



Air Force Act 1955

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PART II

DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR-FORCE OFFENCES

Confirmation, Revision and Review of Proceedings of Courts-Martial

107 Confirmation of proceedings of courts-martial

- (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.
- (2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of the two next following sections or the provisions of this Act as to confirmation or approval.

108 Petitions against finding or sentence

At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

109 Revision of findings of courts-martial

- (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—
 - (a) that the finding was against the weight of evidence, or
 - (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.

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- (2) Any such direction shall be accompanied by the necessary directions for the re-assembly of the court, and shall contain a statement of the reasons for the direction.
- (3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.
- (4) On any such revision the court shall not have power to receive further evidence.
- (5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

- (6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

110 Powers of confirming officers

- (1) Subject to the provisions of the last foregoing section and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming officer.
- (2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer may, if—
 - (a) some other finding of guilty could have been validly made by the court-martial on the charge before it, and
 - (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,
 substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) of this section shall be exercised.
- (3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may in lieu of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not

being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

- (4) In confirming the sentence of a court-martial, a confirming officer may—
 - (a) remit in whole or in part any punishment awarded by the court; or
 - (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.
- (5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.
- (6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.
- (8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

111 Confirming officers

- (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say:—
 - (a) the officer who convened the court-martial or any officer superior in command to that officer;
 - (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;
 - (c) failing any such officer as aforesaid, any officer appointed by the Air Council to act as confirming officer, whether for the particular case or for a specified class of cases.
- (2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:—
 - (a) any officer who was a member of the court-martial, or
 - (b) any person who as commanding officer of the accused investigated the allegations against him or who is for the time being the commanding officer of the accused, or
 - (c) any person who as appropriate superior authority investigated the allegations against the accused:

Provided that a person excluded by the foregoing provisions of this subsection may act as confirming officer for a field general court-martial, if otherwise having power to do so, where he is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming officer.

- (3) A warrant or authorisation empowering the convening of a general or district court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the warrant or

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authorisation, and the powers conferred by subsection (1) of this section shall be exercisable subject to any such reservation.

- (4) Where a person is found guilty by a court-martial held on board any ship and is disembarked before the finding or sentence has been confirmed it may be confirmed by any officer under, or in the area of, whose command he is for the time being, being an officer having power to confirm courts-martial of the like description as that held on board the ship.

112 Approval as well as confirmation required for certain death sentences

- (1) A sentence of death confirmed by an officer below the rank of air vice-marshal shall not be carried into effect unless approved by an officer not below the rank of air vice-marshal or by a naval or military officer of corresponding rank, being a naval or military officer commanding the command in which the person under sentence was serving at the date of the sentence.
- (2) Without prejudice to the provisions of the last foregoing subsection, a sentence of death passed by a court-martial shall not be carried into effect in a colony unless approved by the Governor of the colony.
- (3) Notwithstanding anything in the foregoing provisions of this section, sentence of death passed on a person on active service may be carried out without such approval as is mentioned in subsection (1) or subsection (2) of this section where in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

113 Review of findings and sentences of courts-martial

- (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section one hundred and eight of this Act against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.
- (2) The reviewing authorities for the purposes of this Act are the following:—
- (a) Her Majesty,
 - (b) the Air Council, or (so far as the delegation extends) any officer to whom the powers of the Air Council as reviewing authority, or any of those powers, may be delegated by, or by regulations of, the Air Council,
 - (c) any officer superior in command to the confirming officer.
- (3) If an application for leave to appeal is received by the registrar of the Courts-Martial Appeal Court or the said registrar receives particulars of such an application furnished in pursuance of paragraph (b) of subsection (3) of section four of the Courts-Martial (Appeals) Act, 1951, so much of subsection (1) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.

- (4) Notwithstanding anything in subsection (1) of this section, a sentence of death passed on a person on active service and the finding of guilty in consequence of which it was passed shall not be required to be reviewed if in the opinion of the confirming officer it is essential in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.
- (5) On a review under this section the reviewing authority may—
- (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;
 - (b) in so far as the review is of a sentence, quash the sentence;
 - (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2) to (4) of section one hundred and ten of this Act;
- and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (6) Where a reviewing authority exercises any of the powers conferred by the last foregoing subsection, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

114 Reconsideration of sentences of imprisonment and detention

- (1) Sentences of imprisonment and detention may be reconsidered by such officers (not below the rank of air commodore or corresponding naval or military rank) as may be specified by regulations of the Air Council; and if on any such reconsideration it appears to the authority that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.
- (2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after the review of a sentence it is effective it shall be reconsidered not less frequently than at such intervals as shall be specified by regulations of the Air Council:
- Provided that delay in complying with this subsection shall not invalidate the sentence.