 to 90. In section 91(1), the words from “and the convening officer” to the end. In section 93, in subsection (1), the words “other than an exempted person” and “judge advocate”, and subsection (1A). Section 95(4). In section 96(5), the words from “or on” to “finding”. Sections 104 to 106. Section 139. In section 143(1), the definition of “convening officer”. In section 209(3), paragraph (d) and, in

Status: This is the original version (as it was originally enacted).

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1955 c. 19.	Air Force Act 1955.	<p>paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above”.</p> <p>In section 225(1), the definition of “Rules of Procedure”.</p> <p>Sections 77 to 80.</p> <p>Section 82(3).</p> <p>Section 84.</p> <p>Section 85(3).</p> <p>Sections 86 to 90.</p> <p>In section 91(1), the words from “and the convening officer” to the end.</p> <p>In section 93, in subsection (1), the words “other than an exempted person” and “judge advocate”, and subsection (1A).</p> <p>Section 95(4).</p> <p>In section 96(5), the words from “or on” to “finding”.</p> <p>Sections 104 to 106.</p> <p>Section 139.</p> <p>In section 143(1), the definition of “convening officer”.</p> <p>In section 209(3), paragraph (d) and, in paragraph (fa), the words “constituted under section 87 above” and “constituted under section 88 above”.</p> <p>In section 223(1), the definition of “Rules of Procedure”.</p>
1957 c. 53.	Naval Discipline Act 1957.	<p>Sections 49, 50, 52A, 53 and 55.</p> <p>In section 56(2), the words from “and shall” to the end.</p>

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In section 57, subsections (1) and (3). Section 59(5).
		In section 76(6)(a), the words from “by the officer” to the end.
		In Schedule 4, in paragraph 4, the words from “and subsections” to “not apply”.
1966 c. 45.	Armed Forces Act 1966.	Sections 24, 30 and 31.
1967 c. 80.	Criminal Justice Act 1967.	In section 12, the words “or orders”.
1976 c. 52.	Armed Forces Act 1976.	Section 5. In Schedule 3, in paragraph 1, the definition of “directing officer”, in paragraph 2(2), the words from “if so” to “direction”, paragraph 4(5), paragraph 7, in paragraph 12(4)(h), the words “and the directing officer”, paragraph 12(4)(m) and, in paragraph 18(10), the words “or as judge advocate”.
1984 c. 60.	Police and Criminal Evidence Act 1984.	In section 72(1), in paragraph (b)(i) of the definition of “proceedings”, the words from “or from” to “1957”. In section 82(1), in paragraph (b)(i) of the definition of “proceedings”, the words from “or from” to “1957”.

PART II

REPEALS RELATING TO ABOLITION OF CONFIRMATION

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1955 c. 18.	Army Act 1955.	In section 97, subsection (2) and, in subsection (3), the words from “and” (in the first place it appears) to the end.

Status: This is the original version (as it was originally enacted).

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		Section 107.
		Sections 109 to 111.
		In section 120, in subsection (5), paragraph (b) and, in paragraph (d), the words “the confirming officer” and, in subsection (6), the words “not being confirmed or by its”.
		In section 127, in subsection (4), the words “confirming officer or” (in both places) and subsection (5).
		In section 131, in subsection (1), the word “confirmation” and, in subsection (3), the words “and the sentence has been confirmed”.
		In section 133(2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or”.
		In section 134, in subsection (2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or” and subsection (3).
		In section 138, in subsection (7), the words “by the confirming officer” and “officer”, in subsection (8), the words from the beginning to “officer; and” and the words “confirmation and”, in subsection (10), the word “officer” (in both places).
		In section 140, the words “confirming officer or” and “as the case may be”.
		In section 141, in subsection (5), the words

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		from “or” (in the second place it appears) to “confirmation” (in the first place it appears) and the words from “or of” to the end and subsection (6).
		In Schedule 5A, in paragraph 4(12), the words “confirming officer or”, in paragraph 5(2) (b), the words “confirmation, revision or” and, in paragraph 15, in subparagraph (4), the words “confirmation” and “or revision”, and, in subparagraphs (5), (6) and (7), the words “confirmation” and “revision”.
1955 c. 19.	Air Force Act 1955.	In section 97, subsection (2) and, in subsection (3), the words from “and” (in the first place it appears) to the end. Section 107. Sections 109 to 111. In section 120, in subsection (5), paragraph (b) and, in paragraph (d), the words “the confirming officer” and, in subsection (6), the words “not being confirmed or by its”. In section 127, in subsection (4), the words “confirming officer or” (in both places) and subsection (5). In section 131, in subsection (1), the word “confirmation” and, in subsection (3), the words “and the sentence has been confirmed”. In section 133(2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or”.

Status: This is the original version (as it was originally enacted).

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In section 134, in subsection (2), paragraph (a) and, in paragraph (b), the words “confirmation of the sentence is withheld or” and “confirming officer or” and subsection (3).
		In section 138, in subsection (7), the words “by the confirming officer” and “officer”, in subsection (8), the words from the beginning to “officer; and” and the words “confirmation and”, in subsection (10), the word “officer” (in both places).
		In section 140, the words “confirming officer or” and “as the case may be”.
		In section 141, in subsection (5), the words from “or” (in the second place it appears) to “confirmation” (in the first place it appears) and the words from “or of” to the end and subsection (6).
		In Schedule 5A, in paragraph 4(12), the words “confirming officer or”, in paragraph 5(2) (b), the words “confirmation, revision or” and, in paragraph 15, in subparagraph (4), the words “confirmation” and “or revision”, and, in subparagraphs (5), (6) and (7), the words “confirmation” and “revision”.
1957 c. 53.	Naval Discipline Act 1957.	In Schedule 4A, in paragraph 4(12), the words “confirming officer or”, in paragraph 5(2) (b), the words “confirmation, revision or” and, in paragraph 15, in subparagraph (4), the words “confirmation” and “or revision”, and, in subparagraphs (5), (6) and

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1968 c. 20.	Courts-Martial (Appeals) Act 1968.	(7), the words “confirmation” and “revision”. In section 17(2)(b), the words from “being” to the end. In section 37(2), the words from “(including” to “court-martial” (in the last place it appears). In Schedule 2, paragraph 3.
1968 c. 64.	Civil Evidence Act 1968.	In section 11(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).
1968 c. 70.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.	In section 10(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).
1971 c. 36 (N.I.).	Civil Evidence Act (Northern Ireland) 1971.	In section 7(6), the words from “as regards” (in the first place they appear) to “Act of 1957” (in the second place they appear).
1986 c. 21.	Armed Forces Act 1986.	In Schedule 1, paragraph 1(1) (d).

PART III

OTHER REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1869 c. 44.	Greenwich Hospital Act 1869.	Section 7.
1955 c. 18.	Army Act 1955.	Section 108. In section 122(1)(e), the words “for good conduct and industry”. Section 181. In Schedule 7, paragraph 8.
1955 c. 19.	Air Force Act 1955.	Section 108.

Status: This is the original version (as it was originally enacted).

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In section 122(1)(e), the words “for good conduct and industry”.
		Section 181.
1957 c. 53.	Naval Discipline Act 1957.	Section 72.
		In section 82(1)(d), the words “for good conduct and industry”.
		In section 111(2) the words “or the Women’s Royal Naval Service”.
		In section 132, in subsection (5), the words “the Women’s Royal Naval Service,”.
1966 c. 45.	Armed Forces Act 1966.	Section 2(4).
1968 c. 20.	Courts-Martial (Appeals) Act 1968.	In section 8, subsection (1A) (a), in subsection (2) (a) the words from “or (if” to “annulled” and subsection (5).
		In section 32(2)(a), the words from “under” to “1968”.
		Section 53.
		In section 57(1), the word “and” after the definition of “prescribed”.
1968 c. 27.	Firearms Act 1968.	Section 11(3).
1970 c. 41.	Equal Pay Act 1970.	Section 1(9).
1970 c. 32 (N.I.).	Equal Pay Act (Northern Ireland) 1970.	Section 1(10).
1974 c. 53.	Rehabilitation of Offenders Act 1974.	In section 2, in subsection (1) the words “Subject to the following provisions of this section” and subsections (2) to (4).
		In section 6, in subsection (6) the words “Subject to subsection (7) below” and subsection (7).
1976. c. 52.	Armed Forces Act 1976.	Section 17.

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		In Schedule 3, in paragraph 19, the words from “but” to “period”.
1976 c. 74.	Race Relations Act 1976.	In Schedule 9, paragraph 20(2).
		In section 54(2), the words “or to a complaint to which section 75(8) applies”.
S.I. 1978/1908 (N.I. 27).	Rehabilitation of Offenders (Northern Ireland) Order 1978.	In Article 4, in paragraph (1), the words “Subject to the following provisions of this Article,” and paragraphs (2) to (4).
		In Article 7, in paragraph (6) the words “Subject to paragraph (7)” and paragraph (7).
1981 c. 55.	Armed Forces Act 1981.	In section 20(2) the words “and the Women’s Royal Naval Service”.
		In Schedule 3, in paragraph 11(1) the words “and the Women’s Royal Naval Service” and in paragraphs 11(2) and 12 to 14 the words “or the Women’s Royal Naval Service”.
		In Schedule 4, paragraphs 2(1) and 3(1).
1983 c. 20.	Mental Health Act 1983.	Section 46.
1984 c. 36.	Mental Health (Scotland) Act 1984.	Section 69.
S.I. 1986/595 (N.I.4).	Mental Health (Northern Ireland) Order 1986.	Article 52.
1991 c. 62.	Armed Forces Act 1991.	Section 1.
1995 c. 35.	Criminal Appeal Act 1995.	In Schedule 2, paragraphs 1 and 2.”