

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, SCHEDULE 3 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 3

Section 26

UNFITNESS TO STAND TRIAL AND INSANITY: COURTS-MARTIAL ETC

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

1 F1

Textual Amendments

F1 Sch. 3 paras. 1-5 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)

2 F2

Textual Amendments

F2 Sch. 3 paras. 1-5 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)

Naval Discipline Act 1957 (c. 53)

3 F3

Textual Amendments

F3 Sch. 3 paras. 1-5 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)

4 F4

Textual Amendments

F4 Sch. 3 paras. 1-5 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)

5 F5

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Textual Amendments

F5 Sch. 3 paras. 1-5 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in S.I. 2009/1059)

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

- 6 The Courts-Martial (Appeals) Act 1968 is amended as follows.
 7 For section 16 substitute—

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

- (1) This section applies where, on an appeal against conviction, the Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
 - (a) that the proper finding would have been one of not guilty by reason of insanity; or
 - (b) that the case is not one where there should have been a finding of not guilty, but that there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him.
- (2) The Appeal Court shall make in respect of the appellant—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
 - (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the Appeal Court have power to make a hospital order,
 the Appeal Court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) The provisions of, or made under, the sections specified below shall apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to a court-martial.

The sections are—

 - (c) where the relevant Service Act is the Army Act, sections 116B to 116D of that Act;
 - (d) where the relevant Service Act is the Air Force Act, sections 116B to 116D of that Act;
 - (e) where the relevant Service Act is the Naval Discipline Act, sections 63B to 63D of that Act.
- (5) Where the Appeal Court make an interim hospital order by virtue of this section—

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- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by a judicial officer and not by the Appeal Court; and
- (b) section 38(7) of the Mental Health Act 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.

(6) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.”

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

9 F6

Textual Amendments

F6 Sch. 3 para. 9 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in [S.I. 2009/1059](#))

10 F7

Textual Amendments

F7 Sch. 3 para. 10 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in [S.I. 2009/1059](#))

11 (1) Section 24 (appeal against finding of unfitness to stand trial) is amended as follows.

(2) In subsection (1)—

- (a) for “his trial” substitute “ trial and to have done the act or made the omission charged against him ”;
- (b) for “the finding” substitute “ either or both of those findings ”.

(3) In subsection (2), after “except” insert “ section 8(2) and ”.

12 For section 25 substitute—

“25 Disposal of appeal under s. 24

- (1) This section applies to appeals under section 24 of this Act.
- (2) Where the Appeal Court allow an appeal against a finding that the appellant is unfit to stand trial—
 - (a) the appellant may be tried accordingly for the offence with which he was charged; and
 - (b) the Court may make such orders as appear to them necessary or expedient pending any such trial for the custody, release or continued detention of the appellant.

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- (3) Where, otherwise than in a case falling within subsection (2) above, the Appeal Court allow an appeal against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a finding of not guilty to be recorded (but not a finding of not guilty by reason of insanity).”

13 After that section insert—

*“Appeal against order made in cases of insanity or unfitness to stand trial
 Right of appeal against hospital order etc.*

25A Right of appeal against hospital order etc.

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

(2) An appeal under this section lies only with the leave of the Appeal Court.
Disposal of appeal under s. 25A

25B Disposal of appeal under s. 25A

- (1) If on an appeal under section 25A of this Act the Appeal Court consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
- (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Appeal Court make an interim hospital order by virtue of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by a judicial officer and not by the Appeal Court; and
 - (b) section 38(7) of the said Act of 1983 (absconding offenders) shall have effect as if the reference to the court that made the order were a reference to a judicial officer.
- (4) The fact that an appeal is pending against a supervision order under the relevant Service Act shall not affect any power conferred on any other court to revoke or amend the order.
- (5) Where the Appeal Court make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable by a judicial officer and not by the Appeal Court.”

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14 (1) Section 57 (interpretation) is amended as follows.

(2) In subsection (1) insert at the relevant places—

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

““hospital order” has the meaning given in section 37 of the Mental Health Act 1983;”;

““interim hospital order” has the meaning given in section 38 of that Act;”;

““judicial officer” has the same meaning as in the relevant Service Act;”;

““restriction order” has the meaning given to it by section 41 of the Mental Health Act 1983;”;

““supervision order” means an order which requires the person in respect of whom it is made to be under the supervision of another person for a period specified in the order of not more than two years.”

(3) ^{F8}

Textual Amendments

F8 Sch. 3 para. 14(3) repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in [S.I. 2009/1059](#))

15 ^{F9}

Textual Amendments

F9 Sch. 3 para. 15 repealed (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), [Sch. 17](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see transitional provisions in [S.I. 2009/1059](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)