



# Armed Forces Discipline Act 2000

## 2000 CHAPTER 4

### *Custody*

#### **1 Custody without charge**

- (1) For section 75 of the Army Act 1955 (provisions for avoiding delay after arrest) there is substituted—

#### *“Custody*

##### **75 Limitations on custody without charge**

- (1) A person arrested under section 74 of this Act shall not be kept in military custody without being charged except in accordance with sections 75A to 75C of this Act.
- (2) If at any time the commanding officer of a person who is kept in military custody without being charged—
- (a) becomes aware that the grounds for keeping that person in military custody have ceased to apply; and
  - (b) is not aware of any other grounds on which continuing to keep that person in military custody could be justified under the provisions of this Act,
- it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from military custody.
- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 75A to 75K of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 76(1) of this Act.

### **75A Authorisation of custody without charge**

- (1) Where a person is arrested under section 74 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in military custody without being charged,shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in military custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in military custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;and the person to whom the report relates may be kept in military custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in military custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously, he may authorise the keeping of that person in military custody.
- (5) An authorisation under subsection (4) above—
  - (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  - (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.
- (6) A person shall not be kept in military custody later than 48 hours after the relevant time without being charged except in accordance with section 75C of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 74 of this Act means the time of the arrest.

### **75B Review of custody by commanding officer**

- (1) The commanding officer of a person kept in military custody in accordance with section 75A of this Act shall, subject to subsection (3) below, review the keeping of that person in military custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 75A of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under subsection (4) of that section, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in military custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—
  - (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 75A(4) of this Act, and
  - (b) the keeping in military custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

### **75C Extension of custody without charge**

- (1) If, on an application by the commanding officer of a person arrested under section 74 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in military custody is justified, the judicial officer may by order authorise the keeping of that person in military custody.
- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in military custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in military custody is justified only if—

- (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 75B of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and
  - (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in military custody is justified, he shall—
  - (a) refuse the application, or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in military custody during the adjournment.
- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in military custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.
- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from military custody.
- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from military custody.

#### **75D Custody without charge: other cases**

- (1) Sections 75 to 75C of this Act apply—

- (a) where a person is delivered into military custody under section 187(2) or (3), 188(2) or 190A(3) of this Act or under Schedule 2 to the Reserve Forces Act 1996, and
- (b) in any other case where a person arrested by a constable is delivered into military custody,

as they apply where a person is arrested under section 74 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.

- (2) In those cases references to the relevant time are—
  - (a) in relation to a person delivered into military custody following arrest under section 186 or 190A of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into military custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.
- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **75E Custody without charge: supplementary**

- (1) The Defence Council may by regulations make provision with respect to—
  - (a) the delegation by the commanding officer of a person in military custody of any of the commanding officer's functions under sections 75 to 75C of this Act;
  - (b) circumstances in which a person kept in military custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) the keeping of written records relating to compliance with any requirement of sections 75 to 75C of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 75A to 75C of this Act to a period of time is to be treated as approximate only.”
- (2) For section 75 of the Air Force Act 1955 (provisions for avoiding delay after arrest) there is substituted—

#### *“Custody*

#### **75 Limitations on custody without charge**

- (1) A person arrested under section 74 of this Act shall not be kept in air-force custody without being charged except in accordance with sections 75A to 75C of this Act.
- (2) If at any time the commanding officer of a person who is kept in air-force custody without being charged—
  - (a) becomes aware that the grounds for keeping that person in air-force custody have ceased to apply; and

- (b) is not aware of any other grounds on which continuing to keep that person in air-force custody could be justified under the provisions of this Act,

it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from air-force custody.

- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 75A to 75K of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 76(1) of this Act.

### **75A Authorisation of custody without charge**

- (1) Where a person is arrested under section 74 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in air-force custody without being charged,
 shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in air-force custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in air-force custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;
 and the person to whom the report relates may be kept in air-force custody for such period as is necessary to enable the commanding officer to make that determination.
- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in air-force custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously,
 he may authorise the keeping of that person in air-force custody.
- (5) An authorisation under subsection (4) above—
  - (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;

- (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.
- (6) A person shall not be kept in air-force custody later than 48 hours after the relevant time without being charged except in accordance with section 75C of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 74 of this Act means the time of the arrest.

### **75B Review of custody by commanding officer**

- (1) The commanding officer of a person kept in air-force custody in accordance with section 75A of this Act shall, subject to subsection (3) below, review the keeping of that person in air-force custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 75A of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under section 75A(4) of this Act, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in air-force custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—
  - (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 75A(4) of this Act, and
  - (b) the keeping in air-force custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

### **75C Extension of custody without charge**

- (1) If, on an application by the commanding officer of a person arrested under section 74 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in air-force custody is justified, the judicial officer may by order authorise the keeping of that person in air-force custody.
- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.

- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in air-force custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in air-force custody is justified only if—
  - (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 75B of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and
  - (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in air-force custody is justified, he shall—
  - (a) refuse the application, or
  - (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in air-force custody during the adjournment.
- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in air-force custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.
- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from air-force custody.



- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from air-force custody.

#### **75D Custody without charge: other cases**

- (1) Sections 75 to 75C of this Act apply—
- (a) where a person is delivered into air-force custody under section 187(2) or (3), 188(2) or 190A(3) of this Act or under Schedule 2 to the Reserve Forces Act 1996, and
  - (b) in any other case where a person arrested by a constable is delivered into air-force custody,
- as they apply where a person is arrested under section 74 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.
- (2) In those cases references to the relevant time are—
- (a) in relation to a person delivered into air-force custody following arrest under section 186 or 190A of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into air-force custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.
- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **75E Custody without charge: supplementary**

- (1) The Defence Council may by regulations make provision with respect to—
- (a) the delegation by the commanding officer of a person in air-force custody of any of the commanding officer's functions under sections 75 to 75C of this Act;
  - (b) circumstances in which a person kept in air-force custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;
  - (c) the keeping of written records relating to compliance with any requirement of sections 75 to 75C of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 75A to 75C of this Act to a period of time is to be treated as approximate only.”
- (3) After section 47 of the 1957 Act there is inserted—

*“Custody*

**47A Limitations on custody without charge**

- (1) A person arrested under section 45 of this Act shall not be kept in naval custody without being charged except in accordance with sections 47B to 47D of this Act.
- (2) If at any time the commanding officer of a person who is kept in naval custody without being charged—
  - (a) becomes aware that the grounds for keeping that person in naval custody have ceased to apply; and
  - (b) is not aware of any other grounds on which continuing to keep that person in naval custody could be justified under the provisions of this Act,it shall be the duty of the commanding officer, subject to subsection (3) below, to order his immediate release from naval custody.
- (3) A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.
- (4) For the purposes of this section and sections 47B to 47L of this Act a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under section 52B(1) of this Act.

**47B Authorisation of custody without charge**

- (1) Where a person is arrested under section 45 of this Act—
  - (a) the arrest, and
  - (b) any grounds on which he is being kept in naval custody without being charged,shall be reported as soon as practicable to his commanding officer.
- (2) Until such a report is made, the person may be kept in naval custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in naval custody without charge is necessary—
  - (a) to secure or preserve evidence relating to an offence for which he is under arrest, or
  - (b) to obtain such evidence by questioning him.
- (3) After receiving a report under subsection (1) above the commanding officer shall as soon as practicable determine—
  - (a) whether the requirements of subsection (4) below are satisfied, and
  - (b) if so, whether to exercise his powers under that subsection;and the person to whom the report relates may be kept in naval custody for such period as is necessary to enable the commanding officer to make that determination.

- (4) If in relation to the person to whom the report relates the commanding officer has reasonable grounds for believing—
  - (a) that keeping him in naval custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) that the investigation is being conducted diligently and expeditiously, he may authorise the keeping of that person in naval custody.
- (5) An authorisation under subsection (4) above—
  - (a) if given less than 12 hours after the relevant time, shall end not more than 12 hours after the relevant time;
  - (b) if given not less than 12 but less than 36 hours after the relevant time, shall end not more than 36 hours after the relevant time;
  - (c) if given not less than 36 but less than 48 hours after the relevant time, shall end not more than 48 hours after the relevant time.
- (6) A person shall not be kept in naval custody later than 48 hours after the relevant time without being charged except in accordance with section 47D of this Act.
- (7) In this Act “the relevant time” in relation to a person arrested under section 45 of this Act means the time of the arrest.

#### **47C Review of custody by commanding officer**

- (1) The commanding officer of a person kept in naval custody in accordance with section 47B of this Act shall, subject to subsection (3) below, review the keeping of that person in naval custody not later than the end of the period for which it is authorised.
- (2) Subsections (4) and (5) of section 47B of this Act shall apply on each review under this section as they apply where a report is received under subsection (1) of that section.
- (3) A review may be postponed—
  - (a) if, having regard to all the circumstances prevailing at the expiry of the last authorisation under subsection (4) of that section, it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of paragraph (a) above—
    - (i) if at that time the person in naval custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time the commanding officer is not readily available.
- (4) If a review is postponed under subsection (3) above—
  - (a) it shall be carried out as soon as practicable after the expiry of the last authorisation under section 47B(4) of this Act, and
  - (b) the keeping in naval custody of the person to whom the review relates shall by virtue of this paragraph be authorised until that time.

**47D Extension of custody without charge**

- (1) If, on an application by the commanding officer of a person arrested under section 45 of this Act, a judicial officer is satisfied that there are reasonable grounds for believing that the continued keeping of that person in naval custody is justified, the judicial officer may by order authorise the keeping of that person in naval custody.
- (2) A judicial officer may not hear an application under this section unless the person to whom it relates—
  - (a) has been informed in writing of the grounds for the application, and
  - (b) has been brought before him for the hearing.
- (3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
  - (a) the judicial officer shall adjourn the hearing to enable him to obtain representation, and
  - (b) he may be kept in naval custody during the adjournment.
- (4) For the purposes of this section, the continued keeping of a person in naval custody is justified only if—
  - (a) keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and
  - (b) the investigation is being conducted diligently and expeditiously.
- (5) Subject to subsection (7) below, an application under this section may be made—
  - (a) at any time before the end of 48 hours after the relevant time; or
  - (b) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time.
- (6) Where subsection (5)(b) above applies, an authorisation on a review under section 47C of this Act may be for a period ending more than 48 hours after the relevant time, but may not be—
  - (a) for a period of more than six hours, or
  - (b) for a period ending more than 96 hours after the relevant time.
- (7) If—
  - (a) an application under this section is made more than 48 hours after the relevant time, and
  - (b) it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period,the judicial officer shall refuse the application.
- (8) Where on an application under this section relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in naval custody is justified, he shall—
  - (a) refuse the application, or

- (b) adjourn the hearing of it until a time not later than 48 hours after the relevant time.
- (9) The person to whom the application relates may be kept in naval custody during the adjournment.
- (10) The period for which a judicial officer, on an application under this section, may authorise the keeping of a person in naval custody shall be such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him.
- (11) Where a judicial officer refuses an application under this section at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from naval custody.
- (12) Where a judicial officer refuses an application under this section at any later time, he shall direct that the person to whom it relates forthwith be charged or released from naval custody.

#### **47E Custody without charge: other cases**

- (1) Sections 47A to 47D of this Act apply—
  - (a) where a person is delivered into naval custody under section 103(3), 108(2) or 109(1) or (3) of this Act or under Schedule 2 to the Reserve Forces Act 1996, and
  - (b) in any other case where a person arrested by a constable is delivered into naval custody,as they apply where a person is arrested under section 45 of this Act, subject to such modifications as the Secretary of State may by regulations made by statutory instrument prescribe.
- (2) In those cases references to the relevant time are—
  - (a) in relation to a person delivered into naval custody following arrest under section 103 or 105 of this Act or paragraph 2 of Schedule 2 to the 1996 Act or otherwise following arrest by a constable, references to the time of the arrest;
  - (b) in relation to a person delivered into naval custody following surrender under section 188 of this Act or paragraph 6 of that Schedule, references to the time of the surrender.
- (3) Regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **47F Custody without charge: supplementary**

- (1) The Defence Council may by regulations make provision with respect to—
  - (a) the delegation by the commanding officer of a person in naval custody of any of the commanding officer's functions under sections 47A to 47D of this Act to any other person subject to this Act;
  - (b) circumstances in which a person kept in naval custody without being charged is to be informed of, or given an opportunity to make representations about, any matter;

- (c) the keeping of written records relating to compliance with any requirement of sections 47A to 47D of this Act or of regulations under paragraph (b) above.
- (2) Any reference in sections 47B to 47D of this Act to a period of time is to be treated as approximate only.”

## 2 Custody after charge

- (1) After section 75E of the Army Act 1955 there is inserted—

### “75F Custody after charge

- (1) Where a person subject to military law (“the accused”) is kept in military custody after being charged with an offence against any provision of this Part of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in military custody, but only if—
  - (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from military custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in military custody for his own protection or, if he is under 17 years of age, for his own welfare;
  - (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
  - (d) the accused, having been released from military custody after being charged with the offence, has deserted or absented himself without leave.
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused’s behaviour on previous occasions while charged with an offence and released from military custody or while on bail in criminal proceedings,
  - (d) the strength of the evidence that the accused committed the offence, as well as to any others which appear to be relevant.
- (4) If—

- (a) the accused is charged with an offence to which this subsection applies;
- (b) representations are made as to any of the matters mentioned in subsection (2)(a) above; and
- (c) the judicial officer decides not to authorise the keeping of the accused in military custody,

the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.

- (5) Subsection (4) above applies to any offence under section 70 of this Act where the corresponding civil offence is—
  - (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in military custody shall be such period, ending (subject to section 75G(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in military custody—
  - (a) if the accused is subsequently released from military custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary dealing with the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in military custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.”

(2) After section 75E of the Air Force Act 1955 there is inserted—

**“75F Custody after charge**

- (1) Where a person subject to air-force law (“the accused”) is kept in air-force custody after being charged with an offence against any provision of this Part of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in air-force custody, but only if—
  - (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from air-force custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or

- (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in air-force custody for his own protection or, if he is under 17 years of age, for his own welfare;
  - (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
  - (d) the accused, having been released from air-force custody after being charged with the offence, has deserted or absented himself without leave.
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused's behaviour on previous occasions while charged with an offence and released from air-force custody or while on bail in criminal proceedings,
  - (d) the strength of the evidence that the accused committed the offence, as well as to any others which appear to be relevant.
- (4) If—
  - (a) the accused is charged with an offence to which this subsection applies;
  - (b) representations are made as to any of the matters mentioned in subsection (2)(a) above; and
  - (c) the judicial officer decides not to authorise the keeping of the accused in air-force custody,the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.
- (5) Subsection (4) above applies to any offence under section 70 of this Act where the corresponding civil offence is—
  - (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in air-force custody shall be such period, ending (subject to section 75G(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in air-force custody—



- (a) if the accused is subsequently released from air-force custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary dealing with the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in air-force custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.”
- (3) After section 47F of the 1957 Act there is inserted—

**“47G Custody after charge**

- (1) Where a person subject to this Act (“the accused”) is kept in naval custody after being charged with an offence under any provision of Part I of this Act, he shall be brought before a judicial officer as soon as practicable.
- (2) Where the accused is brought before a judicial officer in accordance with subsection (1) above, the judicial officer may by order authorise the keeping of the accused in naval custody, but only if—
  - (a) the judicial officer is satisfied that there are substantial grounds for believing that the accused, if released from naval custody, would—
    - (i) fail to attend any hearing in the proceedings against him,
    - (ii) commit an offence while released, or
    - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (b) the judicial officer is satisfied that the accused should be kept in naval custody for his own protection or, if he is under 17 years of age, for his own welfare;
  - (c) the judicial officer is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this subsection for want of time since the accused was charged with the offence; or
  - (d) the accused, having been released from naval custody after being charged with the offence, has deserted or absented himself without leave.
- (3) In taking the decision required by subsection (2)(a) above, the judicial officer shall have regard to such of the following considerations as appear to him to be relevant—
  - (a) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it),
  - (b) the character, antecedents, associations and social ties of the accused,
  - (c) the accused’s behaviour on previous occasions while charged with an offence and released from naval custody or while on bail in criminal proceedings,
  - (d) the strength of the evidence that the accused committed the offence, as well as to any others which appear to be relevant.
- (4) If—

- (a) the accused is charged with an offence to which this subsection applies;
- (b) representations are made as to any of the matters mentioned in subsection (2)(a) above; and
- (c) the judicial officer decides not to authorise the keeping of the accused in naval custody,

the judicial officer shall state the reasons for his decision and shall cause those reasons to be included in the record of the proceedings.

- (5) Subsection (4) above applies to any offence under section 42 of this Act where the civil offence constituting the offence is—
  - (a) murder;
  - (b) manslaughter;
  - (c) rape;
  - (d) attempted murder; or
  - (e) attempted rape.
- (6) The period for which a judicial officer may, by an order under subsection (2) above, authorise the keeping of the accused in naval custody shall be such period, ending (subject to section 47H(7) of this Act) not later than 8 days after the day on which the order is made, as he thinks fit having regard to the evidence before him.
- (7) An order under subsection (2) above does not authorise the keeping of the accused in naval custody—
  - (a) if the accused is subsequently released from naval custody, at any time after his release; or
  - (b) at any time after the award of punishment on summary trial of the charge or any amended or substituted charge.
- (8) Subsection (1) above does not apply where the accused is charged at a time when he is kept in naval custody by reason of an award or sentence under this Act or of an order under subsection (2) above, unless that reason ceases to apply.”

### **3 Review of custody after charge**

- (1) After section 75F of the Army Act 1955 there is inserted—

#### **“75G Review of custody after charge**

- (1) Where the keeping of the accused in military custody is authorised by an order under section 75F(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused’s commanding officer that the grounds on which such an order was made have ceased to exist, he shall—
  - (a) release the accused from military custody, or
  - (b) request a review.
- (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.

- (4) Subsections (2) to (6) of section 75F of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
  - (5) At the first review the accused may support an application for release from military custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
  - (6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.
  - (7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in military custody for a period of not more than 28 clear days.
  - (8) In this section “review” means a review under subsection (1) above.”
- (2) After section 75F of the Air Force Act 1955 there is inserted—

**“75G Review of custody after charge**

- (1) Where the keeping of the accused in air-force custody is authorised by an order under section 75F(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.
  - (2) If at any time it appears to the accused’s commanding officer that the grounds on which such an order was made have ceased to exist, he shall—
    - (a) release the accused from air-force custody, or
    - (b) request a review.
  - (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.
  - (4) Subsections (2) to (6) of section 75F of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
  - (5) At the first review the accused may support an application for release from air-force custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
  - (6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.
  - (7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in air-force custody for a period of not more than 28 clear days.
  - (8) In this section “review” means a review under subsection (1) above.”
- (3) After section 47G of the 1957 Act there is inserted—

**“47H Review of custody after charge**

- (1) Where the keeping of the accused in naval custody is authorised by an order under section 47G(2) of this Act, it shall be reviewed by a judicial officer not later than the end of the period for which it is authorised.
- (2) If at any time it appears to the accused’s commanding officer that the grounds on which such an order was made have ceased to exist, he shall—
  - (a) release the accused from naval custody, or
  - (b) request a review.
- (3) Where a request is made under subsection (2) above, a review shall be carried out as soon as practicable.
- (4) Subsections (2) to (6) of section 47G of this Act apply on a review as they apply where the accused is brought before a judicial officer under subsection (1) of that section.
- (5) At the first review the accused may support an application for release from naval custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
- (6) At subsequent reviews the judicial officer need not hear arguments as to fact or law which have been heard previously.
- (7) On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in naval custody for a period of not more than 28 clear days.
- (8) In this section “review” means a review under subsection (1) above.”

**4 Custody during court-martial proceedings**

- (1) After section 75G of the Army Act 1955 there is inserted—

**“75H Custody during court-martial proceedings**

- (1) Where the accused is kept in military custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by court-martial, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
- (2) In relation to a review before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.
- (3) In section 75F(2), after paragraph (d) there shall be inserted—
  - “; or
  - (e) the accused’s case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in military custody.”

- (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
  - (5) An order under section 75F(2) does not authorise the keeping of the accused in military custody after he is sentenced by the court-martial.
  - (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.”
- (2) After section 75G of the Air Force Act 1955 there is inserted—

**“75H Custody during court-martial proceedings**

- (1) Where the accused is kept in air-force custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by court-martial, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
  - (2) In relation to a review before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.
  - (3) In section 75F(2), after paragraph (d) there shall be inserted—
    - “; or
    - (e) the accused’s case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in air-force custody.”
  - (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
  - (5) An order under section 75F(2) does not authorise the keeping of the accused in air-force custody after he is sentenced by the court-martial.
  - (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.”
- (3) After section 47H of the 1957 Act there is inserted—

**“47J Custody during court-martial proceedings**

- (1) Where the accused is kept in naval custody under an order under section 47G(2) of this Act at any time after the commencement of his trial by court-martial, section 47H of this Act (and section 47G as applied by that section) shall apply with the following modifications.
- (2) In relation to a review before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to a judicial officer shall have effect as references to the judge advocate.
- (3) In section 47G(2), after paragraph (d) there shall be inserted—

“; or

- (e) the accused's case has been adjourned for inquiries or a report and it appears to the judicial officer that it would be impracticable to complete the inquiries or make the report without keeping the accused in naval custody.”
- (4) Section 47G(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 47G(2) does not authorise the keeping of the accused in naval custody after he is sentenced by the court-martial.
- (6) Subsection (1) above shall cease to apply (but without prejudice to any order already made by virtue of that subsection) if the court-martial is dissolved.”

## 5 Release from custody after charge or during proceedings

- (1) After section 75H of the Army Act 1955 there is inserted—

### “75J Release from custody after charge or during proceedings

- (1) This section applies where, at a hearing under section 75F(1) of this Act or on a review under section 75G(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in military custody.
- (2) Where this section applies, the accused—
  - (a) subject to paragraph (b) below, shall be released from military custody forthwith, but
  - (b) if he is subject to military law only by virtue of section 131 or 205(1) (ea), (eb), (g) or (h) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.
- (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
- (4) A person guilty of an offence under this section shall be liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.”

- (2) After section 75H of the Air Force Act 1955 there is inserted—

### “75J Release from custody after charge or during proceedings

- (1) This section applies where, at a hearing under section 75F(1) of this Act or on a review under section 75G(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in air-force custody.
- (2) Where this section applies, the accused—

- (a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but
    - (b) if he is subject to air-force law only by virtue of section 131 or 205(1) (ff), (h) or (i) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.
  - (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
  - (4) A person guilty of an offence under this section shall be liable on conviction by court-martial to imprisonment for a term not exceeding two years or any less punishment provided by this Act.”
- (3) After section 47J of the 1957 Act there is inserted—

**“47K Release from custody after charge or during proceedings**

- (1) This section applies where, at a hearing under section 47G(1) of this Act or on a review under section 47H(1) of this Act, the judicial officer or judge advocate (as the case may be) does not authorise keeping the accused in naval custody.
- (2) Where this section applies, the accused—
  - (a) subject to paragraph (b) below, shall be released from naval custody forthwith, but
  - (b) if he is a person to whom section 51 of this Act applies or is subject to this Act by virtue of section 111(3) or (5) of this Act, may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate (as the case may be) to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates.
- (3) A person on whom a requirement has been imposed under subsection (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates.
- (4) A person guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.
- (5) Any such offence shall be treated as if it were an offence under Part I of this Act.”

**6 Arrest during proceedings**

- (1) After section 75J of the Army Act 1955 there is inserted—

**“75K Arrest during proceedings**

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to military law (“the accused”) who—
  - (a) has been charged with, or is awaiting sentence for, an offence against any provision of this Part of this Act, and
  - (b) is not in military custody,may, if satisfied that taking the accused into military custody is justified, give orders for his arrest.
- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial’s finding on the charge or every charge against the accused.
- (3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into military custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.
- (5) For the purposes of this section, taking the accused into military custody is justified if there are substantial grounds for believing that, if not taken into military custody, he would—
  - (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (6) Taking the accused into military custody is also justified for the purposes of this section if—
  - (a) the accused is subject to military law only by virtue of section 131 of this Act, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in military custody—
  - (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 75G(1) of this Act.
- (8) A person arrested under subsection (3) above—
  - (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him), and



shall be dealt with by him as on a review under section 75G(1) of this Act.”

(2) After section 75J of the Air Force Act 1955 there is inserted—

**“75K Arrest during proceedings**

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to air-force law (“the accused”) who—
  - (a) has been charged with, or is awaiting sentence for, an offence against any provision of this Part of this Act, and
  - (b) is not in air-force custody,may, if satisfied that taking the accused into air-force custody is justified, give orders for his arrest.
- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial’s finding on the charge or every charge against the accused.
- (3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into air-force custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.
- (5) For the purposes of this section, taking the accused into air-force custody is justified if there are substantial grounds for believing that, if not taken into air-force custody, he would—
  - (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (6) Taking the accused into air-force custody is also justified for the purposes of this section if—
  - (a) the accused is subject to air-force law only by virtue of section 131 of this Act, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in air-force custody—
  - (a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 75G(1) of this Act.
- (8) A person arrested under subsection (3) above—

- (a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and
- (b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him), and shall be dealt with by him as on a review under section 75G(1) of this Act.”

(3) After section 47K of the 1957 Act there is inserted—

**“47L Arrest during proceedings**

- (1) Except where subsection (3) below applies, the commanding officer of a person subject to this Act (“the accused”) who—
  - (a) has been charged with, or is awaiting sentence for, an offence under any provision of Part I of this Act, and
  - (b) is not in naval custody,
 may, if satisfied that taking the accused into naval custody is justified, give orders for his arrest.
- (2) Subject to subsection (4) below, subsection (3) below applies between the commencement of the trial of the accused by court-martial and the announcement of the court-martial’s finding on the charge or every charge against the accused.
- (3) Where this subsection applies, the judge advocate, if satisfied that taking the accused into naval custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence under Part I of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this subsection.
- (4) Subsection (3) above shall cease to apply (but without prejudice to any direction already given by virtue of that subsection) if the court-martial is dissolved.
- (5) For the purposes of this section, taking the accused into naval custody is justified if there are substantial grounds for believing that, if not taken into naval custody, he would—
  - (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (6) Taking the accused into naval custody is also justified for the purposes of this section if—
  - (a) the accused is a person to whom section 51 of this Act applies, and
  - (b) he has failed to attend any hearing in the proceedings against him.
- (7) A person arrested under subsection (1) above, if kept in naval custody—
  - (a) shall be treated as being in naval custody under an order under section 47G(2) of this Act, and
  - (b) shall be brought as soon as practicable before a judicial officer to be dealt with as on a review under section 47H(1) of this Act.

- (8) A person arrested under subsection (3) above—
- (a) shall be treated as being in naval custody under an order under section 47G(2) of this Act, and
  - (b) shall be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him), and shall be dealt with by him as on a review under section 47H(1) of this Act.”

## **7 Judicial officers**

- (1) After section 75K of each of the 1955 Acts there is inserted—

### **“75L Judicial officers**

- (1) Judicial officers shall be appointed for the purposes of this Act by the Judge Advocate General.
- (2) No person shall be appointed under this section unless—
- (a) he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial, or
  - (b) he has, and has had for at least five years, in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.”

- (2) After section 47L of the 1957 Act there is inserted—

### **“47M Judicial officers**

- (1) Judicial officers shall be appointed for the purposes of this Act by the Chief Naval Judge Advocate.
- (2) No person shall be appointed under this section unless—
- (a) he is qualified under section 53B(2) of this Act for appointment as the judge advocate in relation to a court-martial, or
  - (b) he has, and has had for at least five years, in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.”

## **8 Custody rules**

- (1) After section 75L of each of the 1955 Acts there is inserted—

### **“75M Custody rules**

- (1) The Secretary of State may make rules with respect to proceedings—
- (a) on an application under section 75C of this Act;
  - (b) under section 75F(1) of this Act;
  - (c) on a review under section 75G(1) of this Act.

- (2) Rules under this section may in particular make provision with respect to—
- (a) arrangements preliminary to the proceedings;
  - (b) the representation of the person to whom the proceedings relate;
  - (c) the admissibility of evidence;
  - (d) procuring the attendance of witnesses;
  - (e) the immunities and privileges of witnesses;
  - (f) the administration of oaths;
  - (g) circumstances in which a review under section 75G(1) of this Act may be carried out without a hearing;
  - (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 75C(2)(b), 75F(1) or 75K(7)(b) or (8)(b) of this Act for a person to be brought before a judicial officer or judge advocate;
  - (i) the appointment of persons to discharge administrative functions under the rules.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) After section 47M of the 1957 Act there is inserted—

**“47N Custody rules**

- (1) The Secretary of State may make rules with respect to proceedings—
- (a) on an application under section 47D of this Act;
  - (b) under section 47G(1) of this Act;
  - (c) on a review under section 47H(1) of this Act.
- (2) Rules under this section may in particular make provision with respect to—
- (a) arrangements preliminary to the proceedings;
  - (b) the representation of the person to whom the proceedings relate;
  - (c) the admissibility of evidence;
  - (d) procuring the attendance of witnesses;
  - (e) the immunities and privileges of witnesses;
  - (f) the administration of oaths;
  - (g) circumstances in which a review under section 47H(1) of this Act may be carried out without a hearing;
  - (h) the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of section 47D(2)(b), 47G(1) or 47L(7)(b) or (8)(b) of this Act for a person to be brought before a judicial officer or judge advocate;
  - (i) the appointment of persons to discharge administrative functions under the rules.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

## **9 Bail in proceedings for illegal absence**

- (1) In section 187 of the Army Act 1955 (civil court proceedings for illegal absence from army)—
- (a) in subsection (2) for the words from “commit” to the end, and
  - (b) in subsection (3) for “commit him as aforesaid”,
- there is substituted “, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into military custody.”
- (2) In section 187 of the Air Force Act 1955 (civil court proceedings for illegal absence from air force)—
- (a) in subsection (2) for the words from “commit” to the end, and
  - (b) in subsection (3) for “commit him as aforesaid”,
- there is substituted “, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into air-force custody.”
- (3) In section 109 of the 1957 Act (civil court proceedings for illegal absence from navy)—
- (a) for subsection (1)(b) there is substituted—
    - “(b) where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into naval custody.”,
  - (b) subsection (2) is omitted, and
  - (c) in subsection (3)(a) for “commit him as provided by subsection (1) of this section” there is substituted “, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into naval custody”.
- (4) In Schedule 2 to the Reserve Forces Act 1996 (deserters and absentees without leave from reserve forces)—
- (a) for paragraph 4(2)(b) there is substituted—
    - “(b) where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into such custody.”, and
  - (b) in paragraph 5(3) for “commit him as mentioned in paragraph 4(2)(b)” there is substituted “, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into such custody”.

## **10 Further amendments relating to custody**

Schedule 1 to this Act (which makes further amendments of the 1955 Acts and the 1957 Act in relation to custody) shall have effect.

*Election for court-martial trial***11 Right to elect court-martial trial**

(1) After section 76A of the Army Act 1955 there is inserted—

**“76AA Right to elect for court-martial trial**

- (1) Before dealing summarily with a charge, the commanding officer or appropriate superior authority shall afford the accused the opportunity of electing court-martial trial in relation to that charge.
- (2) Where in accordance with regulations under section 83 of this Act two or more charges are together to be dealt with summarily, any election for court-martial trial must relate to all the charges concerned.
- (3) If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority shall refer to higher authority the charge to which the election relates, 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—
  - (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 deal summarily with the charge.
- (5) Subsection (1) above does not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the appropriate superior authority or commanding officer under subsection (4) above.
- (6) Where under section 76B(3) of this Act a charge is amended or one charge is substituted for another, subsection (1) above applies in relation to the amended or substituted charge.”

(2) After section 76A of the Air Force Act 1955 there is inserted—

**“76AA Right to elect for court-martial trial**

- (1) Before dealing summarily with a charge, the commanding officer or appropriate superior authority shall afford the accused the opportunity of electing court-martial trial in relation to that charge.
- (2) Where in accordance with regulations under section 83 of this Act two or more charges are together to be dealt with summarily, any election for court-martial trial must relate to all the charges concerned.
- (3) If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority shall refer to

higher authority the charge or charges to which the election relates, 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—

- (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 deal summarily with the charge.

(5) Subsection (1) above does not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the appropriate superior authority or commanding officer under subsection (4) above.

(6) Where under section 76B(3) of this Act a charge is amended or one charge is substituted for another, subsection (1) above applies in relation to the amended or substituted charge.”

(3) In section 76B of each of the 1955 Acts (summary dealings)—

- (a) subsections (5), (6) and (8) are omitted,
- (b) in subsection (7), for the words from the beginning to “authority” there is substituted “If the commanding officer or appropriate superior authority determines that the charge has been proved, he”, and
- (c) in subsection (10), after “76A” there is inserted “or 76AA”.

(4) In section 52D of the 1957 Act (summary trial), after subsection (2) there is inserted—

“(2A) Where in accordance with regulations under section 52F of this Act two or more charges are together to be tried summarily, any election for court-martial trial must relate to all the charges concerned.”

(5) In subsection (3) of that section for “so elects” there is substituted “elects court-martial trial”.

## **12 Limit on powers of courts-martial where accused elected court-martial trial**

(1) After section 85 of each of the 1955 Acts there is inserted—

### **“85A Powers of court-martial where accused elected court-martial trial**

(1) Where a court-martial tries a person in pursuance of an election for court-martial trial, the court shall not award any punishment which could not have been awarded by the commanding officer or appropriate superior authority who would have dealt summarily with the preliminary charge if the election had not been made.

(2) In subsection (1) above “the preliminary charge” means the charge which would have been dealt with summarily had the accused not elected court-martial trial.

- (3) For the purposes of this section a court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the prosecuting authority has referred the charge back to the commanding officer under section 83BB of this Act.”
- (2) In section 85(1) of each of the 1955 Acts (powers of general courts-martial) for “and to award” there is substituted “and, subject to section 85A below, to award”.
- (3) After section 62 of the 1957 Act there is inserted—

**“62ZA Powers of court-martial where accused elected court-martial trial**

- (1) Where a court-martial tries a person in pursuance of an election for court-martial trial, the court shall not award any punishment which could not have been awarded by the officer who would have tried the preliminary charge summarily if the election had not been made.
- (2) In subsection (1) above, “the preliminary charge” means the charge which would have been tried summarily had the accused not elected court-martial trial.
- (3) Where regulations under section 52F of this Act would have prevented a punishment of a particular description awarded by the officer from taking effect without the approval of another person, it shall be assumed for the purposes of subsection (1) above that the approval would have been obtained.
- (4) For the purposes of this section a court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the prosecuting authority has referred the charge back to the commanding officer under section 52II of this Act.”

*Functions of prosecuting authority*

**13 Functions of prosecuting authority**

Schedule 2 to this Act (which makes amendments of the 1955 Acts and the 1957 Act relating to the functions of the prosecuting authority) shall have effect.

*Summary appeal courts*

**14 Summary appeal courts**

- (1) After section 83 of each of the 1955 Acts there is inserted—

*“The summary appeal court*

**83ZA The summary appeal court**

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded by commanding officers and appropriate superior authorities on dealing summarily with charges.



- (2) The court shall consist of—
    - (a) judge advocates appointed under section 83ZB of this Act, and
    - (b) officers qualified under section 83ZC of this Act to be members of the court.
  - (3) The court—
    - (a) may sit in two or more divisions, and
    - (b) may sit in any place, whether within or outside the United Kingdom.
  - (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
  - (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
  - (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 83ZJ of this Act.”
- (2) After section 52F of the 1957 Act there is inserted—

*“The summary appeal court*

**52FF The summary appeal court**

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded on summary trial.
- (2) The court shall consist of—
  - (a) judge advocates appointed under section 52FG of this Act, and
  - (b) officers qualified under section 52FH of this Act to be members of the court.
- (3) The court—
  - (a) may sit in two or more divisions, and
  - (b) may sit in any place, whether within or outside the United Kingdom.
- (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
- (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
- (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 52FP of this Act.”

**15 Appointment of judge advocates**

- (1) After section 83ZA of each of the 1955 Acts there is inserted—

**“83ZB Judge advocates**

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the Judge Advocate General.
  - (2) No person shall be appointed under this section unless he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial.”
- (2) After section 52FF of the 1957 Act there is inserted—

**“52FG Judge advocates**

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the Chief Naval Judge Advocate.
- (2) No person shall be appointed under this section unless he is qualified under section 53B(2) of this Act for appointment as the judge advocate in relation to a court-martial.”

**16 Officers qualified for membership of summary appeal court**

- (1) After section 83ZB of the Army Act 1955 there is inserted—

**“83ZC Officers qualified for membership of summary appeal court**

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a military officer who 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 periods amounting in the aggregate to not less than two years.
- (2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other military officer or a naval or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
  - (a) the court administration officer,
  - (b) an officer under the command of the court administration officer,
  - (c) the prosecuting authority,
  - (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
  - (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
  - (f) a member of the Bar of Northern Ireland,
  - (g) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules, or
  - (h) any person who is, or has at any time during the preceding five years been, a provost officer.

(4) 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.”

(2) After section 83ZB of the Air Force Act 1955 there is inserted—

**“83ZC Officers qualified for membership of summary appeal court**

(1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is an air-force officer who 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 periods amounting in the aggregate to not less than two years.

(2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other air-force officer or a naval or military officer is qualified under this section for membership of the court.

(3) The following are not qualified under this section for membership of the court—

- (a) the court administration officer,
- (b) an officer under the command of the court administration officer,
- (c) the prosecuting authority,
- (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
- (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
- (f) a member of the Bar of Northern Ireland,
- (g) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules, or
- (h) any person who is, or has at any time during the preceding five years been, a provost officer.

(4) 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.”

(3) After section 52FG of the 1957 Act there is inserted—

**“52FH Officers qualified for membership of summary appeal court**

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a naval officer of or above the rank of lieutenant who 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 periods amounting in the aggregate to not less than three years.
- (2) Subject to subsection (3) below, rules under section 52FP of this Act may specify circumstances in which any other naval officer or a military or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
  - (a) the court administration officer,
  - (b) an officer under the command of the court administration officer,
  - (c) the prosecuting authority,
  - (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
  - (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
  - (f) a member of the Bar of Northern Ireland,
  - (g) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules, or
  - (h) any person who is, or has at any time during the preceding five years been, a member of the Royal Navy Regulating Branch.
- (4) 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.”

**17 Constitution of court for appeals**

- (1) After section 83ZC of each of the 1955 Acts there is inserted—

**“83ZD Constitution of summary appeal court for appeals**

- (1) For the purpose of hearing an appeal, the summary appeal court shall consist of—
  - (a) one of the judge advocates appointed under section 83ZB of this Act, and
  - (b) two officers qualified under section 83ZC of this Act for membership of the court.

- (2) Subsection (1) above has effect subject to any provision made by virtue of section 83ZJ of this Act.
  - (3) The judge advocate for any appeal shall be specified by or on behalf of the Judge Advocate General.
  - (4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.”
- (2) After section 52FH of the 1957 Act there is inserted—

**“52FJ Constitution of summary appeal court for appeals**

- (1) For the purpose of hearing an appeal, the summary appeal court shall consist of—
  - (a) one of the judge advocates appointed under section 52FG of this Act, and
  - (b) two officers qualified under section 52FH of this Act for membership of the court.
- (2) Subsection (1) above has effect subject to any provision made by virtue of section 52FP of this Act.
- (3) The judge advocate for any appeal shall be specified by or on behalf of the Chief Naval Judge Advocate.
- (4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.
- (5) In specifying members of the court under subsection (4) above the person doing so shall ensure that at least one member of the court for any appeal is of or above the rank of commander.
- (6) At any sitting of the court, the most senior member of the court at that sitting shall preside.”

**18 Right of appeal**

- (1) After section 83ZD of each of the 1955 Acts there is inserted—

**“83ZE Right of appeal**

- (1) Any person in respect of whom—
  - (a) a charge has been dealt with summarily, and
  - (b) a finding that the charge has been proved has been recorded,may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).
- (2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.
- (3) The court may at any later time give leave for an appeal to be brought.

(4) On any appeal under this section, the respondent shall be the prosecuting authority.”

(2) After section 52FJ of the 1957 Act there is inserted—

**“52FK Right of appeal**

(1) Any person in respect of whom—

(a) a charge has been tried summarily, and

(b) a finding of guilt has been recorded,

may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).

(2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.

(3) The court may at any later time give leave for an appeal to be brought.

(4) On any appeal under this section, the respondent shall be the prosecuting authority.”

**19 Hearing of appeals**

(1) After section 83ZE of each of the 1955 Acts there is inserted—

**“83ZF Hearing of appeals**

(1) An appeal under section 83ZE of this Act against a finding shall be by way of a rehearing of the charge.

(2) An appeal under section 83ZE of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.

(3) Except in such cases as may be prescribed by rules under section 83ZJ of this Act, appeals shall be heard in open court.

(4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.

(5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.

(6) Any directions given by the judge advocate shall be binding on the court.”

(2) After section 52FK of the 1957 Act there is inserted—

**“52FL Hearing of appeals**

(1) An appeal under section 52FK of this Act against a finding shall be by way of a rehearing of the charge.

(2) An appeal under section 52FK of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.

- (3) Except in such cases as may be prescribed by rules under section 52FP of this Act, appeals shall be heard in open court.
- (4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.
- (5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (6) Any directions given by the judge advocate shall be binding on the court.”

## **20 Powers of court**

After section 83ZF of each of the 1955 Acts there is inserted—

### **“83ZG Powers of summary appeal court**

- (1) On an appeal against a finding that a charge has been proved, the summary appeal court—
  - (a) may confirm or quash the finding, or
  - (b) in a case where the commanding officer or appropriate superior authority could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.
- (2) Where the court quashes a finding—
  - (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
  - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
    - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding that a charge has been proved, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded by the commanding officer or appropriate superior authority so as to award any punishment which—
  - (a) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
  - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
  - (a) may confirm the punishment awarded by the commanding officer or appropriate superior authority, or
  - (b) may substitute any other punishment which—
    - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
    - (ii) in the opinion of the court, is no more severe than that originally awarded.

- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on dealing with the charge summarily.
- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been made or awarded by the officer who dealt summarily with the charge.”

(2) After section 52FL of the 1957 Act there is inserted—

**“52FM Powers of court**

- (1) On an appeal against a finding of guilt, the summary appeal court—
  - (a) may confirm or quash the finding, or
  - (b) in a case where the officer who conducted the summary trial could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.
- (2) Where the court quashes a finding—
  - (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
  - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding of guilt, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded at the summary trial so as to award any punishment which—
  - (a) it would have been within the powers of the officer who conducted the summary trial to award, and
  - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
  - (a) may confirm the punishment awarded at the summary trial, or
  - (b) may substitute any other punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
    - (ii) in the opinion of the court, is no more severe than that originally awarded.
- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on summary trial of the charge.



- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been awarded or made by the officer who conducted the summary trial.”

## **21 Making of, and appeals from, decisions of court**

- (1) After section 83ZG of each of the 1955 Acts there is inserted—

### **“83ZH Making of, and appeals from, decisions of court**

- (1) Subject to section 83ZF(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 83ZD(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.”

- (2) After section 52FM of the 1957 Act there is inserted—

### **“52FN Making of, and appeals from, decisions of court**

- (1) Subject to section 52FL(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 52FJ(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.”

## **22 Rules**

- (1) After section 83ZH of each of the 1955 Acts there is inserted—

### **“83ZJ Rules of summary appeal court**

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
- (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 83ZE of this Act;
  - (b) as to the bringing and abandonment of appeals;
  - (c) as to the procedure for applying for leave under section 83ZE(2) or (3) of this Act;
  - (d) as to the procedure for applying for leave, or making a reference, under section 115(5A) or (5B) of this Act;
  - (e) as to consultation by the court administration officer with the Judge Advocate General before specifying where the court is to sit;

- (f) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 83ZB of this Act sitting alone;
  - (g) enabling an uncontested appeal to be determined without a hearing;
  - (h) as to the convening and constitution of the court to hear any appeal;
  - (i) as to circumstances in which officers otherwise qualified under section 83ZC of this Act are ineligible to hear particular appeals;
  - (j) enabling the appellant to object to members of the court;
  - (k) as to the representation of the appellant on the hearing of appeals under section 83ZE of this Act and at any preliminary proceedings;
  - (l) as to the admissibility of evidence;
  - (m) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
  - (n) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
  - (o) as to the administration of oaths;
  - (p) as to the recording of the proceedings of the court and custody of records of the proceedings;
  - (q) as to making copies of the records of proceedings available and as to the fees payable for such copies;
  - (r) as to the procedure for applying to have a case stated under section 83ZH(2) of this Act.
- (3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.
- (4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) After section 52FN of the 1957 Act there is inserted—

**“52FP Rules of summary appeal court**

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
  - (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 52FK of this Act;
  - (b) as to the bringing and abandonment of appeals;
  - (c) as to the procedure for applying for leave under section 52FK(2) or (3) of this Act;
  - (d) as to the procedure for applying for leave, or making a reference, under section 71B(5A) or (5B) of this Act;
  - (e) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 52FG of this Act sitting alone;

- (f) enabling an uncontested appeal to be determined without a hearing;
  - (g) as to the convening and constitution of the court to hear any appeal;
  - (h) as to circumstances in which officers otherwise qualified under section 52FH of this Act are ineligible to hear particular appeals;
  - (i) enabling the appellant to object to members of the court;
  - (j) as to the representation of the appellant on the hearing of appeals under section 52FK of this Act and at any preliminary proceedings;
  - (k) as to the admissibility of evidence;
  - (l) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
  - (m) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
  - (n) as to the administration of oaths;
  - (o) as to the recording of the proceedings of the court and custody of records of the proceedings;
  - (p) as to making copies of the records of proceedings available and as to the fees payable for such copies;
  - (q) as to the procedure for applying to have a case stated under section 52FN(2) of this Act.
- (3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.
- (4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

## **23 Oaths required of members of court**

- (1) After section 83ZJ of each of the 1955 Acts there is inserted—

### **“83ZK Administration of oaths to members of summary appeal court**

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.
- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) After section 52FP of the 1957 Act there is inserted—

### **“52FQ Administration of oaths to members of summary appeal court**

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.

- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## **24 Privilege of witnesses and others**

- (1) After section 83ZK of each of the 1955 Acts there is inserted—

### **“83ZL Privileges of witnesses and others**

A witness before the summary appeal court or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.”

- (2) After section 52FQ of the 1957 Act there is inserted—

### **“52FR Privileges of witnesses and others**

A witness before the summary appeal court or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.”

## **25 Further amendments relating to summary appeal courts**

Schedule 3 to this Act (which makes further amendments of the 1955 Acts and the 1957 Act in relation to the summary appeal courts) shall have effect.

### *Supplemental*

## **26 Interpretation**

In this Act—

- “the 1955 Acts” means the Army Act 1955 and the Air Force Act 1955;
- “the 1957 Act” means the Naval Discipline Act 1957.

## **27 Repeals**

The enactments specified in Schedule 4 are hereby repealed to the extent specified in the third column of that Schedule.

## **28 Short title and commencement**

- (1) This Act may be cited as the Armed Forces Discipline Act 2000.
- (2) This Act, except this section and section 26, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) An order under subsection (2)—
  - (a) may appoint different days for different purposes, and

- (b) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with any provision brought into force by the order.