



Armed Forces Act 2006

2006 CHAPTER 52

First Group of PartsDiscipline

PART 7

TRIAL BY COURT MARTIAL

CHAPTER 2

COURT MARTIAL PROCEEDINGS

158 Open court

Subject to any provision made by Court Martial rules, the Court Martial must sit in open court.

159 Rulings and directions

- (1) In the case of proceedings where the Court Martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (2) Any rulings or directions given under subsection (1) are binding on the court.

160 Decisions of Court Martial: finding and sentence

- (1) Subject to the following provisions of this section, the finding of the Court Martial on a charge, and any sentence passed by it, must be determined by a majority of the votes of the members of the court.
- (2) The judge advocate is not entitled to vote on the finding.
- (3) In the case of an equality of votes on the finding, the court must acquit the defendant.

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- (4) In the case of an equality of votes on the sentence, the judge advocate has a casting vote.

161 Power of Court Martial to convict of offence other than that charged

- (1) Where the Court Martial acquits a person of an offence specifically charged in the charge sheet, but the allegations in the charge sheet amount to or include (expressly or by implication) an allegation of another service offence, the court may convict him of that other offence.
- (2) For the purposes of subsection (1)—
 - (a) an allegation of an offence to which section 39(1) applies (offence X) shall be taken as including an allegation of an offence under that section of attempting to commit offence X; and
 - (b) an allegation of a completed section 42 offence shall be taken as including an allegation of a section 42 offence of attempt.
- (3) Subsection (1) applies in relation to a charge sheet containing more than one charge as if each charge were contained in a separate charge sheet.
- (4) In this section—

“a completed section 42 offence” means an offence that, by virtue of section 1(4) of the Criminal Attempts Act 1981 (c. 47) as modified by section 43 of this Act, is an offence to which section 1 of that Act applies;

“a section 42 offence of attempt” has the meaning given by section 44(2).

162 Privileges of witnesses and others

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

163 Court Martial rules

- (1) The Secretary of State may by rules (referred to in this Act as “Court Martial rules”) make provision with respect to the Court Martial.
- (2) Court Martial rules may in particular make provision with respect to—
 - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
 - (b) trials and other proceedings of the court;
 - (c) the practice and procedure of the court;
 - (d) evidence, including the admissibility of evidence;
 - (e) the representation of the defendant;
 - (f) appeals from the Service Civilian Court.
- (3) Without prejudice to the generality of subsections (1) and (2), Court Martial rules may make provision—
 - (a) as to oaths and affirmations for members of the court, witnesses and other persons;
 - (b) as to objections to, and the replacement of, members of the court;

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- (c) as to the constitution of the court;
 - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
 - (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
 - (i) the payment of expenses to persons summoned to attend the court;
 - (ii) the issue by the court of warrants for the arrest of persons;
 - (f) as to the amendment of charges;
 - (g) for the taking into consideration, when sentencing an offender, of any other service offence committed by him;
 - (h) for the variation by the court of a sentence passed by it or the variation or rescission by it of an order made by it;
 - (i) for appeals—
 - (i) against any orders (including directions) of the court prohibiting or restricting the publication of any matter or excluding the public from any proceedings (whether made in preliminary proceedings or otherwise);
 - (ii) against any other orders or rulings made in proceedings preliminary to a trial;
 - (j) for the discharge of a court (including provision as to retrials and rehearings following discharge);
 - (k) for the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 (c. 11) (orders for the inspection of bankers' books for the purposes of legal proceedings) to be exercisable by a judge advocate as well as by the court or a judge within the meaning of that Act;
 - (l) for the making and retention of records of the proceedings of the court;
 - (m) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
 - (n) conferring functions in relation to the court on the court administration officer;
 - (o) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
- (a) conferring powers of arrest;
 - (b) requiring any arrested person to be brought before the court;
 - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- (6) Court Martial rules must secure that, after arraignment, charges may not be amended—
- (a) in circumstances substantially different from those in which indictments are amendable by the Crown Court; or
 - (b) otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which indictments are so amendable.

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- (7) Rules made by virtue of subsection (3)(h) may make provision about the commencement of sentences or orders varied by the court (including provision conferring on the court a power to direct that a sentence shall take effect otherwise than as mentioned in section 289(1)).
- (8) Court Martial rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.
- (9) Rules made by virtue of paragraph (i) of subsection (3) may confer jurisdiction on the Court Martial Appeal Court, and rules under section 49 of the Court Martial Appeals Act 1968 may make provision about the powers of that court in relation to appeals made by virtue of that paragraph.