



# Armed Forces Act 2001

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# Armed Forces Act 2001

## 2001 CHAPTER 19

An Act to continue the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957; to make further provision in relation to the armed forces and the Ministry of Defence Police; and for connected purposes.  
[11th May 2001]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### CONTINUANCE OF SERVICES ACTS

##### 1 Continuance of services Acts

- (1) The 1955 Acts and the 1957 Act shall (instead of expiring on 31st August 2001) expire on 31st August 2002 unless continued in force in accordance with this section.
- (2) Subject to subsection (3), Her Majesty may from time to time by Order in Council provide for the 1955 Acts and the 1957 Act to continue in force for a period not exceeding twelve months beyond the day on which they would otherwise expire.
- (3) The 1955 Acts and the 1957 Act may not be continued under subsection (2) beyond the end of the year 2006.
- (4) No recommendation shall be made to Her Majesty in Council to make an Order under subsection (2) unless a draft of the Order has been laid before, and approved by a resolution of, each House of Parliament.

**PART 2**

## POWERS OF ENTRY, SEARCH AND SEIZURE

*Powers to stop and search***2 Powers to stop and search persons, vehicles etc**

- (1) A service policeman may exercise any power conferred by this section—
- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission,
  - (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling or service living accommodation, and
  - (c) in any premises which at the time when he proposes to exercise the power are permanently or temporarily occupied or controlled by any of Her Majesty's forces but are not service living accommodation.
- (2) Subject to subsections (3) to (6), a service policeman—
- (a) may search—
    - (i) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law,
    - (ii) a service vehicle which is in the charge of any person,
    - (iii) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law, or
    - (iv) anything which is in or on a service vehicle or a vehicle falling within sub-paragraph (iii),
 for stolen or prohibited articles, controlled drugs or Her Majesty's stores, and
  - (b) may detain for the purpose of such a search—
    - (i) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law,
    - (ii) any person in charge of a service vehicle,
    - (iii) any service vehicle, and
    - (iv) any vehicle falling within paragraph (a)(iii).
- (3) This section does not give a service policeman power to search a person or vehicle or anything in or on a vehicle unless—
- (a) he has reasonable grounds for suspecting that he will find—
    - (i) stolen or prohibited articles, or
    - (ii) Her Majesty's stores that have been unlawfully obtained, or
  - (b) he has reasonable grounds for suspecting—
    - (i) in the case of the search of a person, that the person is in possession of a controlled drug in circumstances in which he commits an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is an offence under the Misuse of Drugs Act 1971 (c. 38), or

- (ii) in the case of the search of a vehicle, that he will find a controlled drug that is in a person's possession in such circumstances.
- (4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or of any service living accommodation falling within section 15(1)(a) or on other land so occupied and used, a service policeman may not by virtue of subsection (1)(a) or (b) search him in the exercise of the power conferred by this section unless the service policeman has reasonable grounds for believing—
  - (a) that he does not reside in the dwelling or service living accommodation, and
  - (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or of any service living accommodation falling within section 15(1)(a) or on other land so occupied and used, a service policeman may not by virtue of subsection (1)(a) or (b) search the vehicle or anything in or on it in the exercise of the power conferred by this section unless the service policeman has reasonable grounds for believing—
  - (a) that the person in charge of the vehicle does not reside in the dwelling or service living accommodation, and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (6) In subsections (4) and (5) “dwelling” does not include any dwelling which is permanently or temporarily occupied or controlled by any of Her Majesty's forces.
- (7) If in the course of a search under this section a service policeman discovers an article which he has reasonable grounds for suspecting to be—
  - (a) a stolen or prohibited article,
  - (b) evidence of an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is an offence under the Misuse of Drugs Act 1971 (c. 38), or
  - (c) any of Her Majesty's stores that have been unlawfully obtained,he may seize it.
- (8) An article is prohibited for the purposes of this section if it is—
  - (a) an offensive weapon other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty's forces, or
  - (b) an article—
    - (i) made or adapted for use in the course of or in connection with an offence specified in subsection (9) or an offence as respects which the corresponding civil offence is an offence specified in that subsection; or
    - (ii) intended by the person having it with him for such use by him or by some other person.
- (9) The offences referred to in subsection (8)(b)(i) are—
  - (a) burglary,

- (b) theft,
  - (c) offences under section 12 of the Theft Act 1968 (c. 60) (taking motor vehicle or other conveyance without authority), and
  - (d) offences under section 15 of that Act (obtaining property by deception).
- (10) In this section –
- “Her Majesty’s stores” has the same meaning as in the Public Stores Act 1875 (c. 25);
  - “offensive weapon” means any article –
    - (a) made or adapted for use for causing injury to persons, or
    - (b) intended by the person having it with him for such use by him or by some other person;
  - “service vehicle” means a vehicle which –
    - (a) belongs to any of Her Majesty’s forces, or
    - (b) is in use for the purposes of any of those forces.

### **3 Provisions relating to search under s. 2**

- (1) The time for which a person or vehicle may be detained for the purposes of a search under section 2 is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.
- (2) The power conferred by section 2 is not to be construed as authorising a service policeman to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves.
- (3) The Secretary of State may by order make provision, in relation to the search of persons or vehicles under section 2 (whether carried out by service policemen or by virtue of section 4 by other persons), which is equivalent to that made by any provision of –
  - (a) subsections (1) to (7) and (9)(b) of section 2 (provisions relating to search under section 1 of that Act and other powers) of the Police and Criminal Evidence Act 1984 (c. 60) (in this Part referred to as “the 1984 Act”), and
  - (b) section 3 of that Act (duty to make records concerning searches),
 subject to such modifications as the Secretary of State thinks fit.
- (4) An order under subsection (3) may, in particular, apply any of the provisions mentioned in paragraphs (a) and (b) of that subsection subject to modifications specified in the order.
- (5) Section 2 and this section apply to vessels, aircraft and hovercraft as they apply to vehicles.
- (6) Nothing in section 2 limits the powers exercisable on any premises if, or to the extent that, the premises are being used –
  - (a) for holding persons in custody under any of the services Acts, or
  - (b) for the accommodation of persons serving military, air-force or naval sentences of detention or imprisonment.

#### **4 Power of commanding officer in relation to stopping and searching of persons, vehicles etc**

- (1) Subject to subsections (2) and (3), in relation to a person who is subject to service law or a vehicle in the charge of such a person, the powers conferred on a service policeman by section 2 may also be exercised –
  - (a) by that person's commanding officer, or
  - (b) by any member of Her Majesty's forces who is authorised by that person's commanding officer.
- (2) The power conferred on a commanding officer by virtue of subsection (1)(a) may be exercised only by giving orders for the search of a particular person or vehicle.
- (3) A commanding officer may not give orders by virtue of subsection (1)(a) or give authority under subsection (1)(b) unless he has reasonable grounds for believing that it is likely that, if the powers conferred by section 2 could not be exercised before the earliest time by which it would be practicable to obtain –
  - (a) the assistance of a service policeman, or
  - (b) in a case where corresponding powers conferred by section 1 of the 1984 Act or any other enactment are exercisable by a member of a United Kingdom police force, the assistance of a member of such a force who is capable of exercising those corresponding powers,offences against section 70 of either of the 1955 Acts or section 42 of the 1957 Act would be committed or persons who have committed such offences would avoid apprehension.

#### *Entry and search of premises*

#### **5 Power of judicial officer to authorise entry and search of certain premises**

- (1) If, on an application made by a service policeman, a judicial officer is satisfied that there are reasonable grounds for believing –
  - (a) that an offence to which this section applies has been committed, and
  - (b) that there is on relevant residential premises specified in the application material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  - (c) that the material is likely to be relevant evidence, and
  - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
  - (e) that any of the conditions specified in subsection (4) applies,he may issue a warrant authorising a service policeman to enter and search the premises.
- (2) This section applies to the following offences –
  - (a) any offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act for which the corresponding civil offence is, or if it were committed in England and Wales would be, a serious arrestable offence for the purposes of the 1984 Act;
  - (b) any offence against section 24, 25, 26, 30, 31, 32, 37, 48A or 49 of either of the 1955 Acts or against section 2, 3, 4, 5, 9, 10, 16, 19 or 20 of the 1957 Act;



- (c) any offence specified for the purposes of this subsection in an order made by the Secretary of State;
  - (d) any offence against either of the 1955 Acts or under the 1957 Act whose commission –
    - (i) has led to any of the consequences specified in subsection (5), or
    - (ii) is intended or is likely to lead to any of those consequences.
- (3) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).
- (4) The conditions mentioned in subsection (1)(e) are –
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) that entry to the premises will not be granted unless a warrant is produced;
  - (d) in the case of service living accommodation falling within section 15(1)(b) or (c), that the person for whom it is provided will not agree to grant access to it unless a warrant is produced or that it is not practicable to communicate with him;
  - (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.
- (5) The consequences mentioned in subsection (2)(d)(i) are –
- (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any person;
  - (e) substantial financial gain to any person;
  - (f) serious financial loss to any person;
  - (g) the undermining of discipline or morale among members of any of Her Majesty's forces.
- (6) In subsection (5)(d) “injury” includes any disease and any impairment of a person's physical or mental condition.
- (7) For the purposes of subsection (5)(f), loss is serious if, having regard to all the circumstances, it is serious for the person who suffers it.
- (8) In this section “relevant residential premises” means –
- (a) service living accommodation, or
  - (b) other premises occupied as a residence (alone or with other persons) by –
    - (i) a person who is subject to service law, or
    - (ii) a person who is suspected of having committed while subject to service law an offence in relation to which the warrant is sought.
- (9) In this section “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.
- (10) The Secretary of State may by order –

- (a) authorise the use, in connection with any application to a judicial officer for a warrant under this section, of live television links or similar arrangements, and
- (b) make provision, in relation to warrants issued under this section to service policemen or entry and search under such a warrant, which is equivalent to that made by any provision of sections 15 and 16 of the 1984 Act (which relate to the issue to constables of warrants to enter and search premises), subject to such modifications as the Secretary of State thinks fit.

## **6 Special provisions as to access**

- (1) The Secretary of State may by order enable a service policeman to obtain access to excluded material or special procedure material on relevant residential premises, for the purposes of an investigation of an offence to which section 5 applies, by making an application in accordance with the order to a judicial officer.
- (2) An order under this section may, in particular –
  - (a) provide for any provision of Schedule 1 to the 1984 Act (which relates to applications by constables to circuit judges for access to excluded material or special procedure material) to apply with specified modifications for the purposes of the order, and
  - (b) authorise the use, in connection with any application made by virtue of the order, of live television links or similar arrangements.
- (3) In this section “relevant residential premises” has the same meaning as in section 5.

## **7 Power of commanding officer to authorise entry and search of certain premises**

- (1) If an officer has reasonable grounds for believing –
  - (a) that the conditions specified in paragraphs (a) to (e) of section 5(1) are satisfied in relation to –
    - (i) service living accommodation of a person as respects whom the officer is commanding officer, or
    - (ii) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer, and
  - (b) that it is likely that, if no search could be carried out before the earliest time by which it would be practicable –
    - (i) for a service policeman to obtain and execute a warrant under section 5 authorising the entry and search of the premises, or
    - (ii) in a case where a member of a United Kingdom police force could obtain a warrant under section 8 of the 1984 Act or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain such a warrant, the purpose of the search would be frustrated or seriously prejudiced, the officer may authorise a service policeman or, subject to subsection (2), any other member of Her Majesty’s forces to enter and search the premises.
- (2) An officer may not authorise a person other than a service policeman to exercise the powers conferred by subsection (1) unless –

- (a) the premises to be searched consist of service living accommodation falling within section 15(1)(b) or (c), and
  - (b) it is likely that, if no search could be carried out before the earliest time by which it would be practicable to obtain the assistance of a service policeman, the purpose of the search would be frustrated or seriously prejudiced.
- (3) Subject to section 8, a person authorised under subsection (1) may seize and retain anything for which the search under this section was authorised.

## **8 Review by judicial officer**

- (1) Where any property has been seized and retained during a search under section 7, the officer who authorised the search must as soon as practicable request a judicial officer to undertake a review of the search and of the seizure and retention of anything seized and retained during it.
- (2) In relation to a review under this section, a judicial officer shall have such powers and duties as may be prescribed by the Secretary of State by order.

## **9 Entry for purpose of arrest etc**

- (1) Subject to the following provisions of this section, a service policeman may enter and search any relevant residential premises for the purpose—
- (a) of arresting a person under any of the services Acts, or
  - (b) of saving life or limb or preventing serious damage to property.
- (2) In subsection (1) “relevant residential premises” means—
- (a) service living accommodation, or
  - (b) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law.
- (3) Subject to the following provisions of this section and without prejudice to any other enactment, a service policeman may enter and search any premises which are occupied as a residence (alone or with other persons) by a person to whom this subsection applies, for the purpose of arresting that person under any of the services Acts.
- (4) Subsection (3) applies to a person in relation to whom the power of arrest under any of the services Acts is exercisable only by virtue of section 131 of each of the 1955 Acts or section 51 of the 1957 Act.
- (5) Except for the purpose specified in paragraph (b) of subsection (1), the powers of entry and search conferred by this section—
- (a) are only exercisable if the service policeman has reasonable grounds for believing that the person whom he is seeking is on the premises, and
  - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
    - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling, and
    - (ii) any such dwelling in which the service policeman has reasonable grounds for believing that the person whom he is seeking may be.

- (6) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (7) Subject to subsections (8) and (9), an officer may authorise a member of Her Majesty's forces who is not a service policeman to exercise, in relation to premises consisting of—
- (a) service living accommodation of a person as respects whom the officer is commanding officer, or
  - (b) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer,
- the powers conferred by subsection (1) on a service policeman.
- (8) An officer may not authorise a person other than a service policeman to exercise the power conferred by subsection (1)(a) unless—
- (a) the offence in respect of which the arrest is to be made is an offence to which section 5 applies, and
  - (b) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain—
    - (i) the assistance of a service policeman, or
    - (ii) in a case where the powers conferred by section 17(1)(b) or (c) of the 1984 Act (entry for purposes of arrest) are exercisable by a member of a United Kingdom police force, the assistance of a member of such a force capable of exercising them,the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence or be a danger to himself or to others, or discipline or morale among members of any of Her Majesty's forces might be undermined.
- (9) An officer may not authorise a person other than a service policeman to exercise the power conferred by subsection (1)(b) in relation to premises falling within subsection (2)(b) unless it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.
- (10) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

*Powers exercisable on arrest*

**10 Search upon arrest**

- (1) A service policeman or the person exercising the power of arrest may search a person arrested under any of the services Acts if the service policeman or, as the case may be, the person making the arrest has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) Subject to subsections (4), (8) and (9), a service policeman shall also have power to search the arrested person for anything—
- (a) which he might use to assist him to escape from custody, or
  - (b) which might be evidence relating to an offence.

- (3) For the purposes of the following provisions of this section, a thing is “subject to search” if it is something for which a search by a service policeman is permitted under subsection (2).
- (4) A service policeman may not search a person in the exercise of the power conferred by subsection (2) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything that is subject to search.
- (5) Subject to subsections (6) to (9), where a person (“the arrested person”) is to be or has been arrested under any of the services Acts by a person other than a service policeman, the commanding officer of the arrested person –
  - (a) may, if the commanding officer has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search, order the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search, or
  - (b) may authorise the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search.
- (6) A commanding officer may not order or authorise the search of an arrested person under subsection (5)(a) or (b) unless he has reasonable grounds for believing that it is likely that, if the search could not be carried out before the earliest time by which it would be practicable to obtain assistance from –
  - (a) a service policeman, or
  - (b) in a case where the powers conferred by section 32 of the 1984 Act (search upon arrest) are exercisable by a member of a United Kingdom police force, a member of such a force capable of exercising those powers,  
the person who is to be or has been arrested would escape from custody or conceal, alter or destroy evidence.
- (7) A person authorised under paragraph (b) of subsection (5) may not search a person in the exercise of the power conferred by that paragraph unless he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (8) The power to search conferred by subsection (2) or (5) is only a power to search to the extent that is reasonably required for the purpose of discovering anything that is subject to search.
- (9) The power conferred by subsection (1), (2) or (5) is not to be construed as authorising the person exercising the power to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves, but the power does authorise the search of a person’s mouth.
- (10) Any person searching another person in the exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.
- (11) A service policeman or authorised person searching a person in the exercise of the power conferred by subsection (2) or (5) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing –

- (a) that the person searched might use it to assist him to escape from lawful custody; or
  - (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.
- (12) In subsection (11) “authorised person” means a person ordered under subsection (5)(a) or authorised under subsection (5)(b).
- (13) The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under any of the services Acts, which is equivalent to that made by any of the provisions of section 32 of the 1984 Act which relate to the power to enter and search premises, subject to such modifications as the Secretary of State thinks fit.
- (14) The power conferred by subsection (13) includes, in particular, power to apply any provision of section 32 of the 1984 Act relating to the power to enter and search premises, subject to modifications specified in the order.
- (15) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

*Seizure etc.*

**11 Power to make provision equivalent to that made by ss. 18 to 22 of Police and Criminal Evidence Act 1984**

- (1) The Secretary of State may by order make provision, in relation to premises occupied or controlled by a person who—
- (a) has been arrested under any of the services Acts, and
  - (b) is being held in military, air-force or naval custody without being charged,
- which is equivalent to that made by any provision of section 18 of the 1984 Act (entry and search after arrest), subject to such modifications as the Secretary of State thinks fit.
- (2) The Secretary of State may by order make provision, in relation to—
- (a) a service policeman who is on any premises in the exercise of any power conferred by or under this Part, or
  - (b) any power of seizure conferred by or under this Part,
- which is equivalent to that made by any provision of sections 19 to 21 of the 1984 Act (which relate to seizure) or section 22(1) to (4) of that Act (power to retain property seized), subject to such modifications as the Secretary of State thinks fit.
- (3) In subsection (1) “charged” —
- (a) in relation to a person held in military custody, is to be construed in accordance with section 75(4) of the Army Act 1955 (c. 18),
  - (b) in relation to a person held in air-force custody, is to be construed in accordance with section 75(4) of the Air Force Act 1955 (c. 19), and
  - (c) in relation to a person held in naval custody, is to be construed in accordance with section 47A(4) of the 1957 Act.
- (4) No provision made by virtue of this section affects the power conferred by section 12.

**12 Property in possession of service police or commanding officer**

- (1) The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman or a person's commanding officer in connection with the investigation of an offence.
- (2) The regulations may, in particular—
  - (a) enable a court-martial, Standing Civilian Court or judicial officer to make an order for the delivery of the property to the person appearing to the court or judicial officer to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judicial officer thinks fit,
  - (b) enable the commanding officer of a person charged with an offence against any of the services Acts—
    - (i) to determine that any property seized under this Part in connection with the investigation of an offence be delivered to the person appearing to the commanding officer to be the owner of the property, or
    - (ii) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate,
  - (c) enable the commanding officer of a person—
    - (i) in whose possession the property was before it was seized under this Part, or
    - (ii) who claims to be the owner of the property,to determine that it should be delivered to that person,
  - (d) make provision as to appeals against orders made by virtue of paragraph (a) and determinations made by virtue of paragraph (b) or (c), and
  - (e) provide that, on the expiration of a specified period from the making of an order by virtue of paragraph (a), the right of any person to take proceedings for the recovery of the property is to cease.
- (3) A determination made by virtue of subsection (2)(b) or (c) does not bar the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered.

*Supplementary***13 Orders and codes of practice under s. 113 of Police and Criminal Evidence Act 1984**

- (1) Section 113 of the 1984 Act (application of Act to armed forces) is amended as follows.
- (2) In subsection (1) (which confers on the Secretary of State power by order to apply provisions of the 1984 Act to investigations etc under either of the 1955 Acts or under the 1957 Act) for “this Act” there is substituted “Part 5 of this Act (or Part 11 of this Act so far as relating to that Part)”.
- (3) In subsection (3) (which requires the Secretary of State to issue one or more codes of practice for persons other than police officers who are concerned with

enquiries into offences under the 1955 Acts or the 1957 Act) for the words from “with” onwards there is substituted –

“with –

- (a) the exercise of the powers conferred by Part 2 of the Armed Forces Act 2001, or
  - (b) enquiries into offences under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”
- (4) In subsection (4) for the words “enquiries into such offences” there is substituted “the powers mentioned in subsection (3)(a) above or the enquiries mentioned in subsection (3)(b) above”.

#### **14 Power to use reasonable force**

Where a power is conferred on any person by or under this Part, the person on whom the power is conferred may use reasonable force, if necessary, in the exercise of the power.

#### **15 Meaning of “service living accommodation”**

- (1) Subject to subsection (2), in this Part “service living accommodation” means –
- (a) any building or part of a building which is occupied for the purposes of any of Her Majesty’s forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his family, as living accommodation or as a garage,
  - (b) any other room, structure or area (whether on land or on a vessel) which is occupied for the purposes of any of Her Majesty’s forces and is used for the provision of sleeping accommodation for one or more persons subject to service law, or
  - (c) any locker which –
    - (i) is provided by any of Her Majesty’s forces for personal use by a person subject to service law in connection with his sleeping accommodation, but
    - (ii) is not in a room, structure or area falling within paragraph (b).
- (2) Premises are not service living accommodation for the purposes of this Part if, or to the extent that, they are being used –
- (a) for holding persons in custody under any of the services Acts, or
  - (b) for the accommodation of persons serving military, air-force or naval sentences of detention or imprisonment.

#### **16 Part 2: supplementary provisions**

- (1) In this Part –
- “the 1984 Act” means the Police and Criminal Evidence Act 1984 (c. 60);
  - “Commonwealth force” has the same meaning as in the 1955 Acts and the 1957 Act;
  - “controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38);
  - “the corresponding civil offence”, in relation to an offence against section 70 of either of the 1955 Acts or section 42 of the 1957 Act, means the civil offence (within the meaning of the Army Act 1955 (c. 18), the Air Force



- Act 1955 (c. 19) or the 1957 Act) the commission of which constitutes an offence under that section;
- “excluded material” has the same meaning as in the 1984 Act;
- “Her Majesty’s forces” does not include any Commonwealth force;
- “items subject to legal privilege” has the same meaning as in the 1984 Act;
- “judicial officer” means a judicial officer appointed under section 75L of either of the 1955 Acts or under section 47M of the 1957 Act;
- “premises” includes any place and, in particular, includes—
- (a) any vehicle, vessel, aircraft or hovercraft, and
  - (b) any tent or movable structure;
- “the services Acts” means the 1955 Acts and the 1957 Act;
- “service living accommodation” has the meaning given by section 15;
- “service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police;
- “special procedure material” has the same meaning as in the 1984 Act;
- “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 (c. 60) in the provisions of that Act relating to goods which have been stolen;
- “United Kingdom police force” means any of the following—
- (a) the Ministry of Defence Police,
  - (b) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London),
  - (c) the metropolitan police force,
  - (d) the City of London police force,
  - (e) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c. 77), or
  - (f) the Police Service of Northern Ireland.
- (2) In this Part any reference to a person subject to service law is a reference to—
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) any other person to whom any provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply because he is a person falling within—
    - (i) section 209(1) or (2) of either of the 1955 Acts (application of Act to civilians), or
    - (ii) section 118(1) or (2) of the 1957 Act (application of Act to civilians).
- (3) This Part shall, to such extent and subject to such modifications as may be prescribed by regulations made by the Defence Council, apply to persons embarked as passengers on board Her Majesty’s ships or Her Majesty’s aircraft (not being persons who are subject to service law) as it applies to persons subject to service law.
- (4) In subsection (3), “Her Majesty’s ships” has the same meaning as in the Army Act 1955 and “Her Majesty’s aircraft” has the same meaning as in the Air Force Act 1955.
- (5) For the purposes of this Part “commanding officer”—

- (a) in relation to a person subject to military law, means the officer who would be that person's commanding officer for the purposes of section 82 of the Army Act 1955 (c. 18) if he were charged with an offence;
  - (b) in relation to a person subject to air-force law, means the officer who would be that person's commanding officer for the purposes of section 82 of the Air Force Act 1955 (c. 19) if he were charged with an offence;
  - (c) in relation to a person subject to the 1957 Act or a person falling within subsection (2)(b)(ii), means—
    - (i) the officer in command of the ship or naval establishment to which he belongs, or
    - (ii) any other person who by virtue of regulations under section 52E of that Act would be able to exercise the powers conferred by that Act on a commanding officer in relation to that person if he were charged with an offence;
  - (d) in relation to a person falling within subsection (2)(b)(i), means the person who is by virtue of regulations of the Defence Council made for the purposes of section 209(3)(f) of either of the 1955 Acts the commanding officer for the purposes of Part 2 of the Act in question in relation to him;
  - (e) in relation to a person falling within subsection (3), means such officer as may be determined by or under regulations of the Defence Council made for the purposes of that subsection.
- (6) For the purposes of this Part, the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by the Air Force Act 1955 on provost officers are to be taken to be members of the Royal Air Force Police.
- (7) Nothing in this Part limits—
- (a) any power of a service policeman or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation,
  - (b) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation,
  - (c) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to search a person or to stop and search a service vehicle, or
  - (d) any power of a service policeman or commanding officer to search a service vehicle which is not in the charge of any person.
- (8) In subsection (7) "service vehicle" means a vehicle, vessel, aircraft or hovercraft which—
- (a) belongs to any of Her Majesty's forces, or
  - (b) is in use for the purposes of any of those forces.

### PART 3

#### TRIAL AND PUNISHMENT OF OFFENCES

#### **17 Summary dealing or trial and functions of prosecuting authority**

Schedule 1 (which contains amendments relating to summary dealing or trial under the 1955 Acts or the 1957 Act and to the functions of the prosecuting authority under those Acts) shall have effect.

#### **18 Abolition of naval disciplinary courts**

Section 52G of the 1957 Act (under which a disciplinary court may be ordered for the trial of an officer below the rank of commander) shall cease to have effect.

#### **19 Membership of courts-martial**

Schedule 2 (which contains amendments of the 1955 Acts and the 1957 Act relating to the composition of courts-martial, including provisions relating to the eligibility of warrant officers for membership) shall have effect.

#### **20 Eligibility of warrant officers for membership of summary appeal courts**

- (1) The Secretary of State may by order provide that, in such circumstances and subject to such conditions as may be prescribed, warrant officers are to be eligible to be members of any of the summary appeal courts.
- (2) An order under this section may amend either of the 1955 Acts or the 1957 Act.
- (3) No order under this section may enable any of the summary appeal courts to include a warrant officer as a member unless the appellant is of a rank below that of the warrant officer in question.
- (4) In this section “the summary appeal courts” means the court established by section 83ZA of each of the 1955 Acts and the court established by section 52FF of the 1957 Act.

#### **21 Review of sentences by Courts-Martial Appeal Court**

- (1) After section 113A of each of the 1955 Acts there is inserted –

##### **“113B Scope of section 113C**

- (1) Section 113C of this Act applies to any case –
  - (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or
  - (b) in which a sentence is passed by a court-martial on a person –
    - (i) in respect of an offence against section 70 of this Act which satisfies the condition in subsection (2) below, or
    - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the corresponding civil offence is –

- (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 113C of this Act—
- (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following any review under section 113 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **113C Review of sentences by Courts-Martial Appeal Court**

- (1) If it appears to the Attorney General—
- (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,
- he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may—
- (a) quash the sentence passed by the court-martial on the person; and
  - (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
- (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that—
- (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 113 of this Act; or
  - (b) the sentence passed on the person was not that required by section 70(3B), (3E) or (3G) of this Act.
- (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House

shall consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.

- (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
  - (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
  - (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
  - (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
  - (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) After section 71A of the 1957 Act there is inserted –

**“71AB Scope of section 71AC**

- (1) Section 71AC of this Act applies to any case –
  - (a) which is of a description specified for the purposes of this paragraph in an order made by the Secretary of State, or
  - (b) in which a sentence is passed by a court-martial on a person –
    - (i) in respect of an offence against section 42 of this Act which satisfies the condition in subsection (2) below, or
    - (ii) in respect of two or more offences against that section each of which satisfies that condition.
- (2) The condition referred to in subsection (1)(b) above is that the civil offence is –
  - (a) an offence which would be triable by a civil court in England and Wales only on indictment, or
  - (b) an offence of a description specified for the purposes of this paragraph in an order made by the Secretary of State.
- (3) For the purposes of this section and section 71AC of this Act –

- (a) “sentence”, in relation to an offence, includes any order made by a court-martial in dealing with an offender, including an order that no punishment be awarded, and
  - (b) any reference to a sentence passed by a court-martial is a reference to any such sentence as it has effect following a review under section 70 of this Act of the sentence or the finding to which it relates (and, accordingly, the reference in paragraph (a) above to an order that no punishment be awarded includes a reference to the quashing of a sentence on a review).
- (4) The power of the Secretary of State to make an order under subsection (1)(a) or (2)(b) above shall be exercisable by statutory instrument.
  - (5) A statutory instrument containing an order under subsection (1)(a) or (2)(b) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **71AC Review of sentences by Courts-Martial Appeal Court**

- (1) If it appears to the Attorney General –
  - (a) that a sentence passed on a person by a court-martial has been unduly lenient, and
  - (b) that the case is one to which this section applies,he may, with the leave of the Courts-Martial Appeal Court, refer the case to them for them to review the sentencing of that person.
- (2) On a reference under subsection (1) above the Courts-Martial Appeal Court may –
  - (a) quash the sentence passed by the court-martial on the person; and
  - (b) in place of it pass such sentence, being a sentence which would have been open to the court-martial on the findings made against that person, as they think appropriate.
- (3) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that –
  - (a) the court-martial erred in law as to its powers of sentencing or the reviewing authority so erred as to its powers on a review under section 70 of this Act; or
  - (b) the sentence passed on the person was not that required by section 42(1B), (1E) or (1G) of this Act.
- (4) Where the Courts-Martial Appeal Court have concluded their review of a case referred to them under this section, the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceedings to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Courts-Martial Appeal Court to be dealt with or deal with it themselves; and section 41(1) of the Courts-Martial (Appeals) Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (5) A reference under subsection (4) above shall be made only with the leave of the Courts-Martial Appeal Court or the House of Lords; and

leave shall not be granted unless it is certified by the Courts-Martial Appeal Court that the point of law is of general public importance and it appears to the Courts-Martial Appeal Court or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.

- (6) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Courts-Martial Appeal Court.
- (7) A sentence passed by the Courts-Martial Appeal Court or the House of Lords under subsection (2)(b) above shall be treated for the purposes of this Act as a sentence passed by a court-martial.
- (8) The Secretary of State may by regulations made by statutory instrument make supplementary provision with respect to references and applications under this section; and the regulations may in particular contain provision equivalent to that made by any provision of Schedule 3 to the Criminal Justice Act 1988 (which contains supplementary provisions relating to reviews under Part 4 of that Act), subject to such modifications as the Secretary of State thinks fit.
- (9) A statutory instrument containing regulations under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## **22 Required custodial sentences**

- (1) Schedule 3 (which contains amendments of the 1955 Acts and the 1957 Act relating to required custodial sentences) shall have effect.
- (2) Any provision of that Schedule or of Part 2 of Schedule 7 (“the relevant provision”) has effect in relation to a person who falls to be sentenced on being convicted of an offence against section 70 of either of the 1955 Acts or (as the case may be) section 42 of the 1957 Act if that offence is committed on or after the day on which the relevant provision comes into force.

## **23 Restriction of judicial review of courts-martial**

- (1) Section 29 of the Supreme Court Act 1981 (c. 54) (orders of mandamus, prohibition and certiorari) is amended as follows.
- (2) In subsection (1) at the beginning there is inserted “Subject to subsection (3A),”.
- (3) After subsection (3) there is inserted –
  - “(3A) The High Court shall have no jurisdiction to make orders of mandamus, prohibition or certiorari in relation to the jurisdiction of a court-martial in matters relating to –
    - (a) trial by court-martial for an offence, or
    - (b) appeals from a Standing Civilian Court;
 and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

## 24 Offences in relation to courts-martial etc

- (1) In each of the provisions specified in subsection (2), for “document in his custody or under his control” there is substituted “document or other thing which is in his custody or under his control and”.
- (2) The provisions referred to in subsection (1) are—
  - (a) section 57(1)(c) of the Army Act 1955 (c. 18) (refusal of person subject to military law to produce document),
  - (b) section 101(1)(c) of that Act (refusal of person not subject to military law to produce document),
  - (c) section 57(1)(c) of the Air Force Act 1955 (c. 19) (refusal of person subject to air-force law to produce document),
  - (d) section 101(1)(c) of that Act (refusal of person not subject to air-force law to produce document), and
  - (e) section 38(1)(c) of the 1957 Act (refusal of person subject to that Act to produce document).

## 25 Powers to compel attendance of witnesses

- (1) After section 101 of the Army Act 1955 there is inserted—

### “101A Powers to compel attendance of witnesses

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
  - (a) that a person not subject to military law who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the commencement of the trial by court-martial, a judicial officer and, thereafter, the judge advocate.
- (3) Where—
  - (a) a person not subject to military law (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
  - (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,



- (c) it is proved on oath or in such manner as may be prescribed by rules under section 103 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of rules made under that section), and
  - (d) it appears to the judge advocate that there is no just excuse for the defaulter's failure to attend,
- the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.
- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
  - (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
    - (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
    - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
    - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
    - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 75M of this Act; and
    - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
  - (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
    - (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
    - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
    - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above)—
      - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 83ZB of this Act, and
      - (ii) thereafter, the summary appeal court;
    - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 83ZJ of this Act; and
    - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”
- (2) After section 101 of the Air Force Act 1955 (c. 19) there is inserted—

**“101A Powers to compel attendance of witnesses**

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath—
  - (a) that a person not subject to air-force law who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the commencement of the trial by court-martial, a judicial officer and, thereafter, the judge advocate.
- (3) Where—
  - (a) a person not subject to air-force law (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
  - (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
  - (c) it is proved on oath or in such manner as may be prescribed by rules under section 103 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of rules made under that section), and
  - (d) it appears to the judge advocate that there is no just excuse for the defaulter’s failure to attend,the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.
- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
- (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
  - (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;

- (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 75M of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
- (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court –
- (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
  - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
  - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) –
    - (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 83ZB of this Act, and
    - (ii) thereafter, the summary appeal court;
  - (d) the references in paragraph (c) of subsection (3) above to rules under section 103 of this Act shall be construed as references to rules under section 83ZJ of this Act; and
  - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”
- (3) After section 65 of the 1957 Act there is inserted –

**“65A Powers to compel attendance of witnesses**

- (1) Where the appropriate person (as defined by subsection (2) below) is satisfied by evidence on oath –
- (a) that a person not subject to this Act who is in the United Kingdom or in any colony is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial in the United Kingdom or (as the case may be) in that colony,
  - (b) that he will not voluntarily attend as a witness or produce the document or other thing, and
  - (c) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance,
- the appropriate person may, instead of issuing a summons requiring that person to attend, issue a warrant to arrest him and bring him before the court-martial at a time and place specified in the warrant.
- (2) For the purposes of subsection (1) above the appropriate person is, at any time before the court-martial is convened, a judicial officer and, thereafter, the judge advocate.
- (3) Where –

- (a) a person not subject to this Act (“the defaulter”) fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to so attend,
  - (b) the judge advocate is satisfied by evidence on oath that the defaulter is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
  - (c) it is proved on oath or in such manner as may be prescribed by rules under section 58 of this Act that the defaulter has been duly served with the summons and that any expenses to which he is entitled by virtue of regulations made by the Defence Council have been paid or tendered (within the meaning of section 65(3) of this Act), and
  - (d) it appears to the judge advocate that there is no just excuse for the defaulter’s failure to attend,
- the judge advocate may issue a warrant to arrest the defaulter and bring him before the court-martial at a time and place specified in the warrant.
- (4) A warrant under subsection (1) or (3) above must be addressed to a constable.
  - (5) Subsections (1) to (4) above apply in relation to proceedings before a judicial officer as they apply in relation to a court-martial, and in their application in relation to such proceedings—
    - (a) any reference to a court-martial shall be construed as a reference to those proceedings or to the judicial officer (as appropriate);
    - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the proceedings before the judicial officer;
    - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) the judicial officer;
    - (d) for paragraph (c) of subsection (3) above there is substituted—
      - “(c) it is proved on oath or in such manner as may be prescribed by rules under section 47N of this Act that he has been duly served with the summons and that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and”; and
    - (e) any reference in that subsection to the judge advocate shall be construed as a reference to the judicial officer.
  - (6) Subsections (1) to (4) above apply in relation to the summary appeal court as they apply in relation to a court-martial, and in their application in relation to the summary appeal court—
    - (a) any reference to a court-martial shall be construed as a reference to the summary appeal court;
    - (b) the reference in subsection (1)(a) above to a trial by court-martial shall be construed as a reference to the hearing of an appeal by the summary appeal court;
    - (c) the appropriate person for the purposes of subsection (1) above is (instead of the person mentioned in subsection (2) above) —

- (i) at any time before the commencement of the hearing by the summary appeal court, any judge advocate appointed under section 52FG of this Act, and
- (ii) thereafter, the summary appeal court;
- (d) for paragraph (c) of subsection (3) above there is substituted—
  - “(c) it is proved on oath or in such manner as may be prescribed by rules under section 52FP of this Act that he has been duly served with the summons and that any expenses to which he is entitled under those rules have been paid or tendered (within the meaning of those rules), and”; and
- (e) any reference in that subsection to the judge advocate shall be construed as a reference to the summary appeal court.”

## 26 Provision for orders as to costs

- (1) The Secretary of State may by regulations make provision empowering courts-martial, the summary appeal courts, the Courts-Martial Appeal Court and Standing Civilian Courts, in any case where the court is satisfied that one party to proceedings for an offence under any of the services Acts has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
- (2) Regulations under this section may, in particular—
  - (a) allow the making of such an order as is mentioned in subsection (1) at any time during the proceedings,
  - (b) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 (c. 34) or under any legal aid scheme operated by any of Her Majesty’s forces,
  - (c) make provision as to the account to be taken of such an order as is mentioned in subsection (1) in the making of any other order as to costs in respect of the proceedings,
  - (d) contain provision in relation to a Standing Civilian Court equivalent to that made by section 18(5) of the Prosecution of Offences Act 1985 (c. 23) in relation to a magistrates’ court, subject to such modifications as the Secretary of State thinks fit, and
  - (e) make provision as to appeals against orders made by virtue of the regulations.
- (3) Regulations under this section shall provide—
  - (a) that a person against whom an order is made by a court-martial under the regulations may appeal to the Courts-Martial Appeal Court, and
  - (b) that a person against whom an order is made by a summary appeal court or a Standing Civilian Court under the regulations may appeal to the High Court in England and Wales.
- (4) In this section and sections 27 and 28—
  - “the services Acts” means the 1955 Acts and the 1957 Act;
  - “summary appeal court” means the court established by section 83ZA of either of the 1955 Acts or the court established by section 52FF of the 1957 Act.

## 27 Costs against legal representatives etc

- (1) In any proceedings for an offence under any of the services Acts—
  - (a) a court-martial,
  - (b) a summary appeal court,
  - (c) the Courts-Martial Appeal Court, or
  - (d) a Standing Civilian Court,may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.
- (2) Regulations shall provide—
  - (a) that a legal or other representative against whom action is taken by a court-martial under subsection (1) may appeal to the Courts-Martial Appeal Court, and
  - (b) that a legal or other representative against whom action is taken by a summary appeal court or a Standing Civilian Court under subsection (1) may appeal to the High Court in England and Wales.
- (3) In this section—

“legal or other representative”, in relation to any proceedings, means—

  - (a) a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or
  - (b) a prosecuting officer appointed under section 83C of either of the 1955 Acts or under section 52J of the 1957 Act;

“regulations” means regulations made by the Secretary of State;

“wasted costs” means any costs incurred by a party—

  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

## 28 Provisions supplementary to ss. 26 and 27

- (1) Where any of Her Majesty’s forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the services Acts, those costs shall, subject to any provision made by virtue of subsection (2), be taken for the purposes of sections 26 and 27 to have been incurred by the prosecuting authority.
- (2) Regulations under section 26 or 27 may make provision—
  - (a) as to the costs incurred by any of Her Majesty’s forces which are or are not to be taken for the purposes of that section to have been incurred by the prosecuting authority, and
  - (b) as to the person to whom, or account into which, any payment in respect of costs incurred by the prosecuting authority is to be made.
- (3) In this section “the prosecuting authority” means the prosecuting authority appointed under section 83A of either of the 1955 Acts or section 52H of the 1957 Act, as the case requires.

- (4) In section 103 of each of the 1955 Acts (court-martial rules), in subsection (2) after paragraph (m) there is inserted—
- “(mm) enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;”.
- (5) In section 58 of the 1957 Act (court-martial rules), in subsection (2) after paragraph (n) there is inserted—
- “(nn) enabling any jurisdiction conferred on a court-martial by virtue of sections 26 to 28 of the Armed Forces Act 2001 to be exercised by the judge advocate sitting alone;”.

## 29 Custody

Schedule 4 (which contains amendments of the 1955 Acts and the 1957 Act relating to custody) shall have effect.

## 30 Conditional release from custody

- (1) The Secretary of State may by order make provision enabling a person who has been sentenced by a court-martial, a summary appeal court or a Standing Civilian Court (in this section referred to as “the convicted person”) to be released from custody subject to conditions pending a relevant determination.
- (2) In subsection (1), “relevant determination” means—
- (a) in the case of a person sentenced by a court-martial—
    - (i) the determination of an appeal to the Courts-Martial Appeal Court, or
    - (ii) the completion of a review under section 113 of either of the 1955 Acts or section 70 of the 1957 Act of any finding of guilt or any sentence,
  - (b) in the case of a person sentenced by a summary appeal court, the determination of an appeal to the High Court under section 83ZH(2) of either of the 1955 Acts or section 52FN(2) of the 1957 Act or of any appeal from the High Court to the House of Lords under section 1 of the Administration of Justice Act 1960 (c. 65), and
  - (c) in the case of a person sentenced by a Standing Civilian Court—
    - (i) the determination of an appeal to a court-martial or of an appeal from a court-martial to the Courts-Martial Appeal Court, or
    - (ii) the completion of a review under paragraph 20 of Schedule 3 to the Armed Forces Act 1976 (c. 52) of any finding or sentence.
- (3) An order under this section may, in particular, make provision—
- (a) as to the court to which or person to whom any application for release from custody is to be made,
  - (b) as to the manner in which any such application is to be made,
  - (c) as to the criteria to be applied when making a decision under the order,
  - (d) as to the conditions that may be imposed,
  - (e) as to the enforcement of the attendance or return to custody of the convicted person,
  - (f) as to appeals against decisions taken under the order, and

- (g) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject.
- (4) An order under this section may –
  - (a) make provision equivalent to that made by any provision of the Bail Act 1976 (c. 63), the Magistrates' Courts Act 1980 (c. 43) or the Supreme Court Act 1981 (c. 54) relating to bail in criminal proceedings, subject to such modifications as may be specified in the order,
  - (b) make different provision in relation to different courts,
  - (c) confer powers of arrest,
  - (d) subject to subsection (6), create offences punishable with imprisonment for such term not exceeding two years as may be prescribed or by any less punishment provided by the 1955 Acts or the 1957 Act, and
  - (e) make such amendments of the 1955 Acts, the 1957 Act, the Courts-Martial (Appeals) Act 1968 (c. 20) or the Armed Forces Act 1976 (c. 52) as appear to the Secretary of State to be necessary or appropriate in consequence of the order.
- (5) Subsection (4)(d) is to be construed in accordance with section 71(1) of the 1955 Acts and section 43 of the 1957 Act.
- (6) An order under this section may not make provision enabling a Standing Civilian Court to award by sentence –
  - (a) imprisonment for a term exceeding six months, or
  - (b) a fine exceeding £5,000.
- (7) In section 42 of the Courts-Martial (Appeals) Act 1968 (bail) there are omitted –
  - (a) in subsection (1), the words “to whom this section applies”, and
  - (b) subsection (2).

#### PART 4

##### MISCELLANEOUS AND GENERAL

###### *Provision equivalent to criminal justice enactments*

- 31 Power to make provision in consequence of enactments relating to criminal justice**
- (1) In this section a “criminal justice enactment” means any enactment which –
    - (a) is contained in an Act passed after or in the same Session as this Act, and
    - (b) amends the law of England and Wales relating to any of the matters specified in subsection (2).
  - (2) Those matters are –
    - (a) the powers of the police in connection with the investigation of offences or the detection of offenders,
    - (b) powers of arrest and detention in connection with crime or criminal proceedings,
    - (c) the functions of any authority in relation to criminal prosecutions,
    - (d) remand in custody or on bail,



- (e) the rights and duties of an accused person in relation to proceedings in criminal courts,
  - (f) evidence or procedure in criminal courts,
  - (g) the powers of criminal courts, including powers in relation to sentence, and
  - (h) such other matters relating to criminal justice as the Secretary of State may by order prescribe for the purposes of this paragraph.
- (3) The Secretary of State may, if he thinks fit to do so in consequence of a criminal justice enactment, by order make provision, in relation to service policemen, service courts, persons subject to service law or proceedings for offences under the services Acts, which is equivalent to that made by –
- (a) the criminal justice enactment,
  - (b) any enactment relating to any of the matters mentioned in subsection (2) which is amended by the criminal justice enactment, or
  - (c) any subordinate legislation made under the criminal justice enactment or under any Act which is amended by the criminal justice enactment, subject to such modifications as he thinks fit.
- (4) In the following provisions of this section “the relevant provision” means the criminal justice enactment, the enactment falling within subsection (3)(b) or the subordinate legislation falling within subsection (3)(c).
- (5) An order under subsection (3) may make provision in such way as the Secretary of State thinks fit and may, in particular, apply the relevant provision subject to such modifications as he thinks fit and specifies in the order.
- (6) An order under subsection (3) may –
- (a) in relation to any relevant provision, be made in relation to all cases to which the order-making power extends or only in relation to specified cases,
  - (b) make different provision for different cases, including different provision in relation to different service courts, and
  - (c) amend, repeal or revoke any enactment (including the relevant provision and any enactment contained in this Act).
- (7) For the purposes of this section, Chapter 2 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and custody of young offenders) is to be taken to be contained in an Act falling within subsection (1)(a).
- (8) In this section any reference to a person subject to service law is a reference to –
- (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) any other person to whom provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply (whether with or without any modifications).
- (9) In this section –
- “criminal court” means any court of criminal jurisdiction other than a service court;
  - “the services Acts” means the 1955 Acts and the 1957 Act;
  - “service court” means a court-martial, a summary appeal court, a Standing Civilian Court or the Courts-Martial Appeal Court;
  - “service policeman” has the same meaning as in Part 2;
  - “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978 (c. 30);

“summary appeal court” means either of the courts established by section 83ZA of the 1955 Acts or the court established by section 52FF of the 1957 Act.

*Testing for alcohol or drugs*

**32 Powers to test for alcohol or drugs after serious incident**

- (1) This section applies where –
  - (a) an incident has occurred which, in the opinion of an officer designated for the purposes of this subsection in accordance with regulations made by the Defence Council (in this section referred to as “the designated officer”) –
    - (i) resulted in, or
    - (ii) created a risk of,death or serious injury to any person or serious damage to any property; and
  - (b) in the opinion of the designated officer, it is possible that one or more persons subject to service law may have caused, or in any way contributed –
    - (i) to the occurrence of the incident, or
    - (ii) to any death or serious injury to any person or serious damage to any property resulting from it, or to the risk of any such death, injury or damage occurring.
- (2) Any designation made for the purposes of subsection (1) may be expressed to have effect only in relation to a particular incident or description of incident.
- (3) Where the designated officer is the commanding officer of any person in relation to whom he is of the opinion referred to in subsection (1)(b), the designated officer may request that person to provide a sample for the purpose of ascertaining whether, or to what extent, that person has, or has had, alcohol or drugs in his body.
- (4) Where the designated officer is of the opinion referred to in subsection (1)(b) in relation to one or more persons as respects whom he is not the commanding officer, the designated officer may direct the commanding officer of any person specified in the direction, or of persons falling within a class so specified –
  - (a) to request that person, or (as the case may be) every person appearing to the commanding officer to fall within the specified class, to provide a sample for the purpose referred to in subsection (3); or
  - (b) to consider whether the commanding officer is of the opinion referred to in subsection (1)(b) in respect of that person or (as the case may be) of any persons falling within the specified class and, if so, to request that person or (as the case may be) every person who appears to him to fall within that class and as to whom he is of that opinion, to provide a sample for the purpose referred to in subsection (3).
- (5) The Defence Council may by regulations make provision about the obtaining of samples under subsection (3) or (4) and the testing of such samples; and any such regulations may in particular make provision –
  - (a) as to the number of samples which a commanding officer may request a person to provide;

- (b) as to the circumstances in which a commanding officer may request a person to provide more than one type of sample;
  - (c) enabling the commanding officer making the request to specify the manner in which the sample is to be provided;
  - (d) as to the circumstances in which a person who would (apart from regulations made under this paragraph) be liable to be requested to provide a sample under subsection (3) or (4) is not to be so requested;
  - (e) as to the equipment to be used, and the procedures to be followed, in obtaining samples and conducting tests;
  - (f) as to the qualifications and training of any persons engaged in obtaining samples and conducting tests.
- (6) The results of tests performed on samples provided by a person pursuant to a request made under subsection (3) or (4) shall not be admissible in evidence against—
- (a) that person, or
  - (b) any other person,
- in proceedings before a court-martial, commanding officer or appropriate superior authority.
- (7) The Defence Council may by regulations provide for the delegation—
- (a) by a designated officer of his functions under subsections (1), (3) and (4); and
  - (b) by a commanding officer of his functions under subsection (4).
- (8) Nothing in this section—
- (a) limits the powers conferred by—
    - (i) sections 6 and 7 of the Road Traffic Act 1988 (c. 52) (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
    - (ii) any provision of Part 5 of the Police and Criminal Evidence Act 1984 (c. 60) as applied by order under section 113(1) of that Act; or
  - (b) affects the admissibility in any proceedings of evidence obtained under those powers.
- (9) Schedule 5 (which contains amendments of the 1955 Acts and the 1957 Act relating to testing for alcohol and drugs) shall have effect.

### **33 Interpretation of s. 32**

- (1) The provisions of this section have effect for the interpretation of section 32.
- (2) “Drug” means—
- (a) a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38), or
  - (b) any other drug, or description of drug, specified in an order made by the Secretary of State for the purposes of this paragraph.
- (3) “Sample” means—
- (a) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, alcohol in his body, a sample of urine or breath,

- (b) where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, drugs in his body, a sample of urine, and
  - (c) in either case, any other sample specified by the Secretary of State in an order made for the purposes of this paragraph.
- (4) The power conferred by subsection (2)(b) includes power to specify a description of drug by reference to the effects or likely effects of taking drugs within that description.
- (5) The power conferred by subsection (3)(c) does not include power to specify a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person's body orifice (other than the mouth).
- (6) In the case of a sample falling within subsection (3)(c), any reference to a person being requested to provide a sample includes a reference to a person being requested to consent to the taking from him of a sample.
- (7) In section 32, any reference to a person subject to service law is a reference to—
  - (a) a person subject to military law, air-force law or the 1957 Act, or
  - (b) subject to subsection (8), a person to whom any provisions of Part 2 of the Army Act 1955 (c. 18), Part 2 of the Air Force Act 1955 (c. 19) or Parts 1 and 2 of the 1957 Act apply by virtue of—
    - (i) section 209(1) or (2) of either of the 1955 Acts (application of Act to civilians), or
    - (ii) section 118(1) or (2) of the 1957 Act (application of Act to civilians).
- (8) A person is not to be regarded for the purposes of section 32 as a person subject to service law if provisions of either of the 1955 Acts or the 1957 Act apply to him only by virtue of his falling within any description specified in paragraphs 5 to 9 of Schedule 5 to the 1955 Acts or (as the case may be) paragraphs 5 to 9 of Schedule 3 to the 1957 Act.
- (9) For the purposes of section 32, the commanding officer of a person subject to service law is—
  - (a) in relation to a person subject to military law, the officer who would be that person's commanding officer for the purposes of section 82 of the Army Act 1955 if he were charged with an offence;
  - (b) in relation to a person subject to air-force law, the officer who would be that person's commanding officer for the purposes of section 82 of the Air Force Act 1955 if he were charged with an offence;
  - (c) in relation to a person subject to the 1957 Act or a person to whom provisions of that Act apply by virtue of section 118(1) or (2) of that Act, the officer in command of the ship or naval establishment to which he belongs or any other person who, by virtue of regulations made under section 52E of that Act, would be able to exercise the powers conferred by that Act in relation to that person if he were charged with an offence;
  - (d) in relation to a person to whom provisions of Part 2 of either of the 1955 Acts apply by virtue of subsection (1) or (2) of section 209 of the Act in question, the person who is by virtue of regulations of the Defence Council made for the purposes of section 209(3)(f) of that Act the commanding officer for the purposes of Part 2 of that Act in relation to him.

*Miscellaneous amendments***34 Miscellaneous amendments**

Schedule 6 (which contains miscellaneous amendments relating to the armed forces) shall have effect.

*General***35 Orders and regulations**

- (1) Any power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing (whether alone or with other provisions) –
  - (a) an order under section 8(2),
  - (b) an order under section 31(2)(h), or
  - (c) an order under section 30 or 31(3) which by virtue of section 30(4)(e) or 31(6)(c) makes any provision adding to, replacing or omitting any part of the text of an Act,
 shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument which contains –
  - (a) an order made by the Secretary of State under –
    - (i) any provision of Part 2,
    - (ii) section 20,
    - (iii) section 30,
    - (iv) section 31(3), or
    - (v) section 33(2)(b) or (3)(c), or
  - (b) regulations made by the Secretary of State under –
    - (i) any provision of Part 2,
    - (ii) section 26, or
    - (iii) section 27,
 and which is not subject to the requirement in subsection (2) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any power of the Secretary of State to make an order or regulations under this Act includes power to make such incidental, consequential or transitional provision as the Secretary of State thinks fit.

**36 Application to Channel Islands and Isle of Man**

- (1) Section 216 of the Army Act 1955 (c. 18), section 214 of the Air Force Act 1955 (c. 19) and section 125 of the 1957 Act (application of those Acts to Channel Islands and Isle of Man) shall each apply in relation to the provisions of section 20 of this Act as if those provisions were contained in the Army Act 1955, the Air Force Act 1955 or the 1957 Act, as the case may require.
- (2) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in subsection (3) shall extend, with such exceptions and

modifications as appear to Her Majesty to be appropriate, to the Channel Islands and the Isle of Man.

- (3) The provisions referred to in subsection (2) are –
- (a) Part 2,
  - (b) sections 26 to 28,
  - (c) section 30,
  - (d) section 31, and
  - (e) sections 32 and 33.

### **37 Interpretation**

In this Act –

“the 1955 Acts” means the Army Act 1955 (c. 18) and the Air Force Act 1955 (c. 19);

“the 1957 Act” means the Naval Discipline Act 1957 (c. 53).

### **38 Repeals**

The enactments specified in Schedule 7 (which includes enactments that are spent in consequence of section 21(5) of the Human Rights Act 1998 (c. 42) or section 60 of the Youth Justice and Criminal Evidence Act 1999 (c.23)) are repealed to the extent specified in that Schedule.

### **39 Short title and commencement**

- (1) This Act may be cited as the Armed Forces Act 2001.
- (2) Subject to subsections (3) and (4), this Act shall come into force on such day as the Secretary of State may by order appoint.
- (3) The following provisions shall come into force on the day on which this Act is passed –
- (a) section 1,
  - (b) section 35,
  - (c) section 36,
  - (d) section 37,
  - (e) this section,
  - (f) Parts 4 and 5 of Schedule 6, and section 34 so far as relating to those Parts, and
  - (g) Parts 4 to 6 of Schedule 7, and section 38 so far as relating to those Parts.
- (4) The repeal by this Act of section 1 of the Armed Forces Act 1996 (c. 46) shall come into force on 1st September 2001.
- (5) An order under subsection (2) may appoint different days for different purposes.
- (6) An order under subsection (2) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.

## SCHEDULES

### SCHEDULE 1

Section 17

#### SUMMARY DEALING OR TRIAL AND FUNCTIONS OF PROSECUTING AUTHORITY

*Army Act 1955 (c. 18)*

- 1 In section 76A(4) of the Army Act 1955 (which provides that a charge against an officer may be dealt with summarily if the officer is below the rank of lieutenant-colonel), for “lieutenant-colonel” there is substituted “colonel”.
- 2 In section 82(2) of that Act (officers who may act as appropriate superior authorities) in paragraph (a) for “or brigadier” there is substituted “, brigadier or commodore”.
- 3 (1) Section 83BB of that Act (cases where charge may be referred back to commanding officer) is amended as follows.
  - (2) After subsection (2) there is inserted –
 

“(2A) Where –

    - (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,
    - (b) the prosecuting authority –
      - (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
      - (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and
    - (c) the accused is below the rank of colonel,

the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”
  - (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.
- 4 After that section there is inserted –

**“83BC Power of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following –
  - (a) the Royal Military Police;
  - (b) the Royal Navy Regulating Branch;

- (c) the Royal Air Force Police;
- (d) the Ministry of Defence Police;
- (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (f) the metropolitan police force;
- (g) the City of London police force;
- (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (i) the Police Service of Northern Ireland;
- (j) the British Transport Police;
- (k) the National Crime Squad.”

*Air Force Act 1955 (c. 19)*

- 5 In section 76A(4) of the Air Force Act 1955 (which provides that a charge against an officer may be dealt with summarily if the officer is below the rank of wing commander), for “wing commander” there is substituted “group captain”.
- 6 In section 82(2) of that Act (officers who may act as appropriate superior authorities), after “general officer” there is inserted “, commodore”.
- 7 (1) Section 83BB of that Act (cases where charge may be referred back to commanding officer) is amended as follows.
- (2) After subsection (2) there is inserted –
- “(2A) Where –
- (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,
  - (b) the prosecuting authority –
    - (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
    - (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and
  - (c) the accused is below the rank of group captain,
- the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”
- (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.
- 8 After that section there is inserted –

**“83BC Power of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following –
- (a) the Royal Air Force Police;
  - (b) the Royal Military Police;



- (c) the Royal Navy Regulating Branch;
- (d) the Ministry of Defence Police;
- (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (f) the metropolitan police force;
- (g) the City of London police force;
- (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (i) the Police Service of Northern Ireland;
- (j) the British Transport Police;
- (k) the National Crime Squad.”

*Naval Discipline Act 1957 (c. 53)*

- 9 (1) Section 52B of the 1957 Act (investigation of charges by commanding officer) is amended as follows.
- (2) In subsection (5), for “subsection (6)” there is substituted “subsections (6) and (6A)”.
- (3) For subsection (6) there is substituted –
- “**(6)** The commanding officer may not try summarily any charge which is not capable of being tried summarily.
- (6A)** The commanding officer may not try summarily any charge against an officer unless –
- (a) the commanding officer is of or above the rank of commander,
  - (b) the rank of the commanding officer is at least two ranks higher than that of the accused, and
  - (c) the accused is below the rank of captain.
- (6B)** For the purposes of subsection (6A) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.”
- 10 In section 52C of that Act (powers of higher authority) after subsection (3) there is inserted –
- “(3A) If the charge is against an officer below the rank of captain and is capable of being tried summarily, the higher authority may, subject to subsection (4) below –
- (a) in a case where the commanding officer satisfies the conditions in section 52B(6A)(a) and (b) of this Act, refer the charge back to the commanding officer to be so tried, and
  - (b) in any other case, refer the charge to the appropriate superior authority to be so tried.”
- 11 (1) Section 52D of that Act (summary trial) is amended as follows.
- (2) In subsection (2), after “If”, where first occurring, there is inserted “the charge is against a rating and”.

- (3) After that subsection there is inserted –
- “(2ZA) If the charge is against an officer, the appropriate superior authority shall afford the accused the opportunity of electing court-martial trial.”
- (4) In subsection (3), after “commanding officer” there is inserted “or appropriate superior authority”.
- (5) For subsection (4) there is substituted –
- “(4) If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority shall –
- (a) if the accused is a rating, refer the charge back to the commanding officer of the accused;
- (b) if the accused is an officer, refer the charge back to the appropriate superior authority;
- for the commanding officer or appropriate superior authority to try the charge summarily.”
- (6) After subsection (4) there is inserted –
- “(4A) Subsections (2) and (2ZA) above do not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the commanding officer or appropriate superior authority under subsection (4) above.
- (4B) If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him.
- (4C) Where under subsection (4B) above a charge is amended or one charge is substituted for another, subsection (2) or (2ZA) above applies in relation to the amended or substituted charge.”
- (7) In subsections (5), (6), (7) and (8), after “commanding officer” there is inserted “or appropriate superior authority”.
- (8) After subsection (8) there is inserted –
- “(9) Nothing in this section or section 52C of this Act shall be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge.”

12 After section 52E of that Act there is inserted –

**“52EE Officers who may act as appropriate superior authorities**

- (1) A person may act as appropriate superior authority in relation to a person charged with an offence if –
- (a) he is of or above the rank of commander, and
- (b) his rank is at least two ranks higher than that of the accused.
- (2) The appropriate superior authority in relation to a person charged with an offence shall be appointed by the higher authority.

- (3) For the purposes of subsection (1) above, the holding by any person of any acting rank other than that of commodore is to be disregarded; and in this subsection “acting rank” means rank of any description (however called) such that under Queen’s Regulations a commanding officer has power to order the holder to revert from that rank.”
- 13 In section 52F of that Act (regulations as to summary trial etc) in subsection (2)–
- (a) in paragraph (e), for “a specified description of commanding officer” there is substituted “a commanding officer or appropriate superior authority of a specified description;”, and
- (b) for paragraph (k) there is substituted –
- “(k) who may act as the higher authority and the appropriate superior authority in specified descriptions of cases;
- (l) who is to act as the higher authority and the appropriate superior authority in any particular case.”
- 14 (1) Section 52II of that Act (cases where charge may be referred back to commanding officer) is amended as follows.
- (2) After subsection (2) there is inserted –
- “(2A) Where–
- (a) a case has been referred to the prosecuting authority otherwise than as a result of an election for court-martial trial,
- (b) the prosecuting authority –
- (i) in respect of the case or part of the case, does not determine any charge to be preferred, or
- (ii) before the commencement of the trial of any charge preferred, discontinues proceedings on that charge, and
- (c) the accused is below the rank of captain,
- the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused.”
- (3) In subsection (3), after “subsection (1)” there is inserted “or (2A)”.
- 15 After that section there is inserted –

**“52IJ Power of prosecuting authority to advise police forces**

- (1) The prosecuting authority may give advice to police forces on all matters relating to offences under this Act (including offences under the Reserve Forces Act 1996 which by virtue of subsection (1) of section 103 of that Act are treated for the purposes mentioned in that subsection as being offences under this Act).
- (2) In this section “police force” means any of the following –
- (a) the Royal Navy Regulating Branch;
- (b) the Royal Air Force Police;
- (c) the Royal Military Police;
- (d) the Ministry of Defence Police;

- (e) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
  - (f) the metropolitan police force;
  - (g) the City of London police force;
  - (h) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
  - (i) the Police Service of Northern Ireland;
  - (j) the British Transport Police;
  - (k) the National Crime Squad.”
- 16 In section 122 of that Act (powers of command of members of co-operating military or air forces) in subsection (2), for “section eleven, and section forty-five” there is substituted “sections 11, 45 and 52EE”.
- 17 In section 135(1) of that Act (general interpretation), after the definition of “air signal” there is inserted—  
““appropriate superior authority” means a person who may act as an appropriate superior authority by virtue of section 52EE of this Act;”.

## SCHEDULE 2

Section 19

### MEMBERSHIP OF COURTS-MARTIAL

*Army Act 1955 (c. 18)*

- 1 (1) Section 84C of the Army Act 1955 (convening of general and district courts-martial) is amended as follows.
- (2) In subsection (2) —
- (a) after paragraph (c) there is inserted—  
““(cc) any warrant officers who are to be members of the court-martial;”, and
  - (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e) after “officer” there is inserted “or warrant officer”.
- 2 For section 84D of that Act (constitution of general and district courts-martial) there is substituted —

#### **“84D Constitution of general and district courts-martial**

- (1) A general court-martial shall consist of—
- (a) the president, who shall be a military officer,
  - (b) the judge advocate, and
  - (c) at least four other persons of whom—
    - (i) two shall each be either a military officer or a military warrant officer, and
    - (ii) the rest shall be military officers.
- (2) A district court-martial shall consist of—
- (a) the president, who shall be a military officer,

- (b) the judge advocate, and
- (c) at least two other persons of whom –
  - (i) one shall be either a military officer or a military warrant officer, and
  - (ii) the rest shall be military officers.
- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of field officer unless in the opinion of the court administration officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of captain.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless –
  - (a) he has held a commission in any of Her Majesty's naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above "the qualifying period" means –
  - (a) in relation to a general court-martial, three years, and
  - (b) in relation to a district court-martial, two years.
- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of captain; and, in the case of a general court-martial for the trial of an officer above the rank of captain, all the members so appointed shall be of or above the rank of captain.
- (10) If, in the opinion of the court administration officer, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision –

- (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or
  - (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.
- (11) In this section –
  - “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
  - “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
  - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;
  - “naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”
- 3 (1) Section 92 of that Act (challenges by accused) is amended as follows.
  - (2) In subsection (2) after “appointed members” there is inserted “, and any warrant officers so appointed,”.
  - (3) In subsection (5) –
    - (a) after “court” there is inserted “or to any warrant officer so appointed”,
    - (b) after “the officer” there is inserted “or warrant officer”,
    - (c) for “officers” there is substituted “members who are officers or warrant officers”, and
    - (d) for “another officer” there is substituted “another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)”.
- 4 In section 93 of that Act (administration of oaths) in subsection (1) after “every officer” there is inserted “or warrant officer”.
- 5 (1) Section 103A of that Act (field general courts-martial) is amended as follows.
  - (2) In subsection (4) after paragraph (c) there is inserted –
    - “(d) any warrant officer who is to be a member of the court-martial.”
  - (3) After that subsection there is inserted –
    - “(4A) Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial.”
- 6 (1) Section 103B of that Act (constitution of field general courts-martial) is amended as follows.
  - (2) In subsection (1) for the words from “consist” onwards there is substituted –

“consist of—

- (a) the president, who shall be a military officer, and
- (b) at least two persons appointed under this paragraph, of whom—
  - (i) one shall be either a military officer or a military warrant officer, and
  - (ii) the rest shall be military officers.”

(3) In subsection (2) for the words from “three” to “available” there is substituted “three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above”.

(4) After subsection (6) there is inserted—

“(6A) A field general court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.”

(5) For subsection (7) there is substituted—

“(7) If a field general court-martial is to be convened at any place where, in the opinion of the officer convening it, the necessary number of military officers or military warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(b) above, he may appoint under that provision—

- (a) any naval or air-force officer having qualifications corresponding to those required for a military officer, or
- (b) where a military warrant officer could be appointed, any naval or air-force warrant officer having qualifications corresponding to those required for a military warrant officer.”

(6) In subsection (8), for “less than three officers” there is substituted “only two persons, apart from any judge advocate (as defined by subsection (4) above)”.

(7) In subsection (9)—

(a) after the definition of “air-force officer” there is inserted—

““air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;”,

(b) after the definition of “military officer” there is inserted—

““military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;”, and

(c) after the definition of “naval officer” there is inserted—

““naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

7 In section 209 (application of Acts to civilians), in subsection (3)(fa) for “officers” there is substituted “officers or warrant officers”.

*Air Force Act 1955 (c. 19)*

- 8 (1) Section 84C of the Air Force Act 1955 (convening of general and district courts-martial) is amended as follows.
- (2) In subsection (2) –
- (a) after paragraph (c) there is inserted –
- “(cc) any warrant officers who are to be members of the court-martial;”, and
- (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e), after “officer” there is inserted “or warrant officer”.
- 9 For section 84D of that Act (constitution of general and district courts-martial) there is substituted –

**“84D Constitution of general and district courts-martial**

- (1) A general court-martial shall consist of –
- (a) the president, who shall be an air-force officer,
- (b) the judge advocate, and
- (c) at least four other persons, of whom –
- (i) two shall each be either an air-force officer or an air-force warrant officer, and
- (ii) the rest shall be air-force officers.
- (2) A district court-martial shall consist of –
- (a) the president, who shall be an air-force officer,
- (b) the judge advocate, and
- (c) at least two other persons, of whom –
- (i) one shall be either an air-force officer or an air-force warrant officer, and
- (ii) the rest shall be air-force officers.
- (3) An officer shall not be appointed as the president of a general or district court-martial unless he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period.
- (4) The president of a general or district court-martial shall not be below the rank of squadron leader unless in the opinion of the court administration officer a squadron leader having suitable qualifications is not, with due regard to the public service, available; and in any event the president of such a court-martial shall not be below the rank of flight lieutenant.
- (5) An officer shall not be appointed under subsection (1)(c) above as a member of a general court-martial or under subsection (2)(c) above as a member of a district court-martial unless –
- (a) he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than the qualifying period or for periods amounting in the aggregate to not less than the qualifying period, or



- (b) immediately before receiving his commission, he was a warrant officer in any of those forces.
- (6) In subsections (3) and (5) above “the qualifying period” means—
- (a) in relation to a general court-martial, three years, and
  - (b) in relation to a district court-martial, two years.
- (7) A general or district court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of warrant officer.
- (8) A general or district court-martial shall not include an officer appointed under subsection (1)(c) or (2)(c) above who qualifies under subsection (5) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission.
- (9) Not more than two of the members of a general court-martial appointed under subsection (1)(c) above shall be of a rank below that of flight lieutenant; and, in the case of a general court-martial for the trial of an officer above the rank of flight lieutenant, all the members so appointed shall be of or above the rank of flight lieutenant.
- (10) If, in the opinion of the court administration officer, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) or (2)(c) above, he may appoint under that provision—
- (a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or
  - (b) where an air-force warrant officer could be appointed, a naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.
- (11) In this section—
- “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
- “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
- “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
- “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
- “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957;
- “naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”
- 10 (1) Section 92 of that Act (challenges by accused) is amended as follows.
- (2) In subsection (2) after “appointed members” there is inserted “, and any warrant officers so appointed,”.
  - (3) In subsection (5) —

- (a) after “court” there is inserted “or to any warrant officer so appointed”,
  - (b) after “the officer” there is inserted “or warrant officer”,
  - (c) for “officers” there is substituted “members who are officers or warrant officers”, and
  - (d) for “another officer” there is substituted “another person (who may be either an officer or, where the vacancy could in accordance with this Act be filled by a warrant officer, a warrant officer)”.
- 11 In section 93 of that Act (administration of oaths) in subsection (1) after “every officer” there is inserted “or warrant officer”.
- 12 (1) Section 103A of that Act (field general courts-martial) is amended as follows.
- (2) In subsection (4) after paragraph (c) there is inserted –
- “(d) any warrant officer who is to be a member of the court-martial.”
- (3) After that subsection there is inserted –
- “(4A) Where a judge advocate, as defined by section 103B(4) of this Act, is to be a member of a field general court-martial, the order convening the court-martial shall state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial.”
- 13 (1) Section 103B of that Act (constitution of field general courts-martial) is amended as follows.
- (2) In subsection (1) for the words from “consist” onwards there is substituted –
- “consist of –
  - (a) the president, who shall be an air-force officer, and
  - (b) at least two persons appointed under this paragraph, of whom –
  - (i) one shall be either an air-force officer or an air-force warrant officer, and
  - (ii) the rest shall be air-force officers.”
- (3) In subsection (2) for the words from “three” to “available” there is substituted “three persons having suitable qualifications are not available for appointment under subsection (1)(a) and (b) above”.
- (4) After subsection (6) there is inserted –
- “(6A) A field general court-martial shall not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned.”
- (5) For subsection (7) there is substituted –
- “(7) If a field general court-martial is to be convened at any place where, in the opinion of the officer convening it, the necessary number of air-force officers or air-force warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(b) above, he may appoint under that provision –
  - (a) any naval or military officer having qualifications corresponding to those required for an air-force officer, or

- (b) where an air-force warrant officer could be appointed, any naval or military warrant officer having qualifications corresponding to those required for an air-force warrant officer.”
- (6) In subsection (8), for “less than three officers” there is substituted “only two persons, apart from any judge advocate (as defined by subsection (4) above)”.
- (7) In subsection (9) –
- (a) after the definition of “air-force officer” there is inserted –
- ““air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;”,
- (b) after the definition of “military officer” there is inserted –
- ““military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;”, and
- (c) after the definition of “naval officer” there is inserted –
- ““naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”.
- 14 In section 209 (application of Acts to civilians), in subsection (3)(fa) for “officers” there is substituted “officers or warrant officers”.

*Naval Discipline Act 1957*

- 15 (1) Section 53C of the 1957 Act (ordering of courts-martial) is amended as follows.
- (2) In subsection (2) –
- (a) after paragraph (c) there is inserted –
- “(cc) any warrant officers who are to be members of the court-martial;”, and
- (b) in paragraph (d) after “officers” there is inserted “or warrant officers”.
- (3) In subsection (4)(e) after “officer” there is inserted “or warrant officer”.
- 16 For section 54 of that Act (composition of courts-martial) there is substituted –

**“54 Composition of courts-martial**

- (1) A court-martial shall consist of –
- (a) the president, who shall be a naval officer,
- (b) the judge advocate, and
- (c) not less than four nor more than eight other persons, of whom –
- (i) two shall each be either a naval officer or a naval warrant officer, and
- (ii) the rest shall be naval officers.

- (2) The president of a court-martial shall not be below the rank of captain, and in the case of a court-martial for the trial of an officer of flag rank shall be an officer of flag rank.
- (3) An officer shall not be appointed under subsection (1)(c) above as a member of a court-martial unless—
  - (a) he is of or above the rank of lieutenant and has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than three years, or for periods amounting in the aggregate to not less than three years, or
  - (b) immediately before he received his commission, he was a warrant officer in any of those forces.
- (4) The officers and warrant officers appointed members of a court-martial shall not all belong to the same ship or naval establishment.
- (5) The members appointed under subsection (1)(c) above—
  - (a) shall not include any warrant officer, unless the court-martial is for the trial of a person of a rank or rate below that of a warrant officer,
  - (b) shall not include any officer who qualifies under subsection (3) above only by virtue of paragraph (b) of that subsection, unless the court-martial is for the trial of a person of a rank or rate below that which the officer held immediately before he received his commission,
  - (c) in the case of a trial of an officer of flag rank, shall be of or above the rank of captain,
  - (d) in the case of a trial of a commodore or captain, shall be of or above the rank of commander,
  - (e) in the case of a trial of a commander, shall include at least two members who are of or above the rank of commander.
- (6) If, in the opinion of the court administration officer, the necessary number of naval officers or naval warrant officers having suitable qualifications is not, with due regard to the public service, available for appointment under subsection (1)(c) above, he may appoint under that provision—
  - (a) any military or air-force officer having qualifications corresponding to those required for a naval officer, or
  - (b) where a naval warrant officer could be appointed, any military or air-force warrant officer having qualifications corresponding to those required for a naval warrant officer.
- (7) In this section—
  - “air-force officer” means an officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;
  - “military officer” means an officer belonging to Her Majesty’s military forces and subject to military law;
  - “military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
  - “naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act;

“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to this Act;

“warrant officer” does not include an acting warrant officer (that is, a warrant officer whom a commanding officer has power under Queen’s Regulations to order to revert from the rank of warrant officer).”

- 17 (1) Section 59 of that Act (challenges by accused) is amended as follows.
- (2) In subsection (1), after “court-martial” there is inserted “, and any warrant officers so appointed,”.
- (3) In subsection (4) –
- (a) after “court”, where first occurring, there is inserted “or to any warrant officer so appointed”,
- (b) after “officer”, where second occurring, there is inserted “or warrant officer”.
- (4) In subsection (6) after “court-martial” there is inserted “, and any warrant officers so appointed,”.
- 18 In section 118 (application of Acts to civilians), for subsection (3A) there is substituted –
- “(3A) A court-martial for the trial of any such person may include in place of the corresponding number of persons eligible to be appointed under section 54(1)(c) of this Act not more than two persons who are in the service of the Crown and are persons to whom this Act applies by virtue of this section.”

## SCHEDULE 3

Section 22

## REQUIRED CUSTODIAL SENTENCES

*Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)*

- 1 (1) Section 70 of the Army Act 1955 (civil offences) is amended as follows.
- (2) In subsection (3) before paragraph (b) there is inserted –
- “(ac) if he is a person to whom subsection (3B), (3E) or (3G) below applies, be sentenced in accordance with the subsection in question;”.
- (3) For subsection (3A) there is substituted –
- “(3A) Subsection (3B) below applies to a person convicted of an offence against this section if –
- (a) the corresponding civil offence is a serious offence, and
- (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted –
- (i) of a serious offence, or
- (ii) of an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a serious offence.

- (3B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
- (3C) An offence the sentence for which is imposed under subsection (3B) above shall not be regarded as an offence the sentence for which is fixed by law.
- (3D) Subsection (3E) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a class A drug trafficking offence,
  - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either—
    - (i) a class A drug trafficking offence, or
    - (ii) an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a class A drug trafficking offence, and
  - (c) one of those other offences was committed after he had been convicted of the other.
- (3E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3F) Subsection (3G) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a domestic burglary,
  - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either—
    - (i) a domestic burglary in respect of which he was convicted in England and Wales, or
    - (ii) an offence against this section, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a domestic burglary, and
  - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.
- (3G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more

days, it shall be taken for the purposes of subsections (3A), (3D) and (3F) above to have been committed on the last of those days.”

(4) After subsection (6) there is inserted –

“(7) In this section –

“class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;

“domestic burglary” has the same meaning as in section 111 of that Act;

“serious offence” has the same meaning as in section 109 of that Act.”

2 (1) Section 70 of the Air Force Act 1955 (c. 19) is amended as follows.

(2) In subsection (3) before paragraph (b) there is inserted –

“(ac) if he is a person to whom subsection (3B), (3E) or (3G) below applies, be sentenced in accordance with the subsection in question;”.

(3) For subsection (3A) there is substituted –

“(3A) Subsection (3B) below applies to a person convicted of an offence against this section if –

(a) the corresponding civil offence is a serious offence, and

(b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of –

(i) a serious offence, or

(ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a serious offence.

(3B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.

(3C) An offence the sentence for which is imposed under subsection (3B) above shall not be regarded as an offence the sentence for which is fixed by law.

(3D) Subsection (3E) below applies to a person convicted of an offence against this section if –

(a) the corresponding civil offence is a class A drug trafficking offence,

(b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either –

(i) a class A drug trafficking offence, or

(ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a class A drug trafficking offence, and

(c) one of those other offences was committed after he had been convicted of the other.

- (3E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3F) Subsection (3G) below applies to a person convicted of an offence against this section if—
- (a) the corresponding civil offence is a domestic burglary,
  - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either—
    - (i) a domestic burglary in respect of which he was convicted in England and Wales, or
    - (ii) an offence against this section, section 70 of the Army Act 1955 or section 42 of the Naval Discipline Act 1957 constituted by a civil offence which is a domestic burglary, and
  - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.
- (3G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsections (3A), (3D) and (3F) above to have been committed on the last of those days.”
- (4) After subsection (6) there is inserted—
- “(7) In this section—
- “class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - “domestic burglary” has the same meaning as in section 111 of that Act;
  - “serious offence” has the same meaning as in section 109 of that Act.”
- 3 After section 70 of each of the 1955 Acts there is inserted—

#### **“70A Reduction in minimum sentences for guilty pleas**

- (1) Where sentence falls to be imposed under subsection (3E) or (3G) of section 70 of this Act in respect of an offence to which the offender has pleaded guilty, nothing in that subsection shall prevent a court-martial, after taking into account—
- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
  - (b) the circumstances in which the indication was given,



from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

- (2) Where, by virtue of subsection (1) above, a court-martial imposes a sentence which is less severe than that which it would otherwise have imposed, the court-martial shall state in open court that it has done so.
- (3) For the purposes of subsection (1) above, a sentence falls to be imposed under subsection (3E) or (3G) of section 70 of this Act if it is required by that subsection and the court-martial is not of the opinion referred to in that subsection.

#### **70B Reasons to be given for not passing life or minimum sentence**

- (1) If—
  - (a) subsection (3B) of section 70 of this Act applies to a person, but
  - (b) the court-martial is of the opinion that there are exceptional circumstances as mentioned in that subsection which justify its not imposing a sentence of imprisonment for life,
 the court shall state in open court that it is of that opinion and what the exceptional circumstances are.
- (2) If—
  - (a) subsection (3E) or (3G) of section 70 of this Act applies to a person, but
  - (b) the court-martial is of the opinion that there are particular circumstances as mentioned in that subsection which, in all the circumstances, would make a sentence of imprisonment for the minimum term mentioned in that subsection unjust,
 the court shall state in open court that it is of that opinion and what the particular circumstances are.”

4 In paragraph 3 of Schedule 5A to each of the 1955 Acts (powers of court on trial of civilian) —

- (a) in sub-paragraph (1) (absolute and conditional discharge of civilians) for the words “(not being an offence the sentence for which is fixed by law or falls to be imposed under section 70(3A) above) may” there is substituted “may (subject to sub-paragraph (1A) below)”, and
- (b) after that sub-paragraph there is inserted —
 

“(1A) No order may be made under this paragraph if—

  - (a) the offence of which the civilian is found guilty is an offence against section 70 of this Act where the corresponding civil offence is one for which the sentence is fixed by law, or
  - (b) the civilian is a person to whom subsection (3B), (3E) or (3G) of that section applies and the court-martial is not of the opinion mentioned in that subsection.”

*Naval Discipline Act 1957 (c. 53)*

5 (1) Section 42 of the 1957 Act (civil offences) is amended as follows.

- (2) In subsection (1), after paragraph (b) there is inserted –
- “(ba) if he is a person to whom subsection (1B), (1E) or (1G) below applies, be sentenced in accordance with the subsection in question;”.
- (3) For subsection (1A) there is substituted –
- “(1A) Subsection (1B) below applies to a person convicted of an offence against this section if –
- (a) the civil offence is a serious offence, and
  - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of –
    - (i) a serious offence, or
    - (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a serious offence.
- (1B) The court-martial shall sentence the person to imprisonment for life, unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
- (1C) An offence the sentence for which is imposed under subsection (1B) above shall not be regarded as an offence the sentence for which is fixed by law.
- (1D) Subsection (1E) below applies to a person convicted of an offence against this section if –
- (a) the civil offence is a class A drug trafficking offence,
  - (b) at the time when the offence against this section was committed, he was 18 or over and had been convicted of two other offences each of which is either –
    - (i) a class A drug trafficking offence, or
    - (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a class A drug trafficking offence, and
  - (c) one of those other offences was committed after he had been convicted of the other.
- (1E) The court-martial shall sentence the person to imprisonment for a term of at least seven years, unless it is of the opinion that there are particular circumstances which –
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (1F) Subsection (1G) below applies to a person convicted of an offence against this section if –
- (a) the civil offence is a domestic burglary,
  - (b) at the time when the offence was committed he was 18 or over and had been convicted of two other offences each of which is either –
    - (i) a domestic burglary in respect of which he was convicted in England and Wales, or

- (ii) an offence against this section, section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955 constituted by a civil offence which is a domestic burglary, and
  - (c) one of those other offences was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.
- (1G) The court-martial shall sentence the person to imprisonment for a term of at least three years unless it is of the opinion that there are particular circumstances which –
- (a) relate to any of the offences or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (1H) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsections (1A), (1D) and (1F) above to have been committed on the last of those days.”
- (4) After subsection (2A) there is inserted –
- “(3) In this section –
- “class A drug trafficking offence” has the same meaning as in section 110 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - “domestic burglary” has the same meaning as in section 111 of that Act;
  - “serious offence” has the same meaning as in section 109 of that Act.”

6 After section 42 there is inserted –

**“42A Reduction in minimum sentences for guilty pleas**

- (1) Where sentence falls to be imposed under subsection (1E) or (1G) of section 42 of this Act in respect of an offence to which the offender has pleaded guilty, nothing in that subsection shall prevent a court-martial, after taking into account –
  - (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
  - (b) the circumstances in which the indication was given,
 from imposing any sentence which is not less than 80 per cent of that specified in that subsection.
- (2) Where, by virtue of subsection (1) above, a court-martial imposes a sentence which is less severe than that which it would otherwise have imposed, the court-martial shall state in open court that it has done so.
- (3) For the purposes of subsection (1) above, a sentence falls to be imposed under subsection (1E) or (1G) of section 42 of this Act if it is required by that subsection and the court-martial is not of the opinion referred to in that subsection.

#### 42B Reasons to be given for not passing life or minimum sentence

- (1) If—
  - (a) subsection (1B) of section 42 of this Act applies to a person, but
  - (b) the court-martial is of the opinion that there are exceptional circumstances as mentioned in that subsection which justify its not imposing a sentence of imprisonment for life,the court shall state in open court that it is of that opinion and what the exceptional circumstances are.
- (2) If—
  - (a) subsection (1E) or (1G) of section 42 of this Act applies to a person, but
  - (b) the court-martial is of the opinion that there are particular circumstances as mentioned in that subsection which, in all the circumstances, would make a sentence of imprisonment for the minimum term mentioned in that subsection unjust,the court shall state in open court that it is of that opinion and what the particular circumstances are.”

7 In paragraph 3 of Schedule 4A to the 1957 Act (powers of court on trial of civilian)—

- (a) in sub-paragraph (1) (absolute and conditional discharge of civilians) for the words “(not being an offence the sentence for which is fixed by law or falls to be imposed under section 42(1A) above) may” there is substituted “may (subject to sub-paragraph (1A) below)”, and
- (b) after that sub-paragraph there is inserted —

“(1A) No order may be made under this paragraph if—

  - (a) the offence of which the civilian is found guilty is an offence against section 42 of this Act constituted by a civil offence for which the sentence is fixed by law, or
  - (b) the civilian is a person to whom subsection (1B), (1E) or (1G) of that section applies and the court-martial is not of the opinion mentioned in that subsection.”

#### SCHEDULE 4

Section 29

##### AMENDMENTS RELATING TO CUSTODY

*Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)*

- 1 In section 75H of each of the 1955 Acts (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.
- 2 In section 75J of each of the 1955 Acts (release from custody after charge or during proceedings), after subsection (2) there is inserted —

- “(2A) On an application made –  
 (a) by or on behalf of the accused, or  
 (b) by the commanding officer of the accused,  
 any requirement imposed under subsection (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 75H(2) of this Act has effect, by the judge advocate in relation to the court-martial.”
- 3 (1) Section 75K of each of the 1955 Acts (arrest during proceedings) is amended as follows.  
 (2) After subsection (3) there is inserted –  
 “(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”
- (3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.
- 4 After section 75L of each of the 1955 Acts there is inserted –

**“75LL Custody in case of trial by Standing Civilian Court**

In relation to any time after the commencement of the trial of the accused by a Standing Civilian Court, the provisions of Schedule 1A to this Act shall have effect in substitution for the provisions of sections 75H to 75K of this Act.”

- 5 (1) Section 75M of each of the 1955 Acts (custody rules) is amended as follows.  
 (2) At the end of subsection (1) there is inserted –  
 “(d) on an application under section 75J(2A) of, or paragraph 2(3) of Schedule 1A to, this Act.”
- (3) In paragraph (h) of subsection (2) (which relates to the use of live television links, etc.) –  
 (a) after “or (8)(b) of” there is inserted “, or paragraph 3(4)(b) of Schedule 1A to,”, and  
 (b) for “or judge advocate” there is substituted “, judge advocate or magistrate”.
- 6 After Schedule 1 to the Army Act 1955 (c. 18) there is inserted –

“SCHEDULE 1A

CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

*Custody during Standing Civilian Court proceedings*

- 1 (1) Where the accused is kept in military custody under an order under section 75F(2) of this Act at any time after the

commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.

- (2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (3) In section 75F(2), after paragraph (d) there shall be inserted –
  - “; or
  - (e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in military custody.”
- (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 75F(2) does not authorise the keeping of the accused in military custody after he is sentenced by a Standing Civilian Court.

*Release from custody during proceedings*

- 2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in military custody.
- (2) Where this paragraph applies, the accused –
  - (a) subject to paragraph (b) below, shall be released from military custody forthwith, but
  - (b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him.
- (3) On an application made –
  - (a) by or on behalf of the accused, or
  - (b) by the commanding officer of the accused,any requirement imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph) may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

*Arrest during Standing Civilian Court proceedings*

- 3 (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section

- 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into military custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.
- (2) For the purposes of this paragraph, taking the accused into military custody is justified if there are substantial grounds for believing that, if not taken into military custody, he would—
- (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or
  - (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into military custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
- (a) shall be treated as being in military custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”
- 7 After Schedule 1 to the Air Force Act 1955 (c. 19) there is inserted—

#### “SCHEDULE 1A

##### CUSTODY IN CONNECTION WITH TRIAL BY STANDING CIVILIAN COURTS

###### *Custody during Standing Civilian Court proceedings*

- 1 (1) Where the accused is kept in air-force custody under an order under section 75F(2) of this Act at any time after the commencement of his trial by a Standing Civilian Court, section 75G of this Act (and section 75F as applied by that section) shall apply with the following modifications.
- (2) References to a judicial officer shall have effect as references to a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (3) In section 75F(2), after paragraph (d) there shall be inserted—
- “; or
  - (e) the accused’s case has been adjourned for inquiries or a report and it appears to a magistrate appointed under section 6(4) of the Armed Forces Act 1976 that it would be impracticable to complete the inquiries or make the report without keeping the accused in air-force custody.”

- (4) Section 75F(3)(d) does not apply in the case of an accused who is awaiting sentence.
- (5) An order under section 75F(2) does not authorise the keeping of the accused in air-force custody after he is sentenced by a Standing Civilian Court.

*Release from custody during proceedings*

- 2 (1) This paragraph applies where, on a review under section 75G(1) of this Act, the magistrate does not authorise keeping the accused in air-force custody.
- (2) Where this paragraph applies, the accused –
  - (a) subject to paragraph (b) below, shall be released from air-force custody forthwith, but
  - (b) may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him.
- (3) On an application made –
  - (a) by or on behalf of the accused, or
  - (b) by the commanding officer of the accused,any requirement imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above (including such a requirement as previously varied under section 75J(2A) of this Act or under this sub-paragraph) may be varied or discharged by a magistrate appointed under section 6(4) of the Armed Forces Act 1976.
- (4) A person on whom a requirement has been imposed under section 75J(2)(b) of this Act or under sub-paragraph (2)(b) above is guilty of an offence if he fails without reasonable cause to attend any Standing Civilian Court hearing to which the requirement relates.
- (5) A person guilty of an offence under this paragraph shall be liable on conviction by a Standing Civilian Court to any punishment authorised by section 8 of the Armed Forces Act 1976.

*Arrest during Standing Civilian Court proceedings*

- 3 (1) At any time before the conclusion of the trial of the accused by a Standing Civilian Court, a magistrate appointed under section 6(4) of the Armed Forces Act 1976, if satisfied that taking the accused into air-force custody is justified, may direct the arrest of the accused; and any person with power to arrest the accused for an offence against a provision of this Act shall have the same power, exercisable in the same way, to arrest him pursuant to a direction under this sub-paragraph.
- (2) For the purposes of this paragraph, taking the accused into air-force custody is justified if there are substantial grounds for believing that, if not taken into air-force custody, he would –
  - (a) fail to attend any hearing in the proceedings against him,
  - (b) commit an offence,
  - (c) injure himself, or



- (d) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
- (3) Taking the accused into air-force custody is also justified for the purposes of this section if the accused has failed to attend any hearing in the proceedings against him.
- (4) A person arrested under sub-paragraph (1) above—
  - (a) shall be treated as being in air-force custody under an order under section 75F(2) of this Act, and
  - (b) shall be brought as soon as practicable before a magistrate appointed under section 6(4) of the Armed Forces Act 1976 (unless already before such a magistrate), and shall be dealt with by the magistrate as on a review under section 75G(1) of this Act.”

*Naval Discipline Act 1957 (c. 53)*

- 8 In section 47J of the 1957 Act (custody during court-martial proceedings) at the end of subsection (2) there is inserted “, unless on an adjournment of the court-martial the judge advocate orders that during the adjournment matters relating to custody are to be dealt with by a judicial officer”.
- 9 In section 47K of the 1957 Act (release from custody after charge or during proceedings), after subsection (2) there is inserted—
  - “(2A) On an application made—
    - (a) by or on behalf of the accused, or
    - (b) by the commanding officer of the accused,
 any requirement imposed under subsection (2)(b) above (including such a requirement as previously varied under this subsection) may be varied or discharged by a judicial officer or, where section 47J(2) of this Act has effect, by the judge advocate in relation to the court-martial.”
- 10 (1) Section 47L of the 1957 Act (arrest during proceedings) is amended as follows.
  - (2) After subsection (3) there is inserted—
    - “(3A) Where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the reference in subsection (3) above to the judge advocate shall have effect as a reference to a judicial officer.”
  - (3) In subsection (8)(b), for the words “(unless already before him)” there is substituted “or any judicial officer (unless already before the judge advocate or a judicial officer)”.
- 11 In section 47N of that Act (custody rules), at the end of subsection (1) there is inserted—
  - “(d) on an application under section 47K(2A) of this Act.”

SCHEDULE 5

Section 32(9)

TESTING FOR ALCOHOL OR DRUGS

*Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)*

- 1 (1) Section 34A of each of the 1955 Acts is amended as follows.
  - (2) In subsection (1), for “testing for the presence of drugs” there is substituted “the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body”.
  - (3) After subsection (1) there is inserted—
    - “(1A) A drug testing officer may not request a person to provide a sample under subsection (1) above if—
      - (a) he is that person’s commanding officer, or
      - (b) the commanding officer of that person is also his commanding officer.
    - (1B) A request under subsection (1) above may not be made if the sample is sought in connection with—
      - (a) an investigation under this Act of an offence, or
      - (b) an investigation of such an incident as is referred to in section 32(1)(a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).
    - (1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—
      - (a) that person, or
      - (b) any other person,in proceedings before a court-martial, commanding officer or appropriate superior authority.
    - (1D) Nothing in this section—
      - (a) limits the powers conferred by—
        - (i) sections 6 and 7 of the Road Traffic Act 1988 (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
        - (ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or
      - (b) affects the admissibility in any proceedings of evidence obtained under those powers.”
  - 2 After section 34A of the Army Act 1955 (c. 18) there is inserted—

**“34B Failure to provide sample after serious incident**

Any person subject to military law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-martial, be liable to imprisonment for a term

not exceeding six months or any less punishment provided by this Act.”

- 3 After section 34A of the Air Force Act 1955 (c. 19) there is inserted—

**“34B Failure to provide sample after serious incident**

Any person subject to air-force law who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.”

- 4 In the proviso to section 209(2) of each of the 1955 Acts (application of Act to civilians), for the words from “except” onwards there is substituted—

“except—

- (a) sections 29, 35, 36 and 55 to 57, and section 68 so far as it relates to those sections, and
- (b) in the case of persons falling within any description specified in paragraphs 1 to 4 of Schedule 5, section 34B and section 68 so far as it relates to that section.”

*Naval Discipline Act 1957 (c. 53)*

- 5 (1) Section 12A of the 1957 Act (failure to provide a sample for drug testing) is amended as follows.

- (2) In subsection (1)—

- (a) for “testing for the presence of drugs” there is substituted “the purpose of ascertaining whether, or to what extent, he has, or has had, drugs in his body”, and
- (b) the words “on conviction by court-martial” are omitted.

- (3) After that subsection there is inserted—

“(1A) A drug testing officer may not request a person to provide a sample under subsection (1) above if—

- (a) he is that person’s commanding officer, or
- (b) the commanding officer of that person is his commanding officer.

(1B) A request under subsection (1) above may not be made if the sample is sought in connection with—

- (a) an investigation under this Act of an offence, or
- (b) an investigation of such an incident as is referred to in section 32(1)(a) of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident).

(1C) The results of tests performed on a sample provided by a person at the request of a drugs testing officer shall not be admissible in evidence against—

- (a) that person, or
- (b) any other person,

in proceedings before a court-martial, commanding officer or appropriate superior authority.

- (1D) Nothing in this section –
- (a) limits the powers conferred by –
    - (i) sections 6 and 7 of the Road Traffic Act 1988 (breath tests and provision of specimens for analysis), as applied by section 184 of that Act, or
    - (ii) sections 62 and 63 of the Police and Criminal Evidence Act 1984 (intimate and other samples), as applied by order under section 113(1) of that Act; or
  - (b) affects the admissibility in any proceedings of evidence obtained under those powers.”
- (4) In subsection (2), in the definition of “drug testing officer”, for “or non-commissioned officer” there is substituted “, chief petty officer, petty officer or leading rating”.

6 After section 12A of the 1957 Act there is inserted –

**“12B Failure to provide sample after serious incident**

Any person subject to this Act who, without reasonable excuse, fails to comply with a request made under subsection (3) or (4) of section 32 of the Armed Forces Act 2001 (powers to test for alcohol or drugs after serious incident) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or any less punishment provided by this Act.”

- 7 In section 118(2) of the 1957 Act (application to certain civilians) –
- (a) in paragraph (a), after “sections” there is inserted “12B,”, and
  - (b) at the end of the proviso there is inserted “and the said section 12B, and sections 40 and 41 so far relating thereto, shall apply only to persons falling within any description specified in paragraphs 1 to 4 of Schedule 3”.

SCHEDULE 6

Section 34

MISCELLANEOUS AMENDMENTS

PART 1

AMENDMENTS OF SEXUAL OFFENCES (AMENDMENT) ACT 1992

- 1 At the end of section 2 of the Sexual Offences (Amendment) Act 1992 (c. 34) (offences to which that Act applies) there is inserted –
- “(4) This Act applies to a service offence (wherever committed) if the corresponding civil offence is mentioned in subsection (1).”
- 2 At the end of section 4 of that Act (special rules for cases of incest or buggery) there is inserted –
- “(9) For the purposes of this section, a service offence is a section 10 offence, a section 11 offence or a section 12 offence if the

corresponding civil offence is a section 10 offence, a section 11 offence or a section 12 offence, as the case may be.”

- 3 (1) Section 6 of that Act (interpretation etc.) is amended as follows.
  - (2) In subsection (1) –
    - (a) after the definition of “complainant” there is inserted –
 

““corresponding civil offence”, in relation to a service offence, means the civil offence (within the meaning of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957) the commission of which constitutes the service offence;”, and
    - (b) after the definition of “relevant programme” there is inserted –
 

““service offence” means an offence against section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957;”.
  - (3) In subsection (3) after “accused of an offence” there is inserted “, other than a service offence,”.
  - (4) After subsection (3) there is inserted –
 

“(3A) For the purposes of this Act, a person is accused of a service offence if he is treated by section 75(4) of the Army Act 1955, section 75(4) of the Air Force Act 1955 or section 47A(4) of the Naval Discipline Act 1957 as charged with the offence, and references in section 3 to an accusation alleging an offence shall be construed accordingly.”
- 4 (1) Section 7 of that Act (application of Act in relation to courts-martial) is amended as follows.
  - (2) In subsection (1), for “section 2(1)” there is substituted “section 2(4)”.
  - (3) In subsection (2), paragraph (f) and the word “and” preceding it are omitted.

## PART 2

### ABOLITION OF OFFICE OF DEPUTY JUDGE ADVOCATE

#### *Courts-Martial (Appeals) Act 1951 (c. 46)*

- 5 In section 30(1)(b) of the Courts-Martial (Appeals) Act 1951 (assistants to Judge Advocate General), there are omitted –
  - (a) the words “, and such number of officers to be known as Deputy Judge Advocates;”, and
  - (b) the words “in each case”.
- 6 In section 31 of that Act (qualifications of Judge Advocate General and assistants) –
  - (a) in subsection (2) –
    - (i) at the end of paragraph (b) there is inserted “or”, and
    - (ii) paragraph (d) and the word “or” preceding it are omitted,
  - (b) subsection (3) is omitted, and
  - (c) in subsection (4), for “, an Assistant Judge Advocate General or a Deputy Judge Advocate” there is substituted “or an Assistant Judge Advocate General”.

- 7 In section 32(1) of that Act (tenure of Judge Advocate General and assistants) for “, an Assistant Judge Advocate General or a Deputy Judge Advocate” there is substituted “or an Assistant Judge Advocate General”.

*House of Commons Disqualification Act 1975 (c. 24) and Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 8 In Part 3 of Schedule 1 to each of the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), in the entry beginning “Judge Advocate General”, for “, Assistant Judge Advocate General or Deputy Judge Advocate” there is substituted “or Assistant Judge Advocate General”.

*Courts and Legal Services Act 1990 (c. 41)*

- 9 In Schedule 11 to the Courts and Legal Services Act 1990 (judges etc. barred from legal practice) in the entry relating to an Assistant or Deputy Judge Advocate General, the words “or Deputy” are omitted.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 10 In section 27(3) of the Judicial Pensions and Retirement Act 1993 (completion of proceedings after retirement), paragraph (f) is omitted.

PART 3

AMENDMENTS OF RESERVE FORCES ACT 1996

*Delegation by Secretary of State of certain functions*

- 11 In section 35(1) of the Reserve Forces Act 1996 (c. 14) (exercise of certain functions under section 32 or 33 of that Act) after “section” there is inserted “31,”.

*Notice given by special member*

- 12 In section 41 of that Act (cessation of liabilities), in subsection (4) the word “been” is omitted.

*Absence for voting*

- 13 In section 125 of that Act (absence for voting), in paragraph (a), after “Member of the Scottish Parliament” there is inserted “; a Member of the National Assembly for Wales, a Member of the Northern Ireland Assembly”.

PART 4

AMENDMENTS CONSEQUENTIAL ON SECTION 21(5) OF HUMAN RIGHTS ACT 1998

*Army Act 1955 (c. 18) and Air Force Act 1955 (c. 19)*

- 14 In section 24(3) of each of the 1955 Acts (penalty for offence of misconduct in action) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.

- 15 In section 25(2) of each of those Acts (penalty for offence of assisting the enemy) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.
- 16 In section 26(3) of each of those Acts (penalty for offence of obstructing operations) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment provided by this Act”.
- 17 In section 32 of each of those Acts (failure to suppress mutiny) for the words from “court-martial” onwards there is substituted “court-martial be liable to imprisonment or any less punishment provided by this Act”.
- 18 (1) Section 126 of each of those Acts (special provisions as to carrying out of sentences outside the United Kingdom otherwise than in military establishments) is amended as follows.
- (2) In subsection (1) –
- (a) the words from “sentences of death” to “authorities and” are omitted, and
- (b) for “such establishments” there is substituted “establishments under the control of those authorities”.
- (3) In subsection (2), for “sections one hundred and twenty-one and one hundred and twenty-two of this Act” there is substituted “section one hundred and twenty-two of this Act.”
- (4) In subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and” are omitted.

*Naval Discipline Act 1957 (c. 53)*

- 19 In section 2(3) of the 1957 Act (penalty for misconduct in action) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 20 In section 3(2) of that Act (penalty for assisting the enemy) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 21 In section 4(3) of that Act (penalty for obstructing operations) for the words from “liable” to the end there is substituted “liable to imprisonment or any less punishment authorised by this Act”.
- 22 For subsection (7) of section 52B of that Act (investigation of charges by commanding officer) there is substituted –
- “(7) For the purposes of this Act, a charge is capable of being tried summarily if it is for an offence triable by court-martial under this Act, other than –
- (a) an offence listed in subsection (8) below (offences which, before the passing of the Human Rights Act 1998, were punishable by sentence of death), or
- (b) an offence under section 42 of this Act where the civil offence is one for which the sentence is fixed by law as life imprisonment.
- (8) The offences are –
- (a) an offence under section 2 of this Act, if it consists in an act or omission falling within subsection (1) or (2)(a) of that section

- and it is charged that it was committed with intent to assist the enemy;
- (b) an offence under section 3 of this Act, if it consists in an act or omission falling within subsection (1)(a), (b), (c), (d) or (f) of that section and it is charged that it was committed with intent to assist the enemy;
  - (c) an offence under section 4 of this Act, if it is charged that it was committed with intent to assist the enemy;
  - (d) an offence under section 9 of this Act, if it is charged that the mutiny had as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against the enemy, or the impeding of the performance of any such duty or service;
  - (e) an offence under section 10 of this Act, if it is charged that it was committed with intent to assist the enemy;
  - (f) an offence under section 42 of this Act, where the civil offence is treason.”

## PART 5

## QUEEN ALEXANDRA’S ROYAL NAVAL NURSING SERVICE AND FORMER WOMEN’S ROYAL NAVAL SERVICE

*Naval Discipline Act 1957 (c. 53)*

- 23 In section 111 of the 1957 Act there are omitted—
- (a) in subsection (1), the words “and Queen Alexandra’s Royal Naval Nursing Service”, and
  - (b) in subsection (2), the words “or of Queen Alexandra’s Royal Naval Nursing Service”.
- 24 In section 132(5) of that Act, the words “Queen Alexandra’s Royal Naval Nursing Service” are omitted.

*Armed Forces Act 1976 (c. 52)*

- 25 In section 6(9)(b) of the Armed Forces Act 1976, the words “or Queen Alexandra’s Royal Naval Nursing Service” are omitted.

*House of Commons Disqualification Act 1975 (c. 24)*

- 26 In section 1(3) of the House of Commons Disqualification Act 1975, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 27 In section 1(2) of the Northern Ireland Assembly Disqualification Act 1975, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.



*Armed Forces Act 1981 (c. 55)*

- 28 Section 20(2) of, and Part 3 of Schedule 3 to, the Armed Forces Act 1981 (which apply to members of Queen Alexandra’s Royal Naval Nursing Service provisions of the Armed Forces Act 1966 relating to discharge etc.) shall cease to have effect.

*Housing Act 1985 (c. 68)*

- 29 In section 622 of the Housing Act 1985, in the definition of “regular armed forces of the Crown”, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

*Housing Act 1996 (c. 52)*

- 30 In section 199(4) of the Housing Act 1996, for the words from “, the regular air force” to the end there is substituted “or the regular air force as defined by section 223 of the Air Force Act 1955”.

## PART 6

## OTHER AMENDMENTS

*Marriages in service chapels*

- 31 In section 68 of the Marriage Act 1949 (c. 76) (solemnization of marriages in naval, military and air force chapels)–
- (a) in subsection (2)(e), after “daughter” there is inserted “, son, step-daughter or step-son”, and
  - (b) in subsection (3), the words from “and the expression” to the end are omitted.

*Retirement age for assistants to Judge Advocate General*

- 32 (1) In section 32(2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (tenure of office of Judge Advocate General and assistants), for “sixty-five” there is substituted “seventy”.
- (2) The amendment made by sub-paragraph (1) applies in relation to any such officer as is mentioned in section 30(1) of that Act (assistants to Judge Advocate General) whether appointed before or after the commencement of sub-paragraph (1).

*Sentence where penalty for civil offence fixed by law as life imprisonment*

- 33 (1) Section 70(3) of each of the 1955 Acts (punishment of civil offences) is amended as follows.
- (2) For paragraphs (aa) and (ab) there is substituted –
- “(aa) if the corresponding civil offence is one for which the sentence is fixed by law as life imprisonment, be sentenced to imprisonment for life;”.
- 34 (1) Section 42(1) of the 1957 Act (punishment of civil offences) is amended as follows.

- (2) The words “Subject to section 43A below” are inserted at the beginning and the words “subject to section 43A below be liable” are omitted.
- (3) For paragraph (b) there is substituted –
  - “(b) in the case of an offence constituted by a civil offence the sentence for which is fixed by law as life imprisonment, be sentenced to imprisonment for life;”.
- (4) In paragraph (c), after “any other offence,” there is inserted “be liable”.

*Qualification for appointment as judicial officer*

- 35 (1) Section 75L of each of the 1955 Acts (judicial officers) is amended as follows.
  - (2) In subsection (2) the word “or” at the end of paragraph (a) is omitted and at the end of paragraph (b) there is inserted –
    - “or
    - (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Judge Advocate General to be appropriate.”
  - (3) After that subsection there is inserted –
    - “(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates’ Courts).”
- 36 (1) Section 47M of the 1957 Act (judicial officers) is amended as follows.
  - (2) In subsection (2) the word “or” at the end of paragraph (a) is omitted and at the end of paragraph (b) there is inserted –
    - “or
    - (c) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Chief Naval Judge Advocate to be appropriate.”
  - (3) After that subsection there is inserted –
    - “(3) In subsection (2)(c), “relevant judicial appointment”, in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a Circuit judge or a District Judge (Magistrates’ Courts).”

*Evidence given before boards of inquiry*

- 37 In section 135 of the Army Act 1955 (c. 18) (boards of inquiry), for subsection (5) there is substituted –

“(5) Evidence given before a board of inquiry convened –  
 (a) under this section,  
 (b) under section 135 of the Air Force Act 1955, or  
 (c) under the Queen’s Regulations for the Royal Navy,  
 shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 70 of this Act where the corresponding civil offence is perjury.”

38 In section 135 of the Air Force Act 1955 (c. 19) (boards of inquiry), for subsection (5) there is substituted –

“(5) Evidence given before a board of inquiry convened –  
 (a) under this section,  
 (b) under section 135 of the Army Act 1955, or  
 (c) under the Queen’s Regulations for the Royal Navy,  
 shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 70 of this Act where the corresponding civil offence is perjury.”

*Compensation for loss*

39 In subsection (2) of section 147 of each of the 1955 Acts (compensation for loss occasioned by wrongful act or negligence), for the words from “may order” to “made)” there is substituted “may, at a time when the person responsible is a member of the regular forces, order him”.

40 In subsection (2) of section 128C of the 1957 Act (compensation for loss occasioned by wrongful act or negligence), for the words from “may order” to “made)” there is substituted “may, at a time when the person responsible is subject to this Act, order him”.

*Redress of complaints*

41 In section 180 of each of the 1955 Acts (redress of complaints) for subsection (2) there is substituted –

“(2) A person (“the person aggrieved”) may not make a complaint under this section with respect to –  
 (a) any decision of a judicial officer or judge advocate under section 75C, 75F, 75G, 75H, 75J or 75K of this Act,  
 (b) any decision of a judicial officer under Part 2 of the Armed Forces Act 2001,  
 (c) any matter against which the person aggrieved may present a petition under section 113 of this Act, or  
 (d) any matter against which the person aggrieved may bring an appeal under section 83ZE of this Act or under the Courts-Martial (Appeals) Act 1968.”

42 In section 130 of the 1957 Act (redress of complaints) for subsection (2) there is substituted –

“(2) A person (“the person aggrieved”) may not make a complaint under this section with respect to –

- (a) any decision of a judicial officer or judge advocate under section 47D, 47G, 47H, 47J, 47K and 47L of this Act,
- (b) any decision of a judicial officer under Part 2 of the Armed Forces Act 2001,
- (c) any matter against which the person aggrieved may present a petition under section 70 of this Act, or
- (d) any matter against which he may bring an appeal under section 52FK of this Act or under the Courts-Martial (Appeals) Act 1968.”

43 In paragraph 9 of Schedule 6 to each of the 1955 Acts (provisions not applying to attached members of other services), the words “and one hundred and eighty” are omitted.

*Civilian contractors attached to or accompanying armed forces*

44 In Schedule 5 to each of the 1955 Acts (which lists civilians who are subject to Part 2 of the Act when outside the United Kingdom), in paragraph 4—

- (a) after “profession” there is inserted “, business”, and
- (b) at the end there is inserted “or by an officer authorised by the Defence Council”.

45 In Schedule 3 to the 1957 Act (which lists civilians who are subject to certain provisions of the Act when outside the United Kingdom), in paragraph 4—

- (a) after “profession” there is inserted “, business”, and
- (b) at the end there is inserted “or by an officer authorised by the Defence Council”.

*Interpretation of references to “Royal Air Force Police”*

46 In section 225(1) of the Army Act 1955 (c. 18) and section 135(1) of the 1957 Act (interpretation), after the definition of “the relevant time” there is inserted—

““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers;”.

47 In section 223(1) of the Air Force Act 1955 (c. 19) (interpretation) after the definition of “the relevant time” there is inserted—

““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under this Act on provost officers;”.

48 In subsection (4) of section 11 of the Armed Forces Act 1996 (c. 46) (which relates to the interpretation of that section)—

(a) after the definition of “fingerprints” there is inserted—

““the Royal Air Force Police” includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers;”,  
and

- (b) in the definition of “service policeman”, for “, the Royal Air Force Police or the staff of the Royal Air Force Provost Marshal” there is substituted “or the Royal Air Force Police”.

*Interpretation of references to a “constable”*

- 49 At the end of the definition of “constable” in each of the following provisions—
- (a) section 225(1) of the Army Act 1955 (c. 18) ,
  - (b) section 223(1) of the Air Force Act 1955 (c. 19), and
  - (c) section 135(1) of the 1957 Act,
- there is inserted “but does not include a provost officer or a person exercising authority under or on behalf of a provost officer”.

*Application to civilians*

- 50 (1) Section 209 of each of the 1955 Acts (application of Act to civilians) is amended as follows.
- (2) In paragraphs (a) and (b) of the proviso to subsection (2), for “section 68 so far as it relates” there is substituted “sections 68 and 68A so far as they relate”.
  - (3) In subsection (3)(f), for “the provisions of this Act relating to custody and the investigation of offences” there is substituted “Part 2 of this Act”.
  - (4) Subsection (3C) is omitted.
- 51 In Schedule 4 to the 1957 Act (application of Act to civilians), paragraph 4B is omitted.
- 52 In paragraph 4 of Schedule 5A to each of the 1955 Acts (community supervision orders) after sub-paragraph (7D) there is inserted—
- “(7E) Section 132(3) of this Act (as applied to civilians by section 209 of this Act) does not apply in relation to an offence under sub-paragraph (6) above.”
- 53 In paragraph 4 of Schedule 4A to the 1957 Act (community supervision orders) after sub-paragraph (7D) there is inserted—
- “(7E) Section 52(2) of this Act (as applied to civilians by section 118 of this Act) does not apply in relation to an offence under sub-paragraph (6) above.”

*Arrest of civilian whose sentence is deferred*

- 54 In paragraph 2A of Schedule 5A to each of the 1955 Acts (deferment of award of sentence)—
- (a) in sub-paragraph (8) for “the Court or the directing officer” there is substituted “a magistrate appointed under section 6(4) of the Armed Forces Act 1976”,
  - (b) in sub-paragraph (9)—
    - (i) for “subject to service law” there is substituted “a person to whom Part 2 of this Act is applied by section 209 above”, and
    - (ii) in paragraph (b), for “the directing officer or by any superior officer or authority” there is substituted “a magistrate appointed under section 6(4) of the Armed Forces Act 1976”,

- (c) in sub-paragraph (10) for the words “the Standing Civilian Court or directing officer” there is substituted “the magistrate”, and
- (d) sub-paragraph (13) is omitted.

*Right of appeal to Courts-Martial Appeal Court*

- 55 (1) Section 8 of the Courts-Martial (Appeals) Act 1968 (c. 20) (right of appeal) is amended as follows.
- (2) In subsection (1A), for “any of those Schedules” there is substituted “Schedule 5A to the Army Act, Schedule 5A to the Air Force Act or Schedule 4A to the Naval Discipline Act”.
  - (3) For subsections (2) and (3) there is substituted –
    - “(2) Subject to subsection (3) below, the person’s right of appeal is not exercisable –
      - (a) unless he has presented a petition to the Defence Council under section 113 of the Army Act or the Air Force Act or section 70 of the Naval Discipline Act within the period prescribed for the purposes of the section in question, and
      - (b) until either the prescribed period (beginning with the day on which the petition is presented) expires or he is notified by the reviewing authority of the result of its review under the section in question, whichever first occurs.
    - (3) The Appeal Court may direct that a person who –
      - (a) has not presented a petition as mentioned in subsection (2)(a) above,
      - (b) has been notified by the reviewing authority of the result of its review under section 113 of the Army Act or the Air Force Act or section 70 of the Naval Discipline Act, and
      - (c) has applied for leave to appeal,may appeal if they think that there is a reasonable explanation for his not having exercised his right to present a petition and that it is in the interests of justice that he should appeal.”
  - (4) In subsection (4) for “subsection (1)” there is substituted “subsection (2)”.
- 56 In section 36(1)(a) of that Act (functions of Courts-Martial Appeal Court which are exercisable by any judge of that court) for “be treated as not having lost his right of” there is substituted “may”.

*Children in respect of whom protective orders may be made*

- 57 In section 17 of the Armed Forces Act 1991 (c. 62) (power to make service family child assessment orders), for subsections (1) and (2) there is substituted –
- “(1) The power to make an order under this section (in this Part of this Act referred to as an “assessment order”) is exercisable only with respect to a child who –
    - (a) resides outside the British Islands with the family of a person subject to service law serving in a country or territory outside the British Islands or of a civilian in a corresponding position,or

- (b) is staying (for however short a time) outside the British Islands with such a family.
- (2) In the following provisions of this section and in section 18 of this Act, any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying.”
- 58 In section 19 of that Act (power to make orders for the emergency protection of children of service families) for subsections (1) and (2) there is substituted—
- “(1) The power to make an order under this section (in this Part of this Act referred to as a “protection order”) is exercisable only with respect to a child who—
- (a) resides outside the British Islands with the family of a person subject to service law serving in a country or territory outside the British Islands or of a civilian in a corresponding position, or
- (b) is staying (for however short a time) outside the British Islands with such a family.
- (2) In the following provisions of this Part, any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying.”

*Amendment relating to abolition of naval disciplinary courts*

- 59 In section 5 of the Sex Offenders Act 1997 (c. 51) (certificates for purposes of Part 1 of that Act) for subsection (6) there is substituted—
- “(6) In this section “court” includes a court-martial and a Standing Civilian Court.”

SCHEDULE 7

Section 38

REPEALS

PART 1

REPEALS RELATING TO ABOLITION OF NAVAL DISCIPLINARY COURTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Criminal Evidence Act 1898 (c. 36)	In section 6(1), the words “and disciplinary courts”.
The Army Act 1955 (c. 18)	In section 57(3), the words “or disciplinary court”.
The Air Force Act 1955 (c. 19)	In section 57(3), the words “or disciplinary court”.
The Naval Discipline Act 1957 (c. 53)	In section 38(2), the words “and to a disciplinary court”. Section 52C(5). Section 52G. Section 65(4). Section 70(7). In section 73, the words “and disciplinary courts”. In section 76(6)(a), the words “or disciplinary court”. In section 77(1), the words “or disciplinary court”. In section 95(2), the words “and to disciplinary courts”. In section 129(1), the words “or disciplinary court”, in both places where they occur. In Schedule 5, in the entries relating to section 57 of the Army Act 1955 and section 57 of the Air Force Act 1955, the words from “after the word” to “court”, and”.
The Courts-Martial (Appeals) Act 1968 (c. 20)	In section 57(1), in the definition of “naval court-martial”, the words “, and includes a disciplinary court”.
The Civil Evidence Act 1968 (c. 64)	In section 11(6), the words from “or a disciplinary” to “Act of 1957”.
The Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))	In section 7(6), the words from “or a disciplinary” to “Act of 1957” and the words “disciplinary court”.
The Police and Criminal Evidence Act 1984 (c. 60)	In section 67(12)(a), the words from “or a disciplinary” to “1957”. In section 82(1), in the definition of “court-martial”, the words from “or a disciplinary” to “Act of 1957”. In section 113(11)(a), the words from “or a disciplinary” to “Act of 1957”.
The Criminal Justice Act 1988 (c. 33)	In section 146, the words from “disciplinary” to “1957”.



<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Criminal Justice Act 1988 (c. 33) – <i>cont.</i>	In Schedule 13, in paragraph 1, in paragraph (b) of the definition of “Service courts”, the words from “and disciplinary” to “that Act” and in paragraph 7(b) the words from “or disciplinary” to “that Act”.
The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))	In Article 66(11)(a), the words from “or a disciplinary” to “1957”. In Article 70(2)(b), head (ii) and the word “or” immediately preceding it.
The Criminal Justice and Public Order Act 1994 (c. 33)	Section 39(2)(g).
The Northern Ireland (Emergency Provisions) Act 1996 (c. 22)	In section 54(9), in the definition of “criminal proceedings”, the words from “or a disciplinary” to “1957 Act”.
The Armed Forces Act 1996 (c. 46)	In section 11(4), paragraph (b) of the definition of “service disciplinary proceedings”. In Schedule 1, paragraphs 100, 105, 108, 109(2)(c) and (4)(a) and 111.
The Police Act 1997 (c. 50)	In section 108(1), in paragraph (a) of the definition of “criminal proceedings” the words from “or a disciplinary” to “Act of 1957”.
The Youth Justice and Criminal Evidence Act 1999 (c. 23)	In section 63(1), in paragraph (a) of the definition of “service court”, the words from “or a disciplinary” to the end.
The Terrorism Act 2000 (c. 11)	In section 101(9), in the definition of “criminal proceedings”, the words from “or a disciplinary” to “1957 Act”.
The Regulation of Investigatory Powers Act 2000 (c. 23)	In section 81(4)(a), sub-paragraph (ii) and the word “or” immediately preceding it.
The Freedom of Information Act 2000 (c. 36)	In section 29(5), in paragraph (a) of the definition of “criminal proceedings”, the words from “or a disciplinary” to “of 1957”.

PART 2

REPEALS RELATING TO REQUIRED CUSTODIAL SENTENCES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Crime (Sentences) Act 1997 (c. 43)	Section 55(2). In Schedule 4, paragraphs 1(1) and (4), 2(1) and (4) and 3(1) and (4).
The Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraphs 8, 13 and 18.

PART 3

REPEALS RELATING TO ABOLITION OF OFFICE OF DEPUTY JUDGE ADVOCATE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Courts-Martial (Appeals) Act 1951 (c. 46)	In section 30(1)(b), the words “, and such number of officers to be known as Deputy Judge Advocates,” and the words “in each case”. In section 31 – (a) in subsection (2), paragraph (d) and the word “or” which precedes it, and (b) subsection (3).
The Courts and Legal Services Act 1990 (c. 41)	In Schedule 11, in the entry relating to an Assistant or Deputy Judge Advocate General, the words “or Deputy”.
The Judicial Pensions and Retirement Act 1993 (c. 8)	In section 27(3), paragraph (f).

PART 4

REPEALS CONSEQUENTIAL ON HUMAN RIGHTS ACT 1998

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Army Act 1955 (c. 18)	In section 31, subsection (1) and, in subsection (2), the words “, in a case not falling within the last foregoing subsection”. In section 68, the proviso. In section 70(3), paragraph (a). In section 71(1), paragraph (a). In section 71A(3), the words from “, nor shall sentence of death” to “when the offence was committed”. In section 85(2), the words “of death or”. In section 96, subsections (3) and (4). Section 112. Section 113(6). Section 121. In section 123 –

<i>Short title and chapter</i>	<i>Extent of repeal</i>
<p>In section 85(2), the words “of death or”. – <i>cont.</i></p>	<p>(a) in subsection (1), the words “Regulations under section one hundred and twenty-one of this Act or” and the words “regulations or”, and            (b) in subsection (2), the words “regulations or”.</p> <p>In section 125—            (a) in subsection (1), the words “death or” and the words “regulations under section one hundred and twenty-one of this Act or of”, and            (b) subsection (2).</p> <p>In section 126—            (a) in subsection (1), the words from “sentences of death” to “authorities and”, and            (b) in subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and”.</p> <p>Section 128(1).            In section 129 (1) the words—            (a) “regulations under section one hundred and twenty-one of this Act or”,            (b) “regulations or”, and            (c) “execution of the sentence is completed or”.</p> <p>In section 209(3)(a)(i), after the word “paragraphs”, the letter “(a)”.</p> <p>Section 214(3).            Section 215(4).            In Schedule 5A—            (a) in the Table at paragraph 15, the first entry in each of the first and second columns, and            (b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.</p>
<p>The Air Force Act 1955 (c. 19)</p>	<p>In section 31, subsection (1) and, in subsection (2), the words “, in a case not falling within the last foregoing subsection”.</p> <p>In section 68, the proviso.            In section 70(3), paragraph (a).            In section 71(1), paragraph (a).            In section 71A(3), the words from “, nor shall sentence of death” to “when the offence was committed”.</p> <p>In section 85(2), the words “of death or”.</p> <p>In section 96, subsections (3) and (4).            Section 112.            Section 113(6).            Section 121.            In section 123—            (a) in subsection (1), the words “Regulations under section one hundred and twenty-one of this Act or” and the words “regulations or”, and</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
<p>The Air Force Act 1955 (c. 19) –  <i>cont.</i></p>	<p>(b) in subsection (2), the words “regulations or”.</p> <p>In section 125 –</p> <p>(a) in subsection (1), the words “death or” and the words “regulations under section one hundred and twenty-one of this Act or of”, and</p> <p>(b) subsection (2).</p> <p>In section 126 –</p> <p>(a) in subsection (1), the words from “sentences of death” to “those authorities and”, and</p> <p>(b) in subsection (3), the words “no sentence of death passed by a court-martial shall be executed, and”.</p> <p>Section 128(1).</p> <p>In section 129 (1) the words –</p> <p>(a) “regulations under section one hundred and twenty-one of this Act or”,</p> <p>(b) “regulations or”, and</p> <p>(c) “execution of the sentence is completed or”.</p> <p>In section 209(3)(a)(i), after the word “paragraphs”, the letter “(a)”.</p> <p>Section 212(3).</p> <p>Section 213(4).</p> <p>In Schedule 5A –</p> <p>(a) in the Table at paragraph 15, the first entry in each of the first and second columns, and</p> <p>(b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.</p>
<p>The Naval Discipline Act 1957                      (c. 53)</p>	<p>In section 9, subsection (1) and, in subsection (2), the words “not described in the foregoing subsection”.</p> <p>In section 10, the words from “, if the offence is committed” to “in any other case”.</p> <p>In section 40, the proviso to the section.</p> <p>In section 42(1), paragraph (a).</p> <p>In section 43(1), paragraph (a).</p> <p>In section 43A(3), the words from “nor shall sentence of death” to “when the offence was committed”.</p> <p>In section 62, subsections (4) and (5).</p> <p>Section 70(6).</p> <p>Sections 78 to 80.</p> <p>Section 123(4).</p> <p>Section 124(2).</p> <p>In section 125(2), the words “80 and”.</p> <p>In Schedule 4A –</p> <p>(a) in the Table at paragraph 15, the first entry in each of the first and second columns, and</p>

## Part 5 – Repeals consequential on Youth Justice and Criminal Evidence Act 1999

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Naval Discipline Act 1957 (c. 53) – <i>cont.</i>	(b) in the Note to the Table, the words from the “or” at the end of paragraph (a) to “first and second columns, and”.

## PART 5

## REPEALS CONSEQUENTIAL ON YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Army Act 1955 (c. 18)	Section 200A.
The Air Force Act 1955 (c. 19)	Section 200A.
The Courts-Martial (Appeals) Act 1968 (c. 20)	Section 37A.
The Armed Forces Act 1976 (c. 52)	In Schedule 3, paragraph 17A.
The Police and Criminal Evidence Act 1984 (c. 60)	In Schedule 6, paragraphs 28(4), 29(4), 34 and 36.

## PART 6

## REPEALS RELATING TO QUEEN ALEXANDRA’S ROYAL NAVAL NURSING SERVICE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Naval Discipline Act 1957 (c. 53)	In section 111, in subsection (1), the words “and Queen Alexandra’s Royal Naval Nursing Service” and, in subsection (2), the words “or of Queen Alexandra’s Royal Naval Nursing Service”. In section 132(5), the words “Queen Alexandra’s Royal Naval Nursing Service”.
The Armed Forces Act 1976 (c. 52)	In section 6(9)(b), the words “or Queen Alexandra’s Royal Naval Nursing Service”.
The Armed Forces Act 1981 (c. 55)	Section 20(2). Part 3 of Schedule 3.

## PART 7

## OTHER REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Marriage Act 1949 (c. 76)	In section 68(3), the words from “and the expression” to the end.
The Army Act 1955 (c. 18)	In section 75L(2), the word “or” at the end of paragraph (a). Section 209(3C). Paragraph 2A(13) of Schedule 5A. In paragraph 9 of Schedule 6, the words “and one hundred and eighty”.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Air Force Act 1955 (c. 19)	In section 75L(2), the word “or” at the end of paragraph (a). Section 209(3C). Paragraph 2A(13) of Schedule 5A. In paragraph 9 of Schedule 6, the words “and one hundred and eighty”.
The Naval Discipline Act 1957 (c. 53)	In section 12A(1), the words “on conviction by court-martial”. In section 42(1), the words “subject to section 43A below be liable”. In section 47M(2), the word “or” at the end of paragraph (a). Paragraph 4B of Schedule 4.
The Courts-Martial (Appeals) Act 1968 (c. 20)	In section 42, in subsection (1) the words “to whom this section applies”, and subsection (2).
The Sexual Offences (Amendment) Act 1992 (c. 34)	In section 7(2), paragraph (f) and the word “and” preceding it.
The Reserve Forces Act 1996 (c. 14)	In section 41(4), the word “been”.
The Armed Forces Act 1996 (c. 46)	Section 1.

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