
STATUTORY INSTRUMENTS

1997 No. 16

DEFENCE

**The Criminal Justice and Public Order Act 1994
(Application to the Armed Forces) Order 1997**

<i>Made</i>	- - - -	<i>8 January 1997</i>
<i>Laid before Parliament</i>		<i>9th January 1997</i>
<i>Coming into force</i>	- -	<i>1st February 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 39(1) of the Criminal Justice and Public Order Act 1994⁽¹⁾, hereby makes the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 1997 and shall come into force on 1st February 1997.

(2) In this Order “the Act” means the Criminal Justice and Public Order Act 1994.

Application of the Act

2.—(1) The provisions of the Act which are specified in column 1 of the Schedule to this Order shall apply to the proceedings to which this Order applies, subject to the modifications specified in column 2 of that Schedule.

(2) This Order applies—

- (a) to proceedings whereby a charge is summarily tried under Part II of the Naval Discipline Act 1957⁽²⁾;
- (b) to proceedings before a court-martial constituted under the Army Act 1955⁽³⁾;
- (c) to proceedings before a court-martial constituted under the Air Force Act 1955⁽⁴⁾;
- (d) to proceedings before a court-martial constituted under the Naval Discipline Act 1957;
- (e) to proceedings before a disciplinary court constituted under the Naval Discipline Act 1957;
- (f) to proceedings before the Courts-Martial Appeal Court;

(1) 1994 c. 33.
(2) 1957 c. 53.
(3) 1955 c. 18.
(4) 1955 c. 19.

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(g) to proceedings before a Standing Civilian Court;
and it applies wherever the proceedings take place.

8th January 1997

James Arbuthnot
Minister of State, Ministry of Defence

SCHEDULE

Article 2(1)

APPLICATION AND MODIFICATION OF THE ACT

Column 1 Provisions applied	Column 2 Modifications
In section 34— subsection (1)	(i) in paragraph (a)— the omission of the words “at any time before he was charged with the offence,”; for the word “constable” there shall be substituted the words “service policeman”; after the word “committed,” there shall be inserted the words “or during the taking of evidence as a preliminary to the trial of the offence by court-martial,”; and (ii) in paragraph (b)— after the word “charged” there shall be inserted the words “by a service policeman”; after the word “informed” there shall be inserted the words “by a service policeman”;
subsection (2), except paragraphs (a) and (b)	in paragraph (d), the omission of the words “or jury”;
subsections (3) and (5)	
subsection (6)	for the words “the commencement of this section” there shall be substituted the words “the coming into force of the 1997 Order”.
In section 35— subsection (1)	for the words “legal representative” there shall be substituted the word “representative”;
subsection (2)	the omission of the words “(in the case of proceedings on indictment, in the presence of the jury)” and of the words “or jury”;
subsection (3)	the omission of the words “or jury”;
subsections (4), (5) and (6)	
subsection (7)	for the words following the word “applies” there shall be substituted the words “only if the time when the court begins to receive evidence in the proceedings falls after the coming into force of the 1997 Order”.
In section 36—	

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Column 1 Provisions applied	Column 2 Modifications
subsection (1)	for the word “constable” wherever it occurs there shall be substituted the words “service policeman”;
subsection (2), except paragraphs (a) and (b)	in paragraph (d), the words “or jury” shall be omitted;
subsection (3)	
subsection (4)	for the word “constable” there shall be substituted the words “service policeman”;
subsection (6)	
subsection (7)	for the words “the commencement of this section” there shall be substituted the words “the coming into force of the 1997 Order”.
In section 37—	
subsection (1)	for the word “constable” wherever it occurs there shall be substituted the words “service policeman”;
subsection (2), except paragraphs (a) and (b)	in paragraph (d), the words “or jury” shall be omitted;
subsection (3)	for the word “constable” there shall be substituted the words “service policeman”;
subsection (5)	
subsection (6)	for the words “the commencement of this section” there shall be substituted the words “the coming into force of the 1997 Order”.
In section 38—	
subsection (1)	<ul style="list-style-type: none"> (i) the omission of the definition of “legal representative”; and (ii) the insertion of the following definitions in the appropriate places— <ul style="list-style-type: none"> ““court” in relation to any proceedings whereby a charge is tried summarily shall include any person or body trying the charge; “the 1997 Order” means the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 1997 (S.I.1997/16); “service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police

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Column 1 Provisions applied	Column 2 Modifications
subsection (2)	or the staff of the Royal Air Force Provost Marshal”;
subsection (3)	the omission of the words “have the proceedings against him transferred to the Crown Court for trial,”;
subsections (5) and (6).	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st February 1997, applies the provisions of sections 34 to 38 of the Criminal Justice and Public Order Act 1994 which are specified in column 1 of the Schedule to the Order to the proceedings set out in article 2 of the Order. The application of the provisions is subject to the modifications set out in column 2 of the Schedule.

Section 34 makes provision for the effect of an accused’s failure to mention facts when questioned or charged.

Section 35 makes provision for the effect of an accused’s silence at trial.

Section 36 makes provision for the effect of an accused’s failure or refusal to account for objects, substances or marks.

Section 37 makes provision for the effect of an accused’s failure or refusal to account for his presence at a particular place.

In relation to each of these sections the modifications are the substitution of references to service policemen for references to constables and the omission of references to juries and to proceedings before juries. The sections will only apply to the specified proceedings after this Order comes into force.

Section 35(1) is, in addition, modified by the substitution of “representative” for “legal representative”.

Additional definitions are inserted in section 38(1) and subsections (2), (3), (5) and (6) are applied with a minor modification to subsection (3).