

SCHEDULES

SCHEDULE 3

Section 26

UNFITNESS TO STAND TRIAL AND INSANITY: COURTS-MARTIAL ETC

Army Act 1955 (3 & 4 Eliz. 2 c. 18) and Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)

- 1 For section 116 of the Army Act 1955 and of the Air Force Act 1955 (provisions where accused found insane) substitute—

“Findings of unfitness to stand trial and insanity

Fitness to stand trial

- (1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.
- (3) If, having regard to the nature of the supposed disability, the judge advocate is of opinion that it is expedient to do so and in the interests of the accused, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.
- (4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the judge advocate sitting alone.
- (7) A judge advocate shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

Finding that the accused did the act or made the omission charged

- (1) This section applies where in accordance with section 115A(6) above it is determined by a judge advocate that the accused is unfit to stand trial.
- (2) The trial shall not proceed or further proceed but it shall be determined by the court—

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

Findings of insanity

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

Powers to deal with person unfit to stand trial or not guilty by reason of insanity

- (1) This section applies where, on a trial of a person by a court-martial—
 - (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
 - (b) the accused is found not guilty by reason of insanity.
- (2) The court shall make in respect of the accused—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
 - (a) the offence to which the finding relates is an offence the sentence for which is fixed by law, and
 - (b) the court has power to make a hospital order,
 the court shall make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).

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- (4) The functions of the court under this section shall be exercised by the judge advocate (or, where subsection (5) below applies, the judicial officer) sitting alone, and section 95(2) and (3) above shall not apply.
- (5) Any function of the court under this section exercisable after an adjournment or an appeal shall be exercisable by a judicial officer if—
- (a) the court ordering the adjournment, or (as the case may be) the Courts-Martial Appeal Court, so orders; or
 - (b) the Judge Advocate General so directs.
- (6) In this Act—
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
 - “restriction order” has the meaning given to it by section 41 of that Act;
 - “supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a person (“the supervising officer”) for a period specified in the order of not more than two years.

Orders under the Mental Health Act

- (1) In relation to the making of an order by virtue of subsection (2)(a) of section 116A above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—
- (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted—
- “(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”
- (2) In relation to a case where section 116A above applies but the court has not yet made one of the disposals mentioned in subsection (2) of that section—
- (a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
 - (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if—

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- (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 116A above applies; and
 - (ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.
- (3) In relation to the making of any order under the 1983 Act by virtue of this Act, that Act shall apply—
- (a) as if references to the Crown Court were references to a court-martial;
 - (b) as if references to an offender were references to a person in whose case section 116A above applies (references to an offence being construed accordingly); and
 - (c) with such further modifications as may be prescribed.
- (4) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an order is made under the 1983 Act by virtue of this Act.
- Regulations under this subsection may in particular make provision for a person in respect of whom such an order has been made to be conveyed to, and detained in, a place of safety pending his admission to hospital.
- (5) Where—
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 116A(1)(a) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may either remit the person for trial before a court-martial or direct that he be tried before a civil court.
- In this subsection “responsible medical officer” means the registered medical practitioner in charge of the person’s treatment.
- (6) The Secretary of State may by regulations make provision supplementing subsection (5) above, including in particular—
- (a) provision for a person in whose case that subsection applies to be conveyed to a court or place of detention and to be detained in such a place;
 - (b) provision for the hospital order and the restriction order to cease to have effect at such time as may be prescribed.

Supervision orders

- (1) The court shall not make an order under section 116A(2)(b) above unless it is satisfied—
- (a) that, having regard to all the circumstances of the case, the making of a supervision order is the most suitable means of dealing with the accused;
 - (b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and

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- (c) that arrangements have been made for any treatment which (under subsection (2) below) is intended to be specified in the order.
- (2) An order under section 116A(2)(b) above may, in accordance with regulations under subsection (3) below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- (3) The Secretary of State may—
 - (a) by order direct that the definition of “supervision order” in section 116A(6) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order under this subsection;
 - (b) by regulations make further provision in relation to supervision orders.
- (4) Regulations under subsection (3) above may in particular make provision—
 - (a) as to the procedure to be followed by a court-martial making a supervision order;
 - (b) as the requirements which may be specified in such an order;
 - (c) as to the descriptions of supervising officer who may be so specified;
 - (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
 - (e) for the amendment and revocation of any supervision order.

Provisions supplementary to sections 115A to 116C

- (1) In this section and sections 115A to 116C above—
 - “duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);
 - “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 115A and 116 of this Act which permit a court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (3) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the court may require the signatory of any such report to be called to give oral evidence.
- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
 - (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;

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- (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
 - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 116A to 116C above, and orders under section 116C(3) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 2 In section 225(1) of the Army Act 1955 and in section 223(1) of the Air Force Act 1955 (general provisions as to interpretation) insert at the appropriate places—
- ““hospital order” has the meaning assigned to it by section 116A(6) of this Act;”;
 - ““restriction order” has the meaning assigned to it by section 116A(6) of this Act;”;
 - ““supervision order” has the meaning assigned to it by section 116A(6) of this Act;”.

Naval Discipline Act 1957 (c. 53)

- 3 For section 63 of the Naval Discipline Act 1957 (provisions where accused found insane) substitute—

“Findings of unfitness to stand trial and insanity

Fitness to stand trial

- (1) This section applies where on a trial by court-martial of a person the question arises (at the instance of the defence or otherwise) whether the accused is fit to stand trial.
- (2) For the purposes of this Act a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales.
- (3) If, having regard to the nature of the supposed disability, the judge advocate is of opinion that it is expedient to do so and in the interests of the accused, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.
- (4) If, before the question of fitness to stand trial falls to be determined, the court finds the accused not guilty on the charge or each of the charges on which he is being tried, that question shall not be determined.
- (5) Subject to subsections (3) and (4) above, the question of fitness to stand trial shall be determined as soon as it arises.
- (6) The question of fitness to stand trial shall be determined by the judge advocate sitting alone.

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- (7) A judge advocate shall not make a determination under subsection (6) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

Finding that the accused did the act or made the omission charged

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

Findings of insanity

- (1) Where, on the trial of a person by court-martial, the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court shall find that the accused was not guilty of that offence by reason of insanity.
- (2) No finding under subsection (1) above shall be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

Powers to deal with person unfit to stand trial or not guilty by reason of insanity

- (1) This section applies where, on a trial of a person by a court-martial—
- (a) the accused is found to be unfit to stand trial and to have done the act or made the omission charged against him; or
 - (b) the accused is found not guilty by reason of insanity.
- (2) The court shall make in respect of the accused—
- (a) a hospital order (with or without a restriction order);

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- (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
- (a) the offence to which the finding relates is an offence the sentence for which is fixed by law, and
 - (b) the court has power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this subsection).
- (4) The functions of the court under this section shall be exercised by the judge advocate (or, where subsection (5) below applies, the judicial officer) sitting alone, and sections 56A(3) and 57 above shall not apply.
- (5) Any function of the court under this section exercisable after an adjournment or an appeal shall be exercisable by a judicial officer if—
- (a) the court ordering the adjournment, or (as the case may be) the Courts-Martial Appeal Court, so orders; or
 - (b) the Judge Advocate of Her Majesty’s Fleet so directs.
- (6) In this Act—
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
 - “restriction order” has the meaning given to it by section 41 of that Act;
 - “supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a person (“the supervising officer”) for a period specified in the order of not more than two years.

Orders under the Mental Health Act

- (1) In relation to the making of an order by virtue of subsection (2)(a) of section 63A above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—
- (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 63A above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted—
- “(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”
- (2) In relation to a case where section 63A above applies but the court has not yet made one of the disposals mentioned in subsection (2) of that section—
- (a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);

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- (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if—
 - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 63A above applies; and
 - (ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.
- (3) In relation to the making of any order under the 1983 Act by virtue of this Act, that Act shall apply—
- (a) as if references to the Crown Court were references to a court-martial;
 - (b) as if references to an offender were references to a person in whose case section 63A above applies (references to an offence being construed accordingly); and
 - (c) with such further modifications as may be prescribed.
- (4) The Secretary of State may by regulations make provision with respect to the admission to, detention in, and release from, hospital of any person in respect of whom an order is made under the 1983 Act by virtue of this Act.
- Regulations under this subsection may in particular make provision for a person in respect of whom such an order has been made to be conveyed to, and detained in, a place of safety pending his admission to hospital.
- (5) Where—
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 63A(1)(a) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may either remit the person for trial before a court-martial or direct that he be tried before a civil court.
- In this subsection “responsible medical officer” means the registered medical practitioner in charge of the person’s treatment.
- (6) The Secretary of State may by regulations make provision supplementing subsection (5) above, including in particular—
- (a) provision for a person in whose case that subsection applies to be conveyed to a court or place of detention and to be detained in such a place;
 - (b) provision for the hospital order and the restriction order to cease to have effect at such time as may be prescribed.

Supervision orders

- (1) The court shall not make an order under section 63A(2)(b) above unless it is satisfied—
 - (a) that, having regard to all the circumstances of the case, the making of a supervision order is the most suitable means of dealing with the accused;
 - (b) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
 - (c) that arrangements have been made for any treatment which (under subsection (2) below) is intended to be specified in the order.
- (2) An order under section 63A(2)(b) above may, in accordance with regulations under subsection (3) below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- (3) The Secretary of State may—
 - (a) by order direct that the definition of “supervision order” in section 63A(6) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order under this subsection;
 - (b) by regulations make further provision in relation to supervision orders.
- (4) Regulations under subsection (3) above may in particular make provision—
 - (a) as to the procedure to be followed by a court-martial making a supervision order;
 - (b) as the requirements which may be specified in such an order;
 - (c) as to the descriptions of supervising officer who may be so specified;
 - (d) for treatment to be provided at a place other than the place specified in the order in accordance with arrangements made by the medical practitioner by whom or under whose direction the supervised person is being treated;
 - (e) for the amendment and revocation of any supervision order.

Provisions supplementary to sections 62A to 63C

- (1) In this section and sections 62A to 63C above—

“duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);

“prescribed” means prescribed by regulations made by the Secretary of State.
- (2) For the purposes of the provisions of sections 62A and 63 of this Act which permit a court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to

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subsection (3) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the court may require the signatory of any such report to be called to give oral evidence.

- (3) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
 - (b) if the accused is not so represented, the substance of the report shall be disclosed to him; and
 - (c) the accused may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the accused or on his behalf.
- (4) The power of the Secretary of State to make regulations under sections 63A to 63C above, and orders under section 63C(3) above, shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

4 In the proviso to section 56(3) of that Act (court-martial not to be adjourned for more than six days), after “except with the consent of the accused and the prosecuting authority” insert “, or for the purpose of exercising powers under section 63A of this Act,”.

5 In section 135(1) of that Act (general provisions as to interpretation) insert at the appropriate places—

““hospital order” has the meaning assigned to it by section 63A(6) of this Act;”;

““restriction order” has the meaning assigned to it by section 63A(6) of this Act;”;

““supervision order” has the meaning assigned to it by section 63A(6) of this Act;”.

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

6 The Courts-Martial (Appeals) Act 1968 is amended as follows.

7 For section 16 substitute—

“Substitution of finding of insanity or findings of unfitness to stand trial etc.

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

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- (2) The Appeal Court shall make in respect of the appellant—
- (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the Appeal Court have power to make a hospital order,
- the Appeal Court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) The provisions of, or made under, the sections specified below shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.
- The sections are—
- (c) where the relevant Service Act is the Army Act, sections 116B to 116D of that Act;
 - (d) where the relevant Service Act is the Air Force Act, sections 116B to 116D of that Act;
 - (e) where the relevant Service Act is the Naval Discipline Act, sections 63B to 63D of that Act.
- (5) Where the Appeal Court make an interim hospital order by virtue of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the Mental Health Act 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (6) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.”

8 In section 21 (appeal against finding of not guilty by reason of insanity), in subsection (1), after “except” insert “section 8(2) and”.

9 In section 22 (consequences where appeal under section 21 allowed), at the beginning of subsection (4) insert “Subject to section 23 below,”.

10 For section 23 substitute—

“Substitution of findings of unfitness to stand trial etc.

- (1) This section applies where, on an appeal under section 21 of this Act, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—

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- (a) the case is not one where there should have been a finding of not guilty; but
 - (b) there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
 - (2) The Appeal Court shall make in respect of the appellant—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
 - (3) Where—
 - (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the Appeal Court have power to make a hospital order,the Appeal Court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
 - (4) The provisions of, or made under, the sections specified below shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.

The sections are—

 - (c) where the relevant Service Act is the Army Act, sections 116B to 116D of that Act;
 - (d) where the relevant Service Act is the Air Force Act, sections 116B to 116D of that Act;
 - (e) where the relevant Service Act is the Naval Discipline Act, sections 63B to 63D of that Act.
 - (5) Where the Appeal Court make an interim hospital order by virtue of this section—
 - (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the Mental Health Act 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
 - (6) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.”
- 11 (1) Section 24 (appeal against finding of unfitness to stand trial) is amended as follows.
- (2) In subsection (1)—
 - (a) for “his trial” substitute “trial and to have done the act or made the omission charged against him”;
 - (b) for “the finding” substitute “either or both of those findings”.
 - (3) In subsection (2), after “except” insert “section 8(2) and”.
- 12 For section 25 substitute—

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“Disposal of appeal under s. 24

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

13 After that section insert—

“Appeal against order made in cases of insanity or unfitness to stand trial

Right of appeal against hospital order etc.

- (1) A person in whose case a court-martial—
 - (a) makes a hospital order or interim hospital order by virtue of the relevant Service Act, or
 - (b) makes a supervision order under the relevant Service Act,
 may appeal to the Appeal Court against the order.
- (2) An appeal under this section lies only with the leave of the Appeal Court.

Disposal of appeal under s. 25A

- (1) If on an appeal under section 25A of this Act the Appeal Court consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
 - (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Appeal Court make an interim hospital order by virtue of this section—
 - (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by a judicial officer and not by the Appeal Court; and

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- (b) section 38(7) of the said Act of 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (4) The fact that an appeal is pending against a supervision order under the relevant Service Act shall not affect any power conferred on any other court to revoke or amend the order.
- (5) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.”
- 14 (1) Section 57 (interpretation) is amended as follows.
- (2) In subsection (1) insert at the relevant places—
- ““duly approved” means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis and treatment of mental disorder (within the meaning of that Act);”;
- ““hospital order” has the meaning given in section 37 of the Mental Health Act 1983;”;
- ““interim hospital order” has the meaning given in section 38 of that Act;”;
- ““judicial officer” has the same meaning as in the relevant Service Act;”;
- ““restriction order” has the meaning given to it by section 41 of the Mental Health Act 1983;”;
- ““supervision order” means an order which requires the person in respect of whom it is made to be under the supervision of another person for a period specified in the order of not more than two years.”
- (3) After subsection (2) insert—
- “(2A) For the purposes of the provisions of sections 16 and 23 of this Act which permit the Appeal Court to act on the written evidence of a registered medical practitioner or a registered medical practitioner who is duly approved, a report in writing purporting to be signed by a registered medical practitioner or a registered medical practitioner who is duly approved may, subject to subsection (2B) below, be received in evidence without proof of the signature of the practitioner and without proof that he has the requisite qualifications or is duly approved; but the Appeal Court may require the signatory of any such report to be called to give oral evidence.
- (2B) Where, in pursuance of a direction of the Appeal Court, any such report is tendered in evidence otherwise than by or on behalf of the appellant, then—
- (a) if the appellant is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
- (b) if the appellant is not so represented, the substance of the report shall be disclosed to him; and
- (c) the appellant may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by the appellant or on his behalf.”

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

- 15 (1) Schedule 3 (modifications in relation to prisoners of war) is amended as follows.
- (2) In paragraph 3—
- (a) in paragraph (a), for “or 15” substitute “, 14A, 15 or 25A”;
 - (b) omit paragraph (b).
- (3) After paragraph 3 insert—
- “3A In relation to a protected prisoner of war, sections 16 and 23 of this Act shall each have effect as if the following subsection were substituted for subsection (4)—
- “(4) The provisions of a Royal Warrant shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.””