

*Status: Point in time view as at 02/10/2000.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Discipline Act 2000 (repealed), SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 25.

#### AMENDMENTS OF 1955 ACTS AND 1957 ACT RELATING TO SUMMARY APPEAL COURTS

##### *Offences in relation to summary appeal court*

1 In section 57 of the <sup>M1</sup>Army Act 1955 (offences in relation to court-martial) after subsection (5) there is inserted—

“(6) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial include references to the summary appeal court, the court established by section 83ZA of the Air Force Act 1955 or the court established by section 52FF of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to any of those courts, that subsection shall have effect as if the words “other than the court in relation to which the offence was committed” were omitted.

(7) In relation to an offence committed in relation to the summary appeal court, subsection (2) of this section shall have effect as if—

- (a) the reference to a court-martial held in pursuance of this Act were a reference to the summary appeal court,
- (b) for “another court-martial” there were substituted “a court-martial”, and
- (c) for “the president” there were substituted “the judge advocate”.

#### **Marginal Citations**

**M1** 1955 c. 18.

2 In section 57 of the <sup>M2</sup>Air Force Act 1955 (offences in relation to court-martial) after subsection (5) there is inserted—

“(6) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial include references to the summary appeal court, the court established by section 83ZA of the Army Act 1955 or the court established by section 52FF of the Naval Discipline Act 1957 and, in relation to an offence committed in relation to any of those courts that subsection shall have effect as if the words “other than the court in relation to which the offence was committed” were omitted.

(7) In relation to an offence committed in relation to the summary appeal court, subsection (2) of this section shall have effect as if—

- (a) the reference to a court-martial held in pursuance of this Act were a reference to the summary appeal court,
- (b) for “another court-martial” there were substituted “a court-martial”, and

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(c) for “the president” there were substituted “the judge advocate”.

**Marginal Citations**

**M2** 1955 c. 19.

3 In section 38 of the 1957 Act (offences in relation to courts-martial) after subsection (4) there is inserted—

“(5) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial include references to the summary appeal court, the court established by section 83ZA of the Army Act 1955 or the court established by section 83ZA of the Air Force Act 1955 and, in relation to an offence committed in relation to the summary appeal court, subsection (3) of this section shall have effect as if the reference to a court-martial were a reference to the summary appeal court.”

*Rules about election for immediate commencement of sentence*

4 In section 83 of each of the 1955 Acts (regulations as to summary dealings etc.) in subsection (2) after paragraph (g) there is inserted—

“(gg) the procedure for making elections under section 118ZA(2) of this Act and withdrawing such elections;”.

5 In section 52F of the 1957 Act (regulations about summary dealings etc.) in subsection (2) after paragraph (g) there is inserted—

“(gg) the procedure for making elections under section 85A(2) of this Act and withdrawing such elections;”.

*Offences by civilians in relation to summary appeal court*

6 In section 101 of each of the 1955 Acts (offences by civilians in relation to courts-martial) after subsection (2) there is inserted—

“(3) In subsection (1) of this section references in paragraphs (a) to (g) to a court-martial include references to the summary appeal court and, in relation to an offence committed in relation to that court—

(a) the reference to the president of the court-martial is a reference to the judge advocate in relation to the summary appeal court, and

(b) the reference to a court-martial held outside the United Kingdom is a reference to the summary appeal court sitting outside the United Kingdom.”

7 In section 65 of the 1957 Act (contempt of court-martial by civilians) after subsection (4) there is inserted—

“(5) References in subsections (1) and (3) above to a court-martial include references to the summary appeal court.”

*Commencement and suspension of sentences*

8 In section 118 of each of the 1955 Acts (commencement of sentences) in subsection (1)—

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- (a) after “detention” there is inserted “ awarded by a court-martial ”, and
- (b) the words from “or, as the case may be” onwards are omitted.

9 After section 118 of each of the 1955 Acts there is inserted—

**“118ZA Commencement of sentence of detention awarded by commanding officer.**

- (1) Subject to the following provisions of this Part of this Act, subsections (2) to (4) below apply to a sentence of detention awarded by the offender’s commanding officer.
- (2) If the offender so elects at the time of the award, his sentence shall begin to run from the day on which it is awarded.
- (3) If the offender does not make an election under subsection (2) above or, having made such an election, withdraws it during the appeal period, his sentence or, in the case of withdrawal, the remainder of his sentence shall be suspended by virtue of this subsection—
  - (a) until the end of the appeal period, or
  - (b) where an appeal is brought within the appeal period, until the determination of the appeal.
- (4) Where an appeal is brought—
  - (a) within the appeal period, by an offender who has made an election under subsection (2) above which has not been withdrawn, or
  - (b) after the end of the appeal period, by any offender,the remainder of his sentence shall be suspended by virtue of this subsection until the determination of the appeal.
- (5) In this section “the appeal period” means the period within which an appeal may be brought under section 83ZE(2) of this Act.”

- 10 (1) Section 85 of the 1957 Act (commencement of sentences) is amended as follows.
- (2) In subsection (1) for “under this Act” there is substituted “ by a court-martial ”.
- (3) Subsection (2) is omitted.

11 After section 85 of the 1957 Act there is inserted—

**“85A Sentence of detention awarded on summary trial.**

- (1) Subject to the following provisions of this Part of this Act, subsections (2) to (5) below apply to a sentence of detention awarded on summary trial.
- (2) If the offender so elects at the time of the award, his sentence shall begin to run from the day on which it is awarded.
- (3) For the purposes of subsection (2) above, a sentence shall be taken to be awarded on the day on which the warrant specifying the sentence, as approved in accordance with regulations made by the Defence Council, is read to the offender or, if the offender has been detained in custody since the signature of that warrant by the officer by whom he was tried, on the first day on which he was so detained.

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- (4) If the offender does not make an election under subsection (2) above or, having made such an election, withdraws it during the appeal period, his sentence or, in the case of withdrawal, the remainder of his sentence shall be suspended by virtue of this subsection—
- (a) until the end of the appeal period, or
  - (b) where an appeal is brought within the appeal period, until the determination of the appeal.
- (5) Where an appeal is brought—
- (a) within the appeal period, by an offender who has made an election under subsection (2) above which has not been withdrawn, or
  - (b) after the end of the appeal period, by any offender,
- the remainder of his sentence shall be suspended by virtue of this subsection until the determination of the appeal.
- (6) In this section “the appeal period” means the period within which an appeal may be brought under section 52FK(2) of this Act.”

*Consecutive terms of detention*

- 12 In section 118A of each of the 1955 Acts (consecutive terms of imprisonment and detention) after subsection (2) there is inserted—
- “(2A) Where on awarding a sentence of detention (“the subsequent sentence”) the offender’s commanding officer orders under subsection (2) of this section that the subsequent sentence is to begin to run from the expiry of another sentence (“the current sentence”)—
- (a) section 118ZA of this Act shall have effect in relation to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were a reference to the expiry of the current sentence, and
  - (b) where the suspension of a sentence by virtue of subsection (3) or (4) of that section would end before the expiry of the current sentence, the sentence shall run from the expiry of the current sentence.”
- 13 In section 86 of the 1957 Act (consecutive terms of imprisonment and detention) after subsection (2) there is inserted—
- “(2A) Where on awarding a sentence of detention (“the subsequent sentence”) the offender’s commanding officer orders under subsection (2) of this section that the subsequent sentence is to begin to run from the expiry of another sentence (“the current sentence”)—
- (a) section 85A of this Act shall have effect in relation to the subsequent sentence as if the reference in subsection (2) of that section to the day on which the sentence is awarded were a reference to the expiry of the current sentence, and
  - (b) where the suspension of a sentence by virtue of subsection (4) or (5) of that section would end before the expiry of the current sentence, the sentence shall run from the expiry of the current sentence.”

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*Limitation of total period of sentences of detention*

- 14 In section 119A of each of the 1955 Acts (duration of sentence of imprisonment and detention) after subsection (2) there is inserted—

“(2A) Where the whole or part of a sentence of detention is suspended by virtue of section 118ZA(3) or (4) of this Act, any period of detention ending with the beginning of the suspension shall be taken for the purposes of subsection (1) above to be continuous with any period of detention beginning with the end of the suspension.”

- 15 In section 89 of the 1957 Act (limitation of total period of sentences of detention) after subsection (2) there is inserted—

“(2A) Where the whole or part of a sentence of detention is suspended by virtue of section 85A(4) or (5) of this Act, any period of detention ending with the beginning of the suspension shall be taken for the purposes of subsection (1) above to be continuous with any period of detention beginning with the end of the suspension.”

*Persons ceasing to be subject to service law*

- 16 In section 131 of each of the 1955 Acts (trial and punishment of offences under service law notwithstanding offender ceasing to be subject to service law), in subsection (1) after the words “summary dealing with charges” there is inserted “ (including appeals against findings recorded, or punishments awarded, on summary dealing) ”.

*Civilians*

- 17 In subsection (3) of section 209 of each of the 1955 Acts (application of Act to civilians), after paragraph (faa) there is inserted—

“(fab) where the summary appeal court hears an appeal brought by any such person as is mentioned in subsection (1) or (2) above and the court would otherwise include two officers qualified under section 83ZC of this Act for membership of the court, the court may include in place of either or both of them a corresponding number of persons who are in the service of the Crown and are persons such as are mentioned in subsection (1) or (2) above,

(fac) references in Part II of this Act to the officers qualified under section 83ZC for membership of the summary appeal court shall be construed as including references to persons who are members of that court by virtue of paragraph (fab) above.”

- 18 In Schedule 4 to the 1957 Act (application of Act to certain civilians) after paragraph 4B there is inserted—

“4C (1) Where the summary appeal court hears an appeal brought by any person to whom this Act applies by virtue of section 118 of this Act and the court would otherwise include two officers qualified under section 52FH of this Act for membership of the court, the court may include in place of either or both of them a corresponding number of persons who are in the service of the Crown and are persons to whom this Act applies by virtue of section 118.

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- (2) References in Part II of this Act to the officers qualified under section 52FH for membership of the summary appeal court shall be construed as including references to persons who are members of that court by virtue of sub-paragraph (1) of this paragraph.”

*Review of summary findings and awards*

- 19 (1) Section 115 of each of the 1955 Acts (review of summary findings and awards) is amended as follows.
- (2) Subsection (2) is omitted.
- (3) In subsection (3), the word “other” is omitted.
- (4) After subsection (5) there is inserted—
- “(5A) Where—
- (a) the period of fourteen days referred to in subsection (2) of section 83ZE of this Act has expired, and
- (b) no appeal has been brought under that section,
- the authority carrying out a review under this section may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both) to that court to be considered by it as on an appeal.
- (5B) Where an appeal has been brought under section 83ZE of this Act and it appears to the authority carrying out a review under this section, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both), including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal.
- (5C) A reference to the summary appeal court under subsection (5A) or (5B) of this section shall for the purposes of this Act be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.
- (5D) In a case where exceptionally the authority carrying out a review under this section of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment relates only to that finding, quash the punishment awarded in consequence of that finding.
- (5E) The powers conferred by subsection (5D) of this section are exercisable whether or not the conditions in subsection (5A)(a) and (b) are satisfied.”
- (5) Subsections (6) and (7) are omitted.
- 20 (1) Section 71B of the 1957 Act (review of summary findings and awards) is amended as follows.
- (2) Subsection (2) is omitted.
- (3) In subsection (3)—
- (a) for “sentence” there is substituted “ punishment ”, and

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(b) the word “other” is omitted.

(4) After subsection (5) there is inserted—

“(5A) Where—

(a) the period of fourteen days referred to in subsection (2) of section 52FK of this Act has expired, and

(b) no appeal has been brought under that section,

the authority carrying out a review under this section may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both) to that court to be considered by it as on an appeal.

(5B) Where an appeal has been brought under section 52FK of this Act and it appears to the authority carrying out a review under this section, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded (or both), including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal.

(5C) A reference to the summary appeal court under subsection (5A) or (5B) of this section shall for the purposes of this Act be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.

(5D) In a case where exceptionally the authority carrying out a review under this section of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment awarded relates only to that finding, quash the punishment awarded in consequence of that finding.

(5E) The powers conferred by subsection (5D) of this section are exercisable whether or not the conditions in subsection (5A)(a) and (b) are satisfied.”

(5) Subsections (6) and (7) are omitted.

*Relations between service law and civil courts*

21 In section 133 of each of the 1955 Acts (powers of civil courts) in subsection (2) (c)—

(a) after “finding” there is inserted “ or award ”, and

(b) for the words from “, or the award” to the end there is substituted “ on review or quashed or varied by the summary appeal court. ”

22 In section 134 of each of the 1955 Acts (persons not to be tried under those Acts for offences already disposed of) in subsection (2)(c)—

(a) after “finding” there is inserted “ or award ”, and

(b) for the words from “, or the award” to the end of the paragraph there is substituted “ on review or quashed or varied by the summary appeal court; ”.

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*Meaning of “the summary appeal court”*

- 23 In section 225(1) of the <sup>M3</sup>Army Act 1955 and in section 223(1) of the <sup>M4</sup>Air Force Act 1955 (general provisions as to interpretation), after the definition of “stoppages” there is inserted—

““the summary appeal court” means the court established by section 83ZA of this Act;”.

**Marginal Citations**

**M3** 1955 c. 18.

**M4** 1955 c. 19.

- 24 In section 135(1) of the 1957 Act (general interpretation), after the definition of “steals” there is inserted—

““the summary appeal court” means the court established by section 52FF of this Act;”.



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