



**DEFENCE ACTS 1954 TO 1998
AND
COURTS-MARTIAL APPEALS ACT 1983
RESTATEMENT**

**Certified by the Attorney General on 4 May 2004 under
section 2(1) of the Statute Law (Restatement) Act 2002 (No. 33 of 2002)
to be a statement of the law contained in the Defence Acts 1954 to 1998
and the Courts-Martial Appeals Act 1983.**

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Foreword

This publication is a Restatement of the Defence Acts 1954 to 1998 and the Courts-Martial Appeals Act 1983. The Defence Acts 1954 to 1998 comprise of the following—

- **The Defence Act 1954 (No. 18 of 1954),**
- **The Defence (Amendment) (No.2) Act 1960 (No. 44 of 1960),**
- **The Defence (Amendment) Act 1979 (No. 1 of 1979),**
- **The Defence (Amendment) (No. 2) Act 1979 (No. 28 of 1979),**
- **The Defence (Amendment) Act 1987 (No. 8 of 1987),**
- **The Defence (Amendment) Act 1990 (No. 6 of 1990),**
- **The Defence (Amendment) Act 1993 (No. 18 of 1993),**
- **The Defence (Amendment) Act 1998 (No. 31 of 1998), and**
- **The Courts-Martial Appeals Act 1983 (No. 19 of 1983).**

The long title to the **Defence Act 1954 (the Principal Act)** states that it is—

“An Act to make further and better provision in relation to the defence of the state and the Defence Forces and to make provision for other matters connected with or incidental to the matters aforesaid.”.

The short title of this Act is the Defence Act 1954 and it came into operation on 1 January 1955 by virtue of the Defence Act (Commencement) Order 1954 (S.I. No. 233 of 1954).

The subsequent Defence Acts are amending in nature. Their long titles are set out at the end of this Foreword, together with their respective commencement dates. All of these Acts were commenced in a straightforward manner on a particular day, either on their passing or by virtue of various Commencement Orders.

The Defence (Amendment) Act 1960 (No. 22 of 1960) does not require to be restated as it was repealed by the Defence (Amendment) (No. 2) Act 1960.

The long title to the **Courts-Martial Appeals Act 1983** states that it is—

“An Act to establish a courts-martial appeal court, to make provision for the grant by the state of free legal aid in certain courts-martial cases and to provide for matters connected therewith.”.

The short title of this Act is the Courts-Martial Appeals Act and it came into operation (with the exception of Part III) on its passing on 29 June 1983. Part III came into operation on 16 December 1986 by virtue of the Courts-Martial (Legal Aid) Regulations 1986 (S.I. No. 426 of 1986).

This Restatement is an administrative consolidation of the Acts as outlined and is certified by the Attorney General under the Statute Law (Restatement) Act 2002 (No. 33 of 2002) to be *prima facie* evidence of the law restated in it.

To assist you in your understanding of the content and layout of Restatements, it is recommended that you read the document entitled “Modernising Legislation in Ireland, A Guide to Restatement” produced by the Statute Law Revision Unit of the Office of the Attorney General. This paper is available on the Office website at www.attorneygeneral.ie.

Contents

The Restatement has 10 Chapters:

- Chapter 1** — The Defence Act 1954 (the Principal Act),
- Chapter 2** — The Defence (Amendment) (No. 2) Act 1960,
- Chapter 3** — The Defence (Amendment) Act 1979,
- Chapter 4** — The Defence (Amendment) (No. 2) Act 1979,
- Chapter 5** — The Defence (Amendment) Act 1987,
- Chapter 6** — The Defence (Amendment) Act 1990,
- Chapter 7** — The Defence (Amendment) Act 1993,
- Chapter 8** — The Defence (Amendment) Act 1998,
- Chapter 9** — The Courts-Martial Appeals Act 1983 (No. 19 of 1983), and
- Chapter 10** — Miscellaneous provisions.

Layout

Within the Chapters the sections of the Acts are restated as paragraphs. In Chapter I, the paragraph numbers correspond to the original section numbers of the Principal Act and in this way, the integrity of that Act is retained.

Each paragraph has a blue heading that corresponds to the side note of the section being restated.

The blue paragraph heading is followed by square brackets containing a reference to the source of the paragraph, i.e. the original section number, followed by the number and year of enactment of the particular Act.

Example

Paragraph 1, the heading reads — **Short title and commencement [s. 1: 18/1954]**

In Chapter 2 and subsequent chapters, there is no requirement to preserve the integrity of the amending Acts, so the paragraph numbers of the Restatement and the section numbers of those Acts do not correspond. Accordingly, the Restatement does not reproduce the arrangement of sections set out at the beginning of the original Acts.

Textual amendments

Where a section of one of the restated Acts has been affected by means of a textual amendment, the corresponding paragraph is set out in the manner in which it has been affected. The paragraph is followed by details of the legislation which made the changes i.e. the relevant affecting provision or provisions. The word ‘textual’ indicates the type of amendment.

Example

Paragraph 13 sets out section 13 of the Principal Act. That section was textually amended by section 4 of the Defence (Amendment) Act 1998 (No. 31 of 1998) by the substitution of a new section. Section 13 is therefore restated with the new section having replaced the original one. The paragraph is followed by details of the relevant affecting provision —

Affecting provision (textual) — 31/1998, s. 4

Non-textual amendments

Where a section has been amended by a non-textual amendment, details of the affecting provision are set out in a similar fashion to the textual amendment in the previous example. The words ‘non-textual’ indicate this type of amendment. In addition, the text of the amending provision is set out in full at the end of the paragraph. The text is set out in blue font, indented and italicised.

Example

Persons eligible to be appointed officers. [s. 41: 18/1954]

41. Each of the following persons shall be eligible to be appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force, that is to say:—

- (a) Irish citizens;
- (b) any other persons specially approved by the Minister.

Affecting provision (non-textual) — 28/1979, s.3 —

[28/1979 — s. 3 Defence (Amendment) (No. 2) Act 1979]

Application of section 41 of Principal Act to women

3.— A woman shall be eligible to be appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force and for that purpose references in section 41 of the Principal Act to Irish citizens shall be construed as including Irish citizens of either sex and references to any other persons specially approved by the Minister shall be construed as including persons of either sex.

Although the specific portion of the non-textually amending provision is reproduced, in some instances it may be difficult to understand the nature of this type of amendment without consulting the text of the amending Act or the remainder of the affecting provision. To clarify some of these provisions, additional extracts from the relevant legislation are included.

The textual and non-textual amending provisions are removed from the text of the amending Acts when restated. This means that some of the amending Acts are shortened to a considerable extent. For example, the Defence (Amendment) Act 1998 (Chapter 8) originally contained 12 sections but is now reduced to 4 paragraphs. In some instances however, the content of the non-textual amending provisions require that they must be set out again.

Repealed provisions are omitted as they are no longer in force but abbreviated details of the repealing provision are included. The *repealing* provisions from the amending Acts are subsequently omitted. Where applicable, a saving provision may also appear.

Miscellaneous non-textual amendments

All of the non-textual amending provisions in the Defence Acts have been incorporated throughout the Restatement text.

However, the Defence Acts have also been non-textually amended by legislation other than Defence legislation. Where possible, these amendments have been included throughout the Restatement. In some instances, incorporation into the various Chapters has not been possible and accordingly Chapter 10 contains some miscellaneous amendments.

Subsequent amendments

A number of ‘affecting provisions’ have subsequently been amended. Some of these amendments also affect the Principal Act. These amendments are set out in green and immediately follow the preceding amendment.

Notes

Notes are provided throughout the Restatement text to explain or clarify certain affecting provisions. They are also used to highlight important commencement provisions and to provide information.

Commencement provisions

The commencement provisions of all of the restated Defence Acts are included in this Foreword and are not set out again.

References to commencement provisions of other legislation are included where the Act did not become law on the day on which it was signed by the President. An Act may contain a commencement provision allowing for its commencement on a later fixed date or on a date subsequently appointed by the relevant minister. That exact commencement date is not set out but it is confirmed that all legislation referred to in this Restatement has been commenced.

Schedules

For ease of reference, schedules are set out immediately after the paragraph to which they refer. Where a schedule has been amended, the amendment in question immediately follows the repositioned schedule.

Abbreviations

Abbreviations used are in accordance with the list in the database of the Chronological Tables of the Statutes available on the website of the Office of the Attorney General.

Statutory Instruments

A considerable number of statutory instruments have been made under the restated legislation. The volume of this body of secondary legislation prevented its inclusion in the text of this Restatement but a list of that legislation is set out at the end of this Foreword. In addition to the Statutory Instruments listed in this Foreword, there are also a large number of Regulations made by the Minister under the Defence Acts and which deal with the day to day management of the Defence Forces. These are not included in the Restatement in view of the fact that they are subject to continuing amendment and the sheer volume of their content would not make it feasible to include them. Essentially these are internal documents and any information required as to their content would be available on request from Regulations Section of the Department of Defence. Therefore, they are not deemed appropriate for inclusion in the Restatement.

Ministerial powers

The Minister for Defence continues to exercise the general regulation making powers in the restated Acts. By virtue of the Public Service (Transfer of Departmental, Administration and Ministerial Functions) Order 1987 (S.I. No. 81 of 1987), the Minister for Finance also currently exercises certain functions.

Long titles and commencement dates of the Defence Acts.**Defence (Amendment)(No. 2) Act 1960 (No. 44 of 1960):**

“An Act to authorise, subject to the previous approval of Dáil Éireann in certain circumstances, the despatch of contingents of the Permanent Defence Force for service outside the State with International Forces established by the Security Council or the General Assembly of the United Nations for the performance of duties of a police character, To extend the area of service of certain members of the Permanent Defence Force, and for those purposes to amend the Defence Act 1954, in certain respects and to provide for other related matters.”

This Act commenced on its passing on the 21st of December 1960.

Defence (Amendment) Act 1979 (No.1 of 1979):

“An Act to amend the Defence Act 1954.”

This Act commenced on its passing on the 20th of February 1979.

Defence (Amendment)(No. 2) Act 1979 (No. 28 of 1979):

“An Act to provide for the enlistment of women into the Defence Forces and to provide for matters connected therewith.”

This Act commenced on the 23rd of January 1980 by virtue of the Defence (Amendment) (No. 2) Act 1979 (Commencement) Order 1980 (S.I. No.19 of 1980).

Defence (Amendment) Act 1987 (No. 8 of 1987):

“An Act to alter the punishments which may be awarded under the Defence Act 1954 and otherwise to amend and extend that Act.”

This Act commenced on its passing on the 24th of June 1987.

Defence (Amendment) Act 1990 (No. 6 of 1990):

“An Act to provide for the establishment of associations to represent members of the Defence Forces for certain purposes and for connected matters.”

This Act commenced on the 16th of May 1991 by virtue of the Defence (Amendment) Act 1990 (Commencement) Order 1991 (S.I. No.119 of 1991).

Defence (Amendment) Act 1993 (No. 18 of 1993):

“An Act to amend and extend the Defence (Amendment) (No. 2) Act 1960 and to provide for related matters.”

This Act commenced on its passing on the 1st of July 1993.

Defence (Amendment) Act 1998 (No. 31 of 1998):

“An Act to provide for the re-organisation of the headquarters of the Defence Forces and for that purpose to provide for the appointment of a Deputy Chief of Staff (Operations) of the Defence Forces and a Deputy Chief of Staff (Support) of the Defence Forces, to provide for the amendment of the Defence Act 1954, and to provide for related matters.”

This Act commenced on the 1st of October 1998 by virtue of the Defence (Amendment) Act, 1998 (Commencement) Order 1998 (S.I. No. 366 of 1998).

LIST OF STATUTORY INSTRUMENTS

S.I. NO.	TITLE
250 of 1954	Defence (Civil Authority with respect to Courts-Martial) Regulations 1954.
297 of 1954	Defence Forces (Summoning of Civilian Witnesses) Regulations 1954.
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201 of 1983	Courts-Martial Appeals Act 1983 (Application of Part II) Order 1983.
206 of 1983	Courts-Martial Appeals Court Rules 1983.
426 of 1986	Courts-Martial Appeals Act 1983, (Application of Part III) Order 1986.
425 of 1986	Courts-Martial (Legal Aid) Regulations 1986.
46 of 1987	Courts-Martial (Legal Aid) Regulations 1987.
125 of 1988	Courts-Martial (Legal Aid) Regulations 1988.
25 of 1989	Courts-Martial (Legal Aid) Regulations 1989.
68 of 1990	Courts-Martial (Legal Aid) Regulations 1990.
309 of 1993	Courts-Martial (Legal Aid) Regulations 1993.
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112 of 1949	Rules of Procedure (Defence Forces) 1949.
243 of 1954	Rules of Procedure (Defence Forces) 1954.
58 of 1955	Rules of Procedure (Defence Forces) 1954 (Amendment) Rules.
22 of 1983	Rules of Procedure (Defence Forces) 1983.
72 of 1983	Rules of Procedure (Defence Forces) 1983.
202 of 1983	Rules of Procedure (No. 3) (Defence Forces) 1983.
245 of 1987	Rules of Procedure (Defence Forces) 1987.
27 of 1991	Rules of Procedure (Defence Forces) 1991.

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291 of 1954 Rules for Military Prisons and Detention Barracks.

203 of 1983 Rules for Military Prisons and Detention Barracks 1983.

138 of 1972 Prisons Act 1972 (Military Custody) Regulations 1972.

217 of 1972 Prisons (Visiting Committees) Order 1972

•

37 of 1959 Defence Act 1954 (Control of Roads at Gormanstown Aerodrome) Bye-Laws 1959.

188 of 1962 Defence Forces (Registration of Certain Births and Deaths occurring outside the State) Regulations 1962.

ARRANGEMENT OF CHAPTERS AND PARAGRAPHS

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5. Active service.
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8. Provisions in relation to regulations.
9. Repeals.
10. Expenses.

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11. The Council of Defence.
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15. The Judge Advocate-General.

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36. Restrictions on use of land in vicinity of service aerodromes.
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CHAPTER 1

DEFENCE ACT 1954

(No. 18 of 1954)

Affecting provision (non-textual) — 28/1979, s. 2.

[28/1979: Defence (Amendment) (No. 2) Act 1979]

Application of Defence Acts 1954 to 1979, to women. [s. 2: 28/1979]

2. The provisions of the Defence Acts 1954 to 1979, and of any statutory instruments made thereunder shall apply to women members of the Defence Forces holding commissioned or non-commissioned rank and accordingly all words in those Acts and those instruments importing a reference to persons of the male sex shall be construed as importing a reference to persons of either sex.

Note: The most recent collective citation is now the Defence Acts 1954 to 1998, See Chapter 8.

PART I.

PRELIMINARY AND GENERAL.

Short title and commencement. [s. 1: 18/1954]

1. (1) This Act may be cited as the Defence Act 1954.

(2) This Act shall come into operation on such day as may be fixed therefor by order of the Minister for Defence.

Interpretation generally. [s. 2: 18/1954]

2. (1) In this Act—

absence without leave.

the expression “absence without leave” means the act of a person absenting himself without leave within the meaning of section 137;

absent himself without leave.

the expression “absent himself without leave” has the same meaning as in section 137;

absentee.

the word “absentee” means a person who absents himself without leave within the meaning of section 137;

active service, on.

the expression “on active service” has, in relation to a person subject to military law, the meaning assigned to it by section 5;

Act of 1923.

the expression “the Act of 1923” means the Defence Forces (Temporary Provisions) Act 1923 (No. 30 of 1923), as amended, extended and continued by subsequent enactments;

Army Nursing Service

the expression “the Army Nursing Service” means the nursing service established under section 289;

attestation paper.

the expression “attestation paper” means the document referred to as an attestation paper in section 56;

called out in aid of the civil power.

the expression “called out in aid of the civil power”, in relation to a reservist, shall be construed in accordance with subsection (2) of section 90;

called out on permanent service.

the expression “called out on permanent service”, in relation to a reservist, shall be construed in accordance with subsection (2) of section 87 or subsection (3) of section 88 (whichever of those subsections is applicable);

certificate of discharge.

the expression “certificate of discharge” means a certificate issued under section 82;

Chief of Staff.

the expression “the Chief of Staff” means the Chief of Staff of the Defence Forces;

civil court.

the expression “civil court” means any court established under Article 34 of the Constitution, and includes the courts established under the Courts of Justice Act 1924 (No. 10 of 1924), and any Special Criminal Court established under the Offences against the State Act 1939 (No. 13 of 1939);

civil custody.

the expression “civil custody” means the custody of the Garda Síochána or other lawful civil authority authorised to retain in custody civil prisoners and includes confinement in a public prison;

civil offence.

the expression “civil offence” has the meaning assigned to it by section 169;

class of reservists.

the expression “class of reservists” means any class of the Reserve Defence Force, being—

- (a) the Reserve of Men (First Line), or

- (b) the Reserve of Men (An Fórsa Cosanta Áitiúil), or
- (c) the Reserve of Men (An Slua Muirí), or
- (d) any class constituted under subsection (3) of section 21;

Class of the Reserve Defence Force.

the word “class” means, in relation to the Reserve Defence Force, a class of the Reserve Defence Force mentioned in section 21;

commanding officer

the expression “commanding officer” means in any section in which it occurs an officer declared by regulations made by the Minister under this Act to be a commanding officer for the purposes of that section;

commissioned army rank.

the expression “commissioned army rank” means any rank set out in column (2) of the Second Schedule to this Act;

commissioned naval rank.

the expression “commissioned naval rank” means any rank set out in column (3) of the Second Schedule to this Act;

commissioned rank.

the expression “commissioned rank” means any rank being—

- (a) a commissioned army rank, or
- (b) a commissioned naval rank;

company commander.

the expression “company commander” means in any section in which it occurs an officer declared by regulations made by the Minister under this Act to be a company commander for the purposes of that section;

date of attestation.

references to the date of attestation of a man shall be construed as references to the date which is, by virtue of section 59, the date of his attestation;

decoration.

the word “decoration” means any medal, clasp, good conduct badge or other decoration;

Defence Forces.

the expression “the Defence Forces” means the defence forces to be raised and maintained under this Act;

Defence Forces Headquarters.

“Defence Forces Headquarters” shall be construed in accordance with section 13 (inserted by section 4 of the Defence (Amendment) Act 1998);

Deputy Chief of Staff (Operations).

“Deputy Chief of Staff (Operations)” means the Deputy Chief of Staff (Operations) of the Defence Forces;

Deputy Chief of Staff (Support).

“Deputy Chief of Staff (Support)” means the Deputy Chief of Staff (Support) of the Defence Forces.

desert.

the word “desert” means desert the Defence Forces within the meaning of section 135;

deserter.

the word “deserter” means a person who deserts;

desertion.

the word “desertion” means the act of deserting the Defence Forces within the meaning of section 135;

detention barrack.

the expression “detention barrack” means a building or part of a building declared under section 232 to be a detention barrack;

employed on a State ship.

the expression “employed on a State ship” has, in relation to a member of the Defence Forces, the meaning assigned to it by section 6;

enemy.

the word “enemy” includes armed mutineers, armed rebels, armed rioters and pirates;

flag officer.

the expression “flag officer” means an officer holding the commissioned naval rank of commodore or higher commissioned naval rank;

fraudulent enlistment.

the expression “fraudulent enlistment” means the act of fraudulently enlisting within the meaning of section 164;

general officer.

the expression “general officer” means an officer holding the commissioned army rank of brigadier-general or higher commissioned army rank;

man.

the word “man” means a person who is for the time being a member of the Defence Forces, but does not include an officer;

military office.

the expression “military office” means any office in the Defence Forces;

military prison.

the expression “military prison” means a building or part of a building declared under section 232 to be a military prison;

military prisoner.

the expression “military prisoner” means a person under sentence of imprisonment passed by a court-martial;

Minister.

the expression “the Minister” means the Minister for Defence;

non-commissioned army rank.

the expression “non-commissioned army rank” means any rank set out in column (2) of the Third Schedule to this Act;

non-commissioned naval rank.

the expression “non-commissioned naval rank” means any rank set out in column (3) of the Third Schedule to this Act;

non-commissioned officer.

the expression “non-commissioned officer” means a man holding—

- (a) any non-commissioned army rank, other than that of private, or
- (b) any non-commissioned naval rank, other than that of seaman;

offence against military law.

the expression “offence against military law” means any offence mentioned in any section contained in Chapter II of Part V of this Act;

officer.

the word “officer”, when used without qualification, means a person who—

- (a) holds a commissioned rank in, and is for the time being an officer of, the Permanent Defence Force, or
- (b) holds a commissioned rank in, and is for the time being an officer of, the Reserve Defence Force;

operative date.

the expression “the operative date” means the day on which this Act comes into operation;

period of emergency.

the expression “period of emergency” has the meaning assigned to it by section 4;

Permanent Defence Force.

the expression “the Permanent Defence Force” means the constituent part of the Defence Forces which is to be called and known by that name;

person subject to military law.

references to a person subject to military law shall be construed as references to a person who is, by virtue of section 118 or 119, subject to military law;

prescribed.

the word “prescribed” means—

- (a) where it occurs in Part V (except Chapters IV and X) of this Act, prescribed by rules of procedure;
- (b) where it occurs elsewhere, prescribed by regulations made under this Act;

proclamation authorising the calling out of reservists on permanent service.

the expression “proclamation authorising the calling out of reservists on permanent service” means a proclamation made under paragraph (a) of subsection (1) of section 87;

property.

the word “property” includes money;

public prison.

the expression “public prison” means any prison or place in which a person convicted and sentenced to imprisonment by a civil court may be lawfully confined;

recruiting regulations.

the expression “recruiting regulations” means regulations made under section 56;

registered place of abode.

the expression “registered place of abode” means, in relation to a reservist, the address registered by him, in accordance with regulations made by the Minister under this Act, as his registered place of abode;

Reserve Defence Force.

the expression “the Reserve Defence Force” means the constituent part of the Defence Forces which is to be called and known by that name;

reservist.

the word “reservist”, when used without qualification, means a man of the Reserve Defence Force;

right over land.

the expression “right over land” means any easement, profit á prendre or other right over or in respect of land;

rules of procedure.

the expression “rules of procedure” means rules made under section 240;

secret society.

the expression “secret society” means an association, society or other body the members of which are required by the regulations thereof to take or enter into, or do in fact take or enter into, an oath, affirmation, declaration or agreement not to disclose the proceedings or some part of the proceedings of the association, society or body;

service.

the word “service”, when qualifying aircraft, aircraft material, equipment, vehicles, animals, messes, institutes, canteens, necessities, clothing, books or property, means belonging to or connected with the Defence Forces or any unit or part of a unit thereof;

service corps.

the expression “service corps” means any military body or combination of military bodies declared to be a service corps by regulations made under section 23 and for the time being in force;

service custody.

the expression “service custody” means the holding under arrest or in confinement of a person by the Defence Forces and includes confinement in a military prison or a detention barrack;

State ship.

the expression “State ship” means a ship or vessel belonging to, or employed in the service of, the State and used for defence purposes;

steal.

the word “steal” has the same meaning as it has for the purposes of the Larceny Act 1916, and cognate words shall be construed accordingly;

superior officer.

the expression “superior officer”, when used in relation to a man, includes a non-commissioned officer;

term of his original enlistment.

the expression “the term of his original enlistment”—

- (a) in relation to a man of the Permanent Defence Force who is enlisted under section 53, has, subject to paragraph (d) of subsection (1) of section 63, the meaning assigned to it by section 53,
- (b) in relation to a reservist who, having been enlisted in the Permanent Defence Force under section 53, has been transferred to the Reserve Defence Force under section 70, has, subject to paragraph (c) of subsection (2) of section 63, the meaning assigned to it by section 53,
- (c) in relation to a reservist who is enlisted under section 55, has, subject to subsection (3) of section 66, the meaning assigned to it by section 55.

(2) In this Act, a reference by number to a section is to the section of this Act bearing that number unless it is indicated that a reference to some other Act is intended.

(3) In this Act, references to any enactment shall be construed as references to that enactment as amended by any subsequent enactment.

*Affecting provisions (textual) — 1/1979, s. 2;
14/1997, ss. 1 (commencement), 14, sch. 2, par. 1;
31/1998, s. 2.*

Application of Act to persons subject to military law. [s. 3: 18/1954]

3. The application of this Act to a person subject to military law shall not be affected by reason of the fact that such person is for the time being outside the State or on board a ship or aircraft.

Period of emergency. [s. 4: 18/1954]

4. (1) The Government may, whenever they consider the circumstances are of such a nature as to warrant their so doing, by order under this subsection declare that a state of emergency exists.
- (2) The Government may by order under this subsection revoke any order made under subsection (1) of this section.
- (3) Whenever an order is made by the Government under subsection (1) of this section declaring that a state of emergency exists, then, so long as such order remains in force, a period of emergency shall be deemed for the purpose of this Act to exist, and the expression “period of emergency” shall in this Act be construed accordingly.
- (4) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas and be published in the *Iris Oifigiúil*.

(5) If, at the time an order is made under this section, either House of the Oireachtas stands adjourned, that House shall be summoned to meet as soon as conveniently may be but in any event not later than twenty-one days after the order is made.

Active service. [s. 5: 18/1954]

5. (1) A person subject to military law shall, for the purposes of this Act, be on active service—
- (a) during any period during which an order made under subsection (2) of this section is in force, or
 - (b) whenever he is attached to or forms part of a force which is engaged in operations against an enemy, or
 - (c) whenever he is engaged in military operations in a place wholly or mainly occupied by an enemy,

and the expression “on active service” when used in this Act in relation to a person subject to military law shall be construed accordingly.

(2) The Government, during a period of emergency, may, whenever they consider the circumstances are of such a nature as to warrant their so doing, by order under this subsection declare the Defence Forces to be on active service.

(3) An order under subsection (2) of this section shall, if not previously revoked under subsection (4) of this section, cease to be in force on the expiration of the period of emergency current at the time the order was made.

(4) The Government may by order under this subsection revoke any order made under subsection (2) of this section.

Affecting Provision (non-textual) — 44/1960, s. 4 —

[44/1960 — S.4 Defence (Amendment) (No. 2) Act 1960]

Amendments of the Principal Act.

4. (1) *A member of the Permanent Defence Force who is serving outside the State with an armed International United Nations Force shall, for the purposes of the Principal Act, be deemed, while so serving, to be on active service.*

Note: Provision affected by (non-textual) — 18/1993, s. 3(1).

Both provisions affected by 16/1996, ss. 29(2) (commencement), 6(5)(a).

[18/1993 — s. 3(1) Defence (Amendment) Act 1993]**Application of certain provisions of Principal Act and Act of 1960.**

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

[16/1996 — s. 6(5)(a) Protection of Young Persons (Employment) Act 1996]**Employment of young persons.**

6. (5) *The limitations on hours of work and on night work specified in subsection (1) (a) and (b), and the minimum periods of rest specified in subsection (1) (c) and (d) shall not apply to young persons who are members of the Defence Forces when they are—*

(a) on active service within the meaning of section 5 of the Defence Act 1954, or deemed to be on active service, within the meaning of section 4 (1) of the Defence (Amendment) (No. 2) Act 1960;

Employment on State ships. [s. 6: 18/1954]

6. Whenever an officer or man is borne on the roll of, or is being trained or exercised on, any State ship, he shall, for the purposes of this Act, be deemed to be employed on such State ship, and the expression “employed on a State ship” and cognate expressions shall be construed accordingly.

Prosecution of certain offences by the Minister. [s. 7: 18/1954]

7. An offence which under this Act is punishable on summary conviction by the District Court may be prosecuted by the Minister as prosecutor.

Provisions in relation to regulations. [s. 8: 18/1954]

8. (1) Any regulations made under this Act which involve a direct or indirect charge on or a payment into public funds shall be made with the consent of the Minister for Finance.

(2) In making regulations under this Act, the Minister may make different regulations in relation to the Permanent Defence Force, the Reserve Defence Force and different classes of the Reserve Defence Force.

Repeals. [s. 9: 18/1954]

9. The enactments mentioned in column (2) of the First Schedule to this Act are hereby repealed to the extent mentioned in column (3) of the said Schedule.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

No. and Year (1)	Short title (2)	Extent of Repeal (3)
No. 30 of 1923.	Defence Forces (Temporary Provisions) Act 1923.	The whole Act.
No. 16 of 1924.	Ministers and Secretaries Act 1924.	Section 1, paragraph (x), the words “and shall be assisted by a Council of Defence as hereinafter provided”; section 8.
No. 38 of 1924.	Defence Forces (Temporary Provisions) Act 1923 (Continuance and Amendment) Act 1924.	The whole Act.
No. 4 of 1925.	Defence Forces (Temporary Provisions) Act 1925.	The whole Act.
No. 9 of 1926.	Defence Forces (Temporary Provisions) Act 1926.	The whole Act.
No. 9 of 1927.	Defence Forces (Temporary Provisions) Act 1927.	The whole Act.
No. 23 of 1927.	Juries Act 1927.	Part I of First Schedule the words “Members of Defence Forces of Saorstát Éireann on full pay.”
No. 40 of 1927.	Defence Forces (Temporary Provisions) (No. 2) Act 1927.	The whole Act.
No. 2 of 1929.	Defence Forces (Temporary Provisions) Act 1929.	The whole Act.
No. 6 of 1930.	Defence Forces (Temporary Provisions) Act 1930.	The whole Act.
No. 2 of 1931.	Defence Forces (Temporary Provisions) Act 1931.	The whole Act.
No. 52 of 1931.	Defence Forces (Temporary Provisions) (No. 2) Act 1931.	The whole Act.
No. 3 of 1933.	Defence Forces (Temporary Provisions) Act 1933.	The whole Act.
No. 10 of 1934.	Defence Forces (Temporary Provisions) Act 1934.	The whole Act.
No. 26 of 1934.	Defence Forces (Temporary Provisions) (No. 2) Act 1934.	The whole Act.
No. 2 of 1935.	Public Dance Halls Act 1935.	Section 15, the words “of the Minister for Defence or”.
No. 11 of 1935.	Defence Forces (Temporary Provisions) Act 1935.	The Whole Act.
No. 3 of 1936.	Defence Forces (Temporary Provisions) Act 1936.	The whole Act.
No. 6 of 1937.	Defence Forces (Temporary Provisions) Act 1937.	The whole Act.
No. 41 of 1937.	Defence Forces Act 1937.	The whole Act.
No. 8 of 1938.	Defence Forces (Temporary Provisions) Act 1938.	The whole Act.
No. 7 of 1939.	Defence Forces (Temporary Provisions) Act 1939.	The whole Act.
No. 3 of 1940.	Defence Forces (Temporary Provisions) Act 1940.	The whole Act.
No. 11 of 1940.	Defence Forces (Temporary Provisions) (No. 2) Act 1940.	The whole Act.
No. 6 of 1941.	Defence Forces (Temporary Provisions) Act 1941.	The whole Act.
No. 3 of 1942.	Defence Forces (Temporary Provisions) Act 1942.	The whole Act.
No. 1 of 1943.	Defence Forces (Temporary Provisions) Act 1943.	The whole Act.

No. and Year (1)	Short title (2)	Extent of Repeal (3)
No. 4 of 1944.	Defence Forces (Temporary Provisions) Act 1944.	The whole Act.
No. 10 of 1945.	Defence Forces (Temporary Provisions) Act 1945.	The whole Act.
No. 7 of 1946.	Defence Forces (Temporary Provisions) Act 1946.	The whole Act.
No. 4 of 1947.	Defence Forces (Temporary Provisions) Act 1947.	The whole Act.
No. 5 of 1948.	Defence Forces (Temporary Provisions) Act 1948.	The whole Act.
No. 1 of 1949.	Defence Forces (Temporary Provisions) Act 1949.	The whole Act.
No. 2 of 1950.	Defence Forces (Temporary Provisions) Act 1950.	The whole Act.
No. 6 of 1951.	Defence Forces (Temporary Provisions) Act 1951.	The whole Act.
No. 2 of 1952.	Defence Forces (Temporary Provisions) Act 1952.	The whole Act.
No. 1 of 1953.	Defence Forces (Temporary Provisions) Act 1953.	The whole Act.
No. 5 of 1954.	Defence Forces (Temporary Provisions) Act 1954.	The whole Act.

Expenses. [s. 10: 18/1954]

10. The expenses incurred by a Minister of State in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II.

THE COUNCIL OF DEFENCE, THE CHIEF OF STAFF, THE ADJUTANT-GENERAL, THE QUARTERMASTER-GENERAL, MILITARY BRANCHES OF THE DEPARTMENT OF DEFENCE, THE INSPECTOR-GENERAL AND THE JUDGE ADVOCATE-GENERAL.

The Council of Defence. [s. 11: 18/1954]

11. (1) There shall stand established a body to be called the Council of Defence (in this section referred to as the Council) to aid and counsel the Minister on all matters in relation to the business of the Department of Defence on which the Minister may consult the Council.
- (2) The Council shall consist of two civil members, namely, the Minister of State at the Department of Defence and the Secretary of the Department of Defence, and three military members, namely, the Chief of Staff, the Adjutant-General and the Quartermaster-General.
- (3) The Secretary of the Department of Defence shall be secretary of the Council.
- (4) The Council shall meet whenever summoned by the Minister.

*Affecting Provisions (textual) — 28/1977, ss. 7(3) (commencement), 5;
 (non-textual) — 27/1997, s. 4(4);
 31/1998, s. 10(3) —*

[27/1997 — s. 4(4) Public Service Management Act 1997]

4 (4) The position, in relation to a Department, heretofore known as Secretary of the Department or any other person in the Department known as Secretary shall be known as Secretary General of the Department or Secretary General, as the case may be, and the position heretofore known as Secretary to the Government shall be known as Secretary General to the Government and the position, in relation to the Office of the Attorney General, heretofore known as Senior Legal Assistant of the Office of the Attorney General, shall be known as Director General of the Office of the Attorney General.

[31/1998 — s. 10(3) Defence (Amendment) Act 1998]

Adaptations

10(3) (a) References in sections 11 and 40 of the Principal Act to the Adjutant-General shall be construed as references to the Deputy Chief of Staff (Operations).

(b) References in the said sections 11 and 40 to the Quartermaster-General shall be construed as references to the Deputy Chief of Staff (Support).

The Chief of Staff, the Deputy Chief of Staff (Operations) and the Deputy Chief of Staff (Support) [s. 12: 18/1954]

- 12.** (1) There shall be—
- (a) a Chief of Staff of the Defence Forces,
 - (b) a Deputy Chief of Staff (Operations) of the Defence Forces, and
 - (c) a Deputy Chief of Staff (Support) of the Defence Forces.
- (2) (a) An appointment to the office of Chief of Staff shall be made by the President.
- (b) Every person appointed to the office of Chief of Staff shall be an officer of the Permanent Defence Force.
 - (c) Every holder of the office of Chief of Staff shall hold that office for such term (not exceeding 5 years) as may be specified in the instrument of his or her appointment but shall be eligible for re-appointment on the expiration of that term.
 - (d) Where the holder of the office of Chief of Staff ceases to be an officer of the Permanent Defence Force, he or she shall also cease to hold the office of Chief of Staff.
 - (e) The President may, for stated reasons, remove the Chief of Staff from office.

- (3) (a) In this subsection, ‘the Deputy Chief of Staff’ means, as the context may require, the Deputy Chief of Staff (Operations) or the Deputy Chief of Staff (Support).
- (b) The Government shall appoint the Deputy Chief of Staff and may, for stated reasons, terminate his or her appointment as Deputy Chief of Staff.
- (c) A person appointed to be the Deputy Chief of Staff shall be an officer of the Permanent Defence Force.
- (d) Subject to this subsection, a person shall be appointed to be the Deputy Chief of Staff for such term (not exceeding 5 years) as may be specified in the instrument of his or her appointment but shall be eligible for re-appointment on the expiration of that term.
- (e) Where a person appointed to be the Deputy Chief of Staff ceases to be an officer of the Permanent Defence Force, he or she shall also cease to be the Deputy Chief of Staff.

Affecting provision (textual) — 31/1998, s. 3.

Military element of the Department of Defence. [s. 13: 18/1954]

13. (1) There shall stand established in the Department of Defence a military element (which shall be known, and is referred to in this Act, as ‘Defence Forces Headquarters’), the head of which shall be the Chief of Staff.
- (2) Subject to the Defence Acts 1954 to 1998, there shall be assigned to the Chief of Staff such duties in connection with the business of the Department of Defence as the Minister may from time to time determine.
- (3) The Chief of Staff shall be directly responsible to the Minister for the performance of such duties as may from time to time be assigned to him or her under subsection (2).
- (4) The Chief of Staff may, subject to the approval of the Minister, delegate such duties assigned to him or her under subsection (2) as he or she considers appropriate to the Deputy Chief of Staff (Operations) or the Deputy Chief of Staff (Support).

Affecting provision (textual) — 31/1998, s. 4.

Inspector-General. [s. 14: 18/1954]

14. (1) The Government may, whenever they think fit, by order under this subsection declare that there shall be an Inspector-General of the Defence Forces, and whenever any such order is made and is in force there shall be an Inspector-General of the Defence Forces.
- (2) The Government may by order under this subsection revoke any order made under subsection (1) of this section.

(3) The Inspector-General of the Defence Forces shall be an officer of the Permanent Defence Force and shall be appointed by, and hold office during the pleasure of, the President.

(4) The Inspector-General of the Defence Forces shall be charged with the performance of such duties as the Government may from time to time assign to him.

The Judge Advocate-General. [s. 15: 18/1954]

15. (1) There shall be a Judge Advocate-General.

(2) The Judge Advocate-General shall be a practicing barrister-at-law of at least ten years' standing, but shall not be a member of the Defence Forces, and shall be appointed by, and hold office during the pleasure of, the President.

(3) The Judge Advocate-General shall be charged with the performance of such duties as the Government may from time to time assign to him.

(4) There shall be paid to the Judge Advocate-General such remuneration as the Minister, with the consent of the Minister for Finance, may fix.

PART III.

RAISING, MAINTENANCE, COMMAND, CONSTITUTION AND ORGANISATION OF THE DEFENCE FORCES, MILITARY EDUCATION AND MISCELLANEOUS MATTERS RELATING TO THE DEFENCE FORCES.

CHAPTER I.

Raising, Maintenance and Command of the Defence Forces.

Authority to raise and maintain the Defence Forces. [s. 16: 18/1954]

16. It shall be lawful for the Government to raise, train, equip, arm, pay and maintain defence forces to be called and known as Óglaigh na hÉireann or (in English) the Defence Forces.

Military command. [s. 17: 18/1954]

17. (1) Under the direction of the President, and subject to the provisions of this Act, the military command of, and all executive and administrative powers in relation to, the Defence Forces, including the power to delegate command and authority, shall be exercisable by the Government and, subject to such exceptions and limitations as the Government may from time to time determine, through and by the Minister.

(2) (a) The delegation of command and authority by the Minister—

(i) may be made subject to such exceptions and limitations as he may from time to time determine,

(ii) may be in relation to any area, place or State ship or any military body organised under section 22 and may embrace different components of the Defence Forces,

(iii) may, during a period of emergency, be in relation to the whole of the Defence Forces.

(b) For the purposes of subparagraph (ii) of paragraph (a) of this subsection and for administrative purposes, the Minister may divide the State into such and so many areas as he thinks fit.

(3) The Minister may make regulations, applying to officers, as to the persons to be invested, as officers, with military command over the Defence Forces or any part thereof or any person belonging thereto and as to the mode in which such command is to be exercised.

CHAPTER II.

Constitution of the Defence Forces and General Organisation thereof.

Constitution of the Defence Forces. [s. 18: 18/1954]

18. The Defence Forces shall consist of—

(a) a defence force to be called and known as na Buan-Óglaigh or (in English) the Permanent Defence Force, comprising army, naval and air components, and

(b) a defence force to be called and known as na hÓglaigh Cúltaca or (in English) the Reserve Defence Force, comprising army, naval and air components.

Constitution of the Permanent Defence Force. [s. 19: 18/1954]

19. The Permanent Defence Force shall consist of—

(a) persons who are appointed thereto as officers and are for the time being officers of the Permanent Defence Force,

(b) persons who are enlisted therein as men under section 53 or 54 and are for the time being men of the Permanent Defence Force,

(c) persons who, having enlisted therein as men under section 53 and having been transferred to the Reserve Defence Force under section 70, re-enter the Permanent Defence Force under subsection (3) of section 63 and are for the time being men of the Permanent Defence Force, and

(d) persons who are for the time being members of the Army Nursing Service.

Constitution of the Reserve Defence Force. [s. 20: 18/1954]

- 20.** The Reserve Defence Force shall consist of—
- (a) persons who are appointed thereto as officers and are for the time being officers of the Reserve Defence Force,
 - (b) persons who are transferred thereto as men from the Permanent Defence Force under section 70 and are for the time being reservists, and
 - (c) persons who are directly enlisted therein as men under section 55 and are for the time being reservists.

Classes of the Reserve Defence Force. [s. 21: 18/1954]

- 21.** (1) The Reserve Defence Force shall be divided into the following classes—
- (a) a class to be called the Reserve of Officers (First Line) which shall consist of such officers of the Reserve Defence Force as may from time to time stand assigned to that class under section 44,
 - (b) a class to be called the Reserve of Officers (An Fórsa Cosanta Áitiúil) which shall consist of such officers of the Reserve Defence Force as may from time to time stand assigned to that class under section 44,
 - (c) a class to be called the Reserve of Officers (An Slua Muirí) which shall consist of such officers of the Reserve Defence Force as may from time to time stand assigned to that class under section 44,
 - (d) a class to be called the Reserve of Men (First Line) which shall consist of—
 - (i) men (other than men who for the time being stand assigned to another class of reservists under subsection (2) of section 62) who, having enlisted under section 53, are transferred to the Reserve Defence Force in pursuance of section 70 and are for the time being reservists,
 - (ii) men (other than men who for the time being stand assigned to another class of reservists under subsection (2) of section 62) who are enlisted under section 55 for service in that class and are for the time being reservists, and
 - (iii) such reservists as may from time to time stand assigned to that class under section 62,
 - (e) a class to be called the Reserve of Men (An Fórsa Cosanta Áitiúil) which shall consist of—

- (i) men (other than men who for the time being stand assigned to another class of reservists under subsection (2) of section 62) who are enlisted under section 55 for service in that class and are for the time being reservists, and
 - (ii) such reservists as may from time to time stand assigned to that class under section 62,
- (f) a class to be called the Reserve of Men (An Slua Muirí) which shall consist of—
 - (i) men (other than men who for the time being stand assigned to another class of reservists under subsection (2) of section 62) who are enlisted under section 55 for service in that class and are for the time being reservists, and
 - (ii) such reservists as may from time to time stand assigned to that class under section 62,
- (g) such other classes as may be constituted by the Minister under subsection (2) or (3) of this section.
- (2) (a) The Minister may by regulations constitute such and so many classes of officers of the Reserve Defence Force as he thinks fit and assign to any class so constituted such title as he thinks fit.
- (b) A class of the Reserve Defence Force constituted under this subsection shall consist of such officers of the Reserve Defence Force as may from time to time stand assigned to that class under section 44.
- (3) (a) The Minister may by regulations constitute such and so many classes of reservists as he thinks fit and assign to any class so constituted such title as he thinks fit.
- (b) A class of the Reserve Defence Force constituted under this subsection shall consist of—
 - (i) men (other than men who for the time being stand assigned to another class of reservists under subsection (2) of section 62) who are enlisted under section 55 for service in that class and are for the time being reservists, and
 - (ii) such reservists as may from time to time stand assigned to that class under section 62.
- (4) If at any time there are no members of the Reserve Defence Force for the time being assigned to a particular class of the Reserve Defence Force, the Minister may by regulations abolish that class.
- (5) The Minister may from time to time by regulations substitute for the existing title of a particular class of the Reserve Defence Force such other title as he thinks fit and specifies in the regulations.

Organisation of the Defence Forces. [s. 22: 18/1954]

22. (1) The Defence Forces shall be organised into such staffs, units and other elements as may be prescribed.
- (2) The numerical establishment of the Defence Forces and the number in each rank thereof shall be such as may be prescribed.

Affecting provision (textual) — 31/1998, s. 5.

Service corps. [s. 23: 18/1954]

23. The Minister may by regulations declare that any military body (being a staff, unit or other element organised under section 22) or any combination of such military bodies shall be a service corps for the purposes of this Act and assign to that service corps such title as he thinks fit.

Commissioned ranks in the Defence Forces. [s. 24: 18/1954]

24. (1) (a) The several ranks set out in column (2) of the Second Schedule to this Act shall be the commissioned army ranks in the Defence Forces.
- (b) Any commissioned army rank set out in column (2) of the Second Schedule to this Act before any other commissioned army rank shall be higher than that other commissioned army rank.
- (2) (a) The several ranks set out in column (3) of the Second Schedule, to this Act shall be the commissioned naval ranks in the Defence Forces.
- (b) Any commissioned naval rank set out in column (3) of the Second Schedule to this Act before any other commissioned naval rank shall be higher than that other commissioned naval rank.
- (3) For the purposes of this Act—
- (a) the commissioned army rank set out in column (2) of the Second Schedule to this Act at any reference number (being reference number 3, 4, 5, 6, 7, 8, or 9) shall be deemed to correspond to the commissioned naval rank set out in column (3) of the said Second Schedule at that reference number;
- (b) the commissioned army rank set out in column (2) of the said Second Schedule at reference number 10 shall be deemed to correspond to each of the commissioned naval ranks set out in column (3) of the said Second Schedule at reference number 10;
- (c) the commissioned naval rank as set out in column (3) of the said Second Schedule at any reference number (being reference number 3, 4, 5, 6, 7, 8, or 9) shall be deemed to correspond to the commissioned army rank set out in column (2) of the said Second Schedule at that reference number;

- (d) each of the commissioned naval ranks set out in column (3) of the said Second Schedule at reference number 10 shall be deemed to correspond to the commissioned army rank set out in column (2) of the said Second Schedule at reference number 10.

SECOND SCHEDULE.

COMMISSIONED ARMY AND NAVAL RANKS IN THE DEFENCE FORCES.

Reference Number (1)	Army Ranks (2)	Naval Ranks (3)
1	Ginearál or (in English) General.	—
2	Lefteanant-Ghinearál or (in English) Lieutenant-General	—
3	Maor-Ghinearál or (in English) Major-General.	Seach-Aimiréal or (in English) Rear-Admiral.
4	Briogaidire-Ghinearál or (in English) Brigadier-General.	Ceannasóir or (in English) Commodore.
5	Cornal or (in English) Colonel.	Captaen or (in English) Captain.
6	Lefteanant-Chornal or (in English) Lieutenant-Colonel.	Ceannasaí or (in English) Commander
7	Ceannfort or (in English) Commandant.	Lefteanant-Cheannasaí or (in English) Lieutenant-Commander.
8	Captaen or (in English) Captain.	Lefteanant or (in English) Lieutenant.
9	Lefteanant or (in English) Lieutenant.	Fo-Lefteanant or (in English) Sub-Lieutenant.
10	Dara-Lefteanant or (in English) Second-Lieutenant.	Meirgire or (in English) Ensign. Meánloingseach or (in English) Midshipman.

Affecting provision (textual) — 1/1979, s. 4.

(4) Subject to subsection (5), the Minister may—

- (a) direct that an officer who holds (whether by virtue of his appointment thereto or a direction given under paragraph (c) of this subsection) a particular commissioned army rank (not being that of second-lieutenant) shall, in lieu of that commissioned army rank, hold the corresponding commissioned naval rank,
- (b) direct that an officer who holds (whether by virtue of his appointment thereto or a direction given under paragraph (d) of this subsection) the commissioned army rank of second-lieutenant shall, in lieu of that commissioned army rank, hold such one of the following commissioned naval ranks, namely, ensign and midshipman, as may be specified in the direction,
- (c) direct that an officer who holds (whether by virtue of his appointment thereto or a direction given under paragraph (a) of this subsection) a particular commissioned naval rank (not being that of ensign or midshipman) shall, in lieu

of that commissioned naval rank, hold the corresponding commissioned army rank,

- (d) direct that an officer who holds (whether by virtue of his appointment thereto or a direction under paragraph (b) of this subsection) the commissioned naval rank of ensign or midshipman shall, in lieu of that commissioned naval rank, hold the commissioned army rank of second-lieutenant,

and any such direction shall have effect according to the tenor thereof.

(5) A direction shall not be given in respect of an officer under subsection (4) of this section except with his consent.

Affecting provision (textual) — 1/1979, s. 3.

Non-commissioned ranks in the Defence Forces. [s. 25: 18/1954]

25. (1) (a) The several ranks set out in column (2) of the Third Schedule to this Act shall be the non-commissioned army ranks in the Defence Forces.
- (b) Any non-commissioned army rank set out in column (2) of the Third Schedule to this Act before any other non-commissioned army rank shall be higher than that other non-commissioned army rank.
- (2) (a) The several ranks set out in column (3) of the Third Schedule to this Act shall be the non-commissioned naval ranks in the Defence Forces.
- (b) Any non-commissioned naval rank set out in column (3) of the Third Schedule to this Act before any other non-commissioned naval rank shall be higher than that other non-commissioned naval rank.
- (3) The Minister may by regulations declare that, in relation to any particular service corps, the holder of non-commissioned army rank therein shall, in lieu of holding a rank specified in column (2) of the Third Schedule to this Act, hold such other equivalent rank as may be specified in such regulations and, in that case, references in any Saorstát Éireann statute or in any Act of the Oireachtas (whether passed before or after this Act), or in any scheme made (whether before or after the passing of this Act) under the Defence Forces (Pensions) Act 1932 (No. 26 of 1932), to a rank specified in the said column (2) shall as respects that service corps be construed as references to the equivalent rank specified in such regulations.
- (4) The Minister may by regulations divide any non-commissioned army rank or non-commissioned naval rank into such and so many grades as he thinks fit and assign to each of those grades such distinctive description as he thinks fit.
- (5) The Minister may by regulations divide any non-commissioned naval rank into such and so many ratings as he thinks fit and assign to each of those ratings such distinctive description as he thinks fit.

(6) For the purposes of this Act—

- (a) the non-commissioned army rank set out in column (2) of the Third Schedule to this Act at any reference number shall be deemed to correspond to the non-commissioned naval rank set out in column (3) of the said Third Schedule at that reference number;
- (b) the non-commissioned naval rank set out in column (3) of the said Third Schedule at any reference number shall be deemed to correspond to the non-commissioned army rank set out in column (2) of the said Third Schedule at that reference number.

(7) Subject to subsection (8), the Minister may—

- (a) direct that a man who holds (whether by virtue of his enlistment or his appointment thereto or a direction given under paragraph (b) of this subsection) a particular non-commissioned army rank set out in column (2) of the Third Schedule to this Act at any reference number shall, in lieu of that non-commissioned army rank, hold the corresponding non-commissioned naval rank,
- (b) direct that a man who holds (whether by virtue of his enlistment or his appointment thereto or a direction given under paragraph (a) of this subsection) a particular non-commissioned naval rank set out in column (3) of the said Third Schedule at any reference number shall, in lieu of that non-commissioned naval rank, hold the corresponding non-commissioned army rank,

and any such direction shall have effect according to the tenor thereof.

(8) A direction shall not be given in respect of a man under subsection (7) of this section except with his consent.

THIRD SCHEDULE.

NON-COMMISSIONED ARMY AND NAVAL RANKS IN THE DEFENCE FORCES.

Ref No. (1)	Army Ranks (2)	Naval Ranks (3)
1	Maor-Sháirsint or (in English) Sergeant-Major.	Oifigeach Barántais or (in English) Warrant Officer.
2	Ceathrú-Sháirsint Cathláin or (in English) Battalion Quarter-master-Sergeant.	Ard-Mhion-Oifigeach Sinsearach or (in English) Senior Chief Petty Officer.
3	Sáirsint Complachta or (in English) Company-Sergeant.	Ard-Mhion-Oifigeach or (in English) Chief Petty Officer.
4	Ceathrú-Sháirsint Complachta or (in English) Company Quarter-master-Sergeant.	Mion-Oifigeach Sinsearach or (in English) Senior Petty Officer.
5	Sáirsint or (in English) Sergeant.	Mion-Oifigeach or (in English) Petty Officer.
6	Ceannaire or (in English) Corporal.	Mairnéalach Ceannais or (in English) Leading Seaman.
7	Saighdiúir Singil or (in English) Private.	Mairnéalach or (in English) Sea Man.

General regulations in relation to the Defence Forces. [s. 26: 18/1954]

26. The Minister may make regulations, not inconsistent with this Act, in relation to all or any of the matters mentioned in the Fourth Schedule to this Act.

FOURTH SCHEDULE.**MATTERS IN RESPECT OF WHICH REGULATIONS MAY BE MADE UNDER SECTION 26.**

1. The precedence of the respective defence forces forming the Defence Forces and the various service corps, staffs, units and elements thereof.
2. The seniority of officers.
3. The persons to be invested as officers or otherwise with command over the Defence Forces or any part thereof and as to the mode in which such command is to be exercised, so however that command shall not be exercised by any person over a person holding a higher rank than himself.
4. The appointment to, promotion in, and tenure of commissioned rank in the Defence Forces.
5. The appointments to be held by officers and men.
6. The tenure in any office, appointment or capacity in the Defence Forces.
7. The retirement of officers of the Permanent Defence Force, the relinquishment of their commissions by officers of the Reserve Defence Force, the resignation of their commissions by officers and the discharge of men.
8. The officers who are to be commanding officers and company commanders respectively for the purposes of this Act.
9. The seconding of officers to civil or quasi-military appointments.
10. The leave of absence of members of the Defence Forces.
11. The uniform and insignia to be worn by members of the Defence Forces.
12. The orders and decorations to be worn by members of the Defence Forces.
13. The attendance, whether within or without the State, at special classes and courses of instruction of members of the Defence Forces selected for such attendance.
14. The examination of members of the Defence Forces as to proficiency in military subjects and as to their general educational or technical qualifications, and the granting of certificates of proficiency.

15. The classification of men by reference to particular ranks or grades of ranks, qualifications and appointments.

16. The training and inspection of the Defence Forces, the formation of training camps, and the holding of exercises for the Defence Forces.

17. The regulation of artillery, rifle, and bombing and other army, naval or air practice, and the preservation of the public safety thereat.

18. The care, inspection and testing of arms, accoutrements, ammunition, supplies, animals, transport, vessels, aircraft, clothing and equipment of the Defence Forces.

19. Ceremonial duties, honours and salutes.

20. The flying, certification and maintenance of service aircraft and the certification and maintenance of service aircraft material.

21. The colours, flags or pendants proper to, or to be appropriated to the use of, service corps, staffs, units and other elements of the Defence Forces and State ships.

22. The precautions to be taken by State ships for the prevention of collisions at sea.

23. The lighting of State ships.

24. The commissioning and equipment of State ships.

25. The preservation, repair and docking of State ships.

26. The salvage services to be rendered by State ships.

27. Quarantine and customs regulations in relation to State ships and service aircraft.

28. The navigation and pilotage of State ships.

29. The management, control and safety of wharves and dockyards used for defence purposes and of explosives, oils, fuels, supplies and goods stored therein.

30. The survey of State ships and their engines and equipment.

31. The scale of issue of arms, accoutrements, ammunition, supplies, animals, transport, clothing, equipment and other matériel of the Defence Forces.

32. The establishment, conduct and control of messes, canteens and institutions for providing recreation and refreshment for members of the Defence Forces, and the accounting for and the control and disposal of the funds of such messes, canteens and institutions.

33. The establishment of, accounting for and control and disposal of, service funds and funds for the welfare of members of the Defence Forces and their families.

34. The conditions and terms of service of civilian employees.

35. The lending of service equipment free of charge or on hire.

36. Any matter or thing referred to in Part III of this Act as prescribed or as the subject of regulations made by the Minister.

37. Any other matter or thing which is not otherwise expressly provided for by or under this Act and which, in the opinion of the Minister, is necessary for securing the good government, efficiency and internal control and management of the Defence Forces or for carrying out and giving effect to this Act.

Affecting provision (textual) — 8/1987, s. 15.

CHAPTER III.

Military Education.

Establishment of educational institutions. [s. 27: 18/1954]

27. (1) The Minister may establish a Military College and so many other institutions as he thinks necessary for the training and instruction of members of the Defence Forces.

(2) The Minister may make regulations in relation to all or any of the following matters—

- (a) the staff of institutions established under this section,
- (b) the persons to be admitted to such institutions,
- (c) the curricula of such institutions,
- (d) the duration and description of the courses of instruction and training in such institutions,
- (e) the examinations to be held in such institutions,
- (f) the management, control and good government of such institutions.

Other educational arrangements. [s. 28: 18/1954]

28. (1) The Minister may, with the consent of the Minister for Finance, arrange for the instruction of members of the Defence Forces—

- (a) outside the State, or

(b) at institutions other than those established under section 27.

(2) All members of the Defence Forces shall be instructed in giving and receiving in the Irish language such commands and directions as are necessitated by the routine duties of their ranks and appointments.

Cadetships. [s. 29: 18/1954]

29. The Minister may make regulations in relation to cadetships.

CHAPTER IV.

Miscellaneous Provisions in relation to the Defence Forces.

Special powers in relation to defence. [s. 30: 18/1954]

30. (1) The Minister may do all or any of the following things—

- (a) construct and maintain barracks, quarters, defence works, magazines, aerodromes, ranges, harbours, piers, dockyards, dry docks and anchorages;
- (b) construct, acquire, equip, maintain and commission public armed vessels and auxiliaries thereto;
- (c) construct, acquire, equip, maintain and man vessels (other than public armed vessels and auxiliaries thereto) required for defence purposes;
- (d) place and maintain buoys and lights;
- (e) lay mines;
- (f) establish, work and maintain and contract for the establishment, working and maintenance of arms and ammunition factories and factories for the manufacture of other service equipment and stores;
- (g) employ (including employ by way of apprenticeship) civilians with the Defence Forces or in a factory established under this section;
- (h) subject to the provisions of this Act, all such other things as seem to him necessary for the efficient military defence of the State.

(2) Where the exercise of any of the powers conferred by subsection (1) of this section involves a charge on public funds, such powers shall be exercised only with the concurrence of the Minister for Finance.

*Affecting provisions (non-textual) — 45/1956, s. 6(2)(h);
46/1956, s. 20(2)(d);
4/1976, s. 9 -*

[45/1956 — s.6(2)(h) Civil Service Commissioners Act 1956].

Operation of the Act.

6(2) This Act—

(h) does not apply to the employment of civilians by the Minister for Defence under section 30 of the Defence Act 1954 (No. 18 of 1954).

[46/1956 — s.20(2)(d) Civil Service Regulation Act 1956]

Operation of the Act.

20(2) This Act applies to—

(a) persons who are civil servants at the commencement of this Act as well as to persons who become civil servants after the commencement of this Act,

but does not apply to-

(d) a civilian employed by the Minister for Defence under section 30 of the Defence Act 1954 (No. 18 of 1954).

[4/1976 — s.9(1)(a) Juries Act 1976]

Excusal from service.

9.-(1) A county registrar shall excuse any person whom he has summoned as a juror under this Act if—

(a) that person is one of the persons specified in Part II of the First Schedule and informs the county registrar of his wish to be excused,
or. . . .

Note: The relevant extract from the First Schedule of 4/1976 is as follows—

Any civilian employed by the Minister for Defence under section 30 (1) (g) of the Defence Act 1954 (No. 18) on a certificate from the Secretary of the Department of Defence that it would be contrary to the public interest for the civilian to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.

Right of entry on land. [s. 31: 18/1954]

31. (1) Any person (in this section referred to as an authorised person) authorised by the Minister in that behalf may, at any reasonable time and upon giving forty-eight hours' previous notice in writing to the occupier thereof, enter on any land for the purpose of making thereon any inquiry, investigation or examination preliminary or incidental to the doing of anything which the Minister is authorised by this Part to do.

(2) If any person obstructs an authorised person in the exercise of the powers conferred on an authorised person by this section, such person shall be guilty of an offence under

this section and shall be liable on summary conviction thereof to a fine not exceeding £200.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph but only for offences committed after the 24th of June 1987 (s. 16: 8/1987).

Acquisition of land, etc., by agreement. [s. 32: 18/1954]

32. The Minister, with the consent of the Minister for Finance, may for the purposes of this Act, by agreement, take a lease of, or take a licence to use, or acquire, any land or any right over land.

Compulsory acquisition of land or rights over land. [s. 33: 18/1954]

33. (1) If and whenever the Minister thinks proper to acquire compulsorily any land or right over land for the purposes of this Act, he may, with the consent of the Minister for Finance, by order declare his intention to so acquire such land or right over land, and every such order shall operate to confer on the Minister power to acquire compulsorily the land or the right over land mentioned therein under and in accordance with this section.

(2) Compensation shall be paid by the Minister for land compulsorily acquired by the Minister under this section to the several persons having estates or interests therein and for any right over land compulsorily acquired by the Minister under this section to the owner thereof, and such compensation shall, in default of agreement (which agreement shall be subject to the consent of the Minister for Finance), be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919, and for this purpose the Minister shall be deemed to be a public authority within the meaning of the said Act.

- (3) (a) At any time after the Minister becomes entitled under subsection (1) of his section to acquire compulsorily any land or right over land and before conveyance or ascertainment of compensation, the Minister may, subject to the subsequent provisions of this subsection, enter on and take possession of that land or terminate that right.

- (b) Where the Minister exercises any power conferred on him, by paragraph (a) of this subsection, then—

- (i) subject to subparagraph (ii) of this paragraph, the Minister shall pay to the person, who is the occupier of the land entered on or the owner of the right over land terminated, interest on the amount of the compensation payable to such person at the rate of three per cent. per annum from the date on which such power was exercised until payment of such compensation,

(ii) if—

- (I) the Minister has made an unconditional offer in writing of any sum as such compensation to such person, and
- (II) the offer is not accepted by such person, and
- (III) the sum awarded as compensation by the official arbitrator to such person does not exceed the sum so offered,

no interest shall be payable on such compensation in respect of any period after the date of the offer.

(c) The Minister shall not—

- (i) enter on or take possession of any land under paragraph (a) of this subsection without giving to the occupier thereof at least one month's or, in case of an occupied dwellinghouse, three months' previous notice in writing of his intention to do so, or
- (ii) terminate any right over land under paragraph (a) of this subsection without giving the owner thereof at least one month's notice of his intention to do so.

(d) A notice under paragraph (c) of this subsection may be given to any person by sending it by post in an envelope addressed to that person at his usual or last known address.

(e) Where, for any reason, the envelope mentioned in paragraph (d) of this subsection cannot be addressed in the manner provided by that paragraph, it may be addressed to the person for whom it is intended in either or both of the following ways—

- (i) by the description “the occupier” or the “owner” (as the case may be) without stating his name,
- (ii) at the land or the situation of the property to which the notice contained in the envelope relates.

User of land by the Minister. [s. 34: 18/1954]

34. (1) The Minister may use any land vested in or occupied by him for such purposes connected with his powers and duties under this Act and in such manner as he thinks proper.

(2) Where any land vested in or occupied by the Minister abuts on any foreshore, sea or tidal water, the rights conferred by subsection (1) of this section shall include the right

to carry on artillery, rifle, bombing or other army, naval or air practices on or over such fore shore, sea or tidal water.

Affecting provisions (non-textual) — 35/1961, ss. 4, 5(2) -

[35/1961 — s. 4 Curragh of Kildare Act 1961]

Use of Blue Lands by Minister.

4.—The Minister may use the Blue Lands for the purposes and in the manner specified in section 34 of the Defence Act 1954, subject to the limitation that he shall not erect, or authorise or procure the erection of, permanent buildings thereon.

Note: “the Blue Lands” (as defined in s. 1 of 35/1961) means the portion of the Curragh used, immediately before the passing of this Act, for providing rifle practice for members of the Defence Forces and for other military purposes and defined on the deposited map by being coloured blue.

[35/1961 — s. 5(2) Curragh of Kildare Act 1961]

Use of Green lands by Minister.

5 (2) Section 34 of the Defence Act 1954, shall not apply in relation to the Green Lands.

Note: “the Green Lands” (as defined in s. 1 of 35/1961) means the portion of the Curragh that does not include the Camp or Blue Lands and is defined on the deposited map by being coloured green.

**Right of Minister to erect and maintain certain apparatus on land in vicinity of service aerodromes.
[s. 35: 18/1954]**

35. (1) (a) The Minister may cause to be erected, placed and attached upon, in or to any land or building in the vicinity of any other land (including an aerodrome) vested in or occupied by him, and may thereafter maintain and use, such apparatus (including electric lines) as he considers necessary for the purpose of indicating any position or any obstruction or of signalling or supplying information to persons navigating aircraft in such vicinity.
- (b) Before erecting, placing or attaching any apparatus upon, in or to any land or building in pursuance of this subsection, the Minister shall give one month's previous notice to the owner and occupier thereof indicating his proposal.
- (c) If any person wilfully obstructs or destroys, tampers with, pulls down, or defaces any apparatus erected, placed or attached upon, in or to any land or building in pursuance of this subsection, that person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £1,000.
- (2) (a) For the purposes of exercising the powers conferred by subsection (1) of this section any authorised person and any persons acting under his direction may enter upon and pass over (with or without vehicles) any land.

(b) If any person (in this paragraph referred to as the offender) obstructs an authorized person or any person acting under his direction in the exercise of the powers conferred by this subsection, the offender shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £1,000.

(c) In this subsection the expression “authorised person” means any person belonging to a class authorised in writing by the Minister to exercise the powers conferred by this subsection on authorised persons.

(3) If any person having an estate or interest in land proves that his estate or interest is injuriously affected by the exercise of the powers conferred by subsection (1) of this section, he shall be entitled to recover from the Minister compensation for the injury to that estate or interest, and any question whether compensation is payable under this section or as to the amount of any compensation so payable shall, in default of agreement (which agreement shall be subject to the consent of the Minister for Finance), be determined by an arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act 1919, and under and in accordance with that Act.

Affecting provisions (textual) — 8/1987, ss. 2, 9.

Note: S.2 of 8/1987 increased the fines payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Restrictions on use of land in vicinity of service aerodromes. [s. 36: 18/1954]

36. (1) Whenever the Minister is of opinion that the unrestricted use of a particular area of land in the vicinity of an aerodrome vested in or occupied by him would interfere with the navigation of aircraft flying to or from that aerodrome, he may by order (in this section referred to as a protected area order) do the following things—

- (a) declare that that particular area of land shall be a protected area for the purposes of the order,
- (b) declare that, within the protected area, it shall not be lawful for any person, save under and in accordance with a permit granted by the Minister, to erect or add to any building or to erect or place any post, pole or other thing so that any part of the building, post, pole or thing (in this section referred to as an obstruction) will be at a greater height than that fixed by the order.

(2) The following provisions shall apply in respect of every protected area order—

- (a) the Minister shall cause the order to be published in the *Iris Oifigiúil* and in such newspapers circulating in the area to which the order relates as the Minister thinks proper,

- (b) the order may divide the area to which it relates into such and so many sub-areas as the Minister thinks fit and, in that case, may contain different provisions in relation to each of those sub-areas,
- (c) the order may exempt from its operation any specified obstructions or class of obstructions,
- (d) there shall be attached to the order a map showing the area to which the order relates and, where that area is divided into sub-areas, each of those sub-areas,
- (e) the map attached to the order may be omitted from the order in any publication thereof in pursuance of paragraph (a) of this subsection, but copies of the order with the map attached thereto shall be deposited in the office of the Department of Defence, Parkgate, Dublin, and shall be there kept open for public inspection at all reasonable times.

(3) The Minister may by order under this subsection revoke or amend a protected area order.

(4) Every protected area order and every order amending a protected area order shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next subsequent twenty-one days on which such House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done under it.

(5) The Minister may grant permits for the purposes of a protected area order, and the following provisions shall apply in relation to any permit so granted—

(a) the Minister may—

- (i) attach to it such conditions as he thinks fit,
- (ii) revoke or amend it;

(b) the permit shall not operate as a release from any restrictions imposed under the Town and Regional Planning Acts 1934 and 1939, or any other enactment and applicable to the area to which the order relates.

(6) (a) If any person, having an estate or interest in land within an area to which a protected area order applies, proves that his estate or interest is injuriously affected by the refusal of the Minister to grant him a permit or by any conditions attached to a permit granted to him by the Minister, he shall be entitled to recover compensation from the Minister for the injury to that estate or interest, and any question whether compensation is payable under this subsection or as to the amount of any compensation so payable shall, in default of agreement (which agreement shall be subject to the consent of the Minister for Finance), be determined by an arbitrator appointed under the Acquisition of Land

(Assessment of Compensation) Act 1919, and under and in accordance with that Act.

- (b) Where a person would, but for this paragraph, be entitled to compensation under this subsection and also under any other enactment in respect of the same matter, he shall not be entitled to compensation in respect of that matter under both this subsection and that other enactment, but may elect to receive compensation under either this subsection or that other enactment.

(7) If any person erects or adds to a building or erects or places any post, pole or other thing in contravention of a protected area order—

- (a) that person shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £1,000, and
- (b) the Minister may, whether or not any proceedings are taken in respect of the offence, cause such alterations to be made in the building, post, pole or thing in respect of which the contravention took place as may be necessary in his opinion to ensure compliance with the order, and the expenses incurred by the Minister in so doing shall be recoverable by the Minister from the person by whom the contravention is committed as a simple contract debt in any court of competent jurisdiction.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Billeting during a period of emergency. [s. 37: 18/1954]

37. (1) (a) The Minister may, from time to time and at any time, make such regulations as he thinks fit—
- (i) requiring the occupiers of premises to provide, during a period of emergency, lodging, attendance and food for members of the Defence Forces;
 - (ii) requiring the occupiers of premises and of livery stables to provide, during a period of emergency, stabling and forage for horses of the Defence Forces;
 - (iii) requiring the occupiers of premises and garages to provide, during a period of emergency, garaging for mechanically propelled vehicles of the Defence Forces;

- (iv) conferring on such persons as the Minister thinks proper such powers and authorities for the carrying out and enforcement of the regulations as he thinks proper;
 - (v) fixing, with the sanction of the Minister for Finance, the scales of payment to be made in respect of any lodging, attendance, food, stabling, forage or garaging so provided;
 - (vi) providing for any matter or thing ancillary to the matters aforesaid.
- (b) The references in paragraph (a) of this subsection to occupiers of premises shall, in the case of premises which are unoccupied, be construed as references to the owners of those premises.

(2) If any person contravenes (by act or omission) any regulation made under this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200.

(3) There shall be paid to persons providing lodging, attendance, food, stabling, forage or garaging in pursuance of regulations made under this section payments in accordance with the scales fixed by such regulations.

(4) When by regulations made under this section any powers or duties are conferred or imposed on members of the Garda Síochána or where such regulations provide that any arrangements with regard to billeting shall be made in consultation with any member of the Garda Síochána, such regulations so relating to the Garda Síochána shall be made with the concurrence of the Minister for Justice.

(5) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation is passed by either such House within the next subsequent twenty-one days on which such House has sat after such regulation is laid before it, such regulation shall be annulled accordingly but without prejudice to anything previously done under such regulation.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Billeting in peace time. [s. 38: 18/1954]

38. (1) In this section the expression “victualling house” means any premises being—
- (a) premises registered in a register kept under Part III of the Tourist Traffic Act 1939 (No. 24 of 1939), or
 - (b) premises licensed under the Licensing Acts 1833 to 1946, for the sale of Intoxicating liquor for consumption on the premises, or
 - (c) a restaurant registered in a register kept under regulations made under Part V of the Health Act 1947 (No. 28 of 1947).

(2) The Minister may make such regulations as he thinks fit—

- (a) requiring the occupiers of victualling houses to provide lodging, attendance and food for members of the Defence Forces;
- (b) requiring the occupiers of victualling houses and of livery stables to provide stabling and forage for horses of the Defence Forces;
- (c) requiring the occupiers of victualling houses and garages to provide garaging for mechanically propelled vehicles of the Defence Forces;
- (d) conferring on such persons as the Minister thinks proper such powers and authorities for the carrying out and enforcement of the regulations as he thinks proper;
- (e) fixing, with the sanction of the Minister for Finance, the scales of payment to be made in respect of any lodging, attendance, food, stabling, forage or garaging so provided;
- (f) providing for any matter or thing ancillary to the matters aforesaid.

(3) If any person contravenes (by act or omission) any regulation made under this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200.

(4) No member of the Defence Forces shall in pursuance of any regulation made under this section be billeted in any private house or in any premises occupied by women only.

(5) There shall be paid to persons providing lodging, attendance, food, stabling, forage or garaging in pursuance of regulations made under this section payments in accordance with the scales fixed by such regulations.

(6) Where by regulations made under this section any powers or duties are conferred or imposed on members of the Garda Síochána or where such regulations provide that any arrangements with regard to billeting shall be made in consultation with a member of the Garda Síochána, such regulations so relating to the Garda Síochána shall be made with the concurrence of the Minister for Justice.

(7) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation is passed by either such House within the next subsequent twenty-one days on which such House has sat after such regulation is laid before it, such regulation shall be annulled accordingly but without prejudice to anything previously done under such regulation.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Exercise of powers vested in holder of military office. [s. 39: 18/1954]

39. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or be done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service or according to rules of procedure or according to regulations made by the Minister.

Provisions as to orders of military authorities. [s. 40: 18/1954]

40. (1) Where any order is authorised by or under this Act to be made by the Chief of Staff, the Adjutant-General or the Quartermaster-General or by any general, flag or other officer in command, such order may be signified by an order, instruction or letter under the hand of any officer authorised to issue orders on behalf of the Chief of Staff, the Adjutant-General or the Quartermaster-General or the general, flag or other officer in command, and an order, instruction or letter purporting to be signed by an officer appearing therein to be so authorised shall be evidence of his being so authorised.

(2) Subsection (1) of this section shall extend to any order or direction issued in pursuance of this Act in relation to military prisoner or man undergoing detention, and any such order or direction shall not be held invalid by reason of the death or removal from office of the officer signing or ordering the issue of such order or direction or by reason of any defect in such order or direction, if it be alleged in such order or direction that the military prisoner or man undergoing detention has been convicted and that there is a good and valid conviction to sustain the order or direction.

(3) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form, if otherwise valid, shall not be rendered invalid by reason only of such deviation.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 2;

(non-textual) — 31/1998, s. 10(3) —

[31/1998 — s. 10(3) Defence Amendment Act 1998]**Adaptations**

10(3) (a) *References in sections 11 and 40 of the Principal Act to the Adjutant-General shall be construed as references to the Deputy Chief of Staff (Operations).*

(b) *References in the said section 11 and 40 to the Quartermaster-General shall be construed as references to the Deputy Chief of Staff (Support).*

PART IV.**PERSONNEL OF THE DEFENCE FORCES.****CHAPTER I.***Officers.***Persons eligible to be appointed officers. [s. 41: 18/1954]**

41. Each of the following persons shall be eligible to be appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force, that is to say:—

- (a) Irish citizens;
- (b) any other persons specially approved by the Minister.

Affecting provision (non-textual) — 28/1979, s.3 —

[28/1979 — s. 3 Defence (Amendment) (No. 2) Act 1979]

Application of section 41 of Principal Act to women.

3.-A woman shall be eligible to be appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force and for that purpose references in section 41 of the Principal Act to Irish citizens shall be construed as including Irish citizens of either sex and references to any other persons specially approved by the Minister shall be construed as including persons of either sex.

Appointment of officers, and commissions. [s. 42: 18/1954]

42. (1) The President may appoint any eligible person to be an officer of the Permanent Defence Force or the Reserve Defence Force in any commissioned rank, and any such appointment may be without limitation as to time or may be for a specified period or be temporary.
- (2) Where a person is appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force, a commission shall be issued to him and such commission shall be,—
- (a) in case there is an elected President in office exercising and performing the powers and functions of his office, either in the form set out in Part I of the Fifth Schedule to this Act or in the form set out in Part II of the said Schedule and be sealed with the official seal of the President,
 - (b) in any other case, either in the form set out in Part III of the Fifth Schedule to this Act or in the form set out in Part IV of the said Schedule and be sealed with the official seal of the President.
- (3) Where the appointment of a person to be an officer is for a specified period or temporary, words indicating the period of appointment or the word “sealadach” or (in English) “temporary” shall (as the case may require) be endorsed on the commission.
- (4) If an error occurs in a commission issued under subsection (2) of this section, it may, by direction of the President, be amended by correcting such error.

FIFTH SCHEDULE.

FORMS OF COMMISSION TO AN OFFICER.

PART I.

ÓGLAIGH NA HÉIREANN.

Do (Ainm an Ofigigh).....

Le hiontaoibh as do dhílseacht d'Eirinn agus as do thairiseacht don Bhunreacht agus le muinín speisialta as do mhisneach, d'onóir, do dhea-iompar agus d'éirim, Déanaimse,, Uachtarán na hEireann, leis seo, ar chomhairle an Rialtais, tú a bhunú agus a cheapadh chun bheith id oifigeach sa chuid d'Oglaigh na hEireann dá ngairmtear *amhail ón, lá de, 20 Comhlíonfair go dílis do dhualgas i gcéimsan‡ nó in aon chéim is airde ná sin a ndéanfar de thoradh fiúntais tú a cheapadh nó d'ardú chuici ina dhiaidh seo. Déanfair na fir agus na hoifigigh íochtaracha a bheas ag fónamh fút d'aclú a thréineáil in airm agus a choimeád i ndea-ord agus i ndea-araíonacht agus naisctear leis seo ar gach aon duine acu sin agus ordáítear dó umhlóid a thabhairt duit mar oifigeach uachtarach air. Déanfair féin pé orduithe agus ordacháin dleathacha a gheobhair ó am go ham ón Aire Cosanta nó ó dhuine ar bith ded oifigigh uachtaracha a leanúint agus a chomhlíonadh gan ceist.

ARNA THABHAIRT faoi mo Shéala Oifigiúil

an lá seo de..... ,

20..... .

.....
Uachtarán na hEireann.

PART II.

THE DEFENCE FORCES.

To (Name of Officer).....

Trusting in your fidelity to Ireland and loyalty to the Constitution and reposing special confidence in your courage, honour, good conduct, and intelligence, I,....., the President of Ireland, hereby, on the advice of the Government, constitute and appoint you to be an officer in the part of the Defence Forces known as.....* as from the..... day of....., 20.....
You will faithfully discharge your duty in the‡

rank of.....or in any higher rank to which your merit may hereafter determine your appointment or promotion. You will exercise and train in arms and maintain in good order and discipline the men and inferior officers serving under you who are hereby each and all enjoined and commanded to render you obedience as their superior officer. You will yourself observe and obey without question such lawful orders and directions as you shall from time to time receive from the Minister for Defence or from any of your superior officers.

GIVEN under my Official Seal this..... day
of , 20.....
.....
President of Ireland.

PART III.

ÓGLAIGH NA HÉIREANN.

Do (Ainm an Oifigigh).....

Le hiontaoibh as do dhílseacht d'Eirinn agus as do thairiseacht don Bhunreacht agus le muinín speisialta as do mhisneach, d'onóir, do dhea-iompar agus d'éirim, Déanaimidne, na sínithe thíos, is comhaltaí den Choimisiún a bunaíodh mar foráltar, in alt 2 d'Airteagal 14 den Bhunreacht chun cumhachta agus feidhmeanna Uachtarán na hEireann d'oibriú agus a chomhlíonadh, leis seo, ar chomhairle an Rialtais, tú a bhunú agus a cheapadh chun bheith id oifigeach sa chuid d'Oglaigh na hEireann dá ngairmtear* amhail ón..... lá de....., 20.....
Comhlíonfair go dílis do dhualgas i gcéim san ‡
nó in aon chéim is airde ná sin a ndéanfar de thoradh fiúntais tú a cheapadh nó d'ardú chuici ina dhiaidh seo. Déanfair na fir agus na hoifigigh íochtaracha a bheas ag fónamh fút d'aclú agus a thréineáil in airm agus a choimeád i ndea-ord agus i ndea-araíonacht agus naisctear leis seo ar gach aon duine acu sin agus ordaítear dó umhlóid a thabhairt duit mar oifigeach uachtarach air. Déanfair féin pé orduithe agus ordacháin dleathacha a gheobhair ó am go ham ón Aire Cosanta nó ó dhuine ar bith ded oifigigh uachtaracha a leanúint agus a chomhlíonadh gan ceist.

ARNA THABHAIRT faoi Shéala Oifigiúil
Uachtarán na hEireann an..... lá seo
de....., 20.....
.....

PART IV.
THE DEFENCE FORCES.

To (Name of Officer).....

Trusting in your fidelity to Ireland and loyalty to the Constitution and reposing special confidence in your courage, honour, good conduct, and intelligence, We, the undersigned members of the Commission constituted as provided in section 2 of Article 14 of the Constitution to exercise and perform the powers and functions of the President of Ireland, hereby, on the advice of the Government, constitute and appoint you to be an officer in the part of the Defence Forces known as * as from the day of, 20..... You will faithfully discharge your duty in the ‡ rank of..... or in any higher rank to which your merit may hereafter determine your appointment or promotion. You will exercise and train in arms and maintain in good order and discipline the men and inferior officers serving under you who are hereby each and all enjoined and commanded to render you obedience as their superior officer. You will yourself observe and obey without question such lawful orders and directions as you shall from time to time receive from the Minister for Defence or from any of your superior officers.

GIVEN under the Official Seal of the President
of Ireland this..... day of.....,
20.....
.....

* Insert here “na Buan-Oglaigh”, or “the Permanent Defence Force”, “na hOglaigh Cúltaca or “the Reserve Defence Force” (whichever is appropriate).

‡ Insert here “Arm”, “Army”, “Chabhlaich” or “Naval” (whichever is appropriate).

Oath to be taken by officers. [s. 43: 18/1954]

- 43.** (1) Every person appointed to be an officer of the Permanent Defence Force shall take an oath or make a declaration either in the form set out in Part I of the Sixth Schedule to this Act or in the form set out in Part II of the said Schedule.
- (2) Every person appointed to be an officer of the Reserve Defence Force shall take an oath or make a declaration either in the form set out in Part I of the Seventh Schedule to this Act or in the form set out in Part II of the said Schedule.
- (3) The oath or declaration mentioned in subsection (1) or (2) of this section shall be taken or made within the prescribed time and in the prescribed manner before a prescribed officer.
- (4) If any person appointed to be an officer of the Permanent Defence Force or the Reserve Defence Force refuses or neglects to take the oath or make the declaration required by this section to be taken or made by him within the time and in the manner mentioned in subsection (3) of this section, he shall be deemed to have tendered the resignation of his commission and such resignation shall be deemed to have been accepted at the expiration of that time.

SIXTH SCHEDULE.

FORM OF OATH OR DECLARATION TO BE TAKEN OR MADE BY
OFFICERS OF THE PERMANENT DEFENCE FORCE.

PART I.

Mionnaímse (nó dearbhaímse),..... go solamanta go mbeadh dílis d'Eirinn agus tairiseach don Bhunreacht agus, faid a bheadh im oifigeach de na Buan-Oglaigh, go gcomhlíonfaid gach ordú dleathach a bhéarfas m'óifigh uachtaracha dhom agus nach gceanglóid le haon eagraíocht nó cumann polaitíochta ná le haon chumann rúnda ar bith ná nach mbeadh im chomhalta den chéanna ná nach dtaobhód leis an gcéanna.

PART II.

I,, do solemnly swear (or declare) that I will be faithful to Ireland and loyal to the Constitution and that while I am an officer of the Permanent Defence Force I will obey all lawful orders issued to me by my superior officers and will not join or be a member of or subscribe to any political organisation or society or any secret society whatsoever.

SEVENTH SCHEDULE.

FORM OF OATH OR DECLARATION TO BE TAKEN OR MADE BY OFFICERS
OF THE RESERVE DEFENCE FORCE.

PART I.

Mionnaímse (nó dearbhaímse),..... go solamanta go mbeadh dílis d'Eirinn agus tairiseach don Bhunreacht agus, faid a bheadh im oifigeach de na hOglaigh Cúlta, go gcomhlíonfaid gach ordú dleathach a bhéarfas m'óifigh uachtaracha dhom agus nach gceanglóid le haon chumann rúnda ar bith ná nach mbeadh im chomhalta den chéanna ná nach dtaobhód leis an gcéanna.

PART II.

I,....., do solemnly swear (or declare) that I will be faithful to Ireland and loyal to the Constitution and that while I am an officer of the Reserve Defence Force I will obey all lawful orders issued to me by my superior officers and will not join or be a member of or subscribe to any secret society whatsoever.

Assignment of officer of Reserve Defence Force to a particular class of the Reserve Defence Force.
[s. 44: 18/1954]

44. (1) Where a person is appointed to be an officer of the Reserve Defence Force, such person shall, on appointment, be assigned by the Minister to a particular class of the Reserve Defence Force.

(2) An officer of the Reserve Defence Force who for the time being belongs to a particular class of the Reserve Defence Force may, with his own consent, be assigned by the Minister to another class of the Reserve Defence Force.

(3) In this section, the expression “class of the Reserve Defence Force” means any class of the Reserve Defence Force being—

- (a) the Reserve of Officers (First Line), or
- (b) the Reserve of Officers (An Fórsa Cosanta Áitiúil), or
- (c) the Reserve of Officers (An Slua Muirí), or
- (d) any class constituted under subsection (2) of section 21.

Promotion of officers. [s. 45: 18/1954]

45. (1) The Minister may, in accordance with regulations made by him, promote any officer to a higher substantive rank.

(2) The Minister may, in accordance with regulations made by him, promote any officer holding a substantive rank or an acting rank to a higher acting rank.

(3) An officer promoted to a higher acting rank shall at any time thereafter, on a direction to that effect being given by the Minister, revert to his substantive rank or, if so directed, to an acting rank higher than his substantive rank.

Placing of officer on half-pay. [s. 46: 18/1954]

46. The Minister may, in accordance with regulations made by him, place an officer on half-pay for a period not exceeding one year.

Retirement of officers of the Permanent Defence Force. [s. 47: 18/1954]

47. (1) In this section, the word “officer” means an officer of the Permanent Defence Force.

(2) An officer may, for any prescribed reason, be retired by the President.

(3) An officer whose appointment as an officer is temporary may at any time be retired by the President.

(4) (a) An officer of a prescribed description (which may be prescribed by reference to rank or appointment or both or such other matters as the Minister thinks proper) shall retire on reaching the age prescribed as the age for retirement for officers of that description.

(b) Subject to such conditions as may be prescribed, the Minister may permit an officer, who is required by paragraph (a) of this subsection to retire on a particular date, to continue, after that date, to serve as an officer for such

further period (not exceeding one hundred and twenty-two days) as the Minister may fix in respect of him and, in that case, such officer shall retire on the expiration of the further period so fixed in respect of him.

(5) An officer whose appointment as an officer is for a specified period shall retire on the expiration of that period.

(6) An officer who would, on retirement, be eligible, by virtue of length of service, for retired pay or a gratuity under any scheme made under the Defence Forces (Pensions) Act 1932 (No. 26 of 1932), may, with the permission of the Minister, retire.

(7) An officer who is retired or who retires shall cease to be an officer.

48. Relinquishment of commissions by officers of the Reserve Defence Force. [s. 48: 18/1954]

(1) In this section, the word “officer” means an officer of the Reserve Defence Force.

(2) The President may, for any prescribed reason, direct that an officer shall relinquish his commission and in any such case such officer shall relinquish his commission.

(3) The President may direct that an officer whose appointment as an officer is temporary shall relinquish his commission and in any such case such officer shall relinquish his commission.

(4) An officer of a prescribed description (which may be prescribed by reference to rank or appointment or both or such other matters as the Minister thinks proper) shall relinquish his commission on reaching the age prescribed as the age for the relinquishment of commissions by officers of that description.

(5) An officer whose appointment as an officer is for a specified period shall relinquish his commission on the expiration of that period.

(6) An officer who becomes a member of either House of the Oireachtas or who assumes the office of representative in the Assembly of the European Communities shall thereupon relinquish his commission.

(7) An officer who relinquishes his commission shall cease to be an officer.

Affecting provision (textual) — 30/1977, s. 22

Resignation of officers. [s. 49: 18/1954]

49. (1) An officer may, in the prescribed manner, tender to the President the resignation of his commission.

(2) The President may accept or refuse to accept the resignation of his commission tendered by an officer,

(3) An officer who has tendered the resignation of his commission shall not, by reason merely of such tender, be relieved of his military duties.

(4) Where the resignation by an officer of his commission is accepted, such officer shall cease to be an officer.

Dismissal of officers. [s. 50: 18/1954]

50. (1) The President may dismiss any officer.

(2) Except in the case of an officer who is sentenced by a civil court to suffer imprisonment for a term exceeding six months or who is absent without leave for a period exceeding three months, an officer shall not be dismissed under this section unless or until the reasons for the proposed dismissal have been communicated to him and such officer has being given a reasonable opportunity of making such representation as he may think proper in relation to the proposed dismissal.

(3) An officer who is dismissed shall cease to be an officer.

*Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;
14/1997, s. 14, sch. 2, par. 3.*

Effective dates of appointment, etc., of officers. [s. 51: 18/1954]

51. (1) The following—

- (a) the appointment of a person to be an officer of the Permanent Defence Force or the Reserve Defence Force,
- (b) the retirement, under subsection (2) or (3) of section 47, of an officer of the Permanent Defence Force,
- (c) the relinquishment of his commission, under subsection (2) or (3) of section 48, by an officer of the Reserve Defence Force,
- (d) the resignation by an officer of his commission,
- (e) the dismissal of an officer under section 50,

shall, in each case, take effect from such date as the President may fix.

(2) The retirement under subsection (6) of section 47 of an officer of the Permanent Defence Force shall take effect from such date as the Minister may fix.

(3) The following—

- (a) the promotion of an officer to higher substantive or acting commissioned rank,

- (b) the reversion of an officer holding acting commissioned rank to his substantive commissioned rank or to acting commissioned rank higher than his substantive commissioned rank,

shall take effect as from such date as the Minister may fix.

Notification of appointments, etc., in *Iris Oifigiúil*. [s. 52: 18/1954]

52. Notice of the appointment of a person to be an officer, the dismissal (including dismissal by sentence of a court-martial) or the retirement of an officer or the relinquishment or the resignation by an officer of his commission and of the date on which such appointment, dismissal, retirement, relinquishment or resignation (as the case may be) takes effect shall be published in the *Iris Oifigiúil*.

CHAPTER II.

Men.

DIVISION I.

ENLISTMENT AND DISCHARGE, ETC., OF MEN.

Original enlistment.

Enlistment in the Permanent Defence Force for service during a fixed period either in the Permanent Defence Force or partly in the Permanent Defence Force and partly in the Reserve Defence Force. [s. 53: 18/1954]

53. (1) (a) A person (including a minor) may be enlisted as a man of the Permanent Defence Force for service for a period of twelve years or for such less period as may from time to time be prescribed, but not for any longer period, and the period for which a person enlisting under this section is enlisted is in this Act referred to as the term of his original enlistment.
- (b) The Minister, in special cases or classes of cases, may direct that where a boy is enlisted under this section before attaining the age of eighteen years the period of twelve years mentioned in paragraph (a) of this subsection shall be reckoned from the day on which he attains the age of eighteen years.
- (2) The enlistment of a person under this section shall be as follows, either—
- (a) for the whole of the term of his original enlistment in the Permanent Defence Force, or
 - (b) for such portion of the term of his original enlistment as may from time to time be prescribed and as is specified in his attestation paper in the Permanent Defence Force and for the residue of the said term in the Reserve Defence Force.

Affecting provision (non-textual) — 28/1979, s. 4—

[28/1979 — s. 4 Defence (Amendment) (No. 2) Act 1979]

Application of sections 53, 54 and 55 of Principal Act to women.

4.-A woman may—

- (a) *be enlisted in the Permanent Defence Force for service for a fixed period either in the Permanent Defence Force or partly in the Permanent Defence Force and partly in the Reserve Defence Force,*
- (b) *be enlisted in the Permanent Defence Force for service for a period of emergency, or*
- (c) *be directly enlisted in the Reserve Defence Force for service for a fixed period, and for that purpose references in sections 53, 54 and 55 of the Principal Act to persons shall be construed as including persons of either sex and references in sections 53 (1) (b) and 55 (1) (b) of that Act to a boy shall be construed as including references to a girl.*

Enlistment in the Permanent Defence Force for service during a period of emergency. [s. 54: 18/1954]

54. A person (including a minor) may during a period of emergency be enlisted as a man of the Permanent Defence Force to serve for that period of emergency in the Permanent Defence Force.

Affecting provision (non-textual) — 28/1979, s. 4.

See provision affecting par. 53.

Direct enlistment in the Reserve Defence Force for service during a fixed period. [s. 55: 18/1954]

55. (1) (a) A person (including a minor) may be directly enlisted to serve as a man of the Reserve Defence Force for a period of twelve years or for such less period as may from time to time be prescribed, but not for any longer period, and the period for which a person enlisting under this section is enlisted is in this Act referred to as the term of his original enlistment.
- (b) The Minister, in special cases or classes of cases, may direct that where a boy is enlisted under this section before attaining the age of eighteen years the period of twelve years mentioned in paragraph (a) of this subsection shall be reckoned from the day on which he attains the age of eighteen years.
- (2) The enlistment of a person under this section shall be for the whole of the term of his original enlistment in the Reserve Defence Force.
- (3) A person enlisted under this section shall be enlisted for service in a particular class of reservists.

Affecting provision (non-textual) — 28/1979, s. 4.

See provision affecting par. 53.

*Proceedings for enlistment.***56. Recruiting regulations. [s. 56: 18/54]**

(1) The Minister may make regulations (in this Act referred to as recruiting regulations) in relation to all or any of the following matters, that is to say:—

- (a) the appointment and duties of recruiters;
- (b) the persons authorised to enlist recruits for the Permanent Defence Force and the Reserve Defence Force;
- (c) the manner in which recruits are to be enlisted;
- (d) the forms to be used for the purposes of enlistment;
- (e) the persons to be enlisted;
- (f) the enlistment of recruits for service in a particular service corps;
- (g) the enlistment of recruits in the Reserve Defence Force for service in a particular class of reservists;
- (h) any other matter in relation to proceedings for enlistment.

(2) Recruiting regulations shall provide for the completion by a person enlisting in the Permanent Defence Force or the Reserve Defence Force of an attestation paper in the prescribed form and the signing by such person of such attestation paper and the verification of his signature.

Mode of enlisting recruits. [s. 57: 18/1954]

57. Every person enlisting in the Permanent Defence Force or the Reserve Defence Force shall be enlisted in accordance with recruiting regulations.

58. Oath on enlistment. [s. 58: 18/1954]

(1) Every person enlisting in the Permanent Defence Force under section 53 shall take an oath or make a declaration either in the form set out in Part I of the Eighth Schedule to this Act or in the form set out in Part II of the said Schedule.

(2) Every person enlisting in the Permanent Defence Force under section 54 shall take an oath or make a declaration either in the form set out in Part I of the Ninth Schedule to this Act or in the form set out in Part II of the said Schedule.

(3) Every person enlisting in the Reserve Defence Force under section 55 shall take an oath or make a declaration either in the form set out in Part 1 of the Tenth Schedule to this Act or in the form set out in Part II of the said Schedule.

(4) The oath or declaration mentioned in subsection (1), (2) or (3) of this section shall be taken or made before a prescribed officer.

(5) The oath taken or declaration made in pursuance of this section by a person enlisting in the Permanent Defence Force or the Reserve Defence Force shall bind such person to serve in accordance with his engagement and the tenor of such oath or declaration until he is legally discharged.

EIGHTH SCHEDULE.

FORM OF OATH OR DECLARATION TO BE TAKEN OR MADE BY PERSONS ENLISTING IN THE PERMANENT DEFENCE FORCE UNDER SECTION 53.

PART I.

Mionnaímse (nó dearbhaímse)....., go solamanta go mbead dílis d'Eirinn agus tairiseach don Bhunreacht agus, faid a bhead im chomhalta d'Oglaigh na hEireann, go gcomhlíonfad gach ordú dleathach a bhéarfais m'óifigh uachtaracha dhom agus, faid a bhead im chomhalta de na Buan-Oglaigh, nach gceanglóid le haon eagraíocht nó cumann polaitíochta ná le haon chumann rúnda ar bith ná nach mbead im chomhalta den chéanna ná nach dtaobhód leis an gcéanna agus, má bhím im chomhalta de na hOglaigh Cúltaca, nach gceanglóid le haon chumann rúnda ar bith ná nach mbead im chomhalta den chéanna ná nach dtaobhód leis an gcéanna faid a bhead im chomhalta de na hOglaigh Cúltaca.

PART II.

I,, do solemnly swear (or declare) that I will be faithful to Ireland and loyal to the Constitution and that while I am a member of the Defence Forces I will obey all lawful orders issued to me by my superior officers and that while I am a member of the Permanent Defence Force I will not join or be a member of or subscribe to any political organisation or society or any secret society whatsoever and that, if I become a member of the Reserve Defence Force, I will not, while I am a member of the Reserve Defence Force, join or be a member of or subscribe to any secret society whatsoever.

Affecting provision (textual) — 28/1979, s. 6.

NINTH SCHEDULE.

FORM OF OATH OR DECLARATION TO BE TAKEN OR MADE BY PERSONS
ENLISTING IN THE PERMANENT DEFENCE FORCE UNDER SECTION 54.

PART I.

Mionnaímse (nó dearbhaímse),..... go solamanta go mbead dílis d'Eirinn agus tairiseach don Bhunreacht agus, faid a bhead im chomalta de na Buan-Oglaigh, go gcomhlíonfad gach ordú dleathach a bhéarfas m'oifigigh uachtaracha dhom agus nach gceanglód le haon eagraíocht nó cumann polaitíochta ná le haon chumann rúnda ar bith ná nach mbead im chomhalta den chéanna ná nach dtaobhód leis an gcéanna.

PART II

I,, do solemnly swear (or declare) that I will be faithful to Ireland and loyal to the Constitution and that while I am a member of the Permanent Defence Force I will obey all lawful orders issued to me by my superior officers and will not join or be a member of or subscribe to any political organisation or society or any secret society whatsoever.

Affecting Provision (textual) — 28/1979, s. 6.

TENTH SCHEDULE.

FORM OF OATH OR DECLARATION TO BE TAKEN OR MADE BY PERSONS
ENLISTING IN THE RESERVE DEFENCE FORCE UNDER SECTION 55.

PART I.

Mionnaímse (nó dearbhaímse),....., go solamanta go mbead dílis d'Eirinn agus tairiseach don Bhunreacht agus, faid a bhead im chomhalta de na hOglaigh Cúlta, go gcomhlíonfad gach ordú dleathach a bhéarfas m'oifigigh uachtaracha dhom agus nach gceanglód le haon chumann rúnda ar bith ná nach mbead im chomhalta den chéanna ná nach dtaobhód leis an gcéanna.

PART II.

I,, do solemnly swear (or declare) that I will be faithful to Ireland and loyal to the Constitution and that while I am a member of the Reserve Defence Force I will obey all lawful orders issued to me by my superior officers and will not join or be a member of or subscribe to an secret society whatsoever.

Affecting provision (textual) — 28/1979, s. 6.

Effect of signing declaration required by attestation paper and complying with section 58. [s. 59: 18/1954]

59. Every person enlisting in the Permanent Defence Force or the Reserve Defence Force shall, upon—

- (a) signing a declaration affirming such particulars in relation to himself as may be required by his attestation paper and of his willingness to fulfil the engagements set out in the said attestation paper, and
- (b) complying with section 58,

be deemed to be enlisted as a man of the Permanent Defence Force or the Reserve Defence Force (as the case may be), and, for the purposes of this Act, the date of the attestation of such person shall be the date on which he signs the said declaration and complies with section 58.

Appointment to service corps.

Enlistment for general service and appointment to service corps. [s. 60: 18/1954]

60. (1) Recruits may, in pursuance of regulations from time to time made by the Minister, be enlisted for service in a particular service corps, but save as provided in such regulations (if any) recruits shall be enlisted for general service.

(2) The prescribed military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular service corps, to that service corps and, if enlisted for general service, to some service corps.

Transfer of men of Permanent Defence Force enlisted under section 53 from one service corps to another. [s. 61: 18/1954]

61. (1) This section applies only to men of the Permanent Defence Force enlisted under section 53.

(2) The following provisions shall apply in respect of a man of the Permanent Defence Force enlisted for general service—

- (a) in case his service as a man of the Permanent Defence Force in the service corps in which he is for the time being serving is less than ten years, he may be transferred by order of the prescribed military authority to another service corps,
- (b) in case his service as a man of the Permanent Defence Force in the service corps in which he is for the time being serving is ten years or more, he may be transferred by order of the prescribed military authority to another service corps, if, but only if,—
 - (i) he consents to such transfer, or

- (ia) *the transfer is for the purpose of enabling the man to serve, or continue to serve, outside the State with an International United Nations Force and is effected either during, or not more than one month before the commencement of, such service, or,*
- (ii) a proclamation authorising the calling out of reservists on permanent service is for the time being in force.

(3) Where a man of the Permanent Defence Force is enlisted for service in a particular service corps, he may be transferred by order of the prescribed military authority to another service corps, if, but only if, he consents to such transfer *or the transfer is for the purpose of enabling the man to serve, or continue to serve, outside the State with an International United Nations Force and is effected either during, or not more than one month before the commencement of, such service*

(4) The provisions of this section shall have effect subject to subsection (2) of section 296.

(5) *A man of the Permanent Defence Force who by virtue of this section or section 296 of this Act is transferred from one service corps to another service corps for the purpose of enabling the man to serve, or continue to serve, outside the State with an International United Nations Force, shall, on the completion of such service, be transferred by the prescribed military authority with all convenient speed to the first mentioned service corps.*

*Affecting provisions (textual) — 44/1960, s. 4(2);
(non-textual) - 44/1960, s. 4(7)*

Note: The textual amendments made by s. 4 (2) are italicised above for ease of understanding of the non-textual amendment below. Note also that the original s. 4 (2) mistakenly reads s. 4 (6)

[44/1960 — s. 4(7) Defence (Amendment) (No. 2) Act 1960]

Amendments of the Principal Act

4(7) Where at the date of the passing of this Act a member of the Permanent Defence Force is serving outside the State with an International United Nations Force, the amendments of the Principal Act effected by subsections (2), (3), (4) and (6) of this section shall not apply in relation to such member during the period of such service.

Note: Both provisions affected by (non-textual) — 18/1993, s. 3 —

[18/1993 — s. 3 Defence (Amendment) Act 1993]

Application of certain provisions of Principal Act and Act of 1960.

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

3(2) The provisions of the Principal Act specified in the said section 4 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of the Act of 1960) was a reference to an International United Nations Force.

Assignment of reservists to classes of reservists.

Assignment of reservists to a particular class of reservists. [s. 62: 18/1954]

62. (1) A reservist enlisted under section 55 for service in a particular class of reservists shall be assigned by the prescribed military authority to that class of reservists.
- (2) A reservist who for the time being belongs to a particular class of reservists may, with his own consent, be assigned by the Minister to another class of reservists.

Variation of engagement, re-engagement and continuance in service.

Change of conditions of service of men enlisted under section 53. [s. 63: 18/1954]

63. (1) (a) This subsection applies to a man of the Permanent Defence Force who is enlisted under section 53.
- (b) The Minister may by regulations vary the conditions of service of a man to whom this subsection applies so as to permit him, with the consent of the Minister:—
- (i) to enter the Reserve Defence Force at any time for the residue unexpired of the term of his original enlistment, or
- (ii) to extend his service in the Permanent Defence Force for all or any part of the residue unexpired of the term of his original enlistment.
- (c) A man to whom this subsection applies, with the consent of the Minister, may, if the term of his original enlistment is less than twelve years, extend, in accordance with regulations made by the Minister, the term of his original enlistment up to a period of twelve years or any shorter period.
- (d) Where a man to whom this subsection applies extends the term of his original enlistment under this subsection, any subsequent reference in this Act to the term of his original enlistment shall be construed as a reference to the term of his original enlistment as so extended.
- (2) (a) This subsection applies to a reservist who, having been enlisted in the Permanent Defence Force under section 53, has been transferred to the Reserve Defence Force under section 70.
- (b) A reservist to whom this subsection applies, with the consent of the Minister, may, if the term of his original enlistment is less than twelve years, extend, in

accordance with regulations made by the Minister, the term of his original enlistment up to a period of twelve years or any shorter period.

- (c) Where a reservist to whom this subsection applies extends the term of his original enlistment under this subsection, any subsequent reference (including the reference in subsection (3) of this section) in this Act to the term of his original enlistment shall be construed as a reference to the term of his original enlistment as so extended.

- (3) (a) This subsection applies to a reservist who, having been enlisted in the Permanent Defence Force under section 53, has been transferred to the Reserve Defence Force under section 70.

- (b) The Minister may by regulations vary the conditions of service of a reservist to whom this subsection applies so as to permit him, with the consent of the prescribed military authority, to re-enter the Permanent Defence Force for all or any of the residue unexpired of the term of his original enlistment.

(4) Regulations under paragraph (b) of subsection (1) or under subsection (3) of this section may be expressed to be applicable generally or in specified cases only.

Re-engagement of men of the Permanent Defence Force enlisted under section 53. [s. 64: 18/1954]

64. Subject to any regulations from time to time made by the Minister, a man of the Permanent Defence Force enlisted under section 53 may, after the expiration of nine years reckoned, in case he is a man to whom a direction under paragraph (b) of subsection (1) of section 53 was given, from the day on which he attained the age of eighteen years or, in any other case, the date of his attestation, on the recommendation of his commanding officer and with the approval of the prescribed military authority, be re-engaged for such further period of service in the Permanent Defence Force as will make up a total continuous period of twenty-one years' service reckoned as aforesaid and inclusive of any period previously served in the Reserve Defence Force.

Continuance in service after 21 years' service of men of the Permanent Defence Force. [s. 65: 18/1954]

65. (1) The Minister may, as respects men of the Permanent Defence Force who have completed a total continuous period of twenty-one years' service or (by virtue of any continuance in service under this subsection) more in the Defence Forces and who desire to continue to serve in the Permanent Defence Force, by regulations provide for their continuance in service in the Permanent Defence Force.

(2) Where a man of the Permanent Defence Force is continued in service for a particular period under subsection (1) of this section, he may be continued as a man of the Permanent Defence Force for that period in the same manner in all respects as if his term of service were still unexpired.

Extension of term of original enlistment of reservists enlisted under section 55.[s. 66: 18/1954]

66. (1) This section applies to a reservist who is enlisted under section 55.

(2) A reservist to whom this section applies, with the consent of the Minister, may, if the term of his original enlistment is less than twelve years, extend, in accordance with regulations made by the Minister, the term of his original enlistment up to a period of twelve years or any shorter period.

(3) Where a reservist to whom this section applies extends the term of his original enlistment under this section, any subsequent reference in this Act to the term of his original enlistment shall be construed as a reference to the term of his original enlistment as so extended.

Re-engagement of reservists. [s. 67: 18/1954]

67. Subject to any regulations from time to time made by the Minister, a reservist may, after the expiration of nine years reckoned, in case he is a man to whom a direction under paragraph (b) of subsection (1) of section 53 or paragraph (b) of subsection (1) of section 55, was given, from the day on which he attained the age of eighteen years or, in any other case, the date of his attestation, on the recommendation of his commanding officer and with the approval of the prescribed military authority, be re-engaged for such further period of service in the Reserve Defence Force as will make up a total continuous period of twenty-one years' service reckoned as aforesaid and inclusive, in case he enlisted under section 53, of any period previously served in the Permanent Defence Force.

Continuance in service after 21 years' service of reservists. [s. 68: 18/1954]

68. (1) The Minister may, as respects reservists who have completed a total continuous period of twenty-one years' service or (by virtue of any continuance in service under this subsection) more in the Defence Forces and who desire to continue to serve in the Reserve Defence Force, by regulations provide for their continuance in service in the Reserve Defence Force.

(2) Where a reservist is continued in service for a particular period under subsection (1) of this section, he may be continued as a reservist for that period in the same manner in all respects as if his term of service were still unexpired.

Transfer to Reserve Defence Force and discharge.

Period of desertion or absence without leave to be excluded in reckoning service of man of the Permanent Defence Force. [s. 69: 18/1954]

69. Where a man of the Permanent Defence Force enlisted under section 53 deserts or absents himself without leave, whether once or oftener, then, save as may be otherwise prescribed, each period commencing on the date on which he deserts or absents himself without leave and ending on the date on which he next surrenders himself or reports back for duty or is apprehended (as the case may be) shall be excluded in reckoning his service in the Permanent Defence Force for the purposes of this Act.

Transfer to the Reserve Defence Force or discharge of men of the Permanent Defence Force enlisted under section 53. [s. 70: 18/1954]

70. (1) This section applies only to men of the Permanent Defence Force enlisted under section 53.

(2) In reckoning the service of a man of the Permanent Defence Force for the purposes of transfer to the Reserve Defence Force or discharge from the Permanent Defence Force, his service shall, subject to section 69, be reckoned from, in case he is a man in respect of whom a direction has been given under paragraph (b) of subsection (1) of section 53, the date on which he attains the age of eighteen years or, in any other case, the date of his attestation.

(3) (a) Every man of the Permanent Defence Force, upon completion of the period of his service with the Permanent Defence Force, if shorter than the term of his original enlistment, shall, subject to the provisions of this subsection, be transferred in the prescribed manner to the Reserve Defence Force.

(b) Where the time at which a man of the Permanent Defence Force would, by virtue of paragraph (a) of this subsection, be entitled to be transferred to the Reserve Defence Force occurs while a proclamation authorising the calling out of reservists on permanent service is in force, *or he is serving outside the State with an International United Nations Force*, the following provisions shall have effect—

(i) he shall continue to serve as a man of the Permanent Defence Force for such further period (not exceeding the period during which the proclamation is in force *or the period of such service outside the State with an International United Nations Force, as the case may be, or, where the two periods occur and there is no interval of time between them, the period from the commencement of the period which occurs first to the expiration of the other period*) as the prescribed military authority may decide,

(ii) on the expiration of such further period—

(I) in case the term of his original enlistment has expired and he has not been re-engaged under section 64 or continued in service under section 65, he shall be discharged from the Permanent Defence Force with all convenient speed,

(II) in any other case, he shall be transferred in the prescribed manner to the Reserve Defence Force.

(c) Where a man of the Permanent Defence Force is required by this subsection to be transferred to the Reserve Defence Force—

(i) he shall until so transferred be subject to this Act as a man of the Permanent Defence Force,

(ii) upon such transfer, he shall, subject to subparagraph (iii) of this paragraph, become and be a man of the Reserve Defence Force for the period unexpired of the term of his original enlistment,

(iii) if, during the said period, he re-enters the Permanent Defence Force under subsection (3) of section 63, then, he shall from the date of such re-entry become and be again a man of the Permanent Defence Force in like manner in all respects as if he had not been so transferred to the Reserve Defence Force.

(4) (a) Subject to this subsection, every man of the Permanent Defence Force, upon completion of the term of his original enlistment or the period of his re-engagement under section 64 or the period of his continuance in service under section 65, shall be discharged from the Permanent Defence Force with all convenient speed.

(b) Where the time at which a man of the Permanent Defence Force would, by virtue of paragraph (a) of this subsection, be entitled to be discharged occurs while a proclamation authorising the calling out of reservists on permanent service is in force *or he is serving outside the State with an International United Nations Force*, he shall continue to serve as a man of the Permanent Defence Force for such further period (not exceeding the period during which the proclamation is in force *or the period of such service outside the State with an International United Nations Force, as the case may be, or, where the two periods occur and there is no interval of time between them, the period from the commencement of the period which occurs first to the expiration of the other period*) as the prescribed military authority may direct, and at the expiration of such further period shall be discharged from the Permanent Defence Force with all convenient speed.

(5) Subsections (3) and (4) of this section shall have effect subject to subsection (3) of section 296.

(6) Where a man of the Permanent Defence Force is transferred to the Reserve Defence Force or discharged under this section, he shall be entitled to be conveyed free of cost from the place where he is so transferred or discharged to the place where he appears from his attestation paper to have been resident when attested or to any place at which he may at the time of his transfer or discharge decide to take up his residence and to which he can be conveyed without greater cost.

Affecting provisions (textual) — 44/1960, s. 4(3);

Note: The textual amendments made by s. 4(3) are italicised above for ease of understanding the non-textual Amendment below.

(non-textual) — 44/1960, s.4(7) —

[44/1960 — s. 4(7) Defence (Amendment) (No. 2) Act 1960]

Amendments of the Principal Act

4(7) Where at the date of the passing of this Act a member of the Permanent Defence Force is serving outside the State with an International United Nations Force, the amendments of the Principal Act effected by subsections (2), (3), (4) and (6) of this section shall not apply in relation to such member during the period of such service.

Note: Both provisions affected by (non-textual) — 18/1993, s. 3 —

[18/1993 — s. 3 Defence (Amendment) Act 1993]

Application of certain provisions of Principal Act and Act of 1960.

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

3(2) The provisions of the Principal Act specified in the said section 4 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of the Act of 1960) was a reference to an International United Nations Force.

Discharge of men of the Permanent Defence Force enlisted under section 54. [s. 71: 18/1954]

- 71.** (1) Every man of the Permanent Defence Force enlisted under section 54 to serve for a period of emergency shall upon the expiration of that period of emergency be discharged from the Permanent Defence Force with all convenient speed.

(2) Where a man of the Permanent Defence Force enlisted under section 54 is discharged under this section, he shall be entitled to be conveyed free of cost from the place where he is discharged to the place where he appears from his attestation paper to have been resident when attested or to any place at which he may at the time of his discharge decide to take up residence and to which he can be conveyed without greater cost.

Discharge of reservists. [s. 72: 18/1954]

- 72.** (1) In reckoning the service of a reservist for the purposes of discharge from the Reserve Defence Force, his service shall, subject, if he was transferred to the Reserve Defence Force under section 70, to section 69, be reckoned from, in case he is a man in respect of whom a direction has been given under paragraph (b) of subsection (1) of section 53 or paragraph (b) of subsection (1) of section 55, the date on which he attains the age of eighteen years or, in any other case, the date of his attestation.

- (2) (a) Subject to this subsection, every reservist, upon completion of the term of his original enlistment or the period of his re-engagement under section 67 or the period of his continuance in service under section 68, shall be discharged from the Reserve Defence Force with all convenient speed.

- (b) Where the time at which a reservist would, by virtue of paragraph (a) of this subsection, be entitled to be discharged occurs while a proclamation authorising the calling out of reservists on permanent service is in force, he shall continue to serve as a reservist for such further period (not exceeding the period during which the proclamation is in force) as the prescribed military authority directs, and at the expiration of such further period shall be discharged from the Reserve Defence Force with all convenient speed.

- (c) Paragraphs (a) and (b) of this subsection shall have effect subject to subsection (2) of section 297.

(3) Where a reservist is discharged under this section and immediately before his discharge stood called out on permanent service, he shall be entitled to be conveyed free of cost from the place where he is discharged to the place which was his registered place of abode when he was called out on permanent service or to any other place at which he may at the time of his discharge decide to take up his residence and to which he can be conveyed without greater cost.

Discharge otherwise than on completion of service.

Discharge of men by direction of Minister or authorised officer. [s. 73: 18/1954]

73. The Minister or any officer authorised by the Minister in that behalf may, for prescribed reasons, direct the discharge of a man from the Permanent Defence Force or the Reserve Defence Force (as the case may be).

Discharge of reservists becoming members of either House of the Oireachtas. [s. 74:18/1954]

74. A reservist who becomes a member of either House of the Oireachtas or who assumes the office of representative in the Assembly of the European Communities shall thereupon stand, by virtue of this section, discharged from the Reserve Defence Force.

Affecting provision (textual) — 30/1977, s. 22.

Discharge by purchase. [s. 75: 18/1954]

75. (1) A man shall be entitled, except during a period of emergency, to his discharge from the Permanent Defence Force or the Reserve Defence Force by purchase as may be prescribed.
- (2) Where—
- (a) a man at any time within three months after the date of his attestation pays to the Minister such sum (not exceeding twenty-five pounds) as the Minister may fix and applies to be discharged, and
 - (b) such payment and application are not made during a period of emergency, such person shall be discharged from the Permanent Defence Force or the Reserve Defence Force (as the case may be) with all convenient speed.
- (3) Where—
- (a) a person has enlisted, and
 - (b) a period of emergency commences within three months after the date of his attestation, and
 - (c) such person within three months after the termination of the period of emergency pays to the Minister such sum (not exceeding twenty-five pounds) as the Minister may fix and applies to be discharged,

such person shall be discharged from the Permanent Defence Force or the Reserve Defence Force (as the case may be) with all convenient speed.

Affecting provisions (non-textual) — 44/1960, s. 4(4), (7) —

[44/1960 — s. 4(4), (7) Defence (Amendment) (No. 2) Act 1960]

Liability of certain members of the Permanent Defence Force for service with International United Nations Forces.

4(4)(a) Subject to subsection (7) of this section, section 75 of the Principal Act shall, in its application to a man of the Permanent Defence Force who is serving outside the State with an International United Nations Force, have effect as if the references therein to a period of emergency included references to a period during which the man is serving outside the State with an International United Nations Force.

(b) Where, in relation to a man of the Permanent Defence Force, a period (being either a period of emergency or a period in which the man is serving outside the State with an International United Nations Force) is followed within three months after its expiration by a period (being either a period of emergency or a period in which the man is serving outside the State with an International United Nations Force), the former period shall, for the purposes of subsection (3) of section 75 of the Principal Act be deemed to have terminated at the time of the termination of the latter period.

4(7) Where at the date of the passing of this Act a member of the Permanent Defence Force is serving outside the State with an International United Nations Force, the amendments of the Principal Act effected by subsections (2), (3), (4) and (6) of this section shall not apply in relation to such member during the period of such service.

Note: Both provisions affected by (non-textual) — 18/1993, s. 3 —

[18/1993 — s. 3 Defence (Amendment) Act 1993]

Application of certain provisions of Principal Act and Act of 1960.

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

(2) The provisions of the Principal Act specified in the said section 4 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of the Act of 1960) was a reference to an International United Nations Force.

Discharge of persons under eighteen. [s. 76: 18/1954]

76. (1) Where—

- (a) a person under the age of eighteen years is enlisted without the consent in writing of his parent, and

- (b) the parent of such person applies within three months after the date of such person's attestation to the commanding officer or the Minister for the discharge of such person,

such person shall be discharged from the Permanent Defence Force or the Reserve Defence Force (as the case may be) with all convenient speed provided that this section shall not apply to a person who is under the age of eighteen years and is or has been married at the time of attestation.

(2) In this section, the word "parent", in relation to a person (in this subsection referred to as the recruit) who was under the age of eighteen years at the date of his attestation shall be construed in accordance with the following provisions—

- (a) subject to paragraph (b) of this subsection, the word means the person (in this subsection referred to as the legal guardian) having the legal custody of the recruit at that date;
- (b)
 - (i) if at that date there was no legal guardian, or
 - (ii) if, owing to the absence from the State of the legal guardian or for any other reason, the recruit was not at that date living with or in the actual custody of the legal guardian,

then, the word means the person with whom the recruit was living or in whose actual custody he was at that date.

Affecting provisions (textual) — 2/1985, ss. 9 (commencement), 5(a).

Discharge of apprentices. [s. 77: 18/1954]

77. Where—

- (a) a person under the age of twenty-one years is enlisted and
- (b) such person is at the date of his attestation bound for a period of not less than two years under an indenture of apprenticeship, and
- (c) the master of such person, within one month after the date of his attestation, pays to the Minister such sum (not exceeding five pounds) as the Minister may fix, produces the said indenture to the commanding officer of such person and applies to the said commanding officer for the discharge of such person,

such person shall be discharged from the Permanent Defence Force or the Reserve Defence Force (as the case may be) with all convenient speed.

Affecting provision (non-textual) — 2/1985, s. 2(3) —

[2/1985 — s. 2 Age of Majority Act 1985]**Reduction of age of majority.**

2.—(3) *Where there is, in any statutory provision passed or made before the commencement of this Act, a reference to the age of twenty-one years, such provision shall, subject to subsection (4), be construed and have effect as if the reference therein were a reference to full age.*

Status of unenlisted person in receipt of pay as a man and of persons informally enlisted.

Status of unenlisted person in receipt of pay as a man. [s. 78: 18/1954]

78. (1) Where a person—
- (a) has accepted pay as a man of the Permanent Defence Force, and
 - (b) has neither been attested nor re-engaged as a man of the Permanent Defence Force,
- the following provisions shall have effect—
- (i) such person may at any time claim his discharge, and on such claim being made he shall be discharged from the Permanent Defence Force with all convenient speed, and
 - (ii) until such claim is made and such person is actually discharged in the manner prescribed by regulations made under section 81, he shall be subject to this Act as a man of the Permanent Defence Force duly enlisted and attested or re-engaged.
- (2) Subsection (1) of this section shall apply in respect of a person who has accepted pay, a grant or other payment as a reservist and has neither been attested nor re-engaged as a reservist, subject to the modification that references to the Permanent Defence Force shall be construed as references to the Reserve Defence Force.

Status of persons enlisted or re-engaged where error or illegality in enlistment or re-engagement. [s. 79: 18/1954]

79. (1) Where there has been an error (not being a material error) in the enlistment, attestation, re-engagement or continuance in service of a person as a man of the Permanent Defence Force, such error shall not invalidate his enlistment, attestation, re-engagement or continuance in service and may be corrected by direction of the Minister.
- (2) Where—
- (a) a person has been attested, re-engaged or continued in service as a man of the Permanent Defence Force, and
 - (b) there has been any material error or any illegality in his enlistment, attestation, re-engagement or continuance in service (as the case may be), and

- (c) such person has after the date of his attestation, re-engagement or continuance in service (as the case may be) accepted pay as a man of the Permanent Defence Force, and
- (d) such person, within three months after he first so accepted pay, claims his discharge on the ground of such error or illegality,

then the following provisions shall apply—

- (i) such person shall be discharged from the Permanent Defence Force with all convenient speed;
- (ii) during the period commencing on the date of his attestation, re-engagement or continuance in service and ending on the date on which he is discharged in the manner prescribed by regulations made under section 81 he shall be deemed for the purposes of this Act to be a man of the Permanent Defence Force.

(3) Where—

- (a) a person has been attested, re-engaged or continued in service as a man of the Permanent Defence Force, and
- (b) there has been any material error or any illegality in his enlistment, attestation, re-engagement or continuance in service (as the case may be), and
- (c) such person has after the date of his attestation, re-engagement or continuance in service (as the case may be) received pay as a man of the Permanent Defence Force, and
- (d) such person does not, within three months after he first so accepted pay, claim his discharge on the ground of such error or illegality,

then such person shall, notwithstanding such error or illegality, be deemed for the purposes of this Act to have been duly attested and enlisted or re-engaged or continued in service as a man of the Permanent Defence Force.

(4) Where—

- (a) a person has been attested, re-engaged or continued in service as a man of the Permanent Defence Force, and
- (b) there has been any material error or any illegality in his enlistment, attestation, re-engagement or continuance in service (as the case may be), and
- (c) such person has not after the date of his attestation, re-engagement or continuance in service (as the case may be) accepted pay as a man of the Permanent Defence Force,

the following provisions shall have effect—

- (i) such person may at any time claim his discharge, and on such claim being made he shall be discharged from the Permanent Defence Force with all convenient speed, and
- (ii) until such claim is made and such person is actually discharged in the manner prescribed by regulations made under section 81, he shall be deemed for the purposes of this Act to be a man of the Permanent Defence Force.

(5) Subsections (2), (3) and (4) of this section shall apply in respect of a person who has been attested, re-engaged or continued in service as a reservist, subject, however, to the following modifications, that is to say:—

- (a) references to the Permanent Defence Force shall be construed as references to the Reserve Defence Force, and
- (b) references to pay shall be construed as references to pay, a grant or other payment.

General provisions as to discharge.

Order for discharge of men. [s. 80: 18/1954]

- 80.** Where a man is required by section 70, 71, 72, 75, 76, 77, 78 or 79 to be discharged, the prescribed military authority shall order the discharge of such man from the Permanent Defence Force or the Reserve Defence Force (as the case may be).

Provisions in relation to discharge. [s. 81: 18/1954]

- 81.** (1) A man shall not be discharged from the Permanent Defence Force or the Reserve Defence Force except in pursuance of—
- (a) a direction under section 73, or
 - (b) an order of the prescribed military authority under section 80, or
 - (c) a sentence of discharge with ignominy from the Defence Forces or of discharge from the Defence Forces imposed by a court-martial.
- (2) The Minister may make regulations as to the manner in which and the persons by whom the discharge of men is to be carried out.
- (3) Until the discharge of a person who is a man of the Permanent Defence Force or the Reserve Defence Force is carried out in accordance with regulations made under subsection (2) of this section, such person shall remain a man of the Permanent Defence Force or the Reserve Defence Force (as the case may be).

(4) Subsections (1), (2) and (3) of this section shall not apply to a reservist discharged by virtue of section 74.

Certificate of discharge. [s. 82: 18/1954]

82. Where a man is discharged from the Permanent Defence Force or the Reserve Defence Force, there shall be given to him or sent to him to his last registered place of abode or to the address indicated by him on discharge a certificate of discharge in such form and containing, in relation to him, such particulars as may be prescribed.

Collection and disposal of moneys paid in respect of discharge of men. [s. 83: 18/1954]

83. (1) All moneys payable in respect of the discharge of men shall be collected and taken in such manner as the Minister for Finance shall from time to time direct and shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(2) The Public Offices Fees Act 1879, shall not apply in respect of any moneys payable in respect of the discharge of men.

DIVISION II.

**PROMOTION OF MEN TO HIGHER NON-COMMISSIONED RANK AND
REDUCTION IN RANK OF NON-COMMISSIONED OFFICERS.**

Promotion of men to higher non-commissioned rank and reduction in rank of non-commissioned officers. [s. 84: 18/1954]

84. (1) The Minister or any officer authorised by him in that behalf may promote—
- (a) any man holding a non-commissioned army rank to a higher substantive non-commissioned army rank,
 - (b) any man holding a non-commissioned naval rank to a higher substantive non-commissioned naval rank.
- (2) The Minister or any officer authorised by him in that behalf may for a prescribed reason reduce—
- (a) a non-commissioned officer holding a substantive non-commissioned army rank to a lower substantive non-commissioned army rank,
 - (b) a non-commissioned officer holding a substantive non-commissioned naval rank to a lower substantive non-commissioned naval rank.
- (3) (a) A non-commissioned officer shall not be reduced in rank under subsection (2) of this section unless and until the reason for the proposed reduction has been communicated to him and such non-commissioned officer has been given a reasonable opportunity of making such representation as he may think proper in relation to the proposed reduction.

- (b) Paragraph (a) of this subsection shall not apply during a period of emergency or in respect of a non-commissioned officer who is on active service.

(4) The Minister or any officer authorised by him in that behalf may promote—

- (a) any man holding a substantive non-commissioned army rank or an acting non-commissioned army rank to a higher acting non-commissioned army rank,
- (b) any man holding a substantive non-commissioned naval rank or an acting non-commissioned naval rank to a higher acting non-commissioned naval rank.

(5) The Minister or any officer authorised by him in that behalf may direct that—

- (a) a non-commissioned officer holding an acting non-commissioned army rank shall revert to his substantive non-commissioned army rank or to an acting non-commissioned army rank higher than his substantive non-commissioned army rank,
- (b) a non-commissioned officer holding an acting non-commissioned naval rank shall revert to his substantive non-commissioned naval rank or to an acting non-commissioned naval rank higher than his substantive non-commissioned naval rank.

(6) The following—

- (a) any promotion under subsection (1) or (4) of this section,
- (b) any reduction under subsection (2) of this section,
- (c) any reversion under subsection (5) of this section,

shall take effect as from such date as the authority making the promotion or reduction or directing the reversion shall fix.

CHAPTER III.

*Service of Members of the Defence Forces.**Service of members of the Permanent Defence Force.*

Affecting provisions (non-textual) — 44/1960, s. 3(2);
18/1993, s. 2(2) —

[44/1960 — s. 3 Defence (Amendment) (No. 2) Act 1960]***Liability of certain members of the Permanent Defence Force for service with International United Nations Forces.***

3(1) (a) This section applies at all times to—

- (i) an officer of the Permanent Defence Force appointed on or after the date of the passing of this Act,
- (ii) a man of the Permanent Defence Force enlisted on or after the date of the passing of this Act.
- (b) Where a member of the Permanent Defence Force (not being a member of the Permanent Defence Force specified in paragraph (a) of this subsection) has offered in writing, whether before or on or after the date of the passing of this Act, to render himself liable for external service during a specified period and the Minister or an officer authorised in that behalf by the Minister has accepted the offer, this section shall also apply to that member during that period.

(2) Notwithstanding anything contained in Chapter III of Part IV of the Principal Act, every member of the Permanent Defence Force to whom this section for the time being applies shall be liable to serve outside the State with a contingent of the Permanent Defence Force which,

- (a) in pursuance of the Defence (Amendment) Act, 1960, was (1960, No. 22.) despatched, or
- (b) in pursuance of section 2 of this Act, is despatched, for service with an International United Nations Force.

Note: Provision affected by 18/1993, s. 2(3)(a) —

[18/1993: Defence (Amendment) Act 1993]***Liability of certain members of the Permanent Defence Force for service with International United Nations Forces.***

2(3)(a) Section 3 of the Act of 1960 shall not apply to—

- (i) an officer of the Permanent Defence Force appointed on or after the date of the passing of this Act, or
- (ii) a man of the Permanent Defence Force enlisted on or after the date of the passing of this Act.

(b) An offer shall not be made under subsection (1) (b) of the said section 3 on or after the date of the passing of this Act.

[18/1993 — s. 2(2) Defence (Amendment) Act 1993]

Liability of certain members of the Permanent Defence Force for service with International United Nations Forces.

2(2) Notwithstanding anything contained in Chapter III of Part IV of the Principal Act, every member of the Permanent Defence Force to whom this section for the time being applies shall be liable to serve outside the State with a contingent of the Permanent Defence Force which in pursuance of section 2 of the Act of 1960 is despatched for service with an International United Nations Force.

Service of members of the Permanent Defence Force. [s. 85: 18/1954].

85. Every officer and man of the Permanent Defence Force shall be liable at all times to render military service within the State and, if he is employed on a State ship or service aircraft, be liable at all times while so employed to render military service outside the territorial seas of the State.

Service of officers of the Reserve Defence Force.

Service of officers of the Reserve Defence Force. [s. 86: 18/1954]

86. (1) Every officer of the Reserve Defence Force shall be liable for such military service or duty, within the State, as may be prescribed and, if he is employed on a State ship or service aircraft, be liable while so employed to render such military service or duty, outside the territorial seas of the State, as may be prescribed.

(2) Every officer of the Reserve Defence Force shall serve under such conditions as may be prescribed.

Service of reservists.

Calling out of reservists on permanent service. [s. 87: 18/1954]

87. (1) (a) The Government may, at any time during a period of emergency, by proclamation—
- (i) declare that it is expedient that reservists be called out on permanent service, and
 - (ii) authorise the Minister to give from time to time such directions as he thinks necessary with regard to the calling out on permanent service of all or any reservists.
- (b) The Government may by proclamation revoke any proclamation made under paragraph (a) of this subsection.

- (c) If, at the time a proclamation is made under paragraph (a) of this subsection, either House of the Oireachtas stands adjourned, that House shall be summoned to meet as soon as conveniently may be.
- (d) Every proclamation under this subsection shall, as soon as may be after it is made, be laid before each House of the Oireachtas and be published in the *Iris Oifigiúil*.

(2) Where—

- (a) the Minister, in pursuance of a proclamation made under paragraph (a) of subsection (1) of this section, gives directions with regard to the calling out on permanent service of any reservists, and
- (b) either or both of the following things are done—
 - (i) a notice (in this subsection referred to as a special notice) is served on each reservist to whom the directions relate requiring him to attend at the time specified in such special notice at his mobilisation centre, or
 - (ii) a notice (in this subsection referred to as a general notice) is published, in the prescribed manner, requiring every reservist to whom the directions relate to attend at the time indicated in respect of him in such general notice at his mobilisation centre,

the following provisions shall have effect—

- (I) such reservist shall, for the purposes of this Act, stand called out on permanent service as from, in case a special notice is served on him, the time at which he is required by such special notice to attend at his mobilisation centre or, in case a general notice is published in the prescribed manner, the time specified in respect of him in such general notice as the time at which he is to attend at his mobilisation centre;
- (II) such reservist shall, unless sooner released by the prescribed military authority, remain called out on permanent service so long as the said proclamation remains in force.

(3) In this section, the expression “mobilisation centre” means, in relation to a reservist, the place which has in accordance with regulations made by the Minister under this Act been designated as his mobilisation centre.

Calling out of certain reservists on permanent service otherwise than under section 87. [s. 88: 18/1954]

88. (1) This section applies to a reservist—

- (a) who has entered into an agreement in writing to be liable to be called out on permanent service under this section, and

- (b) who has not revoked such agreement (which revocation may be effected by his giving three months' notice in writing to a prescribed officer).

(2) Whenever operations for the defence of the State are in preparation or in progress, the Government may authorise the Minister to give such directions as he thinks necessary with regard to the calling out on permanent service of reservists to whom this section applies.

(3) Where—

- (a) the Minister in pursuance of an authorisation under subsection (2) of this section gives directions with regard to the calling out on permanent service of any reservists, and
- (b) a notice is served on any reservist to whom the directions relate requiring him to attend at a specified time and place,

the following provisions shall have effect—

- (i) that reservist shall, for the purposes of this Act, stand called out on permanent service as from the time at which he is required by the notice to attend,
- (ii) that reservist shall cease to be called out on permanent service on the expiration of the period of three months after being so called out unless—
 - (I) a proclamation authorising the calling out of reservists on permanent service has been made and is then in force, or
 - (II) he is sooner released by the prescribed military authority,
- (iii) if a proclamation authorising the calling out of reservists on permanent service is in force on the expiration of that period, then, unless he has been sooner released by the prescribed military authority—
 - (I) he shall continue to stand called out on permanent service,
 - (II) section 87 shall apply in respect of him as if he had been called out on permanent service under that section.

Service of reservists called out on permanent service. [s. 89: 18/1954]

89. Every reservist who is called out on permanent service shall be liable at all times to render military service within the State and, if he is employed on a State ship or service aircraft, be liable at all times while so employed to render military service outside the territorial seas of the State.

Calling out of reservists in aid of the civil power. [s. 90: 18/1954]

90. (1) The Minister may, at any time when occasion appears to require, direct that all or so many reservists as he thinks necessary be called out in aid of the civil power in the maintenance or restoration of the public peace.

(2) Whenever a direction is given by the Minister under this section, a notice shall be served on every reservist to whom the direction relates requiring him to attend at a time and place specified in such notice, and such reservist shall after that time, for the purposes of this Act, stand called out in aid of the civil power and remain called out in aid of the civil power until the prescribed military authority directs his release.

Service of reservists called out in aid of the civil power. [s. 91: 18/1954]

91. Every reservist who is called out in aid of the civil power shall be liable to render military service at any place within the State.

Annual training of reservists. [s. 92: 18/1954]

92. (1) All or any reservists shall be liable to undergo training, within the State or on board State ships outside the territorial seas of the State, at such times and for such periods (not exceeding in any one year thirty days) as may be prescribed, and for that purpose may be called out from time to time as often as may be necessary and may be required to attend at such places as the Minister may direct.

(2) Where a reservist is in pursuance of this section called out for training, notice of such calling out and of the time and place at which he is to attend shall be served on him.

Voluntary training of reservists. [s. 93: 18/1954]

93. The Minister may by regulations provide for the voluntary attendance of any reservist for such training as may be prescribed by the regulations.

Attendance of reservists for inspection. [s. 94: 18/1954]

94. (1) The Minister may make regulations in relation to the periodical attendance for periods (none of which shall exceed seventy-two hours) at specified places of reservists for inspection and such other purposes as may be specified in the regulations.

(2) Whenever a reservist is required to attend in pursuance of regulations made under this section, notice of such requirement and of the time and place at which he is to attend shall be served on him.

Attachment of reservists called out on permanent service, etc. [s. 95: 18/1954]

95. (1) Where a reservist is called out on permanent service or in aid of the civil power or for training under section 92, he may, during the period of such calling out, be employed for service with, or be attached to, any staff, unit or other element of the Defence Forces.

(2) While a reservist is voluntarily attending for training in pursuance of regulations made under section 93 or a reservist is attending any place in pursuance of regulations made under section 94, he may be attached to any staff, unit or other element of the Defence Forces.

Service of notices on reservists. [s. 96: 18/1954]

96. Where a notice is permitted or required by this Chapter to be served on a reservist, it may be served on him—
- (a) by delivering it to him, or
 - (b) by leaving it at his last registered place of abode, or
 - (c) by sending it by post in an envelope addressed to him at his last registered place of abode.

CHAPTER IV.*Pay and Allowances of Members of the Defence Forces.***Regulations as to pay, allowances and gratuities of members of the Defence Forces. [s. 97: 18/1954]**

97. (1) The Minister may make regulations in relation to the following matters—
- (a) the rates and scales of pay, allowances and gratuities of members of the Defence Forces,
 - (b) the grants which may be made to members and units of the Defence Forces,
 - (c) the conditions applicable to the issue of such pay, allowances, gratuities and grants.
- (2) (a) The Minister may, with the consent of the Minister for Finance, make regulations in relation to the following matters—
- (i) the forfeitures and deductions to which the pay, allowances and gratuities of and grants to members of the Defence Forces may be subjected,
 - (ii) the deductions to which grants to units of the Defence Forces may be subjected,
 - (iii) the disposition of such forfeitures and deductions,
 - (iv) the manner in which and the procedure whereby such forfeitures and deductions or any other deductions authorised by this Act are to be made,
- and such forfeitures and deductions may be made and disposed of accordingly.
- (b) Regulations made under this subsection shall not prescribe—
- (i) forfeiture of pay except in respect of—

- (I) absence on desertion or without leave,
- (II) custody, imprisonment or detention,
- (III) absence from duty on account of a disease or disability arising out of the commission of any offence,
- (IV) unclaimed amounts;
- (ii) deductions from pay except in respect of—
 - (I) articles or services provided,
 - (II) marriage allotment,
 - (III) fines, penalties, damages, compensation or costs awarded,
 - (IV) public or service property lost, deficient, damaged or destroyed,
 - (V) public or service debt or disallowance,
 - (VI) unauthorised expenditure or commitment.
- (c) the total deduction to be made under regulations made under this subsection from the pay of a man, except a man who is being transferred to the Reserve Defence Force or discharged from the Defence Forces, shall not in any week exceed such sum as would cause him to receive less than one-third of his pay for that week.
- (d) Every regulation made under this subsection shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent twenty-one days on which that House has sat after the regulation has been laid before it, such regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under such regulation.

(3) Any forfeiture or deduction made under subsection (2) of this section may be remitted by the Minister in whole or in part.

(4) References to pay, allowances, gratuities or grants in this Chapter shall be construed as references to pay, allowances, gratuities or grants payable under regulations made under subsection (1) of this section.

Deductions from pay of man in respect of certain court orders. [s. 98: 18/1954]

98. (1) This section applies to—

- (a) an order made by a civil court under section 1 of the Married Women (Maintenance in case of Desertion) Act 1886,
- (b) an order made by a civil court under section 75 or 82 of the Children Act 1908,
- (c) an order made by a civil court under section 99 of the Children Act 1908, ordering the parent or guardian of an offender to pay a fine, damages or costs,
- (d) an order made by a civil court under section 3, 6 or 7 of the Illegitimate Children (Affiliation Orders) Act 1930 (No. 17 of 1930),
- (e) an order made by the District Court under section 28 or 29 of the Public Assistance Act 1939 (No. 27 of 1939),
- (f) an order made by a civil court under section 232 or 233 of the Mental Treatment Act 1945 (No. 19 of 1945),
- (g) an order made by a civil court for payment of any moneys due as alimony under a deed of separation,
- (h) an order made by a civil court for payment of alimony.

(2) Where an order to which this section applies is made against a person who is or subsequently becomes a man of the Permanent Defence Force and a copy of such order is sent to the Minister, the prescribed authority shall order to be deducted from the pay of such person as a man of the Permanent Defence Force and to be appropriated in satisfaction or part satisfaction of the amount (including any arrears accrued and any costs and expenses) payable under the order such portion (not exceeding, in case he holds the rank of sergeant or a higher non-commissioned army rank or the rank of petty officer or a higher non-commissioned naval rank, two-thirds or, in any other case, three-fourths) of his daily pay as the prescribed authority thinks fit.

(3) Where a reservist is called out on permanent service, subsection (2) of this section shall apply in respect of him in like manner as it applies in respect of a man of the Permanent Defence Force.

Affecting provisions (non-textual) — 11/1976, ss. 2 (commencement) 30(1);
 26/1987, ss. 1(2)(b) (commencement), 24(1);
 6/1989, ss. 46(2) (commencement), 27;
 17/1991, ss. 1(2) (commencement); 78(1);
 26/1995, ss. 1(2) (commencement), 21;
 33/1996, ss. 1(2) (commencement), 29;
 52/1998, ss. 1(2) (commencement), 9(2) —

[11/1976 — 30(1) Family Law (Maintenance of Spouses and Children) Act 1976]

Repeals.

30.-(1) *The Married Women (Maintenance in case of Desertion) Act 1886, section 13 of the Illegitimate Children (Affiliation Orders) Act 1930, section 7 of the Enforcement of Court Orders Act 1940, and section 18 of the Courts Act 1971, are hereby repealed, and the reference in section 98 (1) (a) of the Defence Act 1954 to an order made by a civil court under section 1 of the said Married Women (Maintenance in case of Desertion) Act 1886, shall be construed as a reference to an order under section 5, 6, or 7 of this Act or an order under section 8 of this Act (in so far as it is deemed under that section to be a maintenance order).*

[26/1987 — s. 24(1) Status of Children Act 1987]

Amendment of Defence Act 1954.

24.—(1) *The reference in section 98(1)(d) of the Defence Act 1954, to an order made by a civil court under section 3 of the Illegitimate Children (Affiliation Orders) Act 1930, shall be construed as a reference to an order under section 5A, 6, 7 or 21A of the Act of 1976 (as amended by this Part) or an order under section 8A (inserted by this Part) of the Act of 1976 (in so far as it is deemed under that section to be a maintenance order).*

[6/1989 — s. 27 Judicial Separation and Family Law Reform Act 1989]

Application of maintenance and periodical payments orders to men of Defence Forces.

27.-*The reference in section 98 (1) (h) of the Defence Act 1954, to an order for payment of alimony shall be construed as including references to an order for maintenance pending suit, a periodical payments order and a secured periodical payments order.*

[17/1991 — s. 78(1) Child Care Act 1991]

Maintenance-saver in relation to members of Defence Forces.

78.-(1) *Section 98 of the Defence Act 1954 (which provides for deductions from pay of members of the Permanent Defence Force and reservists called out on permanent service in respect of court orders under sections 75, 82 or 99 of the Children Act 1908) shall apply in like manner to an order made under section 18.*

[26/1995 — s. 21 Family Law Act 1995]

Application of maintenance pending suit and periodical payment orders to certain members of Defence Forces.

21.-*The reference in section 98 (1) (h) of the Defence Act 1954, to an order for payment of alimony shall be construed as including a reference to a maintenance pending suit order, a periodical payments order and a secured periodical payments order.*

[33/1996 — s. 29 Family Law (Divorce) Act 1996]**Application of maintenance pending suit and periodical payment orders to certain members of Defence Forces.**

29.—The reference in section 98 (1) (h) of the Defence Act 1954, to an order for payment of alimony shall be construed as including a reference to a maintenance pending suit order, a periodical payments order and a secured periodical payments order.

Note: s.29 above is contained in Part III of the Act.

Note: Provision affected by 22/1997, s. 142(1), (2)(d)—

[22/1997 — s.142 (1), (2)(d)]**Exemption of certain transfers from capital acquisitions tax following the dissolution of a marriage.**

142.—(1) Notwithstanding the provisions of the Principal Act, a gift or inheritance (within the meaning, in each case, of that Act) taken by virtue or in consequence of an order to which this subsection applies by a spouse who was a party to the marriage concerned shall be exempt from any capital acquisitions tax under that Act and shall not be taken into account in computing such a tax.

(2) Subsection (1) applies—

(d) to an order under Part III of the Family Law (Divorce) Act, 1996.

[52/1998 — s. 9(2) Jurisdiction of Courts and Enforcement of Judgments Act 1998]**Enforcement of Community maintenance orders by the District Court.**

9(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

(a) subsection (1),

(b) section 98(1) of the Defence Act 1954, and

(c) subject to the 1968 Convention, the variation or discharge of that order under section 6 of the Family Law (Maintenance of Spouses and Children) Act 1976, as amended by the Status of Children Act 1987,

to be an order made by the District Court under section 5 or section 5A of the Family Law (Maintenance of Spouses and Children) Act 1976, as may be appropriate.

Deductions from pay of man in respect of maintenance of wife and children. [s. 99: 18/1954]

99. (1) Where it appears to the Minister that a person who is or subsequently becomes a man of the Permanent Defence Force has deserted or left in destitute circumstances, without reasonable cause, his spouse or any of his children (including any of his children in respect of whom his spouse is not a parent and any children he has adopted under the

Adoption Acts, 1952 to 1976) under the age of sixteen years, the Minister may order to be deducted from the daily pay of such person as a man of the Permanent Defence Force and applied in such manner as the Minister thinks fit towards the maintenance of the spouse or any such children such portion (not exceeding, in case he holds the rank of sergeant or a higher non-commissioned army rank or the rank of petty officer or a higher non-commissioned naval rank, two-thirds or, in any other case, three-fourths) of his daily pay as the Minister thinks fit

(2) Where a reservist is called out on permanent service, subsection (1) of this section shall apply in respect of him in like manner as it applies in respect of a man of the Permanent Defence Force.

*Affecting Provisions (textual) — 26/1987, ss. 1(2)(b) (commencement), 24(2);
(non-textual) — 28/1979, s. 5 —*

[28/1979 — s. 5 Defence (Amendment) (No. 2) Act 1979]

Application of section 99 of Principal Act to women.

5.-The provisions of section 99 of the Principal Act shall apply in the case of a woman who holds a non-commissioned rank and for that purpose references in that section to a wife shall be construed as references to a husband.

Restrictions on deductions from pay, etc. [s. 100: 18/1954]

100. (1) No deduction shall be made from any pay, allowance, gratuity or grant unless—

- (a) the deduction is authorised by regulations made under subsection (2) of section 97, or by sections 98 or 99 or by an Act of the Oireachtas, or
- (b) the deduction is authorised by subsection (2) of this section.

(2) Where a member of the Defence Forces consents in writing to such deduction and the deduction has the approval of the prescribed authority, a deduction may be made from that member's pay, allowances, gratuities or grants.

(3) Pay, allowances, gratuities and grants shall not be capable of being attached or otherwise made available by civil process for the payment of any debt.

Withholding of pay in certain cases. [s. 101: 18/1954]

101. Where any question arises as to—

- (a) whether any pay, allowance, gratuity or grant is due, or
- (b) the amount of any pay, allowance, gratuity or grant due, or
- (c) whether a forfeiture or deduction falls to be made of or from any pay, allowance, gratuity or grant, or
- (d) the amount of a forfeiture or deduction to be made of or from any pay, allowance, gratuity or grant due,

the question shall be determined with all convenient speed and, pending such determination, the pay, allowance, gratuity or grant may be withheld, in whole or in part.

Prohibition of assignment of pay, etc. [s. 102: 18/1954]

102. Every instrument (being an assignment of, a charge on, or an agreement to assign or charge any pay, allowance, gratuity or grant) made by a member of the Defence Forces shall be void except—

- (a) it is made, in pursuance of any regulation made in this behalf by the Minister, for the benefit of the family (including an illegitimate child) of that member, or
- (b) it is authorised by subsection (2) of section 100 or by an Act of the Oireachtas.

CHAPTER V.

Disqualifications, Exemptions and Privileges of Members of the Defence Forces.

Prohibition of membership of political and secret societies. [s. 103: 18/1954]

103. (1) A member of the Permanent Defence Force shall not join, or be a member of, or subscribe to, any political organisation or society or any secret society whatsoever.

(2) A member of the Reserve Defence Force shall not join, or be a member of, or subscribe to any secret society whatsoever.

(3) The Minister may by regulations—

- (a) prohibit officers of the Reserve Defence Force, who are, during a period during which a proclamation authorising the calling out of reservists on permanent service is in force, or during a period during which reservists are called out on permanent service under section 88, for the time being continuously engaged in military service or duties for which as officers of the Reserve Defence Force they are liable, from participating in specified political activities, and
- (b) prohibit reservists who stand called out on permanent service from participating in those specified political activities.

Disqualification for membership of a local authority. [s. 104: 18/1954]

104. (1) For the purposes of this section—

- (a) the expression “local authority” means a local authority for the purposes of the Local Government Acts 1925 to 1946, and includes a vocational education committee and a committee of agriculture;
- (b) an officer of the Reserve Defence Force shall be deemed to be actively employed whenever, during a period during which a proclamation authorising the calling out of reservists on permanent service is in force, or during a period during which

reservists are called out on permanent service under section 88, he is employed continuously on military service or duty;

(c) a reservist shall be deemed to be actively employed whenever he is called out on permanent service.

(2) (a) A member of the Permanent Defence Force shall be disqualified from being elected or co-opted or appointed or being a member of a local authority.

(b) If a person, who is for the time being a member of a local authority, becomes a member of the Permanent Defence Force, he shall thereupon cease to be a member of that local authority.

(3) (a) A member of the Reserve Defence Force shall, during any period during which he is actively employed, be disqualified from being elected or co-opted or appointed a member of a local authority.

(b) The following provisions shall apply to a member of the Reserve Defence Force who is for the time being a member of a local authority—

(i) he shall not, during any period during which he is actively employed, act as a member of that local authority and if he does he shall thereupon cease to be a member of that local authority,

(ii) notwithstanding anything contained in any enactment relating to local authorities, he shall not by reason only of his absence from meetings of that local authority during such period be disqualified or vacate his office as a member of that local authority.

[s. 105: 18/1954]

105. *Repealed by 4/1976, s. 4, sch. 2.*

Arms, etc., of members of the Defence Forces to be exempt from seizure. [s. 106: 18/1954]

106. The arms, ammunition, equipment, service necessities and clothing of a member of the Defence Forces shall not be liable to be seized under any order, decree or warrant of a court or any document having the same force and effect as such order, decree or warrant or under any other form of distraint.

Exemption of men from civil process. [s. 107: 18/1954]

107. (1) An order shall not be made under Section 8 of the Enforcement of Court Orders Act 1940, directing the imprisonment of any person—

(a) who is a man of the Permanent Defence Force, or

(b) who is a reservist and is for the time being called out on permanent service.

(2) An order shall not be made under section 6 of the Debtors Act (Ireland) 1872, or under section 6 of the Enforcement of Court Orders Act 1940, directing the imprisonment of any person—

- (a) who is a man of the Permanent Defence Force on active service, or
- (b) who is a reservist and is for the time being called out on permanent service.

(3) Notwithstanding anything contained in paragraph (22) of section 133 of the Children Act 1908, an order made, under either section 75 or 82 of that Act, against a person who is or becomes a man shall not be enforceable by the imprisonment of such person, in case he is a man of the Permanent Defence Force, so long as he is a man of the Permanent Defence Force or, in case he is a reservist, during any period during which he is called out on permanent service.

(4) Notwithstanding anything contained in subsection (5) of section 99 of the Children Act 1908, any sums imposed and ordered to be paid by a parent or guardian under the said section or on forfeiture of any such security as is referred to in the said section, shall not be capable of being recovered in the manner mentioned in the said subsection against a person who is or becomes a man, in case he is a man of the Permanent Defence Force, so long as he is a man of the Permanent Defence Force or, in case he is reservist, during any period during which he is called out on permanent service.

Affecting Provisions (textual) — 8/1987, s. 10;

(non-textual) — 17/1991, ss. 1(2) (commencement), 78(2) —

[17/1991 — s. 78(2) Child Care Act 1991]

Maintenance-saver in relation to members of Defence Forces.

78.-(2) *Section 107 of the Defence Act 1954 (which provides that court orders made under the aforementioned sections against a member of the Permanent Defence Force or a reservist during any period when he is called out on permanent service shall not be enforceable by imprisonment) shall apply in like manner in the case of an order made under section 18.*

Note: s. 18 of 17/1991 relates to care orders.

Exemption from prosecution, etc., under section 83 of the Public Assistance Act 1939. [s. 108: 18/1954]

- 108.** A man of the Permanent Defence Force or a reservist, during any period during which he is called out on permanent service, shall not be liable to be prosecuted or punished for any offence under section 83 of the Public Assistance Act 1939 (No. 27 of 1939).

Obstruction, etc., of member of Garda Síochána. [s. 109: 18/1954]

- 109.** (1) If any officer wilfully neglects or refuses on lawful application to deliver over to a member of the Garda Síochána, or wilfully obstructs or wilfully neglects or refuses to assist a member of the Garda Síochána in lawfully apprehending, any member of the Defence Forces under his command who is accused or convicted of an offence, other than a man accused of an offence under section 83 of the Public Assistance Act, 1939 (No. 27 of 1939), such officer shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for any term not exceeding two years.

(2) Where an officer is convicted of an offence under subsection (1) of this section, the court before which he was convicted shall cause a certificate of the judgement of the court to be sent to the Minister.

Non-liability of person convicted or acquitted by court-martial to be re-tried by civil court. [s. 110: 18/1954]

- 110.** Where a member of the Defence Forces is convicted or acquitted by a court-martial of an offence such person shall not be liable to be tried subsequently by a civil court for that offence.

Protection of persons acting under this Act. [s. 111: 18/1954]

- 111.** (1) Where after the commencement of this Act any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act, the following provisions shall have effect, that is to say;

(a) such action, prosecution or proceeding shall be brought in the High Court;

Paragraphs (b) to (f): Repealed by 27/1954, ss. 1(commencement), 2(5), (6) (saving).

(2) Every action against a member or minister of a court-martial in respect of a sentence of such court-martial or of anything done by virtue, or in pursuance, of such sentence shall be brought in the High Court.

Exemption from duties and tolls. [s. 112: 18/1954]

- 112.** (1) No duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landing place, highway, road, right of way, bridge or canal, shall be paid by or demanded from any unit or other element of the Defence Forces or an officer or man when on duty or any person under escort or in respect of the movement of any matériel of the Defence Forces.

(2) Nothing in subsection (1) of this section shall affect the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of the Defence Forces.

Exemption of members of the Defence Force from certain provisions of the Road Traffic Act 1933. [s. 113: 18/1954]

- 113.** (1) In this section, the expression “the Act of 1933” means the Road Traffic Act 1933 (No. 11 of 1933).

(2) Sections 22 and 39 of the Act of 1933 shall not apply in respect of the driving of a mechanically propelled vehicle, which is the property of the State or otherwise under the control of the Minister, by any member of the Defence Forces while on duty.

(3) The following provisions of the Act of 1933 shall not apply during a period of emergency in respect of any member of the Defence Forces while on duty, that is to say, sections 22 and 49, subsection (2) of section 149, subsection (5) of section 159 and sections 164 and 166.

CHAPTER VI

*Miscellaneous Provisions.***Redress of wrongs. [s. 114: 18/1954]**

114. (1) If an officer thinks himself wronged in any matter by any superior or other officer, including his commanding officer, he may complain thereof to his commanding officer and if, but only if, his commanding officer does not deal with the complaint to such officer's satisfaction, he may complain in the prescribed manner to the Minister who shall inquire into the complaint and give his directions thereon.

(2) If any man thinks himself wronged in any matter by any officer, other than his company commander, or by any man he may complain thereof to his company commander, and if he thinks himself wronged by his company commander either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof in the prescribed manner to the Chief of Staff, who, if so required by the man, shall report on the matter of the complaint to the Minister who shall inquire into the complaint and give his directions thereon.

(3) Every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of, and shall in every case inform the complainant in the prescribed manner as to what action has been taken in respect of the matter complained of.

(4) The Minister shall make regulations providing for the personal submission, by any person subject to this Act, of any grievance to such officer and on such occasions as may be prescribed by such regulations.

Affecting provision (textual) — 31/1998, s. 6.

Collection and distribution of certain property of deceased members of the Defence Forces. [s. 115: 18/1954]

115. (1) In this section, the expression “service estate” means in relation to a deceased member of the Defence Forces—

- (a) pay, allowances, gratuities or grants due to him,
- (b) personal equipment which he is under regulations permitted to retain,
- (c) personal belongings, including money, found on him or in barracks, camp or quarters or otherwise in the care or custody of the Defence Forces.

(2) The service estate of a deceased member of the Permanent Defence Force or of an officer of the Reserve Defence Force who dies while employed on military service or duty

during a period during which a proclamation authorising the calling out of reservists on permanent service is in force or during a period during which reservists are called out on permanent service under section 88 or of a man of the Reserve Defence Force who dies while called out on permanent service may be collected, administered and distributed in accordance with regulations made by the Minister.

Disposal of personal belongings of deserter, absentee or person of unsound mind. [s. 116: 18/1954]

- 116.** The personal belongings and decorations of a member of the Defence Forces who is a deserter or is absent without leave for twenty-one days or who becomes of unsound mind which are found in barracks, camp or quarters or otherwise in the care or custody of the Defence Forces shall be disposed of in accordance with regulations made by the Minister.

Regulations for purposes of Part IV. [s. 117: 18/1954]

- 117.** The Minister may make regulations in relation to all or any of the following—
- (a) the assignment, whether by appointment, transfer or otherwise, of members of the Defence Forces to or within service corps, staffs, units or other elements of the Defence Forces,
 - (b) the manner in which recruits are to be appointed to service corps,
 - (c) the transfer of a man from one service corps to another,
 - (d) any person, matter or thing referred to in this Part as prescribed,
 - (e) any other matter or thing which is referred to in this Part as the subject of regulations and in respect of which express power is not conferred on the Minister to make regulations.

PART V.

DISCIPLINE.

CHAPTER I.

Liability to Military Law.

Persons subject to military law as officers. [s. 118: 18/1954]

- 118.** (1) Each of the persons mentioned in this section shall, for the purposes of this Act, be a person subject to military law as an officer—
- (a) an officer of the Permanent Defence Force at all times,
 - (b) an officer of the Reserve Defence Force when—
 - (i) he is ordered or employed on service or duty for which as an officer of the Reserve Defence Force he is liable, or

- (ii) he is in uniform,
- (c) an officer of the Reserve Defence Force (whether in receipt of pay or otherwise) during and in respect of a time when—
 - (i) he is, with his own consent, attached to or doing duty with any body of troops for the time being subject to military law or ordered on duty by the military authorities, or
 - (ii) he is voluntarily attending training, or
 - (iii) he is undergoing treatment in a military hospital,
- (d) subject to any general or special exemption made by the Minister (the proof whereof shall lie on the person claiming exemption), any person not otherwise subject to military law who, under the general or special orders of the Minister, accompanies in an official capacity equivalent to that of an officer any portion of the Defence Forces which is on active service,
- (e) any person not otherwise subject to military law, accompanying a portion of the Defence Forces which is on active service, who holds from the commanding officer of that portion a pass, revocable at the pleasure of such commanding officer, entitling him to be treated on the footing of an officer.

(2) For the purposes of this section and section 119, a portion of the Defence Forces shall be on active service—

- (a) during a period during which an order under subsection (2) of section 5 is in force, or
- (b) whenever that portion is engaged in operations against an enemy, or
- (c) whenever that portion is engaged in military operations in a place wholly or mainly occupied by an enemy.

Persons subject to military law as men. [s. 119: 18/1954]

119. Each of the persons mentioned in this section shall, for the purposes of this Act, be a person subject to military law as a man—

- (a) a man of the Permanent Defence Force at all times,
- (b) a reservist when—
 - (i) he is called out on permanent service or in aid of the civil power, or
 - (ii) he is called out for training, exercise or other duty under this Act, or

- (iii) he is voluntarily attending training, or
 - (iv) he is undergoing treatment in a military hospital, or
 - (v) he is employed on military service under the orders of an officer, who is himself subject to military law, or
 - (vi) he is in uniform,
- (c) subject to any general or special exemption made by the Minister (the proof whereof shall lie on the person claiming exemption), any person not otherwise subject to military law who is employed by or is in the service of any portion of the Defence Forces which is on active service,
- (d) any person, not otherwise subject to military law, who is a follower of or accompanies any portion of the Defence Forces which is on active service.

Liability to military law in respect of status. [s. 120: 18/1954]

120. (1) Where an offence against military law has been committed by any person while subject to military law, such person may, subject to subsection (2) of this section, be taken into and kept in service custody and tried and punished for such offence, although he or the unit to which he belongs has ceased to be subject to military law, in like manner as he might have been taken into and kept in service custody, tried or punished, if he or such unit had continued to be so subject.

(2) Where—

- (a) an offence (other than that of mutiny, desertion or fraudulent enlistment) against military law has been committed by any person while subject to military law, and
 - (b) such person has since such commission ceased to be subject to military law, such person shall not be tried for such offence unless his trial commences within three months after he ceased to be subject to military law, but nothing in this subsection shall be construed as affecting the jurisdiction of a civil court where the offence is triable by such court as well as by court-martial.
- (3) Where a person subject to military law is sentenced by a court-martial to imprisonment or detention, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from the Defence Forces or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention and punished accordingly as if he continued to be subject to military law.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 4.

Modification of Part V in its application to civilians subject to military law. [s. 121: 18/1954]

121. In the application of this Part to persons who do not belong to the Defence Forces, the following modifications shall be made—

- (a) where an offence against military law has been committed by any person subject to military law who does not belong to the Defence Forces, such person may be tried by any class of court-martial convened by an officer authorised to convene such class of court-martial and on conviction dealt with and punished accordingly;
- (b) any person subject to military law who does not belong to the Defence Forces shall, for the purpose of this Part, be deemed to be under the command of the prescribed officer, but such person shall not be liable to be dealt with summarily under Chapter IV of this Part.

Place of trial for offences against military law. [s. 122: 18/1954]

122. Any person subject to military law who commits any offence against military law may be tried and punished for such offence at any place within or without the State.

Time limit for trial of offences. [s. 123: 18/1954]

123. (1) A person subject to military law shall not in pursuance of this Act be tried or punished for any offence (except mutiny, desertion or fraudulent enlistment) triable by court-martial after the expiration of three years from the date of the commission of the offence.

(2) This section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

CHAPTER II.

Offences against Military Law.

Capital offences by commanders when in action. [s. 124: 18/1954]

124. Every officer subject to military law and in command of a State ship, service aircraft, defence establishment, unit or other element of the Defence Forces—

- (a) who, when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, negligently or through other default, does not use his utmost exertion to bring the officers and men under his command or his ship, aircraft, or his other matériel into action, or
- (b) who, when capable of making a successful defence, surrenders his ship, aircraft, vehicle, defence establishment, matériel or unit to the enemy, or
- (c) who, being in action, unjustifiably withdraws from the action, or
- (d) who unjustifiably fails to pursue an enemy or to consolidate a position gained, or

(e) who unjustifiably fails to relieve or assist a known friend to the utmost of his power, or

(f) who, when in action, unjustifiably forsakes his station,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4

Capital offences by any person in relation to the enemy. [s. 125: 18/1954]

125. Every person subject to military law—

(a) who treacherously deserts to the enemy, or

(b) who treacherously or without due authority sends a flag of truce to the enemy, or

(c) who treacherously or without due authority holds communication with or gives intelligence to the enemy, or

(d) who misbehaves or induces others to misbehave before the enemy in such a way as to show cowardice, or

(e) who assists the enemy with matériel, or

(f) who knowingly harbours or protects an enemy not being a prisoner, or

(g) who treacherously assists the enemy by giving a false identification or other signal or altering or interfering with any signal, or

(h) who improperly delays or treacherously or in a cowardly manner discourages any action against the enemy, or

(i) who, when ordered to carry out an operation of war, negligently or through other default fails to use his utmost exertion to carry the orders into effect, or

(j) who treacherously or unjustifiably abandons or delivers up any defence establishment, garrison, place, State ship, service aircraft, vehicle or animal, matériel, post or guard, or

(k) who knowingly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of matériel, or

(l) who treacherously assists the enemy in any way not specifically hereinbefore mentioned in this section, or

(m) who, while serving in a State ship involved in the convoying and protection of vessels,—

(i) fails to defend the vessels and goods under convoy, or

(ii) refuses to fight in the defence of the vessels in his convoy if they are attacked, or

(iii) cowardly abandons or exposes the vessels in his convoy to hazards,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4

Offences punishable more severely on active service than at other times. [s. 126: 18/1954]

126. (1) In this section, the word “safeguard” means any party of the Defence Forces detached for the purpose of protecting some person or persons or for the purpose of protecting, or of preventing or controlling access to, any premises or place or for the purpose of regulating traffic on any road, railway or inland navigation, and includes any sentry being a member of the Defence Forces posted for any of the said purposes.

(2) Every person subject to military law—

(a) who, when acting as sentry or lookout or otherwise when on watch or guard, leaves his watch, guard, picket, patrol or post before he is regularly relieved or sleeps or is drunk, or

(b) who, without orders from his superior officer, leaves his watch, guard, picket, patrol or post, or

(c) who, without due authority, discloses in any manner whatsoever any information relating to the number, position, matériel, movements, preparations for movements, operations or preparations for operations of the Defence Forces or any portion thereof or to any State ships, service aircraft or vehicles, or

(d) who makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it or gives, without good and sufficient cause, a parole, watchword, password, countersign or identification signal different from that which he received, or

(e) who, without due authority, alters or interferes with any identification or other signal, or

(f) who unjustifiably occasions false alarms, or

(g) who forces a safeguard or forces, strikes or molests a sentinel, or

- (h) who loots or plunders or breaks into any house or place with intent to loot or plunder, or
- (i) who, without orders from his superior officer, or without reasonable cause, wilfully destroys or damages any property, or
- (j) who does violence to any person bringing matériel to the Defence Forces, or
- (k) who, without proper authority, detains or appropriates to the unit of the Defence Forces with which he is serving any matériel being conveyed to any other unit of the Defence Forces, or
- (l) who impedes the provost marshal or any officer or man legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal or any such officer or man, or
- (m) who knowingly does or omits to do anything the doing or omission whereof is calculated to imperil the success or prejudice the security of the Defence Forces or any portion thereof,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer,—

- (i) if he commits such offence on active service, imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial, or
- (ii) if he commits such offence not on active service and is an officer, dismissal with ignominy from the Defence Forces or any less punishment awardable by a court-martial, or
- (iii) if he commits such offence not on active service and is a man, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;

14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Offences related to prisoners of war. [s. 127: 18/1954]

127. Every person subject to military law—

- (a) who, by want of due precaution, or through disobedience of orders or wilful neglect of duty, is taken prisoner, or
- (b) who, having been taken prisoner, fails to rejoin the Defence Forces when able to do so, or

(c) who, having been made a prisoner of war, serves with or aids the enemy, is guilty of an offence against military law, and shall, on conviction by court-martial, in case he served with or aided the enemy, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial and, in any other case, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

*Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4
14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.*

Mutiny with violence. [s. 128: 18/1954]

- 128.** Every person subject to military law who joins in a mutiny that is accompanied by violence is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4

Mutiny without violence. [s. 129: 18/1954]

- 129.** Every person subject to military law who joins in a mutiny that is not accompanied by violence is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 6.

Offences related to mutiny. [s. 130: 18:1954]

- 130.** Every person subject to military law—

- (a) who causes or conspires with any other person to cause a mutiny, or
- (b) who endeavours to persuade any person to join in a mutiny, or
- (c) who, being present, does not use his utmost endeavours to suppress a mutiny, or
- (d) who, being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 6.

Disobedience to superior officer. [s. 131: 18/1954]

- 131.** Every person subject to military law who disobeys a lawful command of a superior officer is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Striking or offering violence to a superior officer. [s. 132: 18/1954]

- 132.** Every person subject to military law who strikes or attempts to strike, or uses, attempts to use, or offers violence to a superior officer is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 6.

Insubordinate behaviour.[s. 133: 18/1954]

- 133.** Every person subject to military law who uses threatening or insulting language to, or behaves in an insubordinate manner towards, a superior officer is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Disorders. [s. 134: 18/1954]

- 134.** Every person subject to military law—

- (a) who, being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer, or
- (b) who strikes or uses or offers violence to any other person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to military law, or
- (c) who resists an escort whose duty it is to apprehend him or to have him in charge, or
- (c) who breaks out of barracks, station, camp, quarters or ship,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Desertion. [s. 135: 18/1954]

135. (1) Every person subject to military law who deserts or attempts to desert the Defence Forces is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer,—

(a) if he commits such offence on active service, imprisonment for life or any less punishment awardable by a court-martial, or

(b) if he commits such offence not on active service, in the case of a first offence, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial or, in the case of a second or any subsequent offence, imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

(2) (a) For the purposes of this Act, a person deserts the Defence Forces—

(i) if, being on or having been warned for hazardous duty or important service, he is absent without due authority with the intention of avoiding that duty or service, or

(ii) if, having been warned that his vessel is under sailing orders, he is absent without due authority with the intention of missing that vessel, or

(iii) if he absents himself without due authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, or

(iv) if he is absent without due authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place, or

(v) if, while absent with due authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, he does any act or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

(b) For the purposes of paragraph (a) of this subsection, a person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;

14/1997, ss. 1 (commencement), 14, sch. 2, par. 5 & 6.

Connivance at desertion. [s. 136: 18/1954]

136. Every person subject to military law—

- (a) who, being aware of the desertion or intended desertion of a person, does not without reasonable excuse inform his superior officer forthwith, or
- (b) who fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s 7, sch. 1, par. 4.

Absence without leave. [s. 137: 18/1954]

137. (1) Every person subject to military law who absents himself without leave is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

(2) For the purposes of this Act, a person absents himself without leave—

- (a) if, without authority, he leaves his unit or formation or the place where his duty requires him to be, or
- (b) if, without authority, he is absent from his unit or formation or the place where his duty requires him to be, or
- (c) if, having been authorised to be absent from his unit or formation or the place where his duty required him to be, he fails to return to that unit, formation or place at the expiration of the period for which his absence was authorised,

and the expression “absent himself without leave” shall in this Act be construed accordingly.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

False statement in respect of leave. [s. 138: 18/1954]

138. Every person subject to military law who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer, if an officer, dismissal from the Defence Forces or any less punishment awardable by a court-martial, or, if a man, detention or any less punishment awardable by a court-martial.

Scandalous conduct of an officer. [s. 139: 18/1954]

139. Every officer who, being subject to military law, behaves in a scandalous manner, unbecoming the character of an officer, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer dismissal with ignominy from the Defence Forces or dismissal from the Defence Forces.

Ill-treatment of inferiors. [s. 140: 18/1954]

140. Every person subject to military law who strikes or otherwise ill-treats any member of the Defence Forces, who by reason of rank or appointment is subordinate to him, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

False accusation against officer or man. [s. 141: 18/1954]

141. Every person subject to military law—
- (a) who makes a false accusation against an officer or man, knowing such accusation to be false, or
 - (b) who knowingly makes a false statement affecting the character of an officer or man,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Drunkenness. [s. 142: 18/1954]

142. Every person subject to military law who, whether on duty or not on duty, is drunk is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer,—

- (a) if an officer, dismissal from the Defence Forces or any less punishment awardable by a court-martial, or
- (b) if a man and the offence is committed on active service or on duty, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial, or
- (c) if a man and the offence is committed not on active service or on duty, detention for a period not exceeding ninety days or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Drugs, etc. [inserted by s. 5: 8/1987]

142.A (1) Every person subject to military law, whether on duty or not on duty, who, owing to his being under the influence of any drug or any volatile substance or volatile preparation, —

- (a) is unfit to be entrusted with any duty he is or may be required to perform, or
- (b) behaves in a disorderly manner or in any manner likely to bring discredit on the Defence Forces,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer, —

- (i) if an officer, dismissal from the Defence Forces or any less punishment awardable by a court-martial, or
- (ii) if a man and the offence is committed on active service or on duty imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial, or
- (iii) if a man and the offence is committed otherwise than on active service or on duty, discharge from the Defence Forces or any less punishment awardable by a court-martial.

(2) In any proceedings for an offence under this section it shall be a defence for the person charged with the offence to prove that the relevant drug, substance or preparation was used by him pursuant to and in accordance with a prescription issued by a registered medical practitioner or was used by him in good faith for medical reasons.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Malingering or maiming. [s. 143: 18/1954]

143. Every person subject to military law—

- (a) who malingers or feigns or induces disease or infirmity, or
- (b) who induces, aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders, or
- (c) who wilfully maims or injures himself or any other person who is a member of the Defence Forces, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Dilatory conduct in regard to trials. [s. 144: 18/1954]

- 144.** Every person subject to military law who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Negligent or wilful interference with lawful custody. [s. 145: 18/1954]

- 145.** Every person subject to military law—
- (a) who, without proper authority, sets free or authorises or otherwise facilitates the setting free of any person in custody, or
 - (b) who negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody, or
 - (c) who assists any person in escaping or attempting to escape from custody, is guilty of an offence against military law and shall, on conviction by court-martial, be liable, in case he acted wilfully, to suffer imprisonment for any term not exceeding seven years or any less punishment awardable by a court-martial and, in any other case, to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

*Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;
14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.*

Escape from custody. [s. 146: 18/1954]

- 146.** Every person subject to military law who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Obstruction of officer or man carrying out police duties. [s. 147: 18/1954]

- 147.** Every person subject to military law—

- (a) who resists or wilfully obstructs an officer or man in carrying out any duty, performed by such officer or man with due authority, pertaining to the arrest, custody or confinement of a person subject to military law, or
- (b) who, when called upon, refuses or neglects to assist an officer or man in the performance of any such duty,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Obstruction of civil power. [s. 148: 18/1954]

148. Every person subject to military law—

- (a) who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or
- (b) who neglects or refuses to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Losing, stranding or hazarding State ships. [s. 149: 18/1954]

149. Every person subject to military law who wilfully or negligently or through other default loses, strands, hazards or damages or suffers to be lost, stranded, hazarded or damaged any State ship, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Unauthorised carriage on ships or aircraft. [s. 150: 18/1954]

150. Every person subject to military law who, being in command of a State ship or service aircraft, takes or receives on board, or allows to be carried, goods or merchandise that he is not authorised to take or receive on board is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s.7, sch. 1, par. 4.

Wrongful acts in relation to aircraft. [s. 151: 18/1954]

151. Every person subject to military law—

- (a) who, in the use of or in relation to any service aircraft or service aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person, or
- (b) who, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any service aircraft or service aircraft material, or
- (c) who, during a state of war, wilfully or negligently causes the sequestration by or under the authority of a neutral State of any service aircraft, or
- (d) who, during a state of war, wilfully or negligently causes, otherwise than in accordance with regulations, orders or instructions, the destruction in a neutral State of any service aircraft,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Inaccurate certificate as regards aircraft. [s. 152: 18/1954]

152. Every person subject to military law who signs any certificate in relation to an aircraft or aircraft material without ensuring the accuracy thereof is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial

Affecting provision(textual) — 16/1990, s. 7, sch. 1, par. 4.

Low flying. [s. 153: 18/1954]

153. Every person subject to military law who flies a service aircraft at a height less than the minimum height authorised in the circumstances is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Disobedience of orders of captain of aircraft. [s. 154: 18/1954]

154. (1) Every person subject to military law who, when in a service aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether the captain is subject to

military law or not, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

(2) For the purposes of this section—

- (a) every person, whatever his rank, shall when he is in a service aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether the latter is subject to military law or not;
- (b) if the service aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether the latter is subject to military law or not.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5;
(non-textual) — 8/1987, s. 6(5) —

[8/1987 — s. 6(5) Defence (Amendment) Act 1987]

Powers exercisable by captain of service aircraft and certain other persons when safety of aircraft. etc. in jeopardy.

6(5) For the purposes of this section and section 154 of the Principal Act, the person who has been designated to be in command of a service aircraft shall be regarded as being the captain of the aircraft.

Fraud by persons in charge of property. [s. 155: 18/1954]

- 155.** Every person subject to military law who, being charged with or concerned in the care and distribution of any public property or service property, steals, fraudulently converts or misapplies or embezzles that property or is concerned in or connives at the stealing, fraudulent conversion or misapplication or embezzlement thereof shall be guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Stealing, embezzlement etc., of property. [s. 156: 18/1954]

- 156.** (1) Every person subject to military law who—
- (a) steals or otherwise unlawfully obtains any property belonging to a person subject to military law or any public service property or service property, or

- (b) handles or possesses (within the meaning of section 17 or 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001) any such property,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court martial.

(2) The said sections 17 and 18 shall apply to the offences of handling and possessing under subsection (1)(b) of this section as they apply to the offences of handling and possessing stolen or otherwise unlawfully obtained property.

Affecting provision (textual) — 50/2001, ss. 1(2) (commencement), 63.

Destruction, loss or improper disposal of property. [s. 157: 18/1954]

157. Every person subject to military law—

- (a) who wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any property being—
 - (i) public property, or
 - (ii) service property, or
 - (iii) property received for, or administered by or through, service messes, institutes or canteens, or
 - (iv) property contributed by members of the Defence Forces for the collective benefit and welfare of such members, or
 - (v) property derived from, purchased out of the proceeds of sale of, or received in exchange for property mentioned in subparagraph (iii) or (iv) of this paragraph, or
- (b) who wilfully destroys, damages or improperly sells, pawns, or pledges any property belonging to another person who is subject to military law,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Bribery, corruption and fraud. [s. 158: 18/1954]

158. Every person subject to military law—

- (a) who connives at the exaction, by a person supplying property or services to the Defence Forces, of an exorbitant price therefor, or

- (b) who wrongfully demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department of Defence or the Defence Forces, or
- (c) who receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to the Department of Defence or the Defence Forces, or to any service mess, institute or canteen,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 5.

Negligent or furious driving of service vehicles. [s. 159: 18/1954]

159. (1) Every person subject to military law—

- (a) who, having the charge of a service vehicle, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, does or causes to be done any bodily injury to any person or damage to any property, or
- (b) who drives a service vehicle on a street, road, highway or any other place, whether public or private, in a manner that is dangerous to any person or property having regard to all the circumstances of the case, or
- (c) who drives or attempts to drive a service vehicle while he is drunk, is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

(2) For the purposes of paragraph (c) of subsection (1) of this section a person shall be deemed to have been drunk while driving or attempting to drive a service vehicle if the court-martial or the officer investigating the charge under section 177, 178 or 179 is satisfied that such person was, by reason of the consumption by him of intoxicating liquor or by reason of his having taken drugs, in such a condition that he was incapable of exercising effective control of such vehicle while in motion.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Unauthorised use of service vehicles. [s. 160: 18/1954]

160. Every person subject to military law —

- (a) who uses a service vehicle for an unauthorised purpose, or

(b) who, without due authority uses a service vehicle for any purpose, or

(c) who uses a service vehicle contrary to any regulation, order or instruction,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Offences in relation to courts-martial, etc. [s. 161: 18/1954]

161. (1) In this section, the expression “service tribunal” means—

(a) a court-martial,

(b) an authorised officer investigating a charge under section 177,

(c) a commanding officer investigating a charge under section 178,

(d) an officer taking a summary of evidence in accordance with regulations made under section 184,

(e) a court of inquiry.

(2) Every person subject to military law—

(a) who, being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending, or

(b) who refuses to take an oath or make an affirmation lawfully required by a service tribunal to be taken or made, or

(c) who refuses to produce any document in his power or control lawfully required by a service tribunal to be produced by him, or

(d) who refuses when a witness to answer any question to which a service tribunal may lawfully require an answer, or

(e) who uses insulting or threatening language or causes any interruption or disturbance in the proceedings of a service tribunal, or

(f) who commits any other contempt of a service tribunal,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

False evidence. [s. 162: 18/1954]

- 162.** Every person subject to military law who, when examined on oath or solemn declaration before a service tribunal, within the meaning of section 161, knowingly gives false evidence is guilty of an offence against military law and shall, on conviction by court martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Disturbances, etc., in billets. [s. 163: 18/1954]

- 163.** Every person subject to military law —
- (a) who ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for matériel has been provided, or
 - (b) who fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises in which matériel is or has been accommodated,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Fraudulent enlistment. [s. 164: 18/1954]

- 164.** (1) Every person subject to military law as a man who fraudulently enlists is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.
- (2) For the purposes of this Act, a man fraudulently enlists who,—
- (a) while belonging to the Permanent Defence Force, or having been called out on permanent service as a man of the Reserve Defence Force, without having obtained a regular discharge therefrom, or otherwise fulfilling the conditions enabling him to enlist, enlists in the Permanent Defence Force, or
 - (b) when belonging to the Permanent Defence Force, enlists in the Reserve Defence Force without having fulfilled the conditions enabling him to so enlist.

(3) When an offender has fraudulently enlisted on several occasions he may for the purpose of this section be deemed to belong to any one or more of the service corps or units to which he has been appointed or transferred as well as the service corps or unit to which he properly belongs.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

General offences in relation to enlistment. [s. 165: 18/1954]

165. Every person subject to military law—

- (a) who is concerned in the enlistment for service in the Permanent Defence Force or the Reserve Defence Force of any man when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against military law, or
- (b) who wilfully contravenes any enactment or regulation in any matter relating to the enlistment or attestation of men of the Permanent Defence Force or the Reserve Defence Force,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Negligent performance of duties. [s. 166: 18/1954]

166. Every person subject to military law who negligently performs a military duty imposed on him is guilty of an offence against military law and shall, on conviction by court-martial, be liable, if an officer, to suffer dismissal from the Defence Forces or any less punishment awardable by a court-martial or, if a man, to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Offences in relation to documents. [s. 167: 18/1954]

167. Every person subject to military law—

- (a) who knowingly or negligently makes or signs a document, required for official purposes, that is false, or
- (b) who knowingly or negligently orders the making or signing of a document, required for official purposes, that is false, or
- (c) who, when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher, or

- (d) who, knowingly and with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any purpose connected with the Department of Defence or the Defence Forces, or
- (e) who refuses or, by culpable neglect, omits to make or send a report or return which it is his duty to make or send,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Conduct to the prejudice of good order and discipline. [s. 168: 18/1954]

- 168.** (1) Every person subject to military law who commits any act, conduct, disorder or neglect to the prejudice of good order and discipline is guilty of an offence against military law and shall, on conviction by court-martial, be liable, if an officer, to suffer dismissal from the Defence Forces or any less punishment awardable by a court-martial and, if a man, to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.
- (2)(a) A person shall not, be charged under this section with an offence which is, by virtue of any previous section contained in this Chapter, an offence against military law.
- (b) Where a person is charged with an offence in contravention of this subsection and is convicted—
- (i) the conviction shall not be invalid by reason only of such contravention unless it appears that an injustice has been done to the person charged by reason of such contravention,
 - (ii) the responsibility of an officer for such contravention shall not be affected by the validity of the conviction.
- (3) For the purposes of this section—
- (a) the contravention (by act or omission) by any person of—
 - (i) any of the provisions of this Act or
 - (ii) any regulations, orders or instructions published for the general information and guidance of that portion of the Defence Forces to which that person belongs or to which he is attached, or

- (iii) any general, garrison, unit, station, standing or local orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline;
- (b) an attempt to commit any offence which is, by virtue of any previous section contained in this Chapter, an offence against military law is, unless such attempt is in itself an offence against military law under that section, an act, conduct, disorder or neglect to the prejudice of good order and discipline.
- (4) Subsection (3) of this section shall not be construed as affecting the generality of subsection (1) of this section.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Offences punishable by ordinary law. [s. 169: 18/1954]

- 169.** (1) Subject to the provisions of this Act, every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to a civil offence) shall be liable to be tried by court-martial.
- (2) Where a person charged under this section is convicted by a court-martial of treason or murder, he shall be sentenced to imprisonment for life.
- (3) Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:
- (a) if he is convicted of manslaughter, be liable to suffer imprisonment for life or any less punishment awardable by a court-martial;
 - (b) if he is convicted of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), be liable to suffer imprisonment for life or any less punishment awardable by a court-martial;
 - (c) if he is convicted of an act of genocide which would be punishable under the Genocide Act 1973, be liable —
 - (i) in case the offence consists of the killing of any person to imprisonment for life,
 - or
 - (ii) in any other case, to imprisonment for a term not exceeding fourteen years;
 - (d) if he is convicted of any offence not before in this section particularly specified in this section which when committed in the State is punishable by the ordinary

criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or, if he is subject to military law as an officer, dismissal with ignominy from the Defence Forces or any lesser punishment awardable by a court-martial or, if he is subject to military law as a man, imprisonment for any term not exceeding two years or any lesser punishment awardable by a court-martial.

(dd) if he is convicted of an offence under the Criminal Justice (United Nations Convention against Torture) Act 2000, be liable to imprisonment for life.

(ddd) if he or she is convicted of an offence under the Criminal Justice (Safety of United Nations Workers) Act, 2000, be liable either to suffer any punishment assigned for such offence by that Act or any less punishment awardable by a court-martial.

*Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;
32/1990, ss. 22(3) (commencement), 19(a);
14/1997, ss. 1 (commencement), 14, sch. 2, par. 6;
11/2000, s. 6 (a);
16/2000, s. 6(a).*

Trial by court-martial of treason and certain murders and attempts [inserted by s. 7, sch. 1, par 4: 16/1990]

169A. (1) A person subject to military law who is accused of murder which is alleged to be murder to which section 3 of the Criminal Justice Act 1990, applies or of an attempt to commit such a murder and is to be tried by court-martial shall be charged with murder to which that section applies or, as the case may be, with an attempt to commit such a murder, and the following provisions of that Act, namely —

(a) section 4, with the substitution of ‘court-martial’ for ‘court’, and

(b) subsection (2) of section 6, with the substitution of ‘charged with’ for ‘indicted for’,

shall apply and have effect in relation to the trial.

(2) The said section 4 shall apply and have effect, in relation to the trial of a person subject to military law who is accused of treason, with the substitution of ‘court-martial’ for ‘court’.

CHAPTER III.

Arrest and Courts of Inquiry on Absent Men.

Provost Marshal. [s. 170:18/1954]

170. For the prompt suppression of all offences a provost marshal of commissioned rank may from time to time be appointed.

Arrest. [s. 171:18/1954]

- 171.** (1) Any person subject to military law, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed an offence against military law, may be placed under arrest.
- (2) In the circumstances mentioned in subsection (1) of this section—
- (a) a provost marshal or an officer legally exercising authority under a provost marshal or on his behalf may arrest or order the arrest of any officer;
 - (b) a provost marshal or an officer or non-commissioned officer legally exercising authority under a provost marshal or on his behalf may arrest or order the arrest of any man;
 - (c) an officer may arrest or order the arrest of—
 - (i) any man,
 - (ii) any officer of lower rank,
 - (iii) any officer of equal or higher rank who is engaged in any quarrel, affray or disorder;
 - (d) a non-commissioned officer may arrest or order the arrest of any man;
 - (e) any person subject to military law who is so authorised by any commanding officer may arrest or order the arrest of a person subject to military law other than an officer or a man.
- (3) Every person authorised by subsection (2) of this section to effect arrest may use such force as is reasonably necessary for that purpose.
- (4) An order given under subsection (2) of this section shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same service corps or unit.

Placing of person arrested in service custody. [s. 172: 18/1954]

- 172.** Where a person has been arrested under section 171, he may forthwith on his being arrested be placed in service custody by or on the order of an officer, man or other person having authority to arrest him, and for this purpose such force as is reasonably necessary may be used.

Guard report. [s. 173: 18/1954]

- 173.** (1) Any person who under section 172 places any other person in service custody shall, at the time he does so or as soon as practicable thereafter, and in any case not later than twenty-four hours thereafter, deliver to the officer or man into whose custody the person

is committed, an account in writing signed by himself of the offence with which the person so committed is charged.

(2) Any officer or man commanding a guard or a provost marshal or any of his assistants or any officer or man shall not refuse to receive or keep any person who is placed in service custody under section 172.

(3) It shall be the duty of an officer or a man who takes or receives any person (in this subsection referred to the prisoner) into custody, as soon as he is relieved from guard or duty or, if he is not sooner relieved, within twenty-four hours after he took the prisoner into custody,—

(a) to give in writing to his commanding officer—

(i) the name and, as far as is known to him, the offence with which the prisoner is charged, and

(ii) the name and rank (if any) of the person by whom the prisoner was committed, and

(b) if he has received the account in writing referred to in subsection (1) of this section, to deliver it to his commanding officer.

Court of inquiry on absent man. [s. 174: 18/1954]

174. (1) When a man of the Permanent Defence Force has been absent without leave from his duty for a period of twenty-one days, a court of inquiry in relation to such man may as soon as practicable be assembled.

(2) When any man of the Reserve Defence Force is subject to military law by reason of his being called out on permanent service or in aid of the civil power or for annual training and is illegally absent from duty, a court of inquiry in relation to such man may be assembled after the expiration of twenty-one days from the date of such absence, whether the period during which such man was subject to military law is or is not less than twenty-one days or has or has not expired before the expiration of twenty-one days from the date of such absence.

(3) Where a court of inquiry in relation to a man is assembled under subsection (1) or (2) of this section, the following provisions shall have effect—

(a) the court shall inquire in the prescribed manner on oath or solemn declaration (which any member of such court is hereby authorised to administer) respecting the absence of such man and the deficiency (if any) in his arms, ammunition, equipment, instruments, service necessities and clothing,

(b) if the court is satisfied that such man has absented himself without leave or other sufficient cause, the following provisions shall have effect, that is to say:—

- (i) the court shall declare such absence and the period thereof, and the said deficiency (if any);
- (ii) a record of such declaration shall be entered by his commanding officer in the service books;
- (iii) in case such man is a man of the Permanent Defence Force or a man of the Reserve Defence Force called out on permanent service, such record shall, if such man does not afterwards surrender or is not apprehended, have the legal effect of a conviction by court-martial for desertion.

CHAPTER IV.

Investigation and Summary Disposition of Charges, Remands for Court-martial and Dispensation with Trial by Court-martial.

Acquittal or conviction to be a bar to summary proceedings. [s. 175: 18/1954]

- 175.** (1) Where—
- (a) a person has been charged with an offence against military law, and
 - (b)
 - (i) he has been acquitted or convicted of the offence by a civil court, or
 - (ii) he has been acquitted of the offence by a court-martial, or
 - (iii) he has been found guilty of the offence by a court-martial and the finding has been confirmed,

he shall not be liable to be dealt with summarily for the offence under this Chapter.

- (2) Where—
- (a) a person subject to military law is charged with an offence against military law, and
 - (b) the offence was dealt with under this Chapter either by being dismissed or being dealt with summarily,

he shall not be liable to be dealt with summarily again under this Chapter in respect of that offence.

Charge to be investigated without delay. [s. 176: 18/1954]

- 176.** The charge against every person taken into service custody shall, without unnecessary delay, be investigated by the proper military authority, and as soon as possible either proceedings shall be taken for punishing him or such person shall be discharged from custody.

Charges against officers. [s. 177: 18/1954]

- 177.** (1) A charge against a person subject to military law as an officer shall in the first instance be investigated by his commanding officer or, if the Adjutant-General so directs, by such officer as the Adjutant-General may appoint for the purpose.
- (2) The officer investigating a charge under subsection (1) of this section shall—
- (a) in case the officer charged holds the rank of commandant or lieutenant-commander or any higher commissioned rank, do one of the following things, that is to say:—
- (i) dismiss the charge, if in his discretion he considers it should not be proceeded with,
- (ii) remand the officer charged for trial by court-martial if he considers the charge should be proceeded with;
- (b) in any other case, do one of the following things, that is to say:—
- (i) dismiss the charge, if in his discretion he considers it should not be proceeded with,
- (ii) subject to regulations made under section 184 refer the charge for trial by an authorised officer,
- (iii) remand the officer charged for trial by court-martial if he considers the charge should be proceeded with.
- (3) Where an officer (in this subsection referred to as the officer charged) holding the army rank of captain or the naval rank of lieutenant or lower commissioned rank is brought for trial before an authorised officer, the following provisions shall have effect, that is to say:—
- (a) the authorised officer—
- (i) shall, after hearing the evidence or without hearing the evidence, dismiss the charge, if in his discretion he considers it should not be proceeded with or, where he considers the charge should be proceeded with, remand the officer charged for trial by court-martial, or
- (ii) may, after hearing the evidence or, if the officer charged consents to the attendance of witnesses being dispensed with, after reading a summary or abstract of the evidence, deal, subject to paragraph (c) of this subsection, with the case summarily and award one of the following punishments, namely—

- (I) *a fine not exceeding an amount equal to three days' pay of the officer charged,*
 - (II) severe reprimand,
 - (III) reprimand;
- (b) the evidence against the officer charged taken before the authorised officer shall, if the officer charged so demands, be taken on oath, and in that event there shall be administered to each witness the same oath or solemn declaration as that required to be taken by a witness before a court-martial, and for this purpose the authorised officer may administer oaths and solemn declarations;
- (c) where the authorised officer proposes to deal with the case summarily under paragraph (a) of this subsection, he shall, if his proposed award is a fine or involves a forfeiture of, or a deduction from pay, or if he proposes to make an order under paragraph (f) of this subsection, ask the officer charged whether he desires to be dealt with summarily or to be tried by court-martial and, if the officer charged elects to be tried by court-martial, the authorised officer shall remand the officer charged for trial by court-martial but otherwise shall proceed to deal with the case summarily;
- (d) where the authorised officer remands the officer charged for trial by court-martial under paragraph (a) of this subsection, then, unless the officer charged has elected under paragraph (c) of this subsection to be tried by court-martial, any officer having power to convene a general court-martial may direct that the charge (with such alterations, amendments and additional charges as he thinks fit) be referred back to an authorised officer and thereupon the authorised officer shall either dismiss or, subject to paragraph (c) of this subsection, deal summarily with the charge or charges as so referred back;
- (e) where—
 - (i) the officer charged is remanded for trial by court-martial under paragraph (a) of this subsection and no direction is given under paragraph (d) of this subsection, or
 - (ii) the officer charged is remanded for trial by court-martial under paragraph (c) of this subsection,

the officer who remanded the officer charged for trial by court-martial shall apply to the authorised convening authority to convene a general court-martial to try the officer charged;

- (f) where—
 - (i) the authorised officer deals with the case summarily, and

- (ii) the offence charged occasioned any expense, loss, damage or destruction,

the authorised officer may, in lieu of or in addition to any punishment which he is authorised by paragraph (a) of this subsection to award in respect of the offence, order that there shall be paid by the officer charged, as compensation for the expense, loss, damage or destruction so occasioned, such sum (not exceeding the amount required to make good such expense, loss, damage or destruction *or an amount equal to nine days' pay of the officer charged*, whichever is the less) as the authorised officer may direct.

Affecting Provision (textual) — 8/1987, s. 3(1);

Note: The amendments made by s. 3 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s.16)

(non-textual) — 12/1992, 1(3) (commencement), 1(4)(b)(iii)

[12/1992 — s. 1(4)(b)(iii) Criminal Evidence Act 1992]

1.- (4) (a) *The provisions of this Act (other than Part III (except sections 15, 16 (1) (b) and 18) and section 29) shall not apply to criminal proceedings instituted before the commencement of the provisions concerned. . . .*

(b) For the purposes of paragraph (a) criminal proceedings are instituted. . . .

(iii) when a person is remanded for trial pursuant to section 177 or 178 (as amended by section 3 of the Defence (Amendment) Act 1987) of the Defence Act 1954.

Disposition of charges against men by commanding officers. [s. 178: 18/1954]

- 178.** (1) The commanding officer shall, upon investigation being had of a charge against a person subject to military law as a man under his command of having committed an offence against military law, dismiss the charge, if in his discretion he considers it should not be proceeded with, but where he considers the charge should be proceeded with he may remand the accused for trial by court-martial or, where the offender is a member of the Defence Forces, may, subject to this section and to regulations made under section 184, deal with the case summarily.

(2) Where the commanding officer deals with a case summarily under this section and the offender is a non-commissioned officer, he may award one of the following punishments—

(a) a fine not exceeding an amount equal to three days' pay of the offender,

(b) severe reprimand or reprimand.

(3) Where the commanding officer deals with a case summarily under this section and the offender is a private or a seaman, the following provisions shall have effect, that is to say:—

(a) the commanding officer may award one of the following punishments—

- (i) detention for any term not exceeding twenty-eight days, subject however where the offence is absence without leave to the following limitations, namely, if the period of absence exceeds seven days, the term of detention awardable shall not exceed the period of absence, and if the period of absence does not exceed seven days, the term of detention awardable shall not exceed seven days,
 - (ii) *a fine not exceeding an amount equal to three days' pay of the offender,*
 - (iii) confinement to barracks for a term not exceeding fourteen days or, if the offender is employed on a State ship, stoppage of shore leave for a term not exceeding fourteen days,
 - (iv) a warning;
- (b) the commanding officer may at the same time award the offender a fine and confinement to barracks for a term not exceeding fourteen days or, if the offender is a seaman, a fine and stoppage of shore leave for a term not exceeding fourteen days, but, save as provided by subsection (4) of this section, no other combination of punishments.
- (4) Where—
- (a) a commanding officer deals with a case summarily under this section, and
 - (b) the offence charged occasioned any expense, loss, damage or destruction,

the commanding officer may, in lieu of or in addition to any punishment which he is authorised by this section to award in respect of the offence, order that there shall be paid by the offender, as compensation for the expense, loss, damage or destruction so occasioned, such sum (not exceeding the amount required to make good such expense, loss, damage or destruction *or an amount equal to nine days' pay of the offender*, whichever is the less) as the commanding officer thinks fit.

(5) Where a commanding officer has power to deal with a case summarily under this section, the evidence against the accused shall, if he so demands, be taken on oath, and in that event there shall be administered to each witness the same oath or solemn declaration as that required to be taken by a witness before a court-martial, and for that purpose a commanding officer may administer oaths and solemn declarations.

(6) Where a commanding officer has power to deal with a case summarily under this section and he considers, after hearing the evidence, that he may so deal with the case, he shall, where the proposed award or finding involves a fine or the forfeiture of or a deduction from pay or where he proposes to make an order under subsection (4) of this section, ask the accused whether he desires to be dealt with summarily or to be tried by court-martial and, if the accused elects to be tried by court-martial, he shall remand him for trial by court-martial but otherwise shall proceed to deal with the case summarily.

(7) Where a commanding officer remands an accused person for trial by court-martial under this section, then, unless the accused has elected under subsection (6) of this section to be tried by court-martial, any officer having power to convene a court-martial may direct that the charge (with such alterations, amendments and additional charges as he thinks fit) shall be referred back to the commanding officer and thereupon the commanding officer shall either dismiss or, subject to subsection (6) of this section, deal summarily with the charge or charges as so referred back.

(8) Where—

(a) a man is remanded for trial by court-martial under subsection (1) of this section and no direction is given under subsection (7) of this section, or

(b) a man is remanded for trial by court-martial under subsection (6) of this section,

the commanding officer shall apply to the authorised convening authority to convene the appropriate court-martial for the trial of the man.

Affecting provision (textual) — 8/1987, s. 3(2).

Note: The amendments made by s. 3 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s.16)

(non-textual) — 12/1992, s. 1(2), (3) (commencement), 1(4)(b)(iii)

[12/1992 — s. 1(4)(b)(iii) Criminal Evidence Act 1992]

1.- (4) (a) *The provisions of this Act (other than Part III (except sections 15, 16 (1) (b) and 18) and section 29) shall not apply to criminal proceedings instituted before the commencement of the provisions concerned. . .*

(b) For the purposes of paragraph (a) criminal proceedings are instituted. . .

(iii) when a person is remanded for trial pursuant to section 177 or 178 (as amended by section 3 of the Defence (Amendment) Act 1987) of the Defence Act 1954.

Disposition of charges against privates and seamen by subordinate officers. [s. 179: 18/1954]

179. (1) A commanding officer may, subject to and in accordance with regulations made under this Chapter, delegate to any officer under his command the power of disposing of charges against privates or seamen who are under the command of such last-mentioned officer, and every officer to whom such power is delegated shall be for the purposes of this section a subordinate officer.

(2) A subordinate officer shall, upon investigation being had of a charge against a private or a seaman, who is a person subject to military law, under his command of having committed an offence against military law, dismiss the charge if in his discretion he considers it should not be proceeded with, but where he considers the charge should be proceeded with he may refer the charge to the commanding officer who shall deal with the case under section 178 or he may himself deal with the case summarily.

(3) Where a subordinate officer deals with a case summarily, under this section, he may award one of the following punishments, that is to say:—

- (a) *a fine not exceeding an amount equal to a days' pay of the offender,*
- (b) confinement to barracks for any period not exceeding seven days, or if the offender is employed on a State ship, stoppage of shore leave for a period not exceeding seven days.
- (c) a warning.

(4) Where—

- (a) a subordinate officer deals with a case summarily under this section, and
- (b) the offence charged occasioned any expense, loss, damage or destruction,

the subordinate officer may, in lieu of or in addition to any punishment which he is authorised by this section to award in respect of the offence, order that there shall be paid by the offender, as compensation for the expense, loss, damage or destruction so occasioned, such sum (not exceeding the amount required to make good such expense, loss, damage or destruction *or an amount equal to four days' pay of the offender*, whichever is the less) as the subordinate officer thinks fit.

(5) Where a subordinate officer has power to deal with a case summarily under this section, the evidence against the accused shall, if he so demands, be taken on oath, and in that event there shall be administered to each witness in the case the same oath or solemn declaration as that required to be taken by a witness before a court-martial, and for that purpose a subordinate officer may administer oaths and solemn declarations.

(6) Where a subordinate officer has power to deal with a case summarily under this section and he considers, after hearing the evidence, that he may so deal with the case, he shall, where the proposed award or finding involves a fine or the forfeiture of or a deduction from pay or where he proposes to make an order under subsection (4) of this section, ask the accused whether he desires to be dealt with summarily or to have the case referred to the commanding officer and, if the accused elects to have the case referred to the commanding officer, he shall refer the case to the commanding officer but otherwise shall proceed to deal with the case summarily.

Affecting provision (textual) — 8/1987, s. 3(2).

Note: The amendments made by s. 3 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s.16)

Revision of summary awards. [s. 180: 18/1954]

180. The following provisions shall have effect in relation to any award of punishment (including an order for payment of compensation) made under this Chapter by an authorised officer, a commanding officer or a subordinate officer, that is to say:—

- (a) if such punishment appears to the prescribed military authority to be wholly illegal, he shall direct the award to be cancelled and the entry thereof in the records of the accused to be expunged;
- (b) if such punishment appears to the prescribed military authority to be in excess of the punishment authorised by law for the offence, he shall vary the punishment so that it shall not be in excess of the punishment authorised by law, and the entry thereof in the records of the accused shall be varied accordingly;
- (c) if such punishment appears to the prescribed military authority to be too severe having regard to all the circumstances of the case, he may, within two years from the date of the award, remit the whole or any part of the punishment and such remission shall be entered in the records of the accused.

Trial of accused without preliminary investigation. [s. 181: 18/1954]

181. (1) Where an offence against military law is alleged to have been committed by a person subject to military law and a court of inquiry has been held in respect of matters relating to the alleged offence, an officer having power to convene a court-martial may, if satisfied that there is *prima facie* evidence of the commission of such offence, order such person to be tried by court-martial without any previous investigation of the charge against such person.

(2) Where a person is ordered to be tried by court-martial under subsection (1) of this section, a statement of the evidence of the witnesses proposed to be called for the prosecution at the trial and a copy of the proceedings and findings of the court of inquiry shall be delivered to him before the trial.

Confession of desertion or fraudulent enlistment. [s. 182: 18/1954]

182. (1) Where a man of the Permanent Defence Force or a man of the Reserve Defence Force called out on permanent service signs a confession that he has been guilty of the offence of desertion or of fraudulent enlistment, a prescribed military authority may by order dispense with his trial by court-martial, and may by such order or a subsequent order do any one or more of the following things, that is to say:—

- (a) reduce him, if he holds a non-commissioned army rank, to any lower non-commissioned army rank or, if he holds a non-commissioned naval rank, to any lower non-commissioned naval rank;
- (b) forfeit in the prescribed manner his seniority of rank;
- (c) in case any expense, loss, damage or destruction is occasioned by the commission of such offence, direct that there shall be paid by him as compensation for such expense, loss, damage or destruction such sum (not exceeding the amount required to make good such expense, loss, damage or destruction) as may be specified in such order.

(2) When a man of the Permanent Defence Force or a man of the Reserve Defence Force called out on permanent service signs a confession that he has been guilty of the offence of desertion or fraudulent enlistment and evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession signed by the commanding officer of the man shall be entered in the service books, and such man shall continue to do duty in the service corps in which he may then be serving or to which he may be transferred until he is discharged or, if he is a man of the Permanent Defence Force, is transferred to the Reserve Defence Force or until legal proof can be obtained of the truth or falsehood of such confession.

Summoning of civilian witnesses before authorised officers and commanding officers. [s. 183: 18/1954]

183. (1) Every person not subject to military law required to give evidence before an authorised officer or a commanding officer investigating a charge under this Chapter may be summoned or ordered in the prescribed manner to attend as a witness before the authorised officer or the commanding officer.

(2) If any person not subject to military law on being duly summoned or ordered to attend as a witness before an authorised officer or a commanding officer and after payment or tender of the reasonable expenses of his attendance makes default in attending, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £100.

Affecting provisions (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

(non-textual) — 8/1987, s. 8(2), (4) —

[8/1987 — s. 8(2), (4) Defence (Amendment) Act 1987]

Production of documents in evidence.

8. (2) A person summoned or ordered under section 183 (1) of the Principal Act to attend as a witness before an authorised officer or a commanding officer investigating a charge under Chapter IV of Part V of that Act may by letter signed by such authorised officer or commanding officer, as may be appropriate, be required to produce to such officer any document, record or other thing in the person's power or control being a document, record or other thing which is either specified in the letter or is of a class or description so specified and being in either case a document, record or other thing which such officer considers necessary for the purposes of the investigation.

8. (4) Any person, not being a person subject to military law, who without just cause or excuse fails or refuses to produce a document, record or other thing, the production of which is required under subsection (2) of this section, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

Regulations in relation to investigation and summary disposition of charges. [s. 184: 18/1954]

184. (1) For the purposes of this Chapter, the Minister may make regulations, not inconsistent with this Act, in relation to all or any of the following matters, that is to say:—

- (a) the officers in whom are to be vested the powers and duties of authorised officers and commanding officers under this Chapter and the officers in whom may be vested by delegation the powers and duties of subordinate officers under this Chapter,
- (b) the offences that may be summarily dealt with after reference to superior authority,
- (c) the offences that may be summarily dealt with without reference to superior authority,
- (d) the delegation to a subordinate officer of power to deal summarily with a case,
- (e) the reference back by officers having power to convene courts-martial of charges for summary disposal,
- (f) the time from which summary awards take effect and the manner in which they are to be carried out,
- (g) any person, matter or thing referred to in this Chapter as prescribed,
- (h) any other matter or thing necessary for carrying this Chapter into effect.

(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after such regulation is made and, if a resolution annulling such regulation is passed by either House of the Oireachtas within the next subsequent twenty-one days on which that House has sat after such regulation has been laid before it, such regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under such regulation.

CHAPTER V.*Courts-martial.*

Affecting provision (non-textual) — 19/1983, s. 20(1) —

[19/1983 — s. 20 Courts-Martial Appeals Act 1983]**Convictions and sentences of the Court, etc.**

20.- (1) Where on any appeal the Court substitutes a conviction of a different offence or substitutes a different sentence, that conviction or sentence shall, for the purposes of the Defence Acts 1954 to 1979, and any instrument made thereunder, be deemed to be a duly confirmed finding or sentence of a court-martial.

(2) Notwithstanding section 206 of the Act of 1954, the Court may by order provide for the date on which a sentence substituted by it, or passed by a court-martial and not varied by the Court, shall commence or take effect.

Note: "Court" (as defined in s. 3 of 19/1983) means the Courts-Martial Appeals Court established by section 9 of the Act of 1983.

Acquittal or conviction to bar subsequent trial by court-martial. [s. 185: 18/1954]

- 185.** (1) Where—
- (a) a person subject to military law has been acquitted of an offence by a court-martial, or
 - (b) a person subject to military law has been found guilty of an offence by a court-martial and the finding has been confirmed,

he shall not be liable to be tried again by a court-martial in respect of that offence.

(2) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried again by a court-martial in respect of that offence.

- (3) Where—
- (a) a person subject to military law is charged with an offence against military law, and
 - (b) the charge is dealt with under Chapter IV of this Part either by being dismissed or being summarily dealt with,

such person shall not be liable to be tried by court-martial in respect of that offence.

Classes of courts-martial. [s. 186: 18/1954]

- 186.** Courts-martial shall be of two classes, namely, general courts-martial and limited courts-martial.

Convening of courts-martial. [s. 187: 18/1954]

- 187.** (1) Each of the following persons shall have power to convene a general court-martial, that is to say:—

- (a) the Minister,
- (b) any officer (holding the army rank of colonel or the naval rank of captain or higher commissioned rank) authorised in that behalf by warrant of the Minister.

(2) Each of the following persons shall have power to convene a limited court-martial, that is to say:—

- (a) an officer who has power to convene a general court-martial,
- (b) any officer authorised in that behalf by warrant of an officer who has power to convene a general court-martial.

(3) A warrant under this section may be made subject to such restrictions, reservations, exceptions and conditions as, if the warrant is made under subsection (1) of this section, the Minister or, if the warrant is made under subsection (2) of this section, the officer making it thinks fit.

(4) A warrant under this section may be addressed to an officer by name or by designation of his office or partly in one way and partly in another, and may or may not, according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to a person for the time being performing the duties of the office named or be extended to the successors in office of an officer.

(5) In this Act, the expression “the convening authority” when used in relation to a court-martial means the person by whom such court-martial is convened.

Special powers of convening authorities. [s. 188: 18/1954]

- 188.** Where an order has been made for the trial by court-martial of a person accused of an offence against military law, the offence shall be taken to be prosecuted at the suit of the convening authority, and accordingly the convening authority shall, in addition to any other powers conferred on him by or under this Act, have, in respect of that offence, powers similar to those conferred by law on the Attorney General in respect of offences triable on indictment before a civil court.

Constitution of general courts-martial. [s. 189: 18/1954]

- 189.** (1) A general court-martial shall consist of—
- (a) a president who, subject to subsection (2) of this section, shall be an officer holding the army rank of colonel or the naval rank of captain or higher commissioned rank, and shall be appointed by the convening authority, and
 - (b) not less than four other members each of whom shall be an officer holding the army rank of captain or the naval rank of lieutenant or higher commissioned rank, and shall be appointed by the convening authority.
- (2) The following provisions shall apply in relation to the president of a general court-martial—
- (a) where the person to be tried is an officer, the president shall in no case be an officer holding a rank lower than that of such person;
 - (b) where it appears to the convening authority that an officer holding the army rank of colonel or the naval rank of captain or higher commissioned rank is, having

due regard to military exigencies and the public service, not available to act as president, the convening authority may, upon endorsing a certificate to that effect on the order convening the general court-martial, appoint, subject however to paragraph (a) of this subsection, as president an officer holding the army rank of captain or the naval rank of lieutenant or higher commissioned rank,

(3) Where the person to be tried by a general court-martial holds a commissioned naval rank or a non-commissioned naval rank, then, at least one member of the court-martial shall be a person holding commissioned naval rank.

(4) (a) There shall be in attendance at a general court-martial a judge-advocate.

(b) The judge-advocate at a general court-martial shall—

(i) be appointed by the prescribed authority,

(ii) be an officer and either a barrister-at-law or a solicitor, and

(iii) perform such duties as may be prescribed.

Constitution of limited courts-martial. [s. 190: 18/1954]

190. (1) A limited court-martial shall consist of—

(a) a president who, subject to subsection (2) of this section, shall be an officer holding the army rank of commandant or the naval rank of lieutenant-commander or higher commissioned rank, and shall be appointed by the convening authority, and

(b) not less than two other members each of whom shall be an officer holding the army rank of lieutenant or the naval rank of sub-lieutenant or higher commissioned rank, and shall be appointed by the convening authority.

(2) Where it appears to the convening authority that an officer holding the army rank of commandant or the naval rank of lieutenant-commander or higher commissioned rank is, having due regard to military exigencies and the public service, not available to act as president of a limited court-martial, the convening authority may, upon endorsing a certificate to that effect on the order convening the limited court-martial, appoint as president an officer holding the army rank of captain or the naval rank of lieutenant.

(3) Where the person to be tried by a limited court-martial holds a non-commissioned naval rank, then, at least one member of the court-martial shall be a person holding commissioned naval rank.

(4) (a) There shall be in attendance at a limited court-martial a judge-advocate.

(b) The judge-advocate at a limited court-martial shall—

- (i) be appointed by the convening authority,
- (ii) be an officer, and
- (iii) perform such duties as may be prescribed.

Disqualifications for membership of courts-martial and for acting as judge advocate. [s. 191: 18/1954]

- 191.** (1) An officer who convenes a court-martial shall not sit on that court-martial.
- (2) None of the following persons shall be qualified to serve as a member of, or to act as judge-advocate at, any court-martial, that is to say:—
- (a) an officer who has examined into or advised on the matters on which the charge against the accused is based,
 - (b) the prosecuting officer,
 - (c) an officer who is a witness for the prosecution,
 - (d) any officer who investigated the charge against the accused or took down any summary or abstract of evidence in the case, or who was a member of a court of inquiry respecting the matters on which the charge against the accused is based,
 - (e) the commanding officer of the accused,
 - (f) any officer who has a personal interest in the case,
 - (g) any officer who is not for the time being subject to military law,
 - (h) an officer who, in an advisory capacity, dealt with the charges to be tried by the court-martial or the evidence to be produced at the court-martial or the conduct of the prosecution at the court-martial.

Jurisdiction of courts-martial. [s. 192: 18/1954]

- 192.** (1) Subject to the provisions of this Act, a court-martial, whether general or limited, shall have jurisdiction to try and punish any person for an offence against military law committed by such person while subject to military law as an officer or a man.
- (2) A limited court-martial shall not have jurisdiction—
- (a) to try any person for any offence against military law committed by such person while subject to military law as an officer, or
 - (b) to try any person who is for the time being an officer, or
 - (c) to try any person for the offence of treason or murder or genocide, or an offence under the Criminal Justice (United Nations Convention Against Torture) Act 2000 or an offence under the Criminal Justice (Safety of United Nations Workers) Act 2000.
 - (d) to award to any person any sentence greater than imprisonment for a term of two years.
- (3) A court-martial shall not have jurisdiction to try any person subject to military law for the offence of treason, murder, genocide, an offence under the Criminal Justice (United Nations Convention against Torture) Act 2000, an offence under the Criminal

Justice (Safety of United Nations Workers) Act 2000, manslaughter, rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) unless such offence was committed while such person was on active service.

- (4) (a) The Minister, with the concurrence of the Minister for Justice, may make regulations with regard to the exercise of the jurisdiction conferred on courts-martial by section 169 and may in particular by the regulations provide that the exercise of such jurisdiction shall depend on the consent of such civil authority as may be specified in the regulations.
- (b) A certificate under the hand of the officer convening a court-martial for the trial of a civil offence certifying that as respects such trial the consent referred to in paragraph (a) of this subsection has been obtained shall be *prima facie* evidence of that fact.

Affecting Provisions (textual) — 28/1973, s. 5;

16/1990, s. 7, sch. 1, par. 4;

32/1990, ss. 22(3) (commencement), 19(b);

14/1997, ss. 1 (commencement), 14, sch. 2, par. 7;

11/2000, s. 6(b);

16/2000, s. 6(b).

(non-textual) — 44/1960, s. 4(5) —

[44/1960 — s. 4(5) Defence (Amendment) (No. 2) Act 1960]

4.(5) Regulations made under subsection (4) of section 192 of the Principal Act and providing that the exercise of the jurisdiction conferred on courts-martial by section 169 of the Principal Act shall depend on the consent of a civil authority specified in the regulations shall not apply in relation to the exercise of that jurisdiction by a court-martial for the trial of a member of the Permanent Defence Force for an offence committed by him while serving outside the State with an International United Nations Force.

Note: Both provisions affected by (non-textual) — 18/1993, s. 3 —

[18/1993 — s. 3 Defence (Amendment) Act 1993]

Application of certain provisions of Principal Act and Act of 1960.

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

(2) The provisions of the Principal Act specified in the said section 4 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of the Act of 1960) was a reference to an International United Nations Force.

Dissolution of courts-martial. [s. 193: 18/1954]

- 193.** (1) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.
- (2) Where after the commencement of the trial the president of a court-martial dies or is otherwise unable to attend and the court is not reduced below the legal minimum, the following provisions shall have effect, that is to say:—
- (a) in case the senior member of the court-martial is qualified to be appointed president of the court-martial, the convening authority may appoint such senior member to be president of the court-martial, and the trial may proceed accordingly;
 - (b) in case such senior member is not qualified to be appointed president of the court-martial or, being qualified, is not so appointed, the court-martial shall be dissolved.
- (3) If, on account of the illness of the accused at any time before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.
- (4) Where a court-martial is dissolved under this section, the accused may be tried again.
- (5) In this section, the expression “the legal minimum” means—
- (a) in relation to a general court-martial, five members (including the president),
 - (b) in relation to a limited court-martial, three members (including the president).

Admission to courts-martial. [s. 194: 18/1954]

- 194.** (1) Subject to subsections (2), (3) and (4) of this section, courts-martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.
- (2) Where the convening authority or the president of a court-martial considers that it is expedient in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the proceedings of the court-martial.
- (3) Witnesses, other than the prosecutor and the accused person, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court-martial.
- (4) On any deliberation amongst the members of a court-martial, no person shall be present except the members, the judge-advocate and any officers under instruction, and the court-martial may either retire or cause the place where they sit to be cleared of all other persons not entitled to be present.

Divers matters of procedure [s. 195: 18/1954]

- 195.** (1) A court-martial may adjourn from time to time and from place to place.
- (2) A court-martial may, if it thinks fit, view any place.

Counsel at courts-martial. [s. 196: 18/1954]

- 196.** (1) The prosecutor at a court-martial may be represented by counsel.
- (2) Any person being tried by a court-martial may be represented by counsel or, if not represented by counsel, by an officer subject to military law.
- (3) Any conduct of counsel which would be liable to censure or would be contempt of court if it took place before the High Court shall be likewise deemed liable to censure or be deemed contempt of court in the case of a court-martial, and rules prescribed for practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial and any wilful disobedience of such rules shall be professional misconduct and if persevered in be deemed contempt of court.
- (4) Where a counsel at a court-martial is guilty of conduct liable to censure or is guilty of contempt of court, the president of the court-martial may certify the offence of such counsel under his hand to the High Court, and the High Court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of such counsel in like manner as if he had been guilty of contempt of the High Court.
- (5) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may in the opinion of the court require his removal from court, but in every such case the president shall certify the offence to the High Court under the immediately preceding subsection.
- (6) In this section, the word “counsel” means a person who is either a barrister-at-law or a solicitor.

Challenges by accused. [s. 197: 18/1954]

- 197.** (1) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court-martial, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer, so that the court-martial may be constituted of officers to whom the accused makes no reasonable objection.
- (2) Every objection made by an accused to any officer shall be submitted to the other officers appointed to form the court-martial.
- (3) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court-martial, shall be allowed, and the court-martial shall adjourn for the purpose of the appointment of another president.

(4) If an objection to the president is allowed, the convening authority shall appoint another president, subject to the same right of the accused to object.

(5) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court-martial shall be read over in the hearing of the accused on their first assembling and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

Voting at courts-martial on questions other than objections to members of the court. [s. 198: 18/1954]

198. (1) Subject to the provisions of this section, every question arising at a court-martial after the commencement thereof shall be decided by a majority of the members of such court-martial.

(2) *Repealed by 16/1990, s. 7, sch. 1, par. 4.*

(3) In case of equality of votes of the members of a court-martial on any question arising after the commencement of the court-martial, the following provisions shall, subject to the immediately preceding subsection, have effect, that is to say:—

(a) in case such question is the finding, the accused shall be acquitted;

(b) in any other case, the president of the court-martial shall have a second or casting vote.

(4) This section shall not apply to any objection to a member of a court-martial made under section 197.

Swearing of court. [s. 199: 18/1954]

199. (1) When a court-martial is constituted with the proper number of officers who are not objected to or the objections to whom have been over-ruled, the following provisions shall have effect, that is to say:—

(a) an oath in the prescribed form shall be administered by the prescribed person to each member of the court-martial;

(b) an oath in the prescribed form shall be administered by the prescribed person to the judge-advocate, to every officer in attendance for the purposes of instruction, and to every interpreter and shorthand writer or other note-taker in attendance.

(2) If a person by this section required to take an oath objects to take an oath or is objected to as incompetent to take an oath, the court-martial shall, if satisfied of the

sincerity of the objection or, where the competence of a person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, permit such person, instead of being sworn, to make a solemn declaration in the prescribed form, and for the purposes of this Act such declaration shall be deemed to be an oath.

(3) For the purposes of this section, different forms of oath and declaration may be prescribed for members of a court-martial, a judge-advocate, officers attending for instruction, interpreters and shorthand writers or other note-takers, and different persons may be prescribed to administer oaths and to take declarations.

Evidence to be on oath. [s. 200: 18/1954]

200. (1) Every witness before a court-martial shall be examined on oath which the president or other prescribed person shall administer in the prescribed form.

(2) If a person by this Act required as witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath or is objected to as incompetent to take an oath, the court-martial shall, if satisfied of the sincerity of the objection or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience, of such person, permit such person, instead of being sworn, to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

Evidence at courts-martial. [s. 201: 18/1954]

201. (1) The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are for the time being followed in civil courts.

(2) (a) In this subsection, the expression “summary of evidence” means evidence in relation to a charge against an accused taken down in writing in accordance with rules of procedure in that behalf.

(b) Where a statement of evidence given on oath by a witness against an accused is contained in a summary of evidence—

(i) subject to subparagraph (ii) of this paragraph, the statement may be read as evidence at the trial of the accused by court-martial, if it is proved that—

(I) the witness is dead or insane or so ill as to be unable to attend the trial, and

(II) the statement was made in the presence of the accused, and

(III) the accused or his counsel or representative had an opportunity of cross-examining the witness,

(ii) if the witness is insane or so ill as to be unable to attend the trial, the statement shall not be read without the accused’s consent.

(3) No person shall at any proceedings before a court-martial be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

Insanity of accused at time of trial. [s. 202: 18/1954]

202. (1) Where at the trial by court-martial of a person charged with an offence it appears that such person is by reason of insanity unfit to take his trial, the following provisions shall have effect, that is to say:—

- (a) the court-martial shall find specially that fact;
- (b) the court-martial shall order that such person be kept in custody in an institution suitable for the detention of such person until such time as he is fit to take his trial or until his release is sooner ordered by the Minister or the High Court, which court shall for that purpose have all the powers which a judge of the Central Criminal Court would have had if the case had been tried before him.
- (c) *Repealed by 19/1983, s. 5(a).*

(2) A finding under this section shall not require confirmation or be subject to revision.

Affecting provisions (textual) — 19/1983, s. 5;

(non-textual) — 17/1981, ss. 2 (commencement), 50 —

[17/1981 — s. 50 Health (Mental Services) Act 1981]

Saver for specified enactments.

50.—(1) *Nothing in this Act shall affect any power exercisable immediately before the commencement of this section under any enactment specified in subsection (2) and no power, restriction or prohibition contained in this Act shall apply in relation to a person detained under any such specified enactment.*

(2) The specified enactments are ...

(h) sections 202 and 203 of the Defence Act 1954.

Insanity of accused at time of commission of offence. [s. 203: 18/1954]

203. (1) Where at the trial by court-martial of a person charged with an offence it appears that such person did the act or made the omission charged, but was insane at the time when he did the said act or made the said omission, the following provisions shall have effect, that is to say: —

- (a) the court-martial shall find specially that the accused was guilty of the act or omission charged but was insane at the time he did the act or made the omission;
- (b) the court-martial shall order that such person be kept in custody in an institution suitable for the detention of such person until further order of the High Court, which court shall for that purpose

have all the powers which a judge of the Central Criminal Court would have had if such person had been tried before him.

(c) *Repealed by 19/1983, s. 6(a).*

(2) A finding under this section shall not require confirmation or be subject to revision.

Affecting provisions (textual) — 19/1983, s. 6;

(non-textual) — 17/1981, ss. 2 (commencement), 50 —

[17/1981 — s. 50 Health (Mental Services) Act 1981]

Saver for specified enactments.

50. (1) *Nothing in this Act shall affect any power exercisable immediately before the commencement of this section under any enactment specified in subsection (2) and no power, restriction or prohibition contained in this Act shall apply in relation to a person detained under any such specified enactment.*

(2) *The specified enactments are ...*

(h) sections 202 and 203 of the Defence Act 1954.

Finding of acquittal. [s. 204: 18/1954]

204. A finding of acquittal by a court-martial, whether on all or any one or more of the charges with which the accused is charged, shall not require confirmation or be subject to revision and shall be pronounced at once in open court, and, if it relates to all the charges with which the accused is charged before the court-martial, the accused shall be released.

Conviction for offence other than that charged. [s. 205: 18/1954]

205. (1) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.
- (2) An accused charged before a court-martial with attempting to desert may be found guilty of being absent without leave.
- (3) An accused charged before a court-martial with any one of the offences mentioned in section 132 may be found guilty of any other offence mentioned in that section.
- (4) An accused charged before a court-martial with any one of the offences mentioned in section 133 may be found guilty of any other offence mentioned in that section.
- (5) An accused charged before a court-martial with stealing may be found guilty of embezzlement or fraudulently misapplying property.
- (6) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying property.
- (7) An accused charged before a court-martial with any other offence against military law may, on failure of proof of an offence being committed under circumstances involving

a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

(8) Where an accused is charged before a court-martial with a civil offence and the charge is one upon which, if he had been tried by a civil court, he might have been found guilty of any other offence, the court-martial shall have power to find him guilty of that other offence.

Effective dates of sentences by courts-martial. [s. 206: 18/1954]

206. (1) Every term of imprisonment or detention to which a person is sentenced by a court-martial, whether the sentence has or has not been revised and whether such person is already undergoing sentence or not, shall, save as otherwise expressly provided in this Act, be reckoned to commence on the day on which the original sentence was signed by the president of the court-martial or on such earlier date as the court-martial may direct.

(2) Each of the following sentences—

- (a) dismissal with ignominy from the Defence Forces,
- (b) dismissal from the Defence Forces,
- (bb) reduction to a lower commissioned army rank, or to a lower commissioned naval rank,
- (c) discharge with ignominy from the Defence Forces,
- (d) discharge from the Defence Forces,
- (e) reduction to a lower non-commissioned army rank, or to a lower non-commissioned naval rank,

shall take effect on and from a date to be fixed in the manner prescribed.

Affecting provisions (textual) — 8/1987, s. 11;

14/1997, ss. 1 (commencement), 14, sch. 2, par. 4;

(non-textual) — 19/1983, s. 20(2) —

[19/1983 — s. 20(2) Courts-Martial Appeals Act 1983]

Convictions and sentences of the Court, etc.

20.— (2) Notwithstanding section 206 of the Act of 1954, the Court may by order provide for the date on which a sentence substituted by it, or passed by a court-martial and not varied by the Court, shall commence or take effect.

Note: “Court” (as defined in s. 3 of 19/1983) means the Courts-Martial Appeals Court established by section 9 of the Act of 1983.

Summoning and privilege of witnesses at courts-martial. [s. 207: 18/1954]**207.**

(1) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2) Every person attending in pursuance of such summons or order as a witness before any court-martial shall during his necessary attendance in or on such court-martial and in going to and returning from the same have the same privilege from arrest as if he were a witness before the High Court.

(3) For the purposes of this and section 208 (except subsection (2) thereof)—

- (a) the expression “a court-martial” shall be deemed to include an officer taking a written summary of evidence in accordance with regulations made under section 184, and
- (b) references to the president or members of the court-martial shall be construed as including references to such officer.

Affecting provisions (non-textual) — 8/1987, 8(1), (3) —

[8/1987 — s. 8(1), (3) Defence (Amendment) Act 1987]**Production of documents in evidence.**

8.— (1) *A person summoned or ordered under section 207 of the Principal Act to give evidence before a court-martial may by letter signed by the president of the court-martial be required to produce to such court-martial any document, record or other thing in his power or control being a document, record or other thing which is either specified in such letter or is of a class or description so specified and being in either case a document, record or other thing required as evidence at such court-martial.*

8. (3) *Subsection (3) of section 207 of the Principal Act shall apply for the purposes of subsection (1) of this section as it applies for the purposes of the said section 207.*

Contempt of court-martial. [s. 208: 18/1954]**208.**

(1) *If any person not subject to military law —*

- (a) *having been duly summoned as a witness before a court-martial, without just cause or excuse disobeys the summons, or*
- (b) *being in attendance as a witness at a court-martial, without just cause or excuse fails or refuses to take an oath or make a solemn declaration when legally required by the court-martial to do so, or to produce any document, record or other thing in his power or control legally required by the court-martial to be produced by*

him, or to answer any question to which the court-martial may legally require an answer, or

- (c) *does anything, whether at the court-martial or otherwise, which, if the court-martial were a civil court having power to commit for contempt, would be contempt of court,*

the person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

- (2) (a) If any person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language or by causing any interruption or disturbance in the proceedings of the court-martial, the court-martial, if they think it expedient, instead of the offender being tried by court-martial, may by order under the hand of the president order the offender to be imprisoned, or, in the case of a man, to undergo detention, for a period not exceeding twenty-one days or, in either case, to be fined.
- (b) Chapter VII of this Part shall not apply to an order under paragraph (a) of this subsection.

Affecting provisions (textual) — 8/1987, s. 12;

Note: The amendment made by s.12 is italicised as it has effect only in relation to offences committed after 24 June 1987 (8/1987, s. 16)

14/1997, ss.1 (commencement), 14, sch. 2, par. 8.

CHAPTER VI.

Punishments awardable by Courts-martial for Offences against Military Law.

Punishments which may be awarded to officers by courts-martial. [s. 209: 18/1954]

- 209.** (1) Punishments may be awarded, in respect of offences against military law committed by persons subject to military law as officers and convicted by court-martial, according to the following scale, that is to say:—

SCALE.

- A. Imprisonment for life or any specified period.
- B. *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 9.*
- C. *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 9.*
- D. Dismissal with ignominy from the Defence Forces.
- E. Dismissal from the Defence Forces.

E1. Where the person convicted is an officer, reduction to, —

- (a) *if he holds a commissioned army rank, any lower commissioned army rank,*
or
 (b) *if he holds a commissioned naval rank, any lower commissioned naval rank.*

F. Forfeiture in the prescribed manner of seniority of rank, either in the Defence Forces or in the portion thereof in which the offender is serving or in both, or, in the case of an officer whose promotion depends on the length of service, forfeiture of all or any part of his service for the purpose of promotion.

G. *A fine not exceeding —*

- (a) in case the person convicted is an officer, an amount equal to ten days' pay of that officer, or*
- (b) in case the person convicted is not an officer but was an officer when the offence was committed, an amount equal to ten days' pay of that person as an officer, or*
- (c) in any other case, an amount equal to the maximum fine awardable for the time being by a court-martial to an officer holding the rank of second-lieutenant who is in receipt of the maximum pay applicable to that rank*

H. Severe reprimand

I. Reprimand.

(2) For the purposes of this Act in its application to a person subject to military law as an officer, any punishment mentioned in the Scale to subsection (1) of this section shall be deemed to be a punishment less than any punishment mentioned before it in the said Scale.

(3) Where—

- (a) a person subject to military law as an officer is convicted by court-martial of an offence against military law mentioned in any section contained in Chapter II of this Part, and*
- (b) such section provides that on such conviction he shall be liable to suffer a specified punishment or any less punishment awardable by a court-martial,*

the expression “any less punishment awardable by a court-martial” means in such section any punishment mentioned in the Scale to subsection (1) of this section which is less than the specified punishment.

(4) Save as is otherwise expressly provided in this Act, a person convicted by court-martial of having committed an offence against military law while subject to military law as an officer shall be sentenced to one punishment only.

(5) Where a court-martial proposes to sentence an officer to imprisonment the court-martial shall, before sentencing him to imprisonment (otherwise than under subsection

(2) of section 208), sentence him to dismissal with ignominy from the Defence Forces or dismissal from the Defence Forces and then sentence him to imprisonment.

(6) An officer sentenced by a court-martial to a fine may be also sentenced to severe reprimand or reprimand.

(6A) An officer sentenced by a court-martial to reduction in rank may also be sentenced to a fine or severe reprimand or reprimand.

(7) An officer sentenced by a court-martial to forfeiture of seniority of rank may be also sentenced to a fine or severe reprimand or reprimand.

(8) An officer dismissed with ignominy from the Defence Forces shall —

(a) be disqualified for ever serving the State again in any military capacity, and

(b) during the period of seven years beginning on the date of his dismissal, subject to subsection (9) of this section, be disqualified for serving the State in any civil capacity.

(9) Where a person by reason of this section is for the time being disqualified for serving the State in any civil capacity, the Government may, in their absolute discretion, remove the disqualification.

Affecting provisions (textual) — 8/1987, s. 4(1);

Note: The amendments made by s. 4 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s.16)

14/1997, ss. 1 (commencement), 14, sch. 2, par. 9 & 10.

16/1990, s. 7, sch. 1, par 4;

Punishments which may be awarded to men by courts martial. [s. 210: 18/1954]

210. (1) Punishments may be awarded, in respect of offences against military law committed by persons subject to military law as men and convicted by court-martial, according to the following scale, that is to say:—

SCALE.

A. Imprisonment for life or any specified period.

B. *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 11.*

C. *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 11.*

D. Discharge with ignominy from the Defence Forces.

E. Discharge from the Defence Forces.

F. *Detention for any term not exceeding two years.*

G. Where the person convicted is a non-commissioned officer, reduction to,—

- (a) if he holds a non-commissioned army rank, any lower non-commissioned army rank, or
- (b) if he holds a non-commissioned naval rank, any lower non-commissioned naval rank.

H. *A fine not exceeding,*

- (a) *in case the person convicted is a non-commissioned officer, an amount equal to nine days' pay of that non-commissioned officer, or*
- (b) *in case the person convicted is a private or a seaman, an amount equal to six days' pay of that private or seaman, as may be appropriate, or*
- (c) *in case the person convicted is not a member of the Defence Forces but was a non-commissioned officer when the offence was committed, an amount equal to nine days' pay of that person as a non-commissioned officer, or*
- (d) *in case the person convicted is not a member of the Defence Forces but was a private or a seaman when the offence was committed, an amount equal to six days' pay of that person as a private or a seaman, as may be appropriate, or*
- (e) *in any other case, an amount equal to the maximum fine awardable for the time being by a court-martial to a private of the highest grade who is in receipt of the maximum pay applicable to that rank and Grade.*

I. Where the person convicted is a non-commissioned officer, forfeiture in the prescribed manner of seniority of rank.

J. Severe reprimand.

K. reprimand.

(2) For the purposes of this Act in its application to a person subject to military law as a man, any punishment mentioned in the Scale to subsection (1) of this section shall be deemed to be a punishment less than any punishment mentioned before it in the said Scale.

(3) Where—

- (a) a person subject to military law as a man is convicted by court-martial of an offence against military law mentioned in any section contained in Chapter 11 of this Part, and
- (b) such section provides that on such conviction he shall be liable to suffer a specified punishment or any less punishment awardable by a court-martial,

the expression “any less punishment awardable by a court-martial” means in such section any punishment mentioned in the Scale to subsection (1) of this section which is less than the specified punishment.

(4) Save as is otherwise expressly provided in this Act, a person convicted by court-martial of having committed an offence against military law while subject to military law as a man shall be sentenced to one punishment only.

(5) For the purposes of commutation and revision of punishment, detention shall not be deemed to be less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(6) Where a court-martial proposes to sentence a man to imprisonment for a term exceeding two years, the court-martial shall, before sentencing him to imprisonment for a term exceeding two years, sentence him to discharge with ignominy from the Defence Forces or discharge from the Defence Forces and then sentence him to imprisonment for a term exceeding two years.

(7) Where, a court-martial sentences a man to imprisonment for any term not exceeding two years (otherwise than under subsection (2) of section 208), the court-martial may also sentence him to discharge with ignominy from the Defence Forces or to discharge from the Defence Forces.

(8) Where a court-martial sentences a non-commissioned officer to the punishment mentioned at G or I in the Scale to subsection (1) of this section, the court-martial may also sentence him to a fine or severe reprimand or reprimand.

(9) Where a court-martial sentences a man to detention or severe reprimand or reprimand, the court-martial may also sentence him to a fine.

(10) Where a non-commissioned officer is sentenced by a court-martial to imprisonment for any term not exceeding two years or detention, the court-martial shall also sentence him to reduction to, in case he holds a

non-commissioned army rank, the rank of private or, in any other case, the rank of seaman.

(11) A man discharged with ignominy from the Defence Forces shall

- (a) be disqualified for ever serving the State again in any military capacity, and*
- (b) during the period of seven years beginning on the date of his discharge, subject to subsection (12) of this section, be disqualified for serving the State in any civil capacity.*

(12) Where a person by reason of this section is for the time being disqualified for serving the State in any civil capacity, the Government may, in their absolute discretion, remove the disqualification.

Affecting provisions (textual) 8/1987, s. 4(2);

Note: The amendments made by s. 4 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s. 16)

16/1990, s. 7, sch. 1, par. 4;

14/1997, ss. 1 (commencement), 14, sch. 2, par. 11 & 12.

One sentence to be awarded in respect of all offences. [s. 211: 18/1954]

211. Where a person is found guilty by a court-martial of two or more offences against military law, the following provisions shall have effect, that is to say:—

- (a) the court-martial shall, if it awards any sentence, award one sentence only in respect of all the offences, and
- (b) such sentence shall be one which may, under this Act, be awarded in respect of any one of such offences.

Restriction on sentence of imprisonment and detention on person already undergoing imprisonment or detention. [s. 212: 18/1954]

212. Where—

- (a) a person is convicted by a court-martial of an offence against military law, and
- (b) the court-martial proposes to sentence such person to imprisonment or detention, and
- (c) such person is at the time of sentence undergoing imprisonment or detention under a former sentence,

any sentence of imprisonment or detention awarded by the court-martial shall be served concurrently with the term then unexpired of the former sentence and on completion of either sentence any balance of the other sentence shall be served.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 13;
(non-textual) — 16/1990, s. 7, sch. 1, par. 4 —

[16/1990 — s. 7, sch. 1, par. 4 (m) Criminal Justice Act 1990]

Sch. 1, par. 4. (m) — section 212 shall not apply to a sentence of imprisonment for life;

Order by court-martial for payment of compensation. [s. 213: 18/1954]

- 213.** (1) Where—
- (a) a person subject to military law is convicted by a court-martial of an offence against military law, and
 - (b) such offence occasioned any expense, loss, damage or destruction,

the court-martial may, in lieu of or in addition to any punishment which it is authorised by this Act to award in respect of the offence, direct that there shall be paid by the offender as compensation for the expense, loss, damage or destruction so occasioned such sum (not exceeding that amount required to make good such expense, loss, damage or destruction) as the court-martial may direct.

(2) A direction under subsection (1) of this section shall, for the purposes of this Act, be deemed to be a sentence of a court-martial.

Restoration of seniority lost and service forfeited by sentence of a court-martial. [s. 214: 18/1954]

- 214.** The Minister may restore the whole or any part of any seniority of rank or service forfeited by sentence of a court-martial in the case of an officer or man who may perform good and faithful service or who may otherwise be deemed by the Minister to merit such restoration.

CHAPTER VII.

Action on Findings and Sentences of Courts-martial.

Findings and sentences not to be valid unless confirmed. [s. 215: 18/1954]

- 215.** Subject to sections 202 to 204, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by a confirming authority under this Chapter.

Affecting provision (textual) — 19/1983, s. 7.

Confirming authorities. [s. 216: 18/1954]

- 216.** (1) Each of the following authorities shall have power to confirm the findings and sentences of courts-martial—

- (a) in the case of a general court-martial, any officer (holding the army rank of colonel or the naval rank of captain or higher commissioned rank) authorised by warrant of the Minister to confirm the findings and sentences of general courts-martial,
- (b) in the case of a limited court-martial,
 - (i) any officer authorised by warrant of the Minister to confirm the findings and sentences of limited courts-martial,
 - (ii) any officer for the time being authorised to convene a limited court-martial.

(2) A warrant under this section may be made subject to such restrictions, reservations, exceptions and conditions as the Minister thinks fit.

(3) A warrant under this section may be addressed to an officer by name or by designation of his office or partly in one way and partly in another and may or may not, according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to a person for the time being performing the duties of the office named or be extended to the successors in office of an officer.

(4) An officer who was a member of a court-martial shall not have power to confirm the finding or the sentence of such court-martial.

(5) In this Act, the expression “confirming authority” when used in relation to a general court-martial or a limited court-martial, means a person authorised by virtue of this section to confirm the finding and sentence of such court-martial.

Reference of finding and sentence by confirming authority to superior confirming authority. [s. 217: 18/1954]

- 217.** An authority having power to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly and refer such finding and sentence or the part not confirmed to any officer holding higher commissioned rank having power to confirm the findings and sentences of courts-martial of the like class, and in such case that officer shall for the purposes of this Act be, to the extent of such reference, the authority having power to confirm the finding and sentence of such court martial.

Revision by courts-martial of findings and sentences. [s. 218: 18/1954]

- 218.** (1) An authority having power to confirm the finding and sentence of a court-martial may, once but once only, send back such finding and sentence or either of them for revision.
- (2) Where an authority having power to confirm the finding and sentence of a court-martial sends back such finding and sentence or either of them for revision under this section, the following provisions shall have effect, that is to say:—
- (a) the court-martial shall not on such revision receive any additional evidence;

- (b) where the finding only is sent back for revision the court-martial may also revise the sentence;
- (c) in no case shall the said authority recommend the increase of the sentence, nor shall the court-martial have power to increase the sentence originally awarded.

Powers of confirming authority as to confirmation. [s. 219: 18/1954]

219. (1) Where a person has been found guilty of any charge by a court-martial, the confirming authority may confirm or refuse confirmation either in whole or in part of the original or revised finding or sentence.

(2) Where a confirming authority refuses confirmation of the finding of a court-martial on any charge, the confirming authority may direct that the accused be tried again by court-martial and may give directions as to the charge or charges on which the accused is to be tried again.

Additional powers of confirming authority in relation to sentences passed by courts-martial. [s. 220: 18/1954]

220. (1) The following provisions shall apply in relation to any sentence passed by a court-martial—

- (a) if the sentence is informally expressed, the confirming authority may, when confirming it, vary the form of the sentence so that it shall be properly expressed;
- (b) if the punishment awarded by the sentence is invalid or in excess of that authorised by this Act—
 - (i) in case the offence in respect of which the punishment was awarded was an offence under section 139, the confirming authority may substitute for the sentence a sentence of dismissal with ignominy from the Defence Forces or any less punishment mentioned in the Scale to subsection (1) of section 209, and confirm the sentence so substituted,
 - (ii) in any other case, the confirming authority may substitute for the sentence a sentence of any other punishment which might have been awarded by the court-martial to the offender, and confirm the sentence so substituted.

(2) *Repealed by 16/1990, s. 7, sch. 1, par. 4.*

(3) The following provisions shall apply in relation to a sentence (other than a sentence of imprisonment on conviction of treason or of murder, or attempted murder, to which section 3 of the Criminal Justice Act 1990, applies) passed by a court martial—

- (a) the confirming authority may, when confirming the sentence, mitigate the punishment thereby awarded to a less amount of the same kind of punishment;
- (b) the confirming authority may, when confirming the sentence, remit the punishment thereby awarded in whole or in part;

- (c) if the offence in respect of which the sentence was passed was an offence under section 139, the confirming authority may substitute for the sentence a sentence of any less punishment mentioned in the Scale to subsection (1) of section 209, and confirm the sentence so substituted;
- (d) if the offence in respect of which the sentence was passed was not an offence under section 139, the confirming authority may substitute for the sentence a sentence of any less punishment which might have been awarded by the court-martial to the offender, and confirm the sentence so substituted.

(4) Where under this section a new sentence is substituted for a sentence passed by a court-martial, the new sentence shall have force and effect as if it had been passed by the court-martial in the first instance and the provisions of this Act shall apply accordingly.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Mitigation, remission, etc., of sentences after confirmation. [s. 221: 18/1954]

- 221.** (1) Where a sentence passed by a court-martial has been confirmed, a superior authority may do any one or more of the following things, that is to say:—
- (a) he may mitigate the punishment thereby awarded to a less amount of the same kind of punishment;
 - (b) he may remit such punishment in whole or in part;
 - (c) he may,—
 - (i) in case such punishment is dismissal with ignominy from the Defence Forces or dismissal from the Defence Forces awarded for an offence under section 139, substitute for it any less punishment mentioned in the Scale to subsection (1) of section 209,
 - (ii) in any other case, substitute for it any less punishment to which the offender might have been sentenced by the court-martial by which the sentence was passed.

Provided that —

- (i) the said power of mitigation or remission shall not, in the case of a sentence of imprisonment passed on a person on conviction of treason or of murder, or attempted murder, to which section 3 of the Criminal Justice Act 1990, applies, be exercisable before the expiration of the minimum period specified by the court-martial under section 4 of that Act, as applied by section 169A of this Act, less any reduction of that period under paragraph (ii) of this proviso, and

- (ii) the rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence passed on him on conviction of treason or of murder, or attempted murder, to which the said *section 3* applies as if he had been sentenced to a term of imprisonment equal to the minimum period specified by the court-martial under the said *section 4*, as applied by *section 169A* of this Act, and that period shall be reduced by the amount of any remission which he has so earned.

(2) Where a sentence passed by a court-martial has been confirmed and is found for any reason to be invalid, a superior authority may pass a valid sentence and the sentence so passed shall have the same effect as if passed by the court-martial and duly confirmed, but the punishment awarded by that sentence shall not be higher in the Scale to subsection (1) of section 209, or subsection (1) of section 210 (whichever of those subsections is appropriate) than the punishment awarded by the invalid sentence nor, in the opinion of the said superior authority, be in excess of the last-mentioned punishment.

(3) Each of the following shall be a superior authority for the purposes of this section—

- (a) the Minister,
- (b) the Adjutant-General,
- (c) any general or flag officer appointed by the for the purpose.

Affecting provision (textual)- 16/1990, s. 7, sch. 1, par. 4.

Date of commencement of sentences of imprisonment or detention imposed by way of substitution.
[s. 222: 18/1954]

222. Where a sentence (in this section referred as the original sentence) imposed by a court-martial has had substituted therefor another sentence (in this section referred to as the substituted sentence) of imprisonment or detention, the following provisions shall have effect, that is to say:—

- (a) *Repealed by 16/1990, s. 7, sch. 1, par. 4.*
- (b) the substituted sentence shall be reckoned to commence on the day on which the original sentence was signed by the president of the court-martial or such earlier date as the court-martial may have directed for the commencement of the original sentence.

Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;

14/1997, ss. 1 (commencement), 14, sch. 2, par. 4.

Suspension of sentences of imprisonment or detention passed on men. [s. 223: 18/1954]

- 223.** (1) Where a man is sentenced to imprisonment or detention, the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the man be not committed to prison or a detention barrack until the orders of a superior authority have been obtained.
- (2) A superior authority may in the case of a man sentenced to imprisonment or detention—
- (a) direct that an order for committal to prison or a detention barrack shall not be issued until his orders have been obtained,
 - (b) suspend the sentence passed on the man, whether or not he has already been committed to prison or a detention barrack.
- (3) Where a sentence of imprisonment or detention is suspended under this section before the man upon whom it was passed has been committed to prison or a detention barrack, he shall be released, and, notwithstanding anything in this Act, the sentence shall not begin to run until he is ordered to be committed to prison or a detention barrack under that sentence.
- (4) Where a sentence of imprisonment or detention is suspended under this section after the man upon whom it was passed has been committed to prison or a detention barrack, he shall be released and the currency of his sentence shall be suspended from the day on which he is released until he is again ordered to be committed to prison or a detention barrack under the same sentence.
- (5) Where a sentence has been suspended under this section, the case may at any time and shall, at intervals of not more than three months, be considered by a superior authority, and if on any such reconsideration it appears to the superior authority that the conduct of the man since his conviction has been such as to justify a remission of the sentence he shall remit it.
- (6) A superior authority may, at any time while a sentence on a man has been suspended under this section, order that the man be committed to prison or a detention barrack and from the date of such order the sentence shall cease to be suspended.
- (7) Where a man, while a sentence on him is suspended under this section, is sentenced to imprisonment or detention for any other offence, then, if that sentence is also suspended under this section, the superior authority ordering the suspension may direct that the two sentences shall run either concurrently or consecutively, so however that the aggregate term of any sentences of detention shall not exceed two consecutive years.
- (8) The powers conferred by this section shall be in addition to and not in derogation of any powers conferred by section 221.
- (9) Each of the following shall be a superior authority for the purposes of this section—

- (a) the Minister,
- (b) the Adjutant-General,
- (c) any general or flag officer appointed by the Minister for the purpose.

(10) This section shall not apply to a sentence of imprisonment on conviction of treason or of murder, or attempted murder, to which section 3 of the Criminal Justice Act 1990, applies.

*Affecting provisions (textual) — 16/1990, s. 7, sch. 1, par. 4;
14/1997, ss. 1 (commencement), 14, sch. 2,
par. 4 & par. 14.*

Quashing of finding of court-martial. [s. 224: 18/1954]

224. (1) Where the finding and sentence of a court-martial in respect of an accused person have been confirmed and it appears to the Minister that the proceedings of the court-martial were illegal, the Minister shall quash the finding, and thereupon the following provisions shall have effect:—

- (a) the whole of the sentence passed by the court-martial shall cease to have effect;
- (b) the Minister may at the same time direct that the accused be tried again for the offence which was the subject of the finding, and in such case the accused may, notwithstanding anything in this Act or any rule of law, be tried by court-martial for such offence and if found guilty punished therefor.

(2) Where the finding and sentence of a court-martial in respect of an accused person have been confirmed and it appears to the Minister that the accused was wrongfully convicted, the Minister may quash the finding of guilty, and thereupon the following provisions shall have effect:—

- (a) if no other finding of guilty by the court-martial in respect of the accused remains, the whole of the sentence passed by the court-martial shall cease to have effect;
- (b) if—
 - (i) another finding (in this subsection referred to as the remaining finding) of guilty by the court-martial in respect of the accused remains, and
 - (ii) any punishment (in this subsection referred to as the original punishment) included in the sentence passed by the court-martial is in excess of the punishment authorised by this Act in respect of the remaining finding or is, in the opinion of the Minister, unduly severe, he may, subject to paragraph (c) of this subsection, substitute another punishment (in this subsection referred to as the substituted punishment) and the substituted punishment shall have effect as if it had been awarded by the court-martial and had been duly confirmed;

(c) the following provisions shall apply in relation to the substituted punishment:—

- (i) it shall not be a punishment which could not have been awarded by the court-martial to the accused in respect of the remaining finding,
- (ii) it shall not be higher in the Scale to subsection (1) of section 209 or subsection (1) of section 210 (whichever of those subsections is appropriate) than the original punishment,
- (iii) *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 15.*
- (iv) if the sentence passed by such court-martial included imprisonment, the substituted punishment, if imprisonment or detention, shall not involve a period of imprisonment or detention exceeding the period comprised in the sentence,
- (v) if the sentence passed by such court-martial included detention, the substituted punishment, if detention, shall not involve a period of detention exceeding the period comprised in the sentence,
- (vi) where the substituted punishment is detention and the original punishment is imprisonment, the term of detention from the date of substitution shall in no case exceed the term of imprisonment remaining to be served.

Affecting provision (non-textual) — 19/1983, s. 8 —

[19/1983 — s. 8 Courts-Martial Appeals Act 1983]

Restriction of section 224 of Act of 1954

8. Section 224 of the Act of 1954 (quashing of finding of court-martial) shall not have effect in relation to the finding or sentence of a court-martial against which the person convicted may, by virtue of an order under section 24 of this Act, appeal to the Court.

Restitution of stolen property. [s. 225: 18/1954]

225. (1) For the purposes of this section, property shall be deemed to have been unlawfully obtained if it was obtained by the commission of an offence against military law.

(2) Where a person has been convicted by court-martial of having unlawfully obtained any property and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial or the Minister may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(3) A like order may be made with respect to any property found in the possession of such offender which appears to the confirming authority or the Minister to have been obtained by the conversion or exchange of any of the property unlawfully obtained.

(4) Moreover where it appears to the confirming authority or the Minister from the evidence given before the court-martial that any part of the property unlawfully obtained was sold to or pawned with any person without any guilty knowledge of the person purchasing or taking in pawn the property, the confirming authority or the Minister may, on the application of that person and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender a sum (not exceeding the amount of the proceeds of the said sale or pawning) shall be paid to the said person purchasing or taking in pawn.

(5) An order under this section shall not bar the right of any person, other than the offender or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

Right to copy of proceedings of court-martial. [s. 226: 18/1954]

226. (1) Any person tried by court-martial shall be entitled on demand at any time, in the case of a general court-martial, within seven years and, in the case of a limited court-martial, within three years after the confirmation of the finding and sentence of the court-martial or after his acquittal, to obtain from the officer or person having the custody of the proceedings of such court-martial, a copy of such proceedings or any specified part thereof upon payment for the same at the prescribed rate, not exceeding four pence for every folio of seventy words or, in such circumstances as may be prescribed, free of charge.

(2) When a person tried by court-martial dies, in the case of a general court-martial, within seven years or, in the case of a limited court-martial, three years after the confirmation of the finding and sentence of the court-martial or after his acquittal, his next of kin shall, within twelve months after his death, be entitled on demand to obtain from the officer or person having the custody of the proceedings of the court-martial a copy of such proceedings or any specified part thereof, upon payment for the same at the rate mentioned in subsection (1) of this section.

(3) The proceedings of a court-martial shall be preserved in the prescribed manner.

(4) For the purposes of this section, the proceedings of a court-martial include the proceedings with respect to revision and confirmation and exhibits.

CHAPTER VIII.

Execution of Sentences.

[s. 227: 18/1954]

227. *Repealed by 16/1990, s. 7, sch. 1, par. 4.*

[s. 228: 18/1954]

228. *Repealed by 14/1997, ss. 1 (commencement), 14, sch. 2, par. 15.*

Execution of sentence of imprisonment or detention. [s. 229: 18/1954]

- 229.** (1) Where a sentence of imprisonment is passed by a court-martial and confirmed, the military prisoner shall undergo sentence as follows:
- (a) if the sentence is for a term exceeding two years, he or she shall, as soon as practicable, be committed to a public prison to undergo sentence;
 - (b) if the sentence is for a term not exceeding two years, he or she shall undergo sentence either in a military prison or detention barrack or in other service custody or in a public prison, or partly in one way and partly in another.
- (2) Where a sentence of detention is passed by a court-martial and confirmed, or is passed by a commanding officer, the person on whom the sentence has been passed shall undergo the term of his detention either in a detention barrack or in service custody, or partly in one way and partly in another, but not in a public prison.
- (3) A military prisoner or a man under sentence of detention may, until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in service custody or in civil custody or partly in service custody and partly in civil custody, and may by order of a competent authority be transferred from service custody to civil custody and from civil custody to service custody as occasion may require.
- (4) An order of a competent authority shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a man under sentence of detention to a detention barrack.
- (5) An order of a competent authority shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or from a detention barrack to prison, or from one prison or detention barrack to another prison or detention barrack, or for the transfer of a man undergoing detention from one prison or detention barrack to another, or for the delivery into service custody of a military prisoner or a man undergoing detention.
- (6) A military prisoner or a man undergoing detention may at any time, if his sentence is remitted, be released by order of a competent authority.
- (7) A military prisoner or a man undergoing detention may, during his conveyance from place to place, be subjected to such restraint as is necessary for his safe conduct and removal.
- (8) A military prisoner while in a public prison shall be confined, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment.
- (9) Where the hospital or place for reception of sick persons in a prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a man undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(10) For the purposes of this section—

- (a) the expression “detention barrack” includes a barrack detention room;
- (b) each of the following shall be a competent authority, namely, the Minister and every prescribed officer, and different officers may be so prescribed for different such purposes.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 16 & 17.

Suspension of currency of sentence where a person escapes or is released without proper authority. [s. 230: 18/1954].

- 230.** Notwithstanding anything contained in this Act, where a person sentenced to imprisonment or detention escapes or is released without proper authority whilst serving such sentence, the currency of such sentence shall be deemed to be suspended from the date on which he escaped or was released without proper authority until he surrenders or is again apprehended, and on such surrender or apprehension he may be recommitted by the prescribed authority to serve the unexpired term of his sentence.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 4.

Duty of governor of prison to receive prisoners. [s. 231: 18/1954]

- 231.** (1) The governor of every prison shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act.
- (2) The governor of every prison shall also receive into his custody for a period not exceeding seven days any man in service custody upon delivery to him of a written order purporting to be signed by the commanding officer of such man.

Establishment of military prisons and detention barracks. [s. 232: 18/1954]

- 232.** (1) It shall be lawful for the Minister to set apart any building or part of a building under the control of the Minister as a military prison or detention barrack and to declare that any such building or part of a building shall be a military prison or a detention barrack, as the case may be.
- (2) The powers of the Minister under this section may, during a period of emergency, be exercised by a prescribed officer.

Regulation of military prisons and detention barracks. [s. 233: 18/1954]

- 233.** (1) The Minister may make rules (in this Act referred to as rules for military prisons and detention barracks) for all or any of the following purposes, that is to say:—
- (a) the government, management and regulation of military prisons and detention barracks;

- (b) the appointment and removal and power of inspectors, visitors, governors and officers thereof;
- (c) the labour of military prisoners and men undergoing detention therein;
- (d) enabling such prisoners or men to earn, by special industry and good conduct, a remission of portion of their sentence;
- (e) the classification of military prisoners and men undergoing detention;
- (f) the safe custody of such prisoners or men, and the maintenance of discipline among them, and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or men;
- (g) the temporary release, in such cases, for such periods and subject to such conditions as may be prescribed by the rules, of such prisoners or men.

(2) Rules under this section shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment or detention more severe than it is, under the law in force for the time being, in any public prison.

(2A) Any power conferred by rules under this section to release a person temporarily shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder, or attempted murder, to which section 3 of the Criminal Justice Act 1990, applies, be exercisable during the period for which the power to mitigate or remit his punishment is prohibited by paragraph (i) of the proviso (inserted by that Act) to section 221 (1) of this Act unless for grave reasons of a humanitarian nature, and any such release shall be only of such limited duration as is justified by those reasons.

(3) Where any person has been temporarily released from a military prison or detention barrack in accordance with rules made under this section the currency of any sentence which he may be serving shall be suspended for the period commencing on the day after the day on which he was released and ending on the day on which he returns to the prison or detention barrack or is otherwise taken into custody under subsection (4) of this section.

(4) If any person who has been temporarily released from a military prison or detention barrack in accordance with rules made under this section fails to comply with any of the conditions subject to which he was released or to return at the expiration of the period for which he was released—

- (a) he may be arrested without warrant by any member of the Garda Síochána or taken into service custody, and may be kept in custody, whether civil or service, until he is taken back to the military prison or detention barrack,
- (b) unless proceedings are taken against him under section 135 or 137, he shall be liable to such punishment as may be prescribed by the rules.

(5) Rules under this section shall provide for applying, with such modifications and adaptations as the Minister thinks proper, in respect of military prisons and detention barracks, the provisions relating to the duties of medical officers contained in section 74 of the Prisons (Ireland) Act 1826, and sections 52 and 53 of the General Prisons (Ireland) Act 1877, and the provisions relating to the duties of gaolers contained in section 54 of the said General Prisons (Ireland) Act 1877.

(6) Every rule made under this section shall be laid before each House of the Oireachtas as soon as may be after such rule is made and, if a resolution annulling such rule is passed by either House of the Oireachtas within the next subsequent twenty-one days on which that House has sat after such rule is so laid before it, such rule shall be annulled accordingly, but without prejudice to the validity of anything previously done under such rule.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 4.

Assisting prisoners in military prisons and detention barracks to escape. [s. 234: 18/1954]

234. Every person who aids any prisoner in escaping or attempting to escape from any military prison or detention barrack, or who, with intent to facilitate the escape of any such prisoner, conveys or causes to be conveyed into any military prison or detention barrack any mask, dress or other disguise or any letter or other article or thing of whatsoever kind shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for any term not exceeding two years.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 18.

Penalty for carrying spirituous liquor, drugs or tobacco into military prisons or detention barracks. [s. 235: 18/1954]

235. Every person who, contrary to the rules for military prisons and detention barracks, brings or attempts by any means whatever to introduce into any military prison or detention barrack any spirituous or fermented liquor or drug or tobacco and every person employed on the staff of any such prison or barrack who suffers any spirituous or fermented liquor or drug or tobacco to be sold or used therein contrary to such rules shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Penalty for carrying letters, etc., into or out of military prisons or detention barracks. [s. 236: 18/1954]

236. Every person who, contrary to the rules for military prisons and detention barracks, conveys or attempts to convey any letter or other document, or any article whatever not allowed by such rules, into or out of such prison or barrack shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £100.

Affecting provision (textual) — 8/1987, s. 2

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Unsoundness of mind of person imprisoned or undergoing detention. [s. 237: 18/1954]

- 237.** If a person imprisoned or undergoing detention by virtue of this Act becomes of unsound mind, then, without prejudice to any other enactment, a Minister of State may, upon a certificate signed by two registered medical practitioners certifying that such person is of unsound mind, order the removal of such person to a mental hospital, there to remain for the unexpired term of his sentence of imprisonment or detention but, upon such person being certified by two registered medical practitioners to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become of unsound mind, there to undergo the remainder of his sentence.

Inquests on persons under sentence dying in military prisons or detention barracks. [s. 238: 18/1954]

- 238.** Whenever a person under sentence dies in a military prison or detention barrack, the following provisions shall have effect, that is to say:—
- (a) the coroner having jurisdiction in the place where such prison or barrack is shall hold an inquest on the body of such person;
 - (b) where it is practicable, one clear day shall intervene between the day of the death and the date of such inquest;
 - (c) such inquest shall be held on the body with a jury;
 - (d) notwithstanding section 5 of the Coroners (Amendment) Act 1927 (No. 1 of 1927), none of the following persons shall be a member of such jury, that is to say:—
 - (i) members of the staff of such prison or barrack,
 - (ii) persons undergoing sentence in such prison or barrack,
 - (iii) persons engaged in any trade or dealing with such prison or barrack.

Provisions as to warrants and orders of military authorities under Chapter VIII of Part V. [s. 239: 18/1954]

- 239.** (1) Where any military prisoner or man undergoing detention is for the time being in custody, whether service custody or civil custody, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such prisoner or man shall not be deemed to be illegal by reason only of any informality or error in or as respects the order, warrant or other document, or the authority by or in pursuance whereof such prisoner or man was brought into or is detained in such custody, and any such order, warrant or document may be amended accordingly.

(2) Where a military prisoner or a man undergoing detention or a person who is subject to military law and charged with an offence is a prisoner or man in service custody and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or man to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or man in custody and convey him in accordance with the order, and the prisoner or man while so kept shall be deemed to be kept in service custody.

Affecting provisions (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 19.

CHAPTER IX.

Rules of Procedure.

Rules of procedure. [s. 240: 18/1954]

240. (1) The Minister may make rules (in this Act referred to as rules of procedure) in relation to all or any of the following matters, that is to say:—

- (a) the assembly and procedure of courts of inquiry and boards;
- (b) the steps to be taken to bring a person to trial by court martial;
- (c) the convening and constitution of courts-martial;
- (d) the adjournment, dissolution and sittings of courts-martial;
- (e) the procedure to be observed in trials by courts-martial;
- (f) the confirmation and revision of the findings and sentences of courts-martial;
- (g) the carrying into effect of sentences of courts-martial;
- (h) the presentation of petitions by or on behalf of persons sentenced by courts-martial;
- (i) the forms of orders to be made under the provisions of this Part relating to courts-martial, imprisonment or detention;
- (j) any matter or thing referred to in this Part (other than Chapters IV and X) as prescribed;
- (k) any other matter or thing expedient or necessary for the purposes of carrying this Act into effect so far as relates to the investigation, trial and punishment of offences triable or punishable by military law.

(2) Rules of procedure shall not contain anything contrary to or inconsistent with this Part.

(3) Rules of procedure shall be judicially noticed.

(4) Rules of procedure may provide for a written summary of evidence being taken on oath and may empower a commanding officer or any other officer before whom he directs such summary to be taken to administer oaths for that purpose.

(5) Rules of procedure in relation to courts of inquiry may provide for evidence being taken on oath and may empower courts of inquiry to administer oaths for that purpose.

(6) Every rule made under this section shall be laid before each House of the Oireachtas as soon as may be after such rule is made and, if a resolution annulling such rule is passed by either House of the Oireachtas within the next subsequent twenty-one days on which that House has sat after such rule is so laid before it, such rule shall be annulled accordingly, but without prejudice to the validity of anything previously done under such rule.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 14, sch. 2, par. 4.

CHAPTER X.

Miscellaneous Offences by Members of the Reserve Defence Force.

Penalty for member of Reserve Defence Force joining armed forces of another State. [s. 241: 18/1954]

- 241.** If, within or without the State, any member of the Reserve Defence Force, while not subject to military law, accepts a commission in, or enters into any engagement to serve in, the armed forces of another State, he shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

Punishment of certain offences by reservists. [s. 242: 18/1954]

- 242.** (1) Where a reservist—
- (a) when required by Reserve Defence Force regulations to attend at a particular time and place fails, without reasonable excuse, to attend at such time and place, or
 - (b) uses threatening or insulting language or behaves in an insubordinate manner to any officer or non-commissioned officer who, in pursuance of Reserve Defence Force regulations, is acting in the execution of his office and would, if such reservist were subject to military law, be his superior officer, or
 - (c) in reply to any notice served on him under this Act or Reserve Defence Force regulations sends any communication of an insubordinate kind, or
 - (d) by any fraudulent means obtains or is accessory to obtaining any pay or other sum contrary to regulations made under section 97, or

(e) fails without reasonable cause to comply with Reserve Defence Force regulations,

such reservist shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250.

(2) Where a reservist commits an offence under this section he may be taken into service custody.

(3) Where a reservist commits in the presence of any officer an offence under this section, such officer may, if he thinks fit, order such reservist, in lieu of being taken into service custody, to be taken into custody by any member of the Garda Síochána.

(4) Where a reservist is required in pursuance of Reserve Defence Force regulations to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting reservists or for any other purpose connected with the Reserve Defence Force and stating that such reservist failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence in any proceedings under this section of such failure.

(5) In this section, the expression “Reserve Defence Force regulations” means regulations made under section 92 or 94.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Non-attendance of reservist called out for training or on permanent service, etc. [s. 243: 18/1954]

243. (1) When a reservist is called out for training or on permanent service or in aid of the civil power, and such reservist, without leave lawfully granted or such sickness or other reasonable excuse as maybe allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, the following provisions shall have effect, that is to say:—

(a) if he is called out on permanent service or in aid of the civil power, such reservist shall be guilty, according to the circumstances, of desertion or absence without leave;

(b) if he is called out for training, such reservist shall be guilty of absence without leave.

(2) Where a reservist commits, by virtue of this section, the offence of desertion or absence without leave, such reservist shall be liable either—

(a) to be tried by court-martial and convicted and punished accordingly, or

- (b) to be tried summarily by the District Court and on conviction by such court to be sentenced to a fine not exceeding £250.

(3) Any offence committed by a reservist which under this section is punishable on conviction by court-martial shall for all purposes of and incidental to the arrest, trial and punishment of the offender, including the summary dealing with his case by his commanding officer, be deemed to be an offence against military law.

(4) A person charged with an offence which under this section is cognisable both by a court-martial and by the District Court shall not be liable to be tried both by a court-martial and the District Court, but may be tried by either of them as may be directed by the prescribed military authority.

(5) The following provisions shall have effect in relation to proceedings against an offender before a court-martial or his commanding officer or the District Court in respect of an offence punishable under this section, that is to say:—

- (a) such proceedings may be instituted whether the term of his service in the Reserve Defence Force has or has not expired;
- (b) such proceedings may, notwithstanding anything contained in this or any other Act, be instituted within two months after whichever of the following times is the later, that is to say:—
 - (i) the time at which the offence becomes known to the prescribed military authority, or
 - (ii) the time at which the offender is arrested.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Record and evidence of absence of reservists called out, etc. [s. 244: 18/1954]

244. Where—

- (a) a reservist, who is called out for training or on permanent service or in aid of the civil power, fails to appear at the time and place at which he is required upon such calling out to attend, and
- (b) his absence continues for not less than fourteen days,

an entry of such absence shall be made by the prescribed officer in the prescribed manner in the prescribed service books, and such entry shall be conclusive evidence of the fact of such absence.

Wrongful sale, etc., of equipment by a member of the Reserve Defence Force. [s. 245: 18/1954]

245. If any person (being a member or former member of the Reserve Defence Force)—

- (a) designedly makes away with, or sells, pawns or wrongfully destroys or damages, or negligently loses, any article issued to him as a member of the Reserve Defence Force, or
- (b) refuses, on demand made by the Minister or any person acting on behalf of the Minister, to deliver up any such article,

then,—

- (i) he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250,
- (ii) the Court by which he is tried may, whether it convicts him of the offence or not, order him to pay to the Minister the value of the article.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Regulations for purposes of Chapter X of Part V. [s. 246: 18/1954]

246. The Minister may make regulations in relation to any person, matter or thing referred to in this Chapter as prescribed.

CHAPTER XI.

Proof of certain matters of Evidence in Proceedings before Civil Courts and Courts-martial.

Evidence of subjection to military law of officers of the Reserve Defence Force. [s. 247: 18/1954]

247. A certificate under the hand of a person authorised by the Minister to make certificates under this section certifying the matters mentioned in any one of the following paragraphs, that is to say:—

- (a) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was at a specified time ordered on service or duty for which as an officer belonging to the Reserve Defence Force he was liable,
- (b) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was during a specified period employed on service or duty for which as an officer of the Reserve Defence Force he was liable,

- (c) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was during a specified period attached to a body of troops for the time being subject to military law,
- (d) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was during a specified period doing duty with a body of troops for the time being subject to military law,
- (e) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was at a specified time ordered on duty by the military authorities,
- (f) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was during a specified period voluntarily attending training,
- (g) that a person named in such certificate was during a specified period an officer of the Reserve Defence Force and was during a specified period undergoing treatment in a military hospital, shall in proceedings under this Act, whether before a civil court or a court-martial, be *prima facie* evidence of the matters so certified and it shall not be necessary to prove the signature of the person purporting to make such certificate or that he was so authorised.

Evidence of certain documents and matters. [s. 248: 18/1954]

248. The following provisions shall have effect with respect to evidence in proceedings under this Act before a court-martial or a civil court—

- (a) a copy of the *Iris Oifigiúil* purporting to contain a notice under section 52 shall be evidence of the matter contained in the notice;
- (b) any attestation paper purporting to be signed by any person upon his being attested as a man in any portion of the Defence Forces shall be evidence of the fact that such person gave, in answer to the questions set forth in such attestation paper, the answers he is therein represented as having given;
- (c) the enlistment of a person in the Permanent Defence Force or the Reserve Defence Force may be proved by the production, by a witness on oath, of a copy of such person's attestation paper purporting to be certified to be a true copy by the officer having the custody of such original attestation paper, without proof of the signature of such officer or of his having custody of such original attestation paper;
- (d) a letter, return or other document with respect to a person—
 - (i) having, or not having, at any specified time or times, served in or been discharged from any portion of the Defence Forces, or

- (ii) having, or not having, held any rank or appointment in, or been posted, attached or transferred to, any portion of the Defence Forces, or having or not having, served in a particular place, or
 - (iiA) having, or not having, at any specified time or times, served outside the State as a member of the Permanent Defence Force with an armed International United Nations Force, or,
 - (iii) being, or not being, authorised to wear any decoration, medal, medal ribbon, badge, wound stripe, rank insignia, or emblem, the use or wearing of which by an unauthorised person is an offence under section 267, if purporting to be signed by or on behalf of the Minister or the commanding officer of any portion of the Defence Forces to which such person appears to have belonged or alleges that he belongs or had belonged, shall be *prima facie* evidence of the relevant facts stated in such letter, return or other document;
- (e) a Defence Force List or Defence Force Gazette (whether printed or cyclostyled) purporting to be issued under the authority of the Minister by the Chief of Staff shall be evidence of the status and rank of any officer therein mentioned and of any appointment held by him and of the unit to which he belongs or is attached;
- (f) a Naval List and Directory (whether printed or cyclostyled) purporting to be issued under the authority of the Minister by the Chief of Staff shall be evidence of—
- (i) the fact that any ship mentioned therein as a State ship is a State ship, and
 - (ii) the status and commissioned naval rank of any officer mentioned therein and of any appointment held by him;
- (g) where a record is made in a service book in pursuance of this Act or any regulations made thereunder or otherwise in pursuance of military duty and purports to be signed by the commanding officer or by the officer whose duty it is to make such record—
- (i) such record shall be evidence of the facts therein stated,
 - (ii) a copy of such record purporting to be certified to be a true copy by the officer having the custody of such service book shall, without proof of the signature of such officer or of his having custody of such service book, be *prima facie* evidence of such record;
- (h) any warrant or order made under this Act by a military authority shall be deemed to be evidence of the matters therein directed to be stated by or in pursuance of this Act;

- (i) a document purporting to be a copy of any instrument (being a warrant or order made under this Act by a military authority) shall, if certified by an officer authorised by the Minister in that behalf to be a true copy of such instrument, be *prima facie* evidence of such instrument and it shall not be necessary to prove the signature of the officer so certifying such document or that he was so authorised;
- (j) where the proceedings are proceedings against an officer or man (in this paragraph referred to as the accused) on a charge of being a deserter or an absentee, and the accused has been arrested by a member of the Garda Síochána or any officer or man or has surrendered himself into the custody of an officer or any portion of the Defence Forces, a certificate purporting to have been signed by the member of the Garda Síochána, officer or man by whom the arrest was made or by the officer to whom the surrender was made or by the commanding officer of the portion of the Defence Forces to whom the surrender was made, and stating the fact, date, time and place of such arrest or surrender, and whether the accused so surrendering was dressed in uniform or not at the time of arrest or surrender shall be evidence of the matters so stated;
- (k) where the proceedings are proceedings against an officer or man (in this paragraph referred to as the accused) on a charge of being a deserter or an absentee, and the accused has surrendered to any member of the Garda Síochána, a certificate purporting to be signed by such member or the person in charge of a Garda Síochána station when the accused has been delivered into service custody by such person and stating the fact, date, time and place of such surrender, and whether the accused was dressed in uniform or not at the time of surrender shall be evidence of the matters so stated;
- (l) where the proceedings are proceedings against an officer or man (in this paragraph referred to as the accused) on a charge of being a deserter or an absentee, and either the accused has been arrested by a member of the Garda Síochána or an officer or man and brought to a Garda Síochána station or has surrendered to a member of the Garda Síochána at a Garda Síochána station, a certificate purporting to be signed by the member of the Garda Síochána in charge of such station at the time when the accused is delivered into service custody and stating the fact, date and place of arrest or surrender, and whether the accused was dressed in uniform or not at the time of arrest or surrender shall be evidence of the matters so stated.

*Affecting provisions (textual) — 8/1987, s. 13;
31/1998, s. 7.*

Evidence of conviction or acquittal by a civil court. [s. 249: 18/1954]

- 249.** (1) Whenever any person subject to military law has been tried by any civil court, the certificate of the clerk of such court or of his deputy, or of any other officer having the custody of the records of such court, setting out the offence for which such person subject to military law was tried, together with the judgment of the court thereon or, if such

person was acquitted, the acquittal, shall be evidence of the conviction and sentence, or of the order of the court, or of the acquittal of such person, as the case may be.

(2) This section shall apply to a man of the Reserve Defence Force who is tried by a civil court, whether he is or is not at the time of trial subject to military law.

Evidence of proceedings of court-martial. [s. 250: 18/1954]

250. (1) The original proceedings of a court-martial purporting to be signed by the president thereof, and being in the custody of the prescribed officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody, and any copy purporting to be certified by the prescribed officer, having such custody as aforesaid, to be a true copy of such proceedings, or of any part thereof, shall be admissible in evidence without proof of the signature of such officer.

(2) Whenever any person subject to military law has been tried by court-martial, the certificate of the prescribed officer having custody of the original proceedings of the court-martial, setting out the place and date of trial, the offence for which such person was tried, together with the finding and sentence of the court-martial and the action of the confirming authority thereon or, if such person was acquitted, the acquittal, shall be evidence of the matters so set out in such certificate.

CHAPTER XII.

Apprehension of Suspected Deserters and Absentees.

Apprehension of suspected deserters and absentees. [s. 251: 18/1954]

251. (1) Where an officer or man or a member of the Garda Síochána has reasonable grounds for suspecting that any person is a deserter or an absentee, he may without warrant arrest such person and thereupon the following provisions shall have effect, that is to say:—

(a) such person (in this subsection referred to as the arrested person) may demand that an inquiry into his arrest be made under the next following paragraph, and the person making the arrest shall inform the arrested person of his right under this paragraph;

(b) if the arrested person so demands, then—

(i) the arrested person shall be brought before a Justice of the District Court or a Peace Commissioner and may in the meantime be detained in any Garda Síochána station;

(ii) the Justice of the District Court or the Peace Commissioner before whom the arrested person is brought shall inquire into the arrest, and

- (I) if satisfied that the arrested person is a deserter or an absentee, shall forthwith cause the arrested person to be delivered into service custody or, until he can be so delivered, to be committed to some prison or Garda Síochána station for such time as appears to him reasonably necessary for the taking of steps to receive the arrested person into service custody,
- (II) if not so satisfied, shall order the release of the arrested person;
- (iii) the Justice of the District Court or Peace Commissioner before whom the arrested person is brought may from time to time adjourn the inquiry, and, if he so does, shall order that the arrested person be detained, during any such adjournment, in a prison or a Garda Síochána station;
- (c) if the arrested person does not so demand, the person making the arrest may deliver him into service custody and pending such delivery the arrested person may, on the requisition in writing of the person making the arrest, be detained in any prison or Garda Síochána station.

(2) Where a person surrenders himself to an officer or man or a member of the Garda Síochána and alleges that he is a deserter or an absentee, such officer, man or member of the Garda Síochána may deliver such person into service custody and pending such delivery such person may, on the requisition in writing of such officer, man or member of the Garda Síochána, be detained in any prison or Garda Síochána station.

Affecting provisions (non-textual) — 12/1967, s. 31(4);

16/1997, ss. 13(2) (commencement), 8(4);

S.I. 93/1997, o. 17, r. 4(4) —

[12/1967 — s. 31(4) Criminal Procedure Act 1967]

Release on bail in certain cases by members of Garda Síochána

31(4) This section does not apply to a person arrested under section 251 of the Defence Act, 1954, on suspicion of being a deserter or an absentee without leave from the Defence Forces.

[16/1997 — s. 8(4) Bail Act 1997]

Enndorsement on warrants as to release on bail

8.— (4) This section shall not apply to a person arrested under section 251 of the Defence Act 1954, on suspicion of his or her being a deserter or an absentee without leave from the Defence Forces.

[S.I. 93/1997 — o. 17, r. 4(4) District Court Rules 1997]

Release on bail in certain cases by members of Garda Síochána

†(4) This rule does not apply to a person arrested under section 251 of the Defence Act 1954, on suspicion of being a deserter or an absentee without leave from the Defence Forces.

PART VI.

OFFENCES IN RELATION TO THE DEFENCE FORCES AND MILITARY PROPERTY.

Recruits punishable for false answers. [s. 252: 18/1954]

- 252.** If any person knowingly makes a false answer to any question, contained in an attestation paper, which has been put to him by or by the direction of the officer before whom he appears for the purpose of being attested in accordance with recruiting regulations, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for any term not exceeding three months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Punishment for pretending to be a deserter or an absentee. [s. 253: 18/1954]

- 253.** Any person who falsely represents himself to any military or civil authority to be a deserter or an absentee shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for any term not exceeding three months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Incitement to disaffection, etc. [s. 254: 18/1954]

- 254.** (1) Any person who by any means whatsoever incites or attempts to incite any person subject to military law—

- (a) to mutiny, or
- (b) to refuse to obey lawful orders given to him by a superior officer, or
- (c) to refuse, neglect or omit to perform any of his duties, or
- (d) to commit any other act in dereliction of his duty,

shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

(2) Any person who has, without lawful excuse, in his possession or under his control any document of such a nature that the dissemination thereof amongst members of the Defence Forces would be an offence under subsection (1) of this section, shall be guilty

of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

Punishment for inducing, etc., members of the Defence Forces to desert. [s. 255: 18/1954]

255. Any person who by any means whatsoever—

- (a) procures or persuades or attempts to procure or persuade any person subject to military law to desert or absent himself without leave, or
- (b) procures or persuades or attempts to procure or persuade any reservist to desert or absent himself without leave within the meaning of section 243, or
- (c) knowing that a person subject to military law is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave, or
- (d) knowing that a reservist is about to desert or absent himself without leave within the meaning of section 243, aids or assists him in so deserting or absenting himself without leave, or
- (e) knowing any person subject to military law to be a deserter or an absentee, conceals such person or aids or assists in concealing him or aids or assists in his rescue, or
- (f) knowing any reservist to be a deserter or an absentee without leave within the meaning of section 243, conceals such man or aids or assists in concealing him or aids or assists in his rescue,

shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for any term not exceeding three months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Penalty for unlawful recruiting or interfering with recruiting. [s. 256: 18/1954]

256. (1) If any person without due authority, the proof of which authority shall lie on such person,—

- (a) acts or purports to act as a recruiter or a person authorised to enlist recruits, or
- (b) publishes or causes to be published notices or advertisements for the purpose of procuring recruits for the Defence Forces, or in relation to recruits for the Defence Forces, or
- (c) receives any person under any such advertisement,

he shall be guilty of an offence under this subsection.

(2) If any person—

- (a) wilfully utters, prints or publishes anything calculated to obstruct or interfere with recruitment for the Defence Forces, or
- (b) directly or indirectly interferes with the recruiting service of the Defence Forces,

he shall be guilty of an offence under this subsection.

(3) Every person guilty of an offence under subsection (1) or (2) of this section shall be liable on summary conviction thereof to a fine not exceeding £200.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Penalty for interference with military duties, etc. [s. 257: 18/1954]

257. Any person—

- (a) who wilfully obstructs, impedes or otherwise interferes with any officer or man in the execution of his duties, or
- (b) who wilfully induces any disease or infirmity in, or maims or injures, any person whom he knows to be a man with a view to enabling such a man to avoid military service, or
- (c) who, with the intent of enabling a man to render himself, or induce the belief that he is, permanently or temporarily, unfit for service, supplies to or for such man any drug, preparation or appliance calculated to or likely to render him or lead to the belief that he is permanently or temporarily unfit for service,

shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1000 or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Penalty for personation. [s. 258: 18/1954]

258. (1) Any person who—

- (a) falsely and deceitfully personates any person with intent fraudulently to obtain any military pay, reward, pension, allowance, grant or gratuity or any sum payable

in respect of military service or any property or money in the possession of the military authorities, or

- (b) falsely represents himself to any military or civil authority to belong to or to be or to have been a particular member of the Defence Forces,

shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250 or, at the discretion of the court, to imprisonment for any term not exceeding three months.

(2) Where a reservist commits in the presence of an officer an offence under this section, such officer may without warrant arrest such man and, in that case, shall, as soon as may be, deliver him into the custody of a member of the Garda Síochána to be dealt with according to law.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Statutory declaration in relation to pay, etc. [s. 259: 18/1954]

- 259.** Where regulations made by the Minister under section 97 provide for proving, by statutory declaration, the identity of the recipient of any payment under the regulations, such declaration may be taken and received by any person specified in that behalf by the regulations.

Penalty for purchasing certain military property. [s. 260: 18/1954]

- 260.** (1) In this section, the expression “military property” means any property being—
- (a) any arms, ammunition (including bombs, grenades or similar missiles), equipment, instruments or clothing issued for the use of members of the Defence Forces, or
 - (b) any military decoration of a member of the Defence Forces, or
 - (c) any furniture, bedding, blankets, sheets, utensils or stores in military charge, or
 - (d) any provisions or forage issued for the use of a member of the Defence Forces or his horse, or
 - (e) any horse or vehicle employed in the service of the Defence Forces.
- (2) (a) If any person—
- (i) buys, exchanges, takes in pawn, obtains or receives from any person, on any pretence whatsoever, any military property, or

- (ii) solicits or entices any person to sell, exchange, pawn or give away any military property, or
- (iii) assists or acts for any person in selling, exchanging, pawning or making away with any military property,

such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250 together with treble the value of any military property of which he has become possessed by means of the offence or, at the discretion, of the court, to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

(b) Where a person is charged with an offence under this section it shall be a good defence to prove that—

- (i) at the time he did the act alleged in the charge, he was unaware that the property in respect of which the charge was made was in fact military property, or
- (ii) the said property was sold by order or with the consent of the Minister or some competent military authority, or
- (iii) the said property was the personal property of a person who had ceased to be a member of the Defence Forces or of the legal personal representatives of a deceased member of the Defence Forces.

(3) Where any military property is found in the possession or keeping of any person, such person may be brought or summoned before a Justice of the District Court, and if such Justice has reasonable ground to believe that the military property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then, if such person does not satisfy such Justice that he came by the military property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to the same penalties as are specified in subsection (2) of this section in the case of a contravention of that subsection.

(4) A person found committing an offence under this section may be arrested without warrant, and brought, together with the military property which is the subject of the offence, before a Justice of the District Court, and any person to whom any such property is offered to be sold, pawned or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may arrest without warrant the person offering such military property and deliver him and such military property into the custody of a member of the Garda Síochána to be dealt with according to law.

(5) A Justice of the District Court, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession or on his premises any military property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant in search for such military property as in the case of stolen goods and any military property found on such search shall be seized by the person charged with the

execution of such warrant, who shall bring the person in whose possession the same is found before some Justice of the District Court to be dealt with according to law.

(6) For the purposes of this section, military property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person or in any house, building, lodging, apartment, field or place, open or enclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit or for the use or benefit of another.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Unlawful possession of certificates of discharge, etc. [s. 261: 18/1954]

- 261.** If any person, without lawful authority or excuse (the proof whereof shall lie on the accused), has in his possession any certificate of discharge of any member of the Defence Forces or any other official document issued in connection with the mobilisation or demobilisation of any part of the Defence Forces or any member thereof, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Forgery of certificate of discharge and personation. [s. 262: 18/1954]

- 262.** If any person—
- (a) forges a certificate of discharge or any certificate purporting to be a certificate of discharge, or
 - (b) utters any such certificate knowing it to be forged, or
 - (c) obtains or seeks to obtain employment by means of any forged or counterfeit certificate of discharge, or
 - (d) personates the holder of a certificate of discharge,

such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof, in the case of a first offence, to imprisonment for a term not exceeding one month or, at the discretion of the court, to a fine not exceeding £200, and, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three months.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Application of Pension Books (Prohibition of Alienation) Act 1932. [s. 263: 18/1954]

263. Every identity certificate, life certificate or other certificate or official document evidencing or issued in connection with the right of any person to a military pension or pay or to any bounty, allowance, gratuity, relief, benefit or advantage granted in connection with military service shall be deemed, for the purposes of the Pension Books (Prohibition of Alienation) Act 1932 (No. 1 of 1932), to be a document to which the said Act applies, and the said Act shall be construed and have effect accordingly.

Unlawful wearing of uniform. [s. 264: 18/1954]

264. (1) *If any person (not being a member of the Defence Forces) wears, without permission granted by or on behalf of the Minister, any uniform of the Defence Forces, or any colourable imitation thereof, such person shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and such imprisonment.*

(2) Subsection (1) of this section shall not apply in respect of the wearing of any uniform of the Defence Forces or any colourable imitation thereof in the course of a stage play or other dramatic representation or performance.

(3) In this section the word “uniform” includes any distinctive part of a uniform.

(4) *In any proceedings for an offence under this section it shall be presumed, until the contrary is proved, that permission to wear a uniform of the Defence Forces, or any colourable imitation thereof, had not been granted by or on behalf of the Minister.*

Affecting provision (textual) — 8/1987, s. 14.

Note: The amendments made by s. 14 are italicised as they have effect only in relation to offences committed after 24 June 1987 (8/1987, s. 16)

Bringing contempt on uniform. [s. 265: 18/1954]

265. (1) If any person wears any uniform of the Defence Forces or any dress, having the appearance of, or bearing any of the regimental or other distinctive marks of, any such uniform, in such a manner or in such circumstances as to be likely to bring contempt upon that uniform, such person shall be guilty of an offence under this subsection.

(2) If any person employs any other person to wear any uniform of the Defence Forces or any dress, having the appearance of, or bearing any of the regimental or other distinctive marks of, any such uniform, in such a manner or in such circumstances as to be likely to bring contempt upon that uniform, such first-mentioned person shall be guilty of an offence under this subsection.

(3) Any person who is guilty of an offence under subsection (1) or (2) of this section shall be liable on summary conviction thereof to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for any term not exceeding six months.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Dyeing and conversion of uniforms, etc. [s. 266: 18/1954]

266. (1) If any person, except under and in accordance with a permit issued by or on behalf of the Minister,

- (a) dyes, or receives for the purpose of dyeing, any service textile article or any article which he has reasonable grounds for believing is a service textile article or a converted service textile article, or
- (b) converts into another article or receives for the purpose of conversion into another article any service textile article,

such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £100.

(2) In this section—

the expression “service textile article” means any article of a textile nature issued to or for the use of members of the Defence Forces;

the expression “converted service textile article” means any service textile article which has been converted into another article.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Unauthorised use, etc., of decorations, etc. [s. 267: 18/1954]

267. (1) If—

- (a) any unauthorised person (in this subsection referred to as the offender) uses or wears any article to which this section applies or any colourable imitation thereof, or
- (b) any person (in this subsection referred to as the offender) falsely represents himself to be a person who is or has been entitled to wear any article to which this section applies, or

- (c) any person (in this subsection referred to as the offender), without lawful authority or excuse (the proof whereof shall lie on such person), supplies or offers to supply any article to which this section applies to a person not authorised to use or wear it,

the offender shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for any term not exceeding three months.

(2) Nothing in subsection (1) of this section shall be construed as rendering unlawful the use, wear or supply of ordinary regimental badges or any brooch or ornament representing those badges.

(3) This section applies to any article, relating to or connected with service in the Defence Forces, supplied or authorised by the Minister, being—

- (a) a decoration, or
- (b) a medal ribbon, or
- (c) a badge, or
- (d) a wound or service stripe, or
- (e) rank insignia, or
- (f) an emblem.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Penalty for sketching, etc., fortifications, etc., and trespassing thereon. [s. 268: 18/1954]

- 268.** (1) If any person, without lawful authority, makes or attempts to make any sketch, drawing, photograph, picture, painting, model or note of any fort, battery, field work, fortification or any military work of defence, aerodrome, barracks, post, magazine, munition factory, stores depot or any other Government property occupied or partly occupied by the Defence Forces or any portion thereof, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £1,000 or, at the discretion of the court, imprisonment for any term not exceeding twelve months, and all sketches, drawings, photographs, pictures, paintings, models and notes and all tools and all materials or apparatus for sketching, drawing, photographing, painting or modelling found in his possession shall be forfeited and may be destroyed, sold or otherwise disposed of as a Minister of State directs.

(2) If any person, without lawful authority, enters or approaches any fort, field work, fortification or any military work of defence, aerodrome, barracks, post, magazine, munition factory, stores depot or any other Government property, occupied or partly occupied by the Defence Forces or any portion thereof, with sketching, drawing, photographing, painting or modelling materials or apparatus in his possession, with the intention of committing an offence under subsection (1) of this section, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £500 or, at the discretion of the court, imprisonment for any term not exceeding six months, and all tools and materials or apparatus for sketching, drawing, photographing, painting or modelling found in his possession shall be forfeited and may be destroyed, sold or otherwise disposed of as a Minister of State directs.

(3) If any person trespasses on any fort, battery, field work, fortification or any military work of defence, aerodrome, barracks, post, magazine, munition factory, stores depot, vessel or any other Government property occupied or partly occupied by the Defence Forces or any portion thereof or any land reserved for or forming part thereof, whether any erection, fort, fortification or work of any kind is thereon or not, or any building or land reserved or set apart or used in connection with the administration, accommodation or training of any part of the Defence Forces, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £250, or at the discretion of the court, imprisonment for any term not exceeding three months.

(4) Any member of the Defence Forces or of the Garda Síochána may without warrant arrest any person who he has reasonable grounds to believe has committed an offence under this section and bring him before a Justice of the District Court to be dealt with according to law.

(5) Any moneys arising on the sale or disposal of any articles forfeited under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

Affecting provisions (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fines payable under this paragraph but only for offences committed after 24 June 1987 (s. 16: 8/1987).

(non-textual) — S.I. 476/2000, reg. 4(2) —

[S.I. 476/2000 — reg. 4(2) European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000]

4.(2) These Regulations shall not apply to—

(a) any property occupied by the Defence Forces and any land or premises referred to in section 268 (1) of the Defence Act 1954.

PART VII.

MANOEUVRES AND ARTILLERY, RIFLE AND BOMBING PRACTICE.

Power to authorise holding of military manoeuvres. [s. 269: 18/1954]

269. (1) The Minister may from time to time by order (in this Act referred to as a manoeuvres (authorisation) order) authorise the holding of military manoeuvres within a specified area and during a specified period commencing not earlier than one month after the date of such order.

(2) Whenever the Minister makes a manoeuvres (authorisation) order, he shall as soon as conveniently may be publish such order in the *Iris Oifigiúil* and in at least two newspapers circulating in the area to which such order relates.

Powers exercisable for purposes of manoeuvres. [s. 270: 18/1954]

270. (1) Where a manoeuvres (authorisation) order has been made in relation to any area, such persons as are under the authority of the Minister engaged in manoeuvres may under the direction of the Minister do, within such area and during the period specified in such order, all or any of the following things, that is to say:—

(a) pass over and encamp, construct military works, not of a permanent character, and execute military manoeuvres on any land;

(b) supply themselves with water from any sources of water and for that purpose dam up any running water.

(2) Nothing in this section shall authorise—

(a) the entry on or interference with (except to the extent of using any road) any dwelling-house, place of worship, hospital, school, factory, workshop used for the carrying on of any trade, business or manufacture, farmyard, garden, orchard, pleasure ground, nursery ground, burial ground, ground attached to any place of worship or school or any premises enclosed within the curtilage of or attached to any dwelling-house;

(b) the damming up of water so as to interfere with the carrying on of any trade or industry;

(c) the taking of water from any source of supply belonging to a private owner or public authority unless with the consent of such owner or authority;

(d) the interference with any national monuments within the meaning of the National Monuments Act 1930 (No. 2 of 1930), or with any picturesque or valuable timber or other national features of exceptional interest or beauty.

(3) The officer in command of the portion of the Defence Forces engaged in any military manoeuvres shall cause all land used under the power conferred by this section to be restored as soon as and as far as may be practicable to its previous condition.

(4) In this section, the word “hospital” includes sanatorium, maternity home, nursing home, convalescent home, county home, preventorium, rehabilitation centre, laboratory, clinic, health centre, first-aid station, dispensary or similar institution.

Compensation for damages caused by military manoeuvres. [s. 271: 18/1954]

271. (1) Where a manoeuvres (authorisation) order has been made, compensation shall be made by the Minister for any damage to person or property or interference with rights or privileges arising from the exercise of the powers conferred by this Part, whether or not occasioned by the acts of the military forces engaged in the manoeuvres, including therein all expenses reasonably incurred in protecting person, property, rights and privileges, and any damage by reason of excessive weight or extraordinary traffic caused to any road.

(2) The amount of any compensation under this section shall, in default of agreement (which agreement shall be subject to the consent of the Minister for Finance), be determined by an arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act 1919, and under and in accordance with that Act.

Offences in relation to manoeuvres. [s. 272: 18/1954]

272. (1) If, within the area and during the period specified in a manoeuvres (authorisation) order authorising military manoeuvres, any person—

- (a) wilfully and unlawfully obstructs or interferes with the execution of the manoeuvres, or
- (b) without due authority enters or remains in any camp or billet or any place where any guns, vehicles, ammunition, supplies or other material used for the purposes of the manoeuvres are stored,

he shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £100.

(2) If, within the area and during the period specified in a manoeuvres (authorisation) order, any person—

- (a) without due authority moves any light, flag, mark or other object relating to, or used for the purposes of, the manoeuvres, or
- (b) maliciously cuts or damages any telegraph or telephone wire or any water or petrol supply pipe laid down by or for the use of the forces engaged in the manoeuvres,

he shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £150.

(3) If, within the area and during the period specified in a manoeuvres (authorisation) order, any person commits any offence under subsection (1) of this section he may be removed from that area by a member of the Garda Síochána or by order of any officer of the Defence Forces.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fines payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Exemption of members of the Defence Forces engaged in manoeuvres from section 164 of the Road Traffic Act 1933. [s. 273: 18/1954]

- 273.** Where a manoeuvres (authorisation) order is made, section 164 of the Road Traffic Act 1933 (No. 11 of 1933), shall not, during the period specified in the order, apply in respect of a vehicle which is being driven by or in the charge of a member of the Defence Forces who is for the time being engaged in the military manoeuvres authorised by the order.

Temporary stoppage of traffic during manoeuvres or artillery, etc., practice. [s. 274: 18/1954]

- 274.** In any area specified in a manoeuvres (authorisation) order or in the vicinity of any place used for artillery, rifle, bombing or other army, naval or air practices, the officer in command of the portion of the Defence Forces engaged in the manoeuvres or in such practices may temporarily stop all traffic by land or water in that area or in the vicinity of that place so far as in his opinion may be necessary for the security of life and the proper conduct of the manoeuvres or such practices.

PART VIII.

BYE-LAWS AS TO LAND USED FOR DEFENCE PURPOSES.

Interpretation of Part VIII. [s. 275: 18/1954]

- 275.** (1) In this Part—

the expression “authorised officer” means any person being—

- (a) a member of the Garda Síochána, or
- (b) a member of the Defence Forces authorised in that behalf by bye-laws;

the word “bye-laws” means bye-laws made under this Part;

the expression “road authority” has the same meaning as in the Local Government Act 1946 (No. 24 of 1946);

the expression “State land” means any land belonging to the State or vested in the Minister.

(2) References in this Part to a contravention of a bye-law include references to a failure or refusal to comply with the bye-law.

Bye-laws as to use of State land appropriated for defence purposes and for securing the public safety. [s. 276: 18/1954]

276. (1) Where any State land is for the time being appropriated for any defence purpose, the Minister may, subject to the provisions of this Part, make bye-laws for regulating the use of the land for the purpose for which it is appropriated and for securing the public against danger arising from that use, with power to prohibit all intrusion on the land and all obstruction of the use thereof.

(2) Bye-laws made under this section shall not authorise the Minister to take away or prejudicially affect any right of common.

(3) Where any bye-laws made under this section permit the public to use land for any purpose when not used for the purpose for which it is appropriated, those bye-laws may also provide for the government of the land when so used by the public, and the preservation of order and good conduct thereon, and for the prevention of nuisances, obstructions, encampments and encroachments thereon, and for the prevention of any injury to the land or to anything growing or erected thereon, and for the prevention of anything interfering with the orderly use thereof by the public for the purpose permitted by the bye-laws.

Extension of power to make bye-laws in respect of non-State land where Minister has right of user for defence purposes. [s. 277: 18/1954]

277. Where the Minister has for the time being the right to use for any defence purpose any land (not being State land), the power conferred by section 276 to make bye-laws shall extend to that land as if it were State land and were appropriated for the said purpose, subject however to this restriction, namely, that any bye-law made by virtue of this section shall not unfavourably affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land.

Extension of power to make bye-laws in respect of adjoining foreshore, sea and tidal water. [s. 278: 18/1954]

278. (1) Where any land, the use of which can be regulated by bye-laws under section 276 or 277, abuts on any foreshore, sea or tidal water, bye-laws may be made in relation to any such foreshore, sea or tidal water as if they were part of the land.

(2) If any person entitled to a private right in or over any foreshore, sea or tidal water in relation to which a bye-law is made by virtue of this section proves that his exercise of that right has been injuriously affected or obstructed by reason of the bye-law, he shall be entitled to recover from the Minister compensation for that injurious affection or obstruction, and any question whether compensation is payable under this subsection or as to the amount of any compensation so payable shall, in default of agreement (which agreement shall be subject to the consent of the Minister for Finance), be determined by an arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act 1919, and under and in accordance with that Act.

(3) (a) A bye-law made by virtue of this section shall not injuriously affect any public right unless the bye-law is made with the consent of the Minister for Industry and Commerce.

- (b) The following provisions shall apply in relation to the giving by the Minister for Industry and Commerce of his consent to a bye-law made by virtue of this section which, if made, would injuriously affect any public right in or over any foreshore, sea or tidal water—
- (i) the said Minister, if satisfied, after compliance with subparagraph (ii) of this paragraph, that a restriction of such public right is required for the safety of the public or for the exigencies of the military purpose to which the land abutting on such foreshore, sea or tidal water is appropriated, may consent to a bye-law restricting the said public right to such extent as in all the circumstances of the case seems reasonable to him,
- (ii) the said Minister before consenting to the bye-law shall cause notice of such proposed bye-law to be given in such manner in the locality as he deems best so as to give interested persons an opportunity of making objections to the proposed bye-law and shall make such enquiries as appear to him necessary for ascertaining that the bye-law will not unreasonably interfere with any public right.
- (c) In this subsection, the expression “public right” includes any right of navigation, anchoring, grounding, fishing, bathing, walking or recreation.

Bye-laws as to roads. [s. 279: 18/1954]

- 279.** (1) The Minister may, in respect of any portion of a road which crosses or runs near any land the use of which may be regulated by bye-law, make, with the consent of the road authority charged with the maintenance of that portion, bye-laws providing for the restriction, by such means as the Minister thinks proper and specifies in the bye-laws, of the use of that portion.

- (2) Save as provided by this section, bye-laws shall not be made in relation to any road.

Notice of intention to make bye-laws. [s. 280: 18/1954]

- 280.** (1) Where the Minister proposes to make any bye-laws, he shall, before making such bye-laws, deposit copies of the proposed bye-laws in every Circuit Court Office in the area to which such proposed bye-laws relate and publish, in some newspaper or newspapers circulating in such area notice of his intention to make bye-laws and of the deposit of such copies.

- (2) Any person may inspect any proposed bye-laws deposited in a Circuit Court Office under this section and may, within twenty-eight days after the publication in accordance with this section of notice of intention to make such proposed bye-laws, send objections to the Minister against the making of such proposed bye-laws.

- (3) The Minister shall before making any bye-laws consider any objections to them sent to him before the expiration of the twenty-eight days referred to in subsection (2) of this section.

Marking of boundaries of bye-law areas. [s. 281: 18/1954]

- 281.** (1) When the Minister makes any bye-laws, he shall cause the boundaries of the area to which the bye-laws relate to be marked in such manner as appears to him necessary to make the boundaries known to all persons in the locality.

(2) Where any bye-laws are made under section 278 in relation to any area which consists of any foreshore, sea or tidal water and the boundaries of that area cannot, in the opinion of the Minister, be conveniently marked by permanent marks, those boundaries shall be described in the bye-laws and shall be deemed to be sufficiently marked within the meaning of subsection (1) of this section if, while that area is in use for military purposes, sufficient means are taken to warn the public from entering that area.

Publication of bye-laws. [s. 282: 18/1954]

- 282.** Where the Minister makes any bye-laws, he shall cause the bye-laws to be published in such manner as he deems necessary to make them known to all persons in the locality to which they relate and shall provide for copies of such bye-laws being sold at the price of one shilling for each copy to any person who desires to obtain a copy.

Penalties for contravention of bye-laws. [s. 283: 18/1954]

- 283.** (1) If any person contravenes any bye-law, such person shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £150, and the court may order any animal, vehicle, vessel or other thing, the property of such person, which is in the area to which the bye-law relates at the time of such contravention, to be forfeited.

(2) Where any animal, vehicle, vessel or other thing is forfeited under this section, it shall be sold in accordance with the directions of the Minister and the proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Removal and arrest of offenders. [s. 284: 18/1954]

- 284.** (1) If, in any area to which a bye-law relates, any person contravenes the bye-law,—
- (a) an authorised officer may order that person to leave the area,
 - (b) if that person, on being so ordered, refuses or fails to leave the area,—
 - (i) he shall be guilty of an offence under this section, and
 - (ii) the authorised officer may either remove him from the area by force or without warrant arrest him.

(2) If any person is on a particular portion of a road, the use of which is restricted by a bye-law made under section 279, in contravention of the bye-law,—

- (a) an authorised officer may order that person to leave that portion,
- (b) if that person, on being so ordered, refuses or fails to leave that portion,
 - (i) he shall be guilty of an offence under this section, and
 - (ii) the authorised officer may either remove him from that portion by force or without warrant arrest him.

(3) Every person guilty of an offence under this section shall be liable on summary conviction thereof to a fine not exceeding £150.

(4) Where an authorised officer (not being a member of the Garda Síochána) arrests a person under this section, he shall, as soon as may be, deliver such person into the custody of a member of the Garda Síochána to be dealt with according to law.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Removal of animals, etc. [s. 285: 18/1954]

285. An authorised officer may remove or cause to be removed any vehicle, animal, vessel or other thing found in any area to which a bye-law relates in contravention of that bye-law.

Obstruction of and assaults on authorised officers. [s. 286: 18/1954]

286. If any person—

- (a) obstructs or impedes an authorised officer in the lawful execution of his powers and duties as an authorised officer under this Part, or
- (b) assaults an authorised officer in the lawful execution of those powers and duties,

that person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250 or, at the discretion of the court, to imprisonment for any term not exceeding six months.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Non-application of Part VIII to the Curragh of Kildare. [s. 287: 18/1954]

287. This Part does not apply to the Curragh of Kildare.

PART IX.

THE ARMY NURSING SERVICE.

The existing nursing service. [s. 288: 18/1954]

- 288.** In this Part, the expression “the existing nursing service” means the nursing service established under the Act of 1923.

Establishment of the Army Nursing Service. [s. 289: 18/1954]

- 289.** (1) There shall stand established a nursing service to be called and known as the Army Nursing Service.
- (2) The Army Nursing Service shall consist of persons who are appointed members thereof.

Affecting provision (textual) — 21/1998, ss. 1(2) (commencement), 24(2).

Application of this Act to the Army Nursing Service. [s. 290: 18/1954]

- 290.** (1) The provisions of this Act (except this Part and sections 8, 103, 104, 234, 235 and 236 and Part VI) shall not, save where specific mention is made therein to the Army Nursing Service or save as is provided by an order under this section, apply in respect of members of the Army Nursing Service.
- (2) The Minister may from time to time by order apply to the members of the Army Nursing Service with such modifications and adaptations as he thinks fit any provision of this Act which does not, by virtue of subsection (1) of this section, apply to members of the Army Nursing Service.
- (3) The Minister may by order under this subsection revoke or amend any order under this section (including this subsection).
- (4) An order under this section shall not come into operation unless and until it is confirmed by resolution of each House of the Oireachtas, but shall as from the date of the passing of the later of such resolutions have statutory effect.

Existing nursing service to be deemed Army Nursing Service. [s. 291: 18/1954]

- 291.** (1) The existing nursing service shall, on the operative date, become and be the Army Nursing Service and every person who immediately before the operative date is a member of the existing nursing service shall by virtue of this section become and be a member of the Army Nursing Service and shall be deemed to have been a member thereof during all the time she was a member of the existing nursing service.
- (2) Any agreement entered into by a member of the existing nursing service in relation to her service as a member of the existing nursing service and in force immediately before the operative date shall continue in force and be applicable to her service as a member of the Army Nursing Service.

Regulations in relation to the Army Nursing Service. [s. 292: 18/1954]

292. The Minister may make regulations in respect of the Army Nursing Service in relation to all or any of the following matters, that is to say:—

- (a) the organisation, command and administration thereof;
- (b) the grades of appointment therein and the numerical establishment thereof;
- (c) the admission and appointment of members thereto;
- (d) the agreements to be signed by persons seeking admission thereto and the members thereof;
- (e) the conditions of service of members thereof;
- (f) the promotion, retirement, discharge and dismissal of members thereof;
- (g) the discipline and punishment of members thereof
- (h) the uniform to be worn by members thereof;
- (i) the pay and allowances of members thereof, and the forfeitures and stoppages of, and the deductions from, such pay and allowances which may be made;
- (j) the leave of members thereof;
- (k) any other matter or thing relating to the internal management thereof.

PART X.

APPLICATION OF THIS ACT TO DEFENCE FORCES ESTABLISHED UNDER THE DEFENCE FORCES
(TEMPORARY PROVISIONS) ACT 1923.**Interpretation of Part X. [s. 293: 18/1954]**

293. (1) In this Part—

Act of 1945.

the expression “the Act of 1945” means the Defence Forces (Temporary Provisions) Act 1945 (No. 10 of 1945);

Act of 1946.

the expression “the Act of 1946” means the Defence Forces (Temporary Provisions) Act 1946 (No. 7 of 1946);

Act of 1947.

the expression “the Act of 1947” means the Defence Forces (Temporary Provisions) Act 1947 (No. 4 of 1947);

Act of 1949.

the expression “the Act of 1949” means the Defence Forces (Temporary Provisions) Act 1949 (No. 1 of 1949);

class of the existing Reserve of Men.

the word “class”, in relation to the existing Reserve of Men, means the class mentioned in column (2) of the Table to this section at reference number 4, 5 or 6;

class of the existing Reserve of Officers.

the word “class” in relation to the existing Reserve of Officers, means the class mentioned in column (2) of the Table to this section at reference number 1, 2 or 3;

existing directly enlisted reservist.

the expression “existing directly enlisted reservist” means a person who is, immediately before the operative date, a man of the existing Reserve of Men and was enlisted therein under section 25 of the No. 2 Act of 1940;

existing nursing service.

the expression “the existing nursing service” means the nursing service established under the Act of 1923;

existing permanent force.

the expression “the existing permanent force” means the force established under Part I of the Act of 1923;

existing regular.

the expression “existing regular” means a person who is, immediately before the operative date, a member (not being an officer within the meaning of the Act of 1923) of the existing permanent force;

existing regular officer.

the expression “existing regular officer” means a person who is, immediately before the operative date, an officer of the existing permanent force;

existing reserve force.

the expression “the existing reserve force” means the reserve force established under Part III of the Act of 1923;

existing reserve officer.

the expression “existing reserve officer” means a person who is, immediately before the operative date, an officer of the existing Reserve of Officers;

existing Reserve of men.

the expression “the existing Reserve of Men” means that part of the existing reserve force which is known as the Reserve of Men;

existing Reserve of Officers.

the expression “the existing Reserve of Officers” means that part of the existing reserve force which is known as the Reserve of Officers;

existing Reservist.

the expression “existing reservist” means a person who is—

(a) an existing directly enlisted reservist, or

(b) an existing transferred reservist;

existing transferred reservist.

the expression “existing transferred reservist” means a person who is, immediately before the operative date, a man of the existing Reserve of Men, and was transferred thereto under section 157 of the Act of 1923;

existing 1923-Act corps of an existing regular or an existing reservist.

references to the existing 1923-Act corps of an existing regular or an existing reservist shall be construed as references to the 1923-Act corps in which he was serving immediately before the operative date;

No. 2 Act of 1940.

the expression “the No. 2 Act of 1940” means the Defence Forces (Temporary Provisions) (No. 2) Act 1940 (No. 11 of 1940);

prescribed military authority.

the expression “the prescribed military authority” has the same meaning as it has in section 61;

1923-Act corps.

the expression “1923-Act corps” means a corps for the purposes of the Act of 1923.

(2) For the purposes of this Part—

- (a) the class of the Reserve Defence Force mentioned in column (3) of the Table to this section at a particular reference number (being reference number 1, 2 or 3) shall be deemed to correspond to the class of the existing Reserve of Officers mentioned in column (2) of the said Table at that reference number;
- (b) the class of the Reserve Defence Force mentioned in column (3) of the said Table at any reference number (being reference number 4, 5 or 6) shall be deemed to correspond to the class of the existing Reserve of Men mentioned in column (2) of the said Table at that reference number.

TABLE TO SECTION 293.

Ref. No.	Class of the existing Reserve of Officers or the existing Reserve of Men	Corresponding class of the Reserve Defence Force
(1)	(2)	(3)
1	The Reserve of Officers — First Line.	The Reserve of Officers (First Line).
2	The Reserve of Officers (Fórsa Cosanta Aitiúil).	The Reserve of Officers (An Fórsa Cosanta Aitiúil).
3	The Reserve of Officers (An Sluagh Muirí).	The Reserve of Officers (An Slua Muirí).
4	The Reserve of Men — First Line.	The Reserve of Men (First Line).
5	The Reserve of Men (Fórsa Cosanta Aitiúil).	The Reserve of Men (An Fórsa Cosanta Aitiúil).
6	The Reserve of Men (An Sluagh Muirí).	The Reserve of Men (An Slua Muirí).

Existing forces to be deemed forces established under this Act. [s. 294: 18/1954]

294. (1) The existing permanent force and the existing nursing service shall, on the operative date, become and be the Permanent Defence Force.

(2) The existing reserve force shall, on the operative date, become and be the Reserve Defence Force.

[s. 295: 18/1954]

295. *Repealed by 31/1998, s. 11.*

Existing regulars. [s. 296: 18/1954]

296. (1) The following provisions shall, as on and from the operative date, have effect in relation to every existing regular—

- (a) he shall become and be a man of the Permanent Defence Force,
- (b) he shall, subject to this Act, hold in the Permanent Defence Force,—
 - (i) if immediately before the operative date he held in the existing permanent force a non-commissioned military rank set out in column (2) of the Table to section 5 of the Act of 1947, the non-commissioned army rank set out in column (2) of the Third Schedule to this Act which is similar in name to such non-commissioned military rank,
 - (ii) if immediately before the operative date he held in the existing permanent force the non-commissioned naval rank of warrant officer, the non-commissioned naval rank of warrant officer,
 - (iii) if immediately before the operative date he held in the existing permanent force any grade of naval rating set out in column (4) of the Table to section 5 of the Act of 1947, the non-commissioned naval rank set out in column (3) of the Third Schedule to this Act which is similar in name to such grade of naval rating,
- (c) Chapter II of Part IV of this Act shall apply in respect of him as if he had been enlisted under section 53 and for this purpose the following provisions shall have effect—
 - (i) he shall be deemed to have been enlisted under section 53 as a man of the Permanent Defence Force for service for a period equal to the period which is immediately before the operative date the term of his original enlistment within the meaning of the Act of 1923, and references in the said Chapter II to the term of his original enlistment shall be construed as references to the period for which he is so deemed to have been enlisted under section 53,
 - (ii) in case his original enlistment under the Act of 1923 was, under subsection (1) of section 145 of the Act of 1923, for the whole of the term of his original enlistment, within the meaning of the Act of 1923, in army service, then, his enlistment under section 53 shall be deemed to be for the whole of the term of his original enlistment, within the meaning of this Act, in the Permanent Defence Force,
 - (iii) in case his original enlistment under the Act of 1923 was, under subsection (2) of section 145 of the Act of 1923, for portion (in this paragraph referred to as his period of army service in the existing permanent force) of the term of his original enlistment, within the meaning of the Act of 1923, in army service and for the residue of the said term in the existing reserve force, then, his enlistment under section 53 shall be deemed to be for a portion (equal in length to his period of army service in the existing permanent force) of the term of his original enlistment, within the

- meaning of this Act, in the Permanent Defence Force and for the residue of the said last-mentioned term in the Reserve Defence Force,
- (iv) in case his conditions of service were varied under section 146 of the Act of 1923, his conditions of service shall be deemed to have been likewise varied under regulations made under section 63,
 - (v) the date of his attestation for the purposes of this Act shall be deemed to be,—
 - (I) in case he did not re-enlist under section 3 or 4 of the Act of 1945, the date of his attestation under the Act of 1923,
 - (II) in case he re-enlisted under section 3 of the Act of 1945, the date which is, by virtue of subparagraph (iv) of paragraph (d) of section 4 of the Act of 1945, the date of his attestation for the purposes of Chapter V of Part II of the Act of 1923, and
 - (III) in case he re-enlisted under section 4 of the Act of 1945, the date which is, by virtue of subparagraph (iv) of paragraph (d) of section 4 of the Act of 1945, the date of his attestation for the purposes of Chapter V of Part II of the Act of 1923,
 - (vi) in case he re-engaged for a further period of army service under section 152 of the Act of 1923, he shall be deemed to have re-engaged under section 64 for a further period of service in the Permanent Defence Force as on and from the date on which he so re-engaged under the said section 152,
 - (vii) in case he was, before the 22nd day of February, 1949, continued in service in the existing permanent force under section 153 of the Act of 1923, he shall be continued in service in the Permanent Defence Force in the same manner as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged,
 - (viii) in case he was, on or after the 22nd day of February, 1949, continued in service in the existing permanent force under section 153 of the Act of 1923, as amended by section 5 of the Act of 1949, he shall be deemed to have been continued in service in the Permanent Defence Force under regulations made under section 65,
 - (ix) in case he did not re-enlist under section 3 or 4 of the Act of 1945—
 - (I) his service in the existing permanent force shall, for the purposes of this Act, be treated as service in the Permanent Defence Force, and

- (II) his service (if any) in the existing reserve force shall, for the purposes of this Act, be treated as service in the Reserve Defence Force,
 - (x) in case he re-enlisted under section 3 of the Act of 1945, any period served by him in the existing permanent force on or after the date on which he enlisted under section 24 of the No. 2 Act of 1940 shall, for the purposes of this Act, be treated as a period served by him in the Permanent Defence Force,
 - (xi) in case he re-enlisted under section 4 of the Act of 1945, the period served by him and mentioned in subparagraph (i) of paragraph (d) of section 4 of the Act of 1945 and any period served by him subsequent to his re-enlistment in the existing permanent force shall, for the purposes of this Act, be treated as periods served by him in the Permanent Defence Force.
- (2) (a) Every existing regular shall be deemed to have been appointed under subsection (2) of section 60 to the service corps which corresponds to his existing 1923 - Act corps, but section 61 shall not apply in respect of him.
- (b) The following provisions shall apply in respect of an existing regular who was enlisted under the Act of 1923 for general service—
- (i) in case his service as a man of the Permanent Defence Force in the service corps in which he is for the time being serving is less than ten years, he may be transferred by order of the prescribed military authority to another service corps,
 - (ii) in case his service as a man of the Permanent Defence Force in the service corps in which he is for the time being serving is ten years or more, he may be transferred by order of the prescribed military authority to another service corps, if, but only if—
 - (I) he consents to such transfer, or
 - (Ia) *the transfer is for the purpose of enabling the man to serve, or continue to serve, outside the State with an International United Nations Force and is effected either during, or not more than one month before the commencement of, such service, or,*
 - (II) a proclamation authorising the calling out of reservists on permanent service is for the time being in force,
 - (iii) for the purposes of this paragraph, his service as an existing regular in his existing 1923 - Act corps shall be treated as service in the service corps to which he is deemed by virtue of paragraph (a) of this subsection to have been appointed.

- (c) Where an existing regular was enlisted under the Act of 1923 for service in a particular 1923 - Act corps, he may be transferred by order of the prescribed military authority from the service corps to which he is deemed by virtue of paragraph (a) of this subsection to have been appointed or from any service corps to which he may be transferred under this paragraph to another service corps, if, but only if, he consents to such transfer *or the transfer is for the purpose of enabling the man to serve, or to continue to serve, outside the State with an International United Nations Force and is effected either during, or not more than one month before the commencement of, such service.*

(3) Section 70, in its application to an existing regular, shall have effect—

- (a) as if for paragraph (b) of subsection (3) there were substituted the following paragraph—

“(b) Where the time at which a man of the Permanent Defence Force would, by virtue of paragraph (a) of this subsection, be entitled to be transferred to the Reserve Defence Force occurs while a proclamation authorising the calling out of reservists on permanent service is in force *or he is serving outside the State with an International United Nations Force*, the following provisions shall have effect—

- (i) he shall continue to serve as a man of the Permanent Defence Force for such further period (not exceeding twelve months) as the prescribed military authority may direct,

(ii) on the expiration of such further period—

- (I) in case the term of his original enlistment has expired and he has not been re-engaged under section 64, he shall be discharged from the Permanent Defence Force with all convenient speed, and

- (II) in any other case, he shall be transferred in the prescribed manner to the Reserve Defence Force.”, and

- (b) as if for paragraph (b) of subsection (4) there were substituted the following paragraph—

“(b) Where the time at which a man of the Permanent Defence Force would by virtue of paragraph (a) of this subsection be entitled to be discharged occurs while a proclamation authorising the calling out of reservists on permanent service is in force or he is serving outside the State with an International United Nations Force, he shall continue to serve as a man of the Permanent Defence Force for such further period (not exceeding twelve months) as the prescribed military authority may direct, and at the expiration of such further period shall be discharged from the Permanent Defence Force with all convenient speed.”

Affecting provisions (textual) — 44/1960, s. 4(6);

Note: The textual amendments made by s. 4(6) are italicised above for ease of understanding the non-textual amendment below

(non-textual) — 44/1960, s. 4(7) —

[44/1960 — s. 4(7) Defence (Amendment) (No. 2) Act 1960]

Amendments of the Principal Act

4(7) Where at the date of the passing of this Act a member of the Permanent Defence Force is serving outside the State with an International United Nations Force, the amendments of the Principal Act effected by subsections (2), (3), (4) and (6) of this section shall not apply in relation to such member during the period of such service.

Note: Both provisions affected by (non-textual) — 18/1993, s. 3(2) —

[18/1993 — s. 3(2) Defence (Amendment) Act 1993]

3(2) The provisions of the Principal Act specified in the said section 4 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of the Act of 1960) was a reference to an International United Nations Force.

Existing reservists. [s. 297: 18/1954]

297. (1) The following provisions shall, as on and from the operative date, have effect in relation to every existing reservist—

- (a) he shall become and be a man of the Reserve Defence Force,
- (b) he shall, subject to this Act, hold in the Reserve Defence Force,—
 - (i) if immediately before the operative date he held in the existing reserve force a non-commissioned military rank set out in column (2) of the Table to section 5 of the Act of 1947, the non-commissioned army rank set out in column (2) of the Third Schedule to this Act which is similar in name to such non-commissioned military rank,
 - (ii) if immediately before the operative date he held in the existing reserve force the non-commissioned naval rank of warrant officer, the non-commissioned naval rank of warrant officer,
 - (iii) if immediately before the operative date he held in the existing reserve force any grade of naval rating set out in column (4) of the Table to section 5 of the Act of 1947, the non-commissioned naval rank set out in column (3) of the Third Schedule to this Act which is similar in name to such grade of naval rating,

- (c) if he re-engaged for a further period of reserve service under section 12 of the Act of 1946, he shall, for the purposes of Chapter II of Part IV of this Act, be deemed to have re-engaged for service under section 67 as on and from the date on which he re-engaged for service under the said section 12,
- (d) he shall belong to the class of the Reserve Defence Force which corresponds to the class of the existing Reserve of Men to which he belongs immediately before the operative date,
- (e) if he is an existing transferred reservist, Chapter II of Part IV of this Act shall apply in respect of him as it he had been enlisted under section 53 and for this purpose the following provisions shall have effect—
 - (i) he shall be deemed to have been enlisted under section 53 as a man of the Permanent Defence Force for service for a period equal to the period which is immediately before the operative date the term of his original enlistment within the meaning of the Act of 1923, and references in the said Chapter II to the term of his original enlistment shall be construed as references to the period for which he is so deemed to have enlisted under section 53;
 - (ii) his enlistment under section 53 shall be deemed to have been for a portion (equal to the portion of the term of his original enlistment, within the meaning of the Act of 1923, which was, under subsection (2) of section 145 of the Act of 1923, to be in army service) of the term of his original enlistment, within the meaning of this Act, in the Permanent Defence Force and for the residue of the said last-mentioned term in the Reserve Defence Force,
 - (iii) in case his conditions of service were varied under section 146 of the Act of 1923, his conditions of service shall be deemed to have been likewise varied under section 63,
 - (iv) the date of his attestation for the purposes of this Act shall be deemed to be—
 - (I) in case he did not re-enlist under section 3 or 4 of the Act of 1945, the date of his attestation under that Act of 1923,
 - (II) in case he re-enlisted under section 3 of the Act of 1945, the date which is, by virtue of subparagraph (iv) of paragraph (d) of section 3 of the Act of 1945, the date of his attestation for the purposes of Chapter V of Part II of the Act of 1923,
 - (III) in case he re-enlisted under section 4 of the Act of 1945, the date which is, by virtue of subparagraph (iv) of paragraph (d) of section 4 of the Act of 1945, the date of his attestation for the purposes of Chapter V of Part II of the Act of 1923,

- (v) he shall be deemed to have been transferred to the Reserve Defence Force under section 70 as on and from the date on which he was transferred to the existing reserve force under section 157 of the Act of 1923,
 - (vi) his service in the existing permanent force shall, for the purposes of this Act, be treated as service in the Permanent Defence Force,
 - (vii) his service in the existing reserve force shall, for the purposes of this Act, be treated as service in the Reserve Defence Force,
- (f) if he is an existing directly enlisted reservist, Chapter II of Part IV of this Act shall apply in respect of him as if he had enlisted under section 55 and for this purpose the following provisions shall have effect—
- (i) he shall be deemed to have been enlisted under section 55 to serve as a man of the Reserve Defence Force for a period equal to the period which is immediately before the operative date the term of his original enlistment within the meaning of Chapter II of Part IV of the No. 2 Act of 1940, and references in Chapter II of Part IV of this Act to the term of his original enlistment shall be construed as references to the period for which he is so deemed to have been enlisted under section 55,
 - (ii) in case his term of original enlistment, within the meaning of Chapter II of Part IV of the No. 2 Act of 1940, was extended under section 26 of that Act, such extension shall be deemed to have been effected under section 66,
 - (iii) the date of his attestation for the purposes of this Act shall be deemed to be the date of his attestation for the purposes of Chapter II of Part IV of the No. 2 Act of 1940,
 - (iv) his service in the existing reserve force shall, for the purposes of this Act, be treated as service in the Reserve Defence Force,
- (g) he shall be deemed to have been appointed under subsection (2) of section 60 to the service corps which corresponds to his existing 1923 - Act corps.
- (2) Section 72, in its application to an existing reservist, shall have effect as if for paragraph (b) of subsection (2) there were substituted the following paragraph—
- “(b) Where the time at which a reservist would by virtue of paragraph (a) of this subsection be entitled to be discharged occurs while a proclamation authorising the calling out of reservists on permanent service is in force, he shall continue to serve as a reservist for such further period (not exceeding twelve months) as the prescribed military authority directs and at the expiration of such further period shall be discharged from the Reserve Defence Force with all convenient speed.”

Continuance of existing orders, etc. [s. 298: 18/1954]

- 298.** (1) In this section, the expression “existing statutory instrument” means any order, regulation, rule or bye-law made under the Act of 1923 which is in force immediately before the operative date and which is capable of being made under this Act.
- (2) Every existing statutory instrument shall be deemed to have been made under this Act and may be revoked or amended accordingly and, until so revoked and subject to any such amendment, shall continue in force.
- (3) In every existing statutory instrument—
- (a) references to the existing permanent force and the existing reserve force shall be construed as references to the Permanent Defence Force and the Reserve Defence Force respectively,
 - (b) references to a particular class of the existing Reserve of Officers or of the existing Reserve of Men shall be construed as references to the corresponding class of the Reserve Defence Force,
 - (c) references to an officer of a particular class of the existing Reserve of Officers shall be construed as references to an officer of the corresponding class of the Reserve Defence Force,
 - (d) references to a member (other than an officer) of a particular class of the existing Reserve of Men shall be construed as references to a member (other than an officer) of the corresponding class of the Reserve Defence Force,
 - (e) references to the existing nursing service shall be construed as references to the Army Nursing Service.

Continuance of existing authorisations and directions. [s. 299: 18/1954]

- 299.** Every authority granted and every direction given under the Act of 1923 which has not been withdrawn before the operative date and which is capable of being granted or given under this Act shall, on and after the operative date, continue in force and have effect as if granted or given under this Act.

Offences and convictions under the Act of 1923. [s. 300: 18/1954]

- 300.** (1) Where before the operative date a court-martial has been convened under the Act of 1923 for the trial of an accused, such trial may be carried on and the accused may be sentenced and punished in the same manner in all respects as if this Act had not come into operation and as if the Act of 1923 were a permanent Act.
- (2) Subject to subsection (1) of this section, every offence committed before the operative date against the Act of 1923 may be tried and punished in like manner as if it had been committed against this Act, so however that a person shall not be subject to any greater punishment for such offence than he is subject to immediately before the operative date.

(3) This Act shall apply to the conviction of a person tried under the Act of 1923 as if he had been convicted under this Act, and every sentence imposed and every award of punishment made under the Act of 1923 may, on and after the operative date, be carried into effect in the same manner in all respects as if it had been imposed or made under this Act.

(4) Every person who is under the Act of 1923 in military custody immediately before the operative date shall be deemed to have been taken into service custody under this Act.

Existing military prisons and detention barracks. [s. 301: 18/1954]

- 301.** Any building or part of a building which immediately before the operative date is set apart as and declared to be a military prison or detention barrack under section 137 of the Act of 1923 shall be deemed to be a military prison or detention barrack set apart and so declared under section 232.

PART XI.

AMENDMENT AND ADAPTATION OF CERTAIN ENACTMENTS.

[s. 302: 18/1954]

- 302.** *Repealed by 43/1960, s. 3, sch.*

Application of the Army Pensions Acts 1923 to 1949, to Reserve Defence Force. [s. 303: 18/1954]

- 303.** (1) In this section, the expression “the Acts” means the Army Pensions Acts 1923 to 1949.
- (2) Save as provided by subsection (3) of this section, the expression “the forces” where it occurs in the Acts shall be construed as excluding the Reserve Defence Force.
- (3) In the Acts (except sections 10 and 14 of the Army Pensions Act 1927 (No. 12 of 1927) —
- (a) the expression “the forces” shall be construed as including the Reserve of Officers (First Line), and the Reserve of Men (First Line),
 - (b) the word “soldier” shall be construed as including a man of the Reserve of Men (First Line).

Amendment of the Ministers and Secretaries Act 1924. [s. 304: 18/1954]

- 304.** (1) For the purposes of subsection (4) of section 15 of the Ministers and Secretaries Act 1924 (No. 16 of 1924), as amended by subsection (2) of section 7 of the Documentary Evidence Act 1925 (No. 24 of 1925), an officer, serving in Defence Forces Headquarters shall, in respect of any order or other instrument made by the Minister under or by virtue of this Act, be deemed to be an officer of the Department of Defence.

(2) For the purposes of paragraph (c) of section 17 of the Ministers and Secretaries Act 1924, an officer serving in Defence Forces Headquarters shall be deemed to be an officer within the meaning of the said paragraph (c).

Affecting provision (textual) — 31/1998, s. 8.

Amendment of the Military Service Pensions Acts 1924 to 1949. [s. 305: 18/1954]

305. In subsections (1) and (3) of section 4 of, and in the Second Schedule to the Military Service Pensions Act 1924 (No. 48 of 1924), and in section 16 of the Military Service Pensions Act 1934 (No. 43 of 1934)—

(a) the references to the Defence Forces of Saorstát Éireann shall be construed as including references to the Permanent Defence Force,

(b) the word “discharge” shall—

(i) in relation to an officer of the Permanent Defence Force, mean retirement or resignation, and

(ii) in relation to a man of the Permanent Defence Force who is transferred to the Reserve Defence Force, mean transfer to the Reserve Defence Force.

Amendment of the Defence Forces (Pensions) Act 1932. [s. 306: 18/1954]

306. (1) The expression “the Forces” where it occurs in the Defence Forces (Pensions) Act 1932 (No. 26 of 1932), shall, in addition to the meaning assigned to it by section 1 of the said Act, include the Permanent Defence Force, and the said Act and any scheme made under the said Act which is in force immediately before the operative date shall be construed and have effect accordingly.

(2) The expression “the Army Nursing Service” where it occurs in the Defence Forces (Pensions) Act 1932, or in any scheme made thereunder, shall, in addition to meaning the nursing service established under the Act of 1923, mean the Army Nursing Service established by this Act.

Amendment of the Workmen’s Compensation Act 1934. [s. 307: 18/1954]

307. Paragraph (d) of subsection (2) of section 5 of the Workmen’s Compensation Act 1934 (No. 9 of 1934), is hereby amended by the substitution of the words “Permanent Defence Force, or Reserve Defence Force as defined by the Defence Act 1954” for the words “Defence Forces of Saorstát Éireann, including a member of the Reserve Force established under Part III of the Defence Forces (Temporary Provisions) Act 1923 (No. 30 of 1923),” and the said section shall be construed and have effect accordingly.

Amendment of section 11 of the Army Pensions Act 1949. [s. 308: 18/1954]

308. In section 11 of the Army Pensions Act 1949 (No. 19 of 1949), and in any scheme made thereunder, the reference to the Reserve-Second Line shall be construed as a reference to the Reserve of Officers (An Fórsa Cosanta Aitiúil), the Reserve of Men (An Fórsa

Cosanta Aitiúil), the Reserve of Officers (An Slua Muirí) and the Reserve of Men (An Slua Muirí).

Adaptation of references to Defence Forces, etc., in certain enactments. [s. 309: 18/1954]

309. (1) In this section—

the expression “the Act of 1947” means the Defence Forces (Temporary Provisions) Act 1947 (No. 4 of 1947);

the expression “enactment to which this section applies” means any enactment being—

- (a) any Saorstát Éireann statute or any instrument made thereunder, or
- (b) any Act of the Oireachtas passed before the operative date or any instrument made thereunder, or
- (c) any scheme made (whether before or after the passing of this Act) under the Defence Forces (Pensions) Act 1932 (No. 26 of 1932).

(2) In any enactment to which this section applies—

- (a) references to the Defence Forces shall be construed as references to the Defence Forces to be raised and maintained under this Act,
- (b) references to the forces established under Part I of the Act of 1923 shall be construed as references to the Permanent Defence Force,
- (c) references to the reserve force established under Part III of the Act of 1923 shall be construed as references to the Reserve Defence Force,
- (d) references to a commissioned military rank set out in the Table to section 3 of the Act of 1947 shall be construed as references to the similar commissioned army rank set out in column (2) of the Second Schedule to this Act or to the commissioned naval rank set out in column (3) of the said Second Schedule which corresponds to such commissioned army rank,
- (e) references to a non-commissioned military rank set out in the Table to section 5 of the Act of 1947 at any reference number shall be construed as references to the similar non-commissioned army rank set out in column (2) of the Third Schedule to this Act or to the non-commissioned naval rank set out in column (3) of the said Third Schedule which corresponds to such non-commissioned army rank,
- (f) references to the former commissioned rank of major shall be construed as references to the commissioned rank of lieutenant-colonel.

- (3) The general adaptations made by this section shall be without prejudice to all specific adaptations made by any other section of this Act, and in the event of any inconsistency between such general adaptations and any such specific adaptation such specific adaptation shall prevail.

Service as a major to be regarded as service as a lieutenant-colonel. [s. 310: 18/1954]

- 310.** Service in the former commissioned rank of major shall for the purposes of this Act and any regulations made thereunder and for the purposes of any scheme made under the Defence Forces (Pensions) Act 1932 (No. 26 of 1932), be regarded as service as a lieutenant-colonel.

PART XII.

MISCELLANEOUS PROVISIONS.

Recovery of moneys due or payable to the Minister. [s. 311: 18/1954]

- 311.** Moneys due and payable to the Minister shall have the like rights, privileges and priorities as are conferred by subsection (2) of section 38 of the Finance Act 1924 (No. 27 of 1924), on the moneys to which that subsection applies.

Affecting provision (non-textual) — 6/1957, ss. 1(2) (commencement), 9, sch., pt. 4 —

[6/1957 — s. 9, sch., pt. 4 Statute of Limitations 1957]

Repeals.

9. — The enactments mentioned in column (2) of the Schedule to this Act are hereby repealed to the extent mentioned in column (3) of that Schedule.

[Extract of Schedule, pt. 4]

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 18 of 1954	The Defence Act 1954	Section 311, to the extent to which it is inconsistent with this Act.

Restrictions on recruiting for other States. [s. 312: 18/1954]

- 312.** (1) It shall not be lawful for any person—
- (a) to induce, procure or persuade any person in the State to accept or agree to accept any commission or engagement in any military, naval or air force maintained by the Government of any other State, or
 - (b) to print within the State or cause or procure to be printed within the State any notice or advertisement in relation to the procurement of personnel for any military, naval or air force maintained by the Government of any other State, or

- (c) to publish or cause or procure to be published within the State any such notice or advertisement as is mentioned in paragraph (b) of this subsection which is printed within the State.

(2) Every person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

- (3) In this section—

the expression “the Government” in relation to any other State includes any person exercising or assuming to exercise powers of Government in or over such State or any part thereof;

the expression “military, naval or air force” does not include a voluntary aid society duly recognised and authorised for the purposes of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field signed at Geneva on the 12th day of August 1949.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Entertainments under service direction. [s. 313: 18/1954]

- 313.** (1) So much of any Act as operates to prohibit as respects particular days, or otherwise to restrict or regulate, the keeping, opening or using of premises for purposes of public entertainment or amusement shall not apply to the use, by authority of the Minister, of any building at a camp or station or of any ship for entertainments or amusements under the direction and control of an officer or committee having official responsibility for such matters.

- (2) For the purposes of this section—

- (a) the expression “public entertainment or amusement” includes public dancing, singing or music, the public performance of stage plays and the giving of cinematograph exhibitions;
- (b) where a building or ship is used for the giving of cinematograph exhibitions, the keeping or storing of films shall be deemed to be part of the use thereof for the giving of the exhibitions.

Grant of excise licence for military canteens. [s. 314: 18/1954]

- 314.** Notwithstanding anything contained in the Licensing Acts 1833 to 1946, or any other enactment, it shall not be necessary for a person holding a canteen under the authority of the Minister to obtain a certificate from a Justice of the District Court to enable him to obtain or hold any excise licence under the said Acts for the sale of intoxicating liquors, and such excise licence may be granted to him accordingly.

[s. 315: 18/1954]

315. *Repealed by 34/1993, ss. 1(2) (commencement), 5(1), sch. 1, 5(2) (saving).*

[s. 316: 18/1954]

316. *Repealed by 34/1993, ss. 1(2) (commencement), 5(1), sch. 1, 5(2) (saving).*

Foreign uniforms. [s. 317: 18/1954]

317. (1) No person shall, save with the consent in writing of a Minister of State, enter or land in the State while wearing any foreign uniform.

(2) No person shall, save with the consent in writing of a Minister of State, go into any public place in the State while wearing any foreign uniform.

(3) A Minister of State may from time to time direct that subsections (1) and (2) of this section shall not during a specified period apply in respect of any particular class (defined in such manner as he thinks fit) of persons, and in that case the said subsections shall not apply during that period in respect of that class of persons.

(4) Every person who contravenes (by act or omission) any provision in subsections (1) or (2) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £250 or, at the discretion of the court, to imprisonment for a term not exceeding six months.

(5) Nothing in this section shall restrict, or apply in respect of, the wearing of any uniform by the head of any diplomatic mission duly accredited to the State or by any member of the diplomatic staff of such mission whose appointment as such has been officially notified to the Minister for External Affairs or who is otherwise entitled to diplomatic immunities.

(6) Nothing in this section shall restrict, or apply in respect of, the wearing of any foreign uniform in the course of a stage play or other dramatic representation or performance.

(7) In this section—

the expression “foreign uniform” means the uniform of any armed force of any other State whether operating by land, sea or air, and includes any distinctive part of any such uniform;

the expression “public place” includes any street, road, park or other similar place, and also any place or building to which the public have access on payment of a charge for admission.

Affecting provision (textual) — 8/1987, s. 2.

Note: S.2 of 8/1987 increased the fine payable under this paragraph for offences committed after 24 June 1987 (s. 16: 8/1987).

Service of solicitors' apprentices in the existing Defence Forces. [s. 318: 18/1954]**318.** (1) In this section—

the expression “the Defence Forces” means—

- (a) the force established under Part I of the Act of 1923, and
- (b) the reserve force established under Part III of the Act of 1923;

the expression “the Act of 1898” means the Solicitors (Ireland) Act 1898;

the expression “the emergency period” means the period which commenced on the 3rd day of September, 1939, and ended on the 1st day of September, 1946.

(2) Where any person, who was during the emergency period engaged in service in the Defence Forces, has entered or shall enter into indentures of apprenticeship with a practicing solicitor, the Council of the Incorporated Law Society may, in their absolute discretion, by order declare that, subject to the fulfilment by that person of such conditions (if any) as the said Council think fit and specify in the order, such period (not exceeding the period of that person's service in the Defence Forces during the emergency period) as the said Council think fit and specify in the order shall, for the purposes of the Act of 1898, be reckonable as actual service under the said indentures of apprenticeship.

(3) Where the Council of the Incorporated Law Society make an order under subsection (2) of this section in relation to any person, the following provisions shall, subject to the fulfilment by that person of the conditions (if any) specified in the order, apply, that is to say:—

- (a) the period specified in the order shall, for the purposes of the Act of 1898, be reckonable as actual service under his indentures of apprenticeship;
- (b) subsection (1) of section 25 of the Act of 1898 shall, in its application to such person, be construed as if there were inserted—
 - (i) after the words “such practicing solicitor”, the words “except during a period declared, by an order made in respect of him by the Council of the Incorporated Law Society under Article 3 of the Emergency Powers (No. 285) Order, 1943 (S. R. & O., No. 268 of 1943), or under section 14 of the Defence Forces (Temporary Provisions) Act 1946 (No. 7 of 1946), or section 318 of the Defence Act 1954, to be reckonable, for the purposes of this Act, as actual service under his indentures of apprenticeship”, and
 - (ii) after the words “employment of a solicitor”, the words “or service in the Defence Forces”;

(c) the forms of affidavit, for the purposes of the said section 25, prescribed by rules made under section 57 of the Act of 1898, may, in relation to that person, be modified in conformity with the amendments effected by paragraph (b) of this subsection.

(4) An order made under Article 3 of the Emergency Powers (No. 285) Order 1943 (S. R. & O., No. 268 of 1943), or under subsection (1) of section 14 of the Defence Forces (Temporary Provisions) Act 1946 (No. 7 of 1946), shall be deemed to have been made under this section.

(5) This section shall be construed as one with the Act of 1898.

CHAPTER 2

DEFENCE (AMENDMENT) (No. 2) ACT

(No. 44 of 1960)

Interpretation. [s. 1: 44/1960]

319. (1) In this Act—

the expression “the Principal Act” means the Defence Act 1954;

the expression “International United Nations Force” means an international force or body established by the Security Council or the General Assembly of the United Nations for the performance of duties of a police character.

(2) This Act shall be construed as one with The Principal Act.

Despatch of contingents of the Permanent Defence Force for service outside the State with International United Nations Forces. [s. 2: 44/1960]

320. (1) Subject to subsection (2) of this section, a contingent of the Permanent Defence Force may be despatched for service outside the State as part of a particular International United Nations Force if, but only if, a resolution has been passed by Dáil Éireann approving of the despatch of a contingent of the Permanent Defence Force for service outside the State as part of that International United Nations Force.

(2) A contingent of the Permanent Defence Force may be despatched for service outside the State with a particular International United Nations Force without a resolution approving of such despatch having been passed by Dáil Éireann if, but only if—

- (a) that International United Nations Force is unarmed, or
- (b) the contingent consists of not more than twelve members of the Permanent Defence Force, and the number of members of the Permanent Defence Force serving outside the State with that International United Nations Force will not, by reason of such despatch, be increased to a number exceeding twelve, or
- (c) the contingent is intended to replace, in whole or in part, or reinforce a contingent of the Permanent Defence Force serving outside the State as part of that International United Nations Force and consisting of more than twelve members of the Permanent Defence Force.

Affecting provision (non-textual) — 18/1993, s. 3(1)

[18/1993 — s. 3(1) Defence (Amendment) Act 1993]*Application of certain provisions of Principal Act and Act of 1960.**3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.***Liability of certain members of the Permanent Defence Force for service with International United Nations Forces. [s. 3: 44/1960]****321.** (1)(a) This section applies at all times to—

- (i) an officer of the Permanent Defence Force appointed on or after the date of the passing of this Act,
- (ii) a man of the Permanent Defence Force enlisted on or after the date of the passing of this Act.

- (b) Where a member of the Permanent Defence Force (not being a member of the Permanent Defence Force specified in paragraph (a) of this subsection) has offered in writing, whether before or on or after the date of the passing of this Act, to render himself liable for external service during a specified period and the Minister or an officer authorised in that behalf by the Minister has accepted the offer, this section shall also apply to that member during that period.

(2) Notwithstanding anything contained in Chapter III of Part IV of The Principal Act, every member of the Permanent Defence Force to whom this section for the time being applies shall be liable to serve outside the State with a contingent of the Permanent Defence Force which,

- (a) in pursuance of the Defence (Amendment) Act 1960, was despatched, or
- (b) in pursuance of section 2 of this Act, is despatched,

for service with an International United Nations Force.

*Affecting provision (non-textual) — 18/1993, s. 2(3)***[18/1993 — s. 2(3) Defence (Amendment) Act 1993]***2(3)(a) Section 3 of the Act of 1960 shall not apply to—*

- (i) *an officer of the Permanent Defence Force appointed on or after the date of the passing of this Act, or*
- (ii) *a man of the Permanent Defence Force enlisted on or after the date of the passing of this Act.*
- (b) *An offer shall not be made under subsection (1) (b) of the said section 3 on or after the date of the passing of this Act.*

Amendments of the Principal Act [s. 4: 44/1960]

322. (1) A member of the Permanent Defence Force who is serving outside the State with an armed International United Nations Force shall, for the purposes of the Principal Act, be deemed, while so serving, to be on active service.

Note: The remainder of section 4 has been incorporated into the Act of 1954.

[s. 5: 44/1960]

323. *Repealed by 27/1965, ss. 8, 9 (saving), sch. 2, pt. 4.*

Registration of certain births and deaths occurring outside the State. [s. 6: 44/1960]

(1) The Minister may by regulations, made with the consent of the Minister for Health, provide for the keeping of a record of—

- (a) the death of a member of the Permanent Defence Force,
- (b) the death of the wife, husband or any of such other members of the family of a member of the Permanent Defence Force as may be specified in the regulations, and
- (c) the birth of a child to a member of or to the wife of a member of the Permanent Defence Force,

occurring outside the State while the member of the Permanent Defence Force is serving outside the State with an International United Nations Force and, as respects a death referred to in paragraph (b) of this subsection or a birth, in such circumstances as may be specified in the regulations.

(2) Records kept pursuant to regulations made under this section shall be—

- (a) authenticated in such manner as may be specified in the regulations by such person as may be specified for that purpose in the regulations, and
- (b) transmitted to an tÁrd-Chláraitheoir in such manner as may be specified in the regulations.

(3) (a) An tÁrd-Chláraitheoir shall maintain a register to be known as the Defence Forces Deaths Register Book (in this section referred to as the Deaths Book) and shall cause an entry to be made in the Deaths Book of each record of a death transmitted to him under this section.

(b) An tÁrd-Chláraitheoir shall maintain a register to be known as the Defence Forces Births Register Book (in this section referred to as the Births Book) and shall cause an entry to be made in the Births Book of each record of a birth transmitted to him under this section.

(c) An entry made under paragraph (a) of this sub-section shall be in such form as may be specified in the regulations under this section and shall contain such particulars as may be specified in those regulations.

324. (d) The Deaths Book and the Births Book shall, for the purposes of the Births and Deaths Registration Acts 1863 to 1952, be deemed to be register books within the

meaning of those Acts, but paragraph (3) of section 27 of the Births and Deaths Registration Act (Ireland), 1880, shall, in its application to the Deaths Book and 1880 the Births Book have effect as if—

- (i) “upon payment of the appointed fee, and” were deleted, and
- (ii) the reference therein to a statutory declaration made by one or more persons required by that Act to give information concerning the birth or death referred to in that paragraph were a reference to a statement in writing made by a person specified under paragraph (a) of subsection (2) of this section.

(4) An tÁrd-Chláraitheoir shall keep at his office an index to the Deaths Book and an index to the Births Book; and persons shall be entitled to search the indices and to have a certified copy of an entry in the Deaths Book or the Births Book or of items contained in the entry on the same terms and conditions in all respects as to fees and otherwise as are applicable under the Births and Deaths Registration Acts 1863 to 1952, or any other enactment in respect of the registers of births and deaths; and such fees shall be collected and disposed of in the same manner as fees payable under the said recited Acts.

(5) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation is passed by either such House within the next subsequent twenty-one days on which such House has sat after such regulation is laid before it, such regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(6) This section shall have and be deemed to have had effect as on and from the 1st day of October, 1960.

*Affecting provisions (textual) — 28/1979, s. 7;
36/1996, s. 7(3) (commencement), 6(1);
(non-textual) — 18/1993, s. 3(1) —*

[18/1993 — s. 3(1) Defence (Amendment) Act 1993]

Application of certain provisions of Principal Act and Act of 1960.

3.-(1) Sections 2, 4 (other than subsection (7)), 5 and 6 of the Act of 1960 shall apply and have effect as if each reference therein to an International United Nations Force (within the meaning of that Act) was a reference to an International United Nations Force.

Repeal. 1960, No. 22. [s. 7: 44/1960]

325. The Defence (Amendment) Act 1960, is hereby repealed.

Short title and collective citation. [s. 8: 44/1960]

326. (1) This Act may be cited as the Defence (Amendment) (No. 2) Act 1960

(2) The Principal Act and this Act may be cited together as the Defence Acts 1954 and 1960.

Note: This Act originally contained 8 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

CHAPTER 3

DEFENCE (AMENDMENT) ACT 1979

(No. 1 of 1979)

Interpretation. [s. 1: 1/1979]

327. In this Act “the Principal Act” means the Defence Act 1954.

Short title, construction and collective citation. [s. 5: 1/1979]

328. (1) This Act may be cited as the Defence (Amendment) Act 1979.
- (2) The Defence Acts 1954 and 1960, and this Act shall be construed together and may be cited together as the Defence Acts 1954 to 1979.

Note: This Act originally contained 5 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

CHAPTER 4

DEFENCE AMENDMENT (No. 2) Act 1979

(No. 28 of 1979)

Interpretation. [S. 1: 28/1979]

329. In this Act “the Principal Act” means the Defence Act 1954.

Short title, construction, collective citation and commencement. [s. 8: 28/1979]

330. (1) This Act may be cited as the Defence (Amendment) (No. 2) Act 1979.

(2) The Defence Acts 1954 to 1979, and this Act shall be construed together.

(3) The collective citation “the Defence Acts 1954 to 1979,” shall include this Act.

(4) This Act shall come into operation on such day as may be fixed by order made by the Minister.

Note: This Act originally contained 8 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

CHAPTER 5

DEFENCE (AMENDMENT) ACT 1987

(No. 8 of 1987)

Interpretation. [s. 1: 8/1987]

331. In this Act—

“a day’s pay” means —

- (a) in relation to a person who is convicted by a court-martial of an offence against military law or whose case is being dealt with summarily under Chapter IV of Part V of the Principal Act and who is a member of the Defence Forces, the basic pay, excluding any additional pay or allowance, that is, or would be, payable to that person in respect of the day on which punishment is awarded in respect of the offence, or
- (b) in relation to a person convicted of an offence against military law who is not a member of the Defence Forces but who was a member of the Defence Forces when the offence was committed, the basic pay, excluding any additional pay or allowance, that would be payable to that person in respect of the day on which punishment is awarded in respect of the offence if he were a member of the Defence Forces on that day and his rank and service (or service in rank, if appropriate) were the same as those on the last day of his service in the Defence Forces;

“the Principal Act” means the Defence Act 1954.

Powers exercisable by captain of service aircraft and certain other persons when safety of aircraft, etc. in jeopardy. [s. 6: 8/1987]

332. (1) Where the captain of a service aircraft has reasonable grounds for believing that a person who is not subject to military law has committed, or is about to commit, on board the aircraft any act jeopardising, or which may jeopardise,—

- (a) the safety of the aircraft, or
- (b) the safety of any person or property on board the aircraft, or
- (c) good order and discipline on board the aircraft,

the captain may take, with respect to that person, such reasonable measures, including restraint of his person, as he reasonably considers to be necessary to protect the safety of the aircraft or of any person or property, or to maintain good order and discipline, on board the aircraft.

(2) For the purposes of enabling him to exercise the powers conferred on him by subsection (1) of this section, the captain of a service aircraft may—

- (a) order or authorise the assistance of any other member of the crew of the aircraft, or
- (b) request or authorise the assistance of any other person on board the aircraft.

(3) Any member of the crew of a service aircraft, or any other person on board the aircraft, may, without being ordered, authorised or requested in that behalf by the captain of the aircraft, take, with respect to any other person on board the aircraft who is not subject to military law, any reasonable measures which he has reasonable grounds for believing to be immediately necessary to protect the safety of the aircraft or of any person or property on board the aircraft.

(4) A measure authorised by this section shall constitute neither—

- (a) an offence either at common law or under statute, nor
- (b) a cause of action in any court.

(5) For the purposes of this section and section 154 of the Principal Act, the person who has been designated to be in command of a service aircraft shall be regarded as being the captain of the aircraft.

Lopping, cutting or removal of certain trees, etc. [s. 7: 8/1987]

333. (1) The Minister may lop, cut or remove, or cause to be lopped, cut or removed, any tree, shrub, hedge or other plant on land in the vicinity of an aerodrome vested in or occupied by him which, in his opinion, obstructs or otherwise interferes with the navigation of aircraft using the aerodrome.

- (2) (a) Before exercising a power under subsection (1) of this section, the Minister shall give to the occupier of the land concerned notice in writing of his intention to so do after the expiration of a period (being a period of not less than twenty-one days) specified in the notice, and in case an occupier of land receives a notice under this section and apart from this subsection would not be entitled to carry out the lopping, cutting or removal referred to in the notice, he may, if he so wishes, by virtue of having received the notice, himself carry out or cause to be carried out such lopping, cutting or removal: provided that, before the expiration of the period specified in the notice, he informs the Minister in writing of his intention so to do.
- (b) Where an occupier of land to whom a notice under this section is given carries out, or causes to be carried out, whether or not by virtue of the power conferred on him in that behalf by paragraph (a) of this subsection, the lopping, cutting or removal referred to in the notice, the reasonable expenses thereby incurred by him shall be paid to him on demand by the Minister.

(3) Where a notice is given under this section, a person appointed in writing by the Minister to be an authorised person for the purposes of this section and any persons acting under that person's direction may, for the purpose of or in connection with carrying out the lopping, cutting or removal specified in the notice, at any reasonable time after the expiration of the period specified in the notice, enter (with or without vehicles) the land to which the notice relates or any other land and, in addition to carrying out such lopping, cutting or removal, do thereon all things ancillary to or reasonably necessary for the aforesaid purpose.

(4) Any person who obstructs or impedes a person in the exercise of a power conferred on him by *subsection (3)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

Short title, collective citation and construction. [s. 17: 8/1987]

334. (1) This Act may be cited as the Defence (Amendment) Act 1987.

(2) The Defence Acts 1954 to 1979, and this Act may be cited together as the Defence Acts 1954 to 1987, and shall be construed together as one Act.

Note: This Act originally contained 17 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

CHAPTER 6

DEFENCE (AMENDMENT) ACT 1990

(No. 6 of 1990)

Definitions. [s. 1: 6/1990]

335. In this Act, unless the context otherwise requires—

“association” means an association established under section 2 (1) of this Act;

“member” means an officer, non-commissioned officer, private or seaman of the Defence Forces;

“operation” means a task undertaken or intended to be undertaken by the Defence Forces in the discharge of their duties;

“the Principal Act” means the Defence Act 1954;

“remuneration” means pay, allowances, gratuities or grants payable by the Minister to a member or any pension, retired pay or gratuity for which a member may be eligible in respect of or arising out of his service as such a member.

Representative associations. [s. 2: 6/1990]

336. (1) Subject to section 3 of this Act, the Minister may provide by regulations for the establishment of an association or associations (in this Act referred to as an “association”) for the purpose of representing members of such rank or ranks of the Defence Forces as may be specified in the regulations in relation to matters affecting their remuneration and such other matters as the Minister may specify in the regulations, but excluding matters relating to any operation and the raising, maintenance, command, constitution, organisation and discipline of the Defence Forces under the Principal Act and offences in relation to the Defence Forces and military property under that Act.

(2) An association shall represent under subsection (1) of this section only members of the association.

(3) An association shall be independent of and shall not, without the consent of the Minister, be associated with or affiliated to any trade union or any other body.

(4) A member shall not become or be a member of a trade union, or of any other body (other than an association), which seeks to influence or otherwise be concerned with the remuneration or other conditions of service of members.

(5) The Minister shall determine any question that arises as to whether any trade union or any other body is a trade union or body to which subsection (4) of this section applies.

(6) The Minister may provide by regulations for the establishment of a system of conciliation and arbitration in respect of such matters, in relation to which an association represents members, as the Minister may specify in the regulations.

(7) Regulations under this section may provide for such ancillary, subsidiary and connected matters as the Minister considers necessary or expedient.

Suspension in certain circumstances of associations. [s. 3: 6/1990]

337. (1) Whenever an order under section 4 (1) of the Principal Act comes into operation, any association shall thereupon become and be suspended and an association shall not be established under section 2 (1) of this Act while the order is in force.

(2) If, following the coming into operation of such an order as aforesaid, an association is suspended, then, as soon as may be after the revocation of that order, the Minister shall revoke the suspension.

Members on active service. [s. 4: 6/1990]

338. Subject to section 5 of this Act, an association shall not represent, or have as a member of any governing or other body or committee of the association, a member who is on active service.

Members serving outside State. [s. 5: 6/1990]

339. The Minister may provide by regulations that an association for members of a specified rank or ranks of the Defence Forces may represent such members serving outside the State, whether with an International United Nations Force (within the meaning of the Defence (Amendment) (No. 2) Act 1960) or otherwise, in relation to such matters and to such extent as may be specified in the regulations.

Persons subject to military law. [s. 6: 6/1990]

340. A person who is subject to military law shall neither endeavour to persuade nor conspire with any other person to endeavour to persuade a member to join a trade union or other body (other than an association) referred to in section 2 (4) of this Act.

Laying of regulations before Houses of Oireachtas. [s. 7: 6/1990]

341. Every regulation made under section 2 or 5 of this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Short title collective citation construction and commencement. [s. 8: 6/1990]

342. (1) This Act may be cited as the Defence (Amendment) Act 1990.
- (2) The Defence Acts 1954 to 1987, and this Act may be cited together as the Defence Acts 1954 to 1990, and shall be construed together as one Act.
- (3) This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

Note: This is the entire Defence (Amendment) Act 1990.

CHAPTER 7

DEFENCE (AMENDMENT) ACT 1993

(No. 18 of 1993)

Definitions. [s. 1: 18/1993]

343. In this Act—

“the Act of 1960” means the Defence (Amendment) (No. 2) Act 1960;

“International United Nations Force” means an international force or body established by the Security Council or the General Assembly of the United Nations;

“the Principal Act” means the Defence Act 1954.

Liability of certain members of the Permanent Defence Force for service with International United Nations Forces. [s. 2: 18/1993]

344. (1)(a) This section applies at all times to—

(i) an officer of the Permanent Defence Force appointed on or after the date of the passing of this Act,

(ii) a man of the Permanent Defence Force enlisted on or after the date of the passing of this Act.

(b) Where a member of the Permanent Defence Force (not being a member of the Permanent Defence Force specified in *paragraph (a)* of this subsection) has offered in writing, whether on or after the date of the passing of this Act, to render himself liable for external service during a specified period and the Minister or an officer authorised in that behalf by the Minister has accepted the offer, this section shall also apply to that member during that period.

(2) Notwithstanding anything contained in Chapter III of Part IV of the Principal Act, every member of the Permanent Defence Force to whom this section for the time being applies shall be liable to serve outside the State with a contingent of the Permanent Defence Force which in pursuance of section 2 of the Act of 1960 is despatched for service with an International United Nations Force.

Annual report to Dáil Éireann. [s. 4: 18/1993]

345. The Minister shall, as soon as may be after the 1st day of January in each year beginning with the year 1994, make a report to Dáil Éireann on the operation in the preceding year of section 2 of the Act of 1960 and Dáil Éireann may by resolution approve of the report.

Short title, collective citation and construction. [s. 5: 18/1993]

346. (1) This Act may be cited as the Defence (Amendment) Act 1993.

(2) The Defence Acts 1954 to 1990, and this Act may be cited together as the Defence Acts 1954 to 1993, and shall be construed together as one.

Note: *This Act originally contained 5 sections. Section 3 has been incorporated into the Restatement.*

CHAPTER 8

DEFENCE (AMENDMENT) ACT 1998

(No. 31 of 1998)

Interpretations [s. 1: 31/1998]

347. (1) In this Act “the Principal Act” means the Defence Act 1954.
- (2) A reference in this Act to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
- (3) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Transitional Provisions. [s. 9: 31/1998]

348. (1) The person who, immediately before the commencement of this Act, holds the office of the Adjutant-General shall be deemed, upon such commencement, to stand appointed to be Deputy Chief of Staff (Operations) and subject to this Act, his or her appointment shall be for the residue of the term for which he or she had been appointed to the first-mentioned office and upon and subject to the other terms and conditions of the first-mentioned office, but shall be eligible for re-appointment as Deputy Chief of Staff (Operations) on the expiration of that term.
- (2) The person who, immediately before the commencement of this Act, holds the office of the Quartermaster-General shall be deemed, upon such commencement, to stand appointed to be Deputy Chief of Staff (Support) and subject to this Act, his or her appointment shall be for the residue of the term for which he or she had been appointed to the first-mentioned office and upon and subject to the other terms and conditions of the first-mentioned office, but shall be eligible for re-appointment as Deputy Chief of Staff (Support) on the expiration of that term.

Adaptations. [s. 10: 31/1998]

349. (1) Subject to sections 6,7 and subsection (3), references in any Act of the Oireachtas passed before the commencement of this Act or in any statutory instrument made before that day (other than such instruments (if any) as may be prescribed by the Minister) to the Adjutant-General or to the Quartermaster-General shall, on and after such commencement, be construed as references to the Deputy Chief of Staff (Support).
- (2) References in such statutory instruments (if any) as may be prescribed by the Minister under subsection (1) to the Adjutant-General or to the Quartermaster-General shall be construed as references to the Deputy Chief of Staff (Operations).
- (3) (a) References in sections 11 and 40 of the Principal Act to the Adjutant-General shall be construed as references to the Deputy Chief of Staff (Operations).

(b) References in the said sections 11 and 40 to the Quartermaster-General shall be construed as references to the Deputy Chief of Staff (Support).

(4) in this section —

“Prescribed” means prescribed by regulations made by the Minister;

“Statutory instrument” has the meaning assigned to it by the Interpretation Act 1937.

Short title, commencement, collective citation and construction. [s. 12: 31/1998]

350. (1) This Act may be cited as the Defence (Amendment) Act 1998.

(2) This Act shall come into operation on such day as the Minister may appoint by order.

(3) The Defence Acts 1954 to 1993 and this Act may be cited together as the Defence Acts 1954 to 1998, and shall be construed together as one.

Note: This Act originally contained 12 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

CHAPTER 9

COURTS-MARTIAL APPEALS ACT 1983

(No. 19 of 1983)

PART I

PRELIMINARY AND GENERAL

Short title. [s. 1: 19/1983]

351. This Act may be cited as the Courts-Martial Appeals Act 1983.

Commencement of Part III. [s. 2: 19/1983]

352. Part III of this Act shall come into operation on such day as may be fixed therefor by order of the Minister.

Definitions. [s. 3: 19/1983]

353. In this Act—

“the Act of 1954” means the Defence Act 1954;

“the Court” means the Courts-Martial Appeal Court;

“the Minister” means the Minister for Defence.

Affecting provisions (textual) — 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Expenses. [s. 4: 19/1983]

354. The expenses incurred by a Minister of the Government in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Restriction of section 224 of Act of 1954. [s. 8: 19/1983]

355. Section 224 of the Act of 1954 (quashing of finding of court-martial) shall not have effect in relation to the finding or sentence of a court-martial against which the person convicted may, by virtue of an order under section 24 of this Act, appeal to the Court.

PART II

COURTS-MARTIAL APPEAL COURT

Note: Ss. 9, 10, 11 & 12: 19/1983 Repealed by 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Right of appeal to the Court. [s. 13: 19/1983]

356. A person convicted by a court-martial may appeal to the Court against the finding or sentence (when confirmed) of the court-martial or against both such finding and such sentence.

[s. 14: 19/1983]

Repealed by 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Interlocutory applications. [s. 15: 19/1983]

357. Where a person convicted by a court-martial appeals to the Court, any interlocutory application in relation to the appeal may be heard and determined, by the Chief Justice or by any judge of the Supreme Court nominated by the Chief Justice for that purpose.

Consequential orders of the Court. [s. 16: 19/1983]

358. Where a person convicted by a court-martial gives notice of appeal to the Court, the Court shall have power to make all consequential orders it may think fit, including—

- (a) in the case of an appellant who is a member of the Defence Forces, an order suspending the operation of a sentence of imprisonment or detention pending the determination of the appeal, and
- (b) in the case of an appellant who is not a member of the Defence Forces, an order admitting the appellant to bail on such terms as the Court thinks proper pending the determination of the appeal.

Affecting provision (textual) — 14/1997, ss. 1 (commencement), 16, sch. 3.

Hearing of appeal by the Court. [s. 17: 19/1983]

359. (1) An appeal to the Court shall be heard and determined by the Court on the proceedings of the trial of the appellant, with power to the Court to hear new or additional evidence and to refer any matter for report by the president or the judge-advocate of the court-martial by which the appellant was tried.

(2) Where the Court is satisfied that the obtaining of a report from the president of the court-martial is impracticable or would involve undue delay, it may refer the matter for report by any other member of the court-martial.

[s. 18: 19/1983]

Repealed by 40/1993, s. 13, sch.

Finding of guilty but insane. [s. 19: 19/1983]

360. If on any appeal it appears to the Court that, although the appellant did the act or made the omission charged against him, he was insane at the time when the act was done or the omission was made so as not to be responsible according to law for the act or omission, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody in like manner as if the case had been determined by the Court of Criminal Appeal on appeal from a conviction on indictment.

[s. 21: 19/1983]*Repealed by 16/1990, s. 9, sch. 2.***Defence of appeal. [s. 22: 19/1983]**

361. The defence of an appeal under this Part of this Act shall be undertaken by the person who convened the court-martial by which the appellant was tried or by his successor in office duly empowered to convene courts-martial.

Rules of court. [s. 23: 19/1983]

362. The Superior Courts Rules Committee shall, with the concurrence of the Minister for Justice, make rules of court for the purposes of this Part of this Act.

Application of Part II. [s. 24: 19/1983]

363. The provisions of this Part of this Act shall have effect in relation to convictions by courts-martial of which the findings are or were promulgated on or after such day (whether before or after the passing of this Act) as the Minister may fix by order under this section.

PART III**LEGAL AID****Definitions for Part III. [s. 25: 19/1983]**

364. In this Part of this Act—

“legal aid certificate” means a legal aid (preliminary proceedings) certificate, a legal aid (court-martial) certificate, a legal aid (Courts-Martial Appeal Court) certificate;

“the prescribed authority” means the person prescribed by regulations under section 33 of this Act to be the prescribed authority for the purposes of this Part of this Act.

Affecting provisions (textual) — 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Legal aid (preliminary proceedings) certificate. [s. 26: 19/1983]

365. Where—

- (a) a person (in this section referred to as “the accused”) is charged with an offence against military law, and
- (b) rules made by the Minister under section 240 of the Act of 1954 permit the accused to be represented by counsel or by a solicitor at the investigation of the charge or the taking down of the evidence pursuant to such rules (or at both such investigation and such taking down of evidence),

then, if it appears to the prescribed authority—

- (i) that the means of the accused are insufficient to enable him to obtain legal aid, and
- (ii) that by reason of the gravity of the charge or of exceptional circumstances it is essential in the interests of justice that he should have legal aid at the investigation of the charge or the taking down of the evidence (or at both such investigation and such taking down of evidence),

the prescribed authority shall, on application being made to him in that behalf, grant in respect of the accused a certificate for free legal aid (in this Part of this Act referred to as “a legal aid (preliminary proceedings) certificate”) and thereupon the accused shall be entitled to such aid and to have a solicitor and (where he is charged with an offence for which a person would be required on conviction to be sentenced to imprisonment for life and the prescribed authority thinks fit) counsel assigned to him for such investigation or such taking down of evidence (or both such investigation and such taking down of evidence) in such manner as may be prescribed by regulations under section 33 of this Act.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 5.

Legal aid (court-martial) certificate. [s. 27: 19/1983]

366. (1) Where—

- (a) an order is made for the trial by court-martial of a person (in this section referred to as “the accused”), and
- (b) a certificate for free legal aid (in this Part of this Act referred to as “a legal aid (court-martial) certificate”) is granted in respect of the accused by the prescribed authority,

the accused shall be entitled to free legal aid in the preparation and conduct of his defence at the trial and to have a solicitor and (where the prescribed authority thinks fit) counsel assigned to him for that purpose in such manner as may be prescribed by regulations under section 33 of this Act.

(2) A legal aid (court-martial) certificate shall be granted in respect of the accused if (but only if)—

- (a) application is made therefor,
- (b) it appears to the prescribed authority that the means of the accused are insufficient to enable him to obtain legal aid, and
- (c) either—

- (i) the trial is on a charge of an offence for which a person could be required on conviction to be sentenced to imprisonment for life, or
- (ii) it appears to the prescribed authority that, having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up), it is essential in the interests of justice that the accused should have legal aid in the preparation and conduct of his defence at the trial.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 5.

Legal aid (Courts-Martial Appeal Court) certificate. [s. 28: 19/1983]

- 367.** (1) Where—
- (a) a person (in this section referred to as “the accused”) is convicted by a court-martial, and
 - (b) a certificate for free legal aid (in this Part of this Act referred to as “a legal aid (Courts-Martial Appeal Court) certificate”) is granted in respect of the accused by the prescribed authority or under subsection (3) of this section,

the accused shall be entitled to free legal aid in the preparation and conduct of an appeal against the finding or sentence of the court-martial or against both such finding and such sentence and to have a solicitor and counsel assigned to him for that purpose in such manner as may be prescribed by regulations under section 33 of this Act.

(2) A legal aid (Courts-Martial Appeal Court) certificate shall be granted in respect of the accused if (but only if)—

- (a) application is made therefor,
- (b) it appears to the prescribed authority that the means of the accused are insufficient to enable him to obtain legal aid, and
- (c) either—
 - (i) the conviction is of an offence for which a person would be required on conviction to be sentenced to imprisonment for life, or
 - (ii) it appears to the prescribed authority that, by reason of the serious nature of the offence or of exceptional circumstances, it is essential in the interests of justice that the accused should have legal aid in the preparation and conduct of an appeal.

(3) Where the accused is refused a legal aid (Courts-Martial Appeal Court) certificate by the prescribed authority, he may apply for the certificate to the Court either—

- (a) by letter addressed to the registrar of the Court setting out the facts of the case and the grounds of the application, or
- (b) to the Court itself,

and the Court shall grant the certificate if (but only if)—

- (i) it appears to the Court that the means of the accused are insufficient to enable him to obtain legal aid, and
- (ii) either—
 - (I) the conviction is of an offence for which a person would be required on conviction to be sentenced to imprisonment for life, or
 - (II) it appears to the Court that, by reason of the serious nature of the offence or of exceptional circumstances, it is essential in the interests of justice that the accused should have legal aid in the preparation and conduct of an appeal.

Affecting provision (textual) — 16/1990, s. 7, sch. 1, par. 5.

[s. 29: 19/1983]

Repealed by 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Payment of expenses of legal aid. [s. 30: 19/1983]

368. (1) Where a legal aid (preliminary proceedings) certificate has been granted in respect of a person, any fees, costs or other expenses properly incurred in preparing and conducting the person's case in relation to the proceedings to which the certificate relates shall, subject to regulations under section 33 of this Act, be paid out of moneys provided by the Oireachtas.

(2) Where a legal aid (court-martial) certificate has been granted in respect of a person, any fees, costs or other expenses properly incurred in preparing and conducting the defence to which the certificate relates shall, subject to regulations under section 33 of this Act, be paid out of moneys provided by the Oireachtas.

(3) Where a legal aid (Courts-Martial Appeal Court) certificate has been granted in respect of a person, any fees, costs or other expenses properly incurred in preparing and conducting the person's case in relation to the appeal to which the certificate relates shall, subject to regulations under section 33 of this Act, be paid out of moneys provided by the Oireachtas.

Affecting provisions (textual) — 31/1995, ss. 1(2) (commencement), 3, sch. 1, pt. 2.

Restriction of section 18. [s. 31: 19/1983]

- 369.** (1) Where a legal aid (preliminary proceedings) certificate or a legal aid (court-martial) certificate has been granted in respect of a person, the Court shall not have jurisdiction under section 18 of this Act to award costs to the person in respect of proceedings in relation to which the certificate applies.

(2) Where a legal aid (Courts-Martial Appeal Court) certificate has been granted in respect of a person, the Court shall not have jurisdiction under section 18 of this Act to award costs to the person in respect of court proceedings in relation to which the certificate applies.

Statement as to means. [s. 32: 19/1983]

- 370.** Before a person is granted a legal aid certificate he may be required by the prescribed authority, the court or the judge, as the case may be, granting the certificate to furnish a written statement in such form as may be prescribed by the Minister by regulations under section 33 of this Act about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid.

Regulations. [s. 33: 19/1983]

- 371.** (1) The Minister may make regulations for carrying this Part of this Act into effect and the regulations may, in particular, prescribe—

- (a) the form of legal aid certificates,
- (b) the rates or scales of payment of any fees, costs or other expenses payable out of moneys provided by the Oireachtas pursuant to such certificates, and
- (c) the manner in which solicitors and counsel are to be assigned pursuant to such certificates.

(2) Regulations under this section in relation to the matters specified in paragraph (b) of subsection (1) of this section shall not be made without the consent of the Minister for Finance.

(3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to anything previously done thereunder.

Penalty for false or misleading statements. [s. 34: 19/1983]

- 372.** (1) A person who, for the purpose of obtaining free legal aid under this Part of this Act, whether for himself or some other person, knowingly makes a false statement or false representation either verbally or in writing or knowingly conceals any material fact shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding six months or to both.

(2) Upon conviction of a person of an offence under this section, the court by which the person is convicted may, if in the circumstances of the case the court so thinks fit, order the person to pay to the Minister the whole or part (as the court considers appropriate) of any sum paid under section 30 of this Act in respect of the free legal aid in relation to which the offence was committed, and any sum paid to the Minister pursuant to this section shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

Note: This Act originally contained 34 sections. The remainder of these sections are spent or have been incorporated into the Restatement.

Chapter 10

Miscellaneous Provisions.

Prisoners of War and Enemy Aliens Act 1956 (No. 27/1956)

[s. 4: 27/1956]

Prisoner of war to be person subject to military law.

373. (4) A prisoner of war shall be a person subject to military law in the same manner as a member of the Defence Forces of rank corresponding to the rank or status of such prisoner of war is so subject for the time being by virtue of the Defence Act, 1954 (No. 18 of 1954), and the provisions of that Act, and of the orders, regulations and rules thereunder, having application in relation to persons subject to military law shall have effect in relation to such prisoner of war accordingly, but without prejudice—
- (a) to any exclusions or modifications which the Minister may think proper to make by regulations under this paragraph so as to enable those provisions to have effect in conformity with the circumstances (including internment) of prisoners of war, and
 - (b) To any regulations under section 2 or section 3 of this Act.

Juries Act 1976 [No. 4/1976]

[s. 7, Sch. 1, Part I: 4/1976]

Ineligibility.

374. (7) The persons specified in Part I of the First Schedule should be ineligible for jury service.

Note: The relevant extract from the First Schedule reads as follows: —

Members of the Defence Forces

Every member of the Permanent Defence Force, including the Army Nursing Service. Every member of the Reserve Defence Force during any period during which he is in receipt of pay for any service or duty as a member of the Reserve Defence Force.

Irish Aviation Authority Act 1993 [No. 29/1993]

[ss. 1(2) (commencement), 3(2): 29/1993]

Application to state aircraft.

375. 3(2) Subject to the Defence Acts, 1954 to 1993, and the exigencies of the security of the State, aircraft of the Defence Forces being operated in Irish airspace outside a designated area (within the meaning of section 68) shall be so operated in accordance with any arrangements in force for the time being made by the Minister for Defence and the company.

Public Service Management Act 1997 [No. 27/1997]**[ss. 14(2) (commencement), 4(i)(h)]****Responsibility and accountability within Departments and Offices.**

- 376.** 4(1) Except as otherwise directed by the Government or provided by or under any other Act, the Secretary General of a Department or Head of a Scheduled Office, as the case may be, shall, subject to the determination of matters of policy by the Minister of the Government having charge of the Department or Scheduled Office or by the Government, have the authority, responsibility and accountability for carrying out the following duties in respect of the Department or Scheduled Office:

(h) subject to the Civil Service Regulation Act, 1956, the Civil Service Commissioners Act, 1956, the Defence Acts, 1954 to 1993 (in respect of civilian employees recruited or appointed under the Defence Acts, 1954 to 1993) and any other Act affecting the appointment, performance, discipline or dismissal of civil servants or civilian employees of the Department of Defence, managing all matters pertaining to appointments, performance, discipline and dismissals of staff below the grade of Principal or its equivalent in the Department or Scheduled Office;