

LAWS OF THE WEST INDIES

CHAPTER 101

DEFENCE

CHAPTER 101

THE DEFENCE ACT, 1958.

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AN ACT to provide for the defence of the Federation by ^{Act} 11/1958. the establishment of a West India Regiment and other units of Her Majesty's military forces, and to provide for matters connected therewith and incidental thereto.

Date of assent 15th December, 1958

Commencement 16th December, 1958 ^{S.I.} 17/1958.

Part I—Preliminary

1. This Act may be cited as the Defence Act, 1958. ^{Short title.}
2. This Act shall apply to the Cayman Islands and ^{Applica-} the Turks and Caicos Islands. ^{tion.}
3. (1) In this Act, unless the context otherwise ^{Interpre-} requires— ^{tation.}

“acting rank” means rank of any description (however called) such that under regulations a

commanding officer has power to order the holder to revert from that rank; “acting warrant officer” and “acting non-commissioned officer”, shall be construed accordingly;

“aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

“aircraft material” includes—

- (a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;
- (b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, aircraft;
- (d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and
- (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

“appropriate superior authority” has the meaning assigned to it by subsection (1) of section 78 and subsection (2) of section 82 of this Act;

“arrest” includes open arrest;

“before the enemy” in relation to a person, means that he is in action against the enemy or about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

“Board of Inquiry Rules” means rules with respect to the convening, constitution and procedure of boards of inquiry made by the Governor-General under section 133 of this Act;

“civil court” means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside the Commonwealth;

“civil offence” has the meaning assigned to it in subsection (2) of section 70 of this Act;

“colour service” means service under the provisions of this Act otherwise than service in the reserve;

“the Commander” means the officer appointed by the Governor-General under section 183 of this Act to have command, direction and general superintendence of the units of the regiment raised under this Act;

“commanding officer” has the meaning assigned to it by subsection (1) of section 82 of this Act;

“Commonwealth force” means any of the military forces of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Federation of Malaya or Ghana;

“competent military authority” means such officer as may be prescribed;

“corresponding civil offence” has the meaning assigned to it by subsection (2) of section 70 of this Act;

“corresponding rank” in relation to any rank or rating in Her Majesty’s naval, military or air forces, means such rank or rating in any other of those forces as may be declared by regulations to correspond therewith;

“court-martial” except where it is expressed to be under service law, means a court-martial under this Act;

“damage” includes destruction and references to damaging shall be construed accordingly;

“date of attestation” in relation to any person means the date on which he is attested in accordance with the provisions of regulations;

“decoration” includes medal, medal ribbon, clasp and good conduct badge;

“desertion” shall be construed in accordance with subsection (2) of section 39 of this Act;

“enemy” includes all persons engaged in armed operations against any of Her Majesty’s forces and also includes all armed mutineers, armed rebels, armed rioters and pirates;

“Governor” means, in relation to a Territory, the officer, however styled, who is for the time being administering the government of the Territory;

“Her Majesty’s military forces” except where otherwise expressly provided, does not include any Commonwealth force;

3 & 4 Eliz.
2 c. 18.

“the Imperial Act” means the Army Act, 1955, of the United Kingdom as amended from time to time and any Imperial enactment substituted therefor;

“Imprisonment and Detention Rules” means rules regulating imprisonment and detention made by the Governor-General under section 132 of this Act;

“property” includes real property in the Federation, and property outside the Federation of the nature of real property;

“provost officer” means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;

“public property” means any property belonging to the Crown in right of its government of the United Kingdom or of the Federation or of any Territory, or to any department of Her Majesty’s Government in the United Kingdom or to the Federal Government or to any department thereof, or to any Territorial Government or department thereof, and includes any property held for the purposes of the Crown as aforesaid or of any such Government or department;

“recruiting officer” means a person authorised as such under the provisions of section 11 of this Act;

“the reserve” means the body comprised of those persons who are subject to reserve service or liability under Part IX of this Act;

“reservist” means a member of the reserve;

“Rules of Procedure” means the Rules of Procedure, made by the Governor-General under section 131 of this Act;

“service” when used adjectivally, means belonging to or connected with Her Majesty’s military forces or any part of Her Majesty’s military forces;

“service law” includes this Act, the Imperial Act, ^{3 & 4 Eliz. 2 c. 18.} the Air Force Act, 1955, of the United Kingdom ^{3 & 4 Eliz. 2 c. 19.} and the Naval Discipline Act, 1957, of the United ^{5 & 6 Eliz. 2 c. 53} Kingdom as amended from time to time and any Imperial enactment substituted therefor;

“ship” includes any description of vessel;

“soldier” does not include an officer but, with the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes a warrant officer and a non-commissioned officer and every person subject to military law under this Act during the time that he is so subject;

“stoppages” means the recovery by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“unit” includes a battalion or other body of Her Majesty’s military forces established and maintained in the Federation under section 6 of this Act corresponding in strength to a battalion or any headquarters or other body of such forces declared by the Commander to be a unit.

(2) In this Act, unless the context otherwise requires, references to regulations shall be construed as references to regulations made under section 221 of this Act.

(3) In this Act, unless the context otherwise requires—

- (a) “the regiment” means the West India Regiment;
- (b) references to the regiment include references to any units formed under paragraph (b) of subsection (1) of section 6 of this Act.

Definition
of stealing.

4. For the purposes of this Act—

(1) a person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner;

(2) the expression “takes” includes obtaining the possession—

- (a) by any trick;
- (b) by intimidation;
- (c) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;

(d) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps;

(3) the expression "carries away" includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached;

(4) the expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen;

(5) everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen:

Provided that—

(a) save as hereinafter expressly provided with respect to fixtures, growing things, and ore from mines, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof; and

(b) the carcase of a creature wild by nature and not reduced into possession while living shall not be capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcase;

(6) every person who—

(a) with intent to steal, rips, cuts, severs or breaks—

(i) any glass or woodwork belonging to any building; or

(ii) any metal or utensil or fixture, fixed in or to any building; or

- (iii) anything made of metal fixed in any land being private property, or as a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial-ground;
- (b) with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or under-wood growing—
 - (i) in any place whatsoever, the value of the article stolen or the injury done being to the amount of one dollar at the least; or
 - (ii) in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, the value of the article stolen or the injury done exceeding the amount of five dollars; or
 - (iii) in any place whatsoever, the value of the article stolen or the injury done exceeding the amount of twenty-five dollars;
- (c) with intent to steal, destroys or damages any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery-ground, hothouse, greenhouse or conservatory;

shall be guilty of stealing;

(7) every person who severs with intent to steal, the ore of any metal, or any lapis calaminaris, manganese, mundick, wad, black cawke, black lead, coal, or cannel coal from any mine bed or vein thereof, shall be guilty of stealing.

Provisions
as to
active
service.

5. (1) In this Act the expression “on active service”, in relation to any unit, means that it is engaged in operations against an enemy, and in relation to a person means that he is serving in or with such a unit which is on active service.

(2) Where it appears to the Governor-General that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public ser-

vice that a unit should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein that unit shall be deemed to be on active service.

(3) Where it appears to the Governor-General that it is necessary for the public service that the period specified in a declaration under subsection (2) of this section should be prolonged or, if previously prolonged under this section, should be further prolonged, he may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any unit is deemed to be on active service by virtue of the foregoing provisions of this section, it appears to the Governor-General that there is no necessity for the unit to continue to be treated as being on active service, he may declare that as from the coming into operation of the declaration the unit shall cease to be deemed to be on active service.

6. (1) There shall be established and maintained in the Federation a body of Her Majesty's military forces consisting of—

Establishment and employment.

- (a) such units as the Governor-General may from time to time think fit to be comprised therein and styled "The West India Regiment";
- (b) such other units as the Governor-General may from time to time think fit to be formed and styled by such designation as the Governor-General shall by notice in the Gazette declare.

(2) Every unit shall be charged with the defence of the Federation and with such other duties as may from time to time be defined by the Governor-General.

(3) The Governor-General may at any time order that any unit shall be employed out of or beyond the Federation.

(4) The Governor-General may order that any officer or soldier shall proceed to any place outside the Federation for the purpose of undergoing instruction or training or for duty or employment.

Part II—Officers

Conditions
of appoint-
ing officers.

7. No person shall be appointed to a commission in the regiment unless he has been recommended by a board set up for that purpose by the Governor-General acting in his discretion.

Commis-
sioning of
officers.

8. (1) The power of appointment to commissions in the regiment shall be vested in:—

- (a) Her Majesty, and exercised on Her Majesty's behalf by the Governor-General, acting in his discretion, in the case of persons who are to be granted a commission for an indefinite period; and
- (b) the Governor-General in the case of persons who are to be commissioned for a specified time, and shall be exercised by him in his discretion.

(2) Every officer on appointment to a commission shall be issued with a commission in the form set out in the First Schedule to this Act which commission shall be signed by the Governor-General.

(3) The appointment of a person to a commission shall be notified in the Gazette.

Promotion,
etc. of
officers
to be
Gazetted.

9. (1) The promotion of officers whether permanent or acting, shall be notified in the Gazette.

(2) Any retirement or resignation of an officer shall be notified in the Gazette.

Reserve of
officers.

10. A reserve of officers may be maintained consisting of those officers of the regiment who have been permitted to retire from the active list.

Part III—Enlistment and Terms of Service

Recruiting
officers.

11. Any person authorised in that behalf by the Governor-General may enlist recruits in the regiment in the prescribed manner.

Enlistment

Enlistment.

12. (1) A person offering to enlist in the regiment shall be given a notice in the prescribed form setting out the

questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him, and a recruiting officer shall not enlist any person in the regiment unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the age of eighteen years unless consent to the enlistment has been given in writing—

- (a) if the person offering to enlist is living with both or one of his parents, by the parents or parent;
- (b) if he is not living with both or one of his parents, but any person (whether a parent or not) whose whereabouts are known or can after reasonable enquiry be ascertained has parental rights and powers in respect of him, by that person;
- (c) if there is no such person as is mentioned in paragraph (b) of this subsection or if after reasonable enquiry it cannot be ascertained whether there is any such person, by any person in whose care (whether in law or in fact) the person offering to enlist may be.

(3) Where the recruiting officer is satisfied by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist has or has not attained the age of eighteen years, that person shall be deemed for the purposes of this Act to have attained, or as the case may be, not to have attained, that age.

A document purporting to be a certificate signed by the recruiting officer, stating that he is satisfied as aforesaid, shall be sufficient evidence, until the contrary is proved, that he is so satisfied.

Terms and conditions of service.

13. (1) The term for which a person enlisting in the regiment may be enlisted shall be such a term beginning with the date of his attestation as is mentioned in the following provisions of this section. Terms of enlistment.

(2) Where the person enlisting has attained the age of eighteen years the said term shall be—

- (a) such term not exceeding six years as may be prescribed, being a term of colour service; or
- (b) such term not exceeding twelve years as may be prescribed, being as to such part thereof as may be prescribed a term of colour service and as to the remainder a term of service in the reserve.

(3) Where the person enlisting has not attained the age of eighteen years the said term shall be—

- (a) a term ending with the expiration of such period, not exceeding six years, as may be prescribed, beginning with the date on which he attains such age, being a term of colour service; or
- (b) a term ending with the expiration of such period, not exceeding twelve years, as may be prescribed, beginning with the date on which he attains such age, being as to such part thereof as may be prescribed a term of colour service and as to the remainder a term in the reserve.

Re-engagement and extension of service

Re-engage-
ment and
conti-
nuance in
service.

14. (1) Any soldier of good character who at any time has completed or is within two years before completing the term of his colour service may with the approval of the competent military authority re-engage for such further period or periods of colour service and service in the reserve as may be prescribed:

Provided that such further period or periods of colour service together with the original period of colour service, shall not, except as provided by subsection (2) of this section, exceed a total continuous period of twenty-two years' colour service from the date of the soldier's original attestation or the date upon which he attained the age of eighteen years, whichever shall be the later.

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(2) Any soldier who shall have completed a period of twenty-two years' colour service may, if he shall so desire and with the approval of the competent military authority, continue to serve from year to year in all respects as if his term of colour service was still unexpired except that it shall be lawful for him to claim his discharge at the expiration of any period of three months after he has given notice to the officer under whose command he is serving of his wish to be discharged.

15. Any soldier whose term of colour service expires during a state of war, insurrection, hostilities or public emergency may be retained in the regiment and his service prolonged for such further period as the competent military authority with the approval of the Governor-General may direct. Prolongation of service.

Discharge and transfer to the reserve

16. (1) Save as in this Act provided, every soldier upon becoming entitled to be discharged shall be discharged with all convenient speed but until discharged shall remain subject to military law under this Act. Discharge.

(2) When a soldier who is discharged is serving out of the Territory in which he was enlisted, then he shall be sent free of cost—

(a) either to that Territory, or

(b) to the Territory in which he intends to reside provided that the cost to the Federation of conveying him to the Territory of intended residence is no greater than the cost of conveying him to the Territory in which he was enlisted,

with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months from his arrival.

(3) Except in pursuance of the sentence of a court-martial under service law, a soldier shall not be discharged unless his discharge has been authorised by order of the competent military authority.

(4) Every soldier shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed.

Transfer
to the
reserve.

17. (1) Save as in this Act provided, every soldier upon falling to be transferred to the reserve shall be transferred to the reserve but until so transferred shall remain subject to military law under this Act.

(2) When a soldier who falls to be transferred to the reserve is serving out of the Territory in which he was enlisted, he shall be sent free of cost—

(a) either to that Territory, or

(b) to the Territory in which he intends to reside provided that the cost to the Federation of conveying him to the Territory of intended residence is no greater than the cost of conveying him to the Territory in which he was enlisted,

with all convenient speed and shall be transferred to the reserve on his arrival there or, if he consents to his transfer being delayed, within six months from his arrival.

(3) Notwithstanding anything in this section hereinbefore contained, the competent military authority may, when a soldier falls to be transferred to the reserve as aforesaid, discharge him forthwith without giving any reason and in any such case the provisions of section 16 of this Act shall apply.

Postpone-
ment of
discharge
or transfer
pending
proceed-
ings for
offences,
etc.

18. (1) Notwithstanding anything in this Part of this Act, a soldier shall not be entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to military law under this Act, to be proceeded against for an offence against any of the provisions of service law:

Provided that if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

(2) Notwithstanding anything in this Part of this Act, a soldier who is serving a sentence of imprisonment or deten-

tion awarded by a court-martial under service law or his commanding officer shall not be entitled to be discharged or transferred to the reserve during the currency of the sentence.

19. (1) A warrant officer or a non-commissioned officer shall not be reduced in rank except by sentence of a court-martial under service law or by order of the Governor-General acting in his discretion, or the Commander, or an officer not below the rank of brigadier or corresponding rank authorised by the Governor-General to act for the purposes of this subsection.

Restrictions on reduction in rank of warrant officers and non-commissioned officers.

(2) An authorisation under subsection (1) of this section may be given generally or subject to such limitations as may be specified by the Governor-General.

(3) For the purposes of this section reduction in rank does not include reversion from acting rank.

20. A warrant officer who is reduced to the ranks may thereupon claim to be discharged unless a state of war, insurrection, hostilities or public emergency exists.

Right of warrant officer to discharge on reduction to ranks.

21. A soldier may be discharged by a competent military authority at any time during the currency of any term of engagement upon such grounds as may be prescribed.

Discharge upon prescribed grounds.

22. (1) A soldier shall be entitled to claim his discharge at any time within six months after the date of his first attestation, and if he makes such a claim he shall on payment of one hundred dollars be discharged with all convenient speed but until discharge shall remain subject to military law under this Act:

Right of soldier to purchase discharge.

Provided that the provisions of this section shall not apply to a soldier who immediately prior to the date of his first attestation was a member of Her Majesty's military forces:

Provided further that the provisions of section 16 of this Act shall not apply to a soldier discharged under the provisions of this section.

(2) Notwithstanding the provisions of this section, no soldier shall be entitled to claim his discharge at a time when or so long as soldiers are required to continue their colour service under the provisions of section 15 of this Act.

Miscellaneous and supplementary provisions

Rules for
reckoning
service.

23. In reckoning the service of any soldier for discharge or re-engagement or transfer to the reserve there shall be excluded therefrom—

- (a) all periods during which he has been absent from his duty from any of the following causes—
 - (i) imprisonment;
 - (ii) desertion;
 - (iii) absence without leave exceeding twenty-eight days; and
- (b) any period ordered by a court-martial to be forfeited.

Validity of
attestation
and
enlistment.

24. (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier—

- (a) the validity of his enlistment shall not be called in question on the grounds of any error or omission in his attestation paper;
- (b) after the expiration of a period of three months from the date on which he made the said declaration he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulations made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier until his discharge.

(2) Where a person has received pay as a soldier without having previously made such declaration as aforesaid then—

- (a) he shall be deemed to be a soldier until discharged;

- (b) he may claim his discharge at any time and if he makes such claim the claim shall be submitted as soon as may be to the competent military authority who shall cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

25.(1) If a person appearing before a recruiting officer for the purpose of being attested knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars.

False answers in attestation paper.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law under this Act.

Part IV—Discipline and Trial and Punishment of Military Offences

*Treachery, cowardice and offences arising out of
military service*

26. (1) Any person subject to military law under this Act who with intent to assist the enemy—

Aiding the enemy.

- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or
- (b) does any act calculated to imperil the success of operations of Her Majesty's forces, of any forces co-operating therewith or of any part of any of those forces; or
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of

hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or

- (d) furnishes the enemy with arms or ammunition or with supplies of any description; or
- (e) harbours or protects an enemy not being a prisoner of war,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act, who knowingly and without lawful excuse—

- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or
- (b) does any act calculated to imperil the success of operations of Her Majesty's forces, of any forces co-operating therewith or of any part of any of those forces; or
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description; or
- (e) harbours or protects an enemy not being a prisoner of war,

shall, on conviction by court-martial, be liable to suffer imprisonment or any less punishment provided by this Act.

Communica-
tion with the
enemy.

27. (1) Any person subject to military law under this Act who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act who without authority communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this section the expression "intelligence" means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty's forces or of any forces co-operating therewith, or any of Her Majesty's ships or aircraft or of the ships or of the ships or aircraft of any such co-operating force;
- (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid;
- (c) any code, cipher, call sign, password or countersign;
- (d) any measures for the defence or fortification of any place on behalf of Her Majesty;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

28. (1) Any person subject to military law under this Act who when before the enemy— Cowardly
behaviour.

- (a) leaves the post, position or other place where it is his duty to be; or
 - (b) throws away his arms, ammunition or tools,
- in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who when before the enemy induces any other person subject to service law and before the enemy to commit an offence under subsection (1) of this section shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Offences
against
morale.

29. Any person subject to military law under this Act who—

- (a) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of Her Majesty's forces, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy, uses words calculated to create despondency or unnecessary alarm,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Becoming
a prisoner
of war
through
disobedience
or wilful
neglect;
and failure
to rejoin
forces.

30. (1) Any person subject to military law under this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking, any reasonable steps to rejoin Her Majesty's service which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

31. (1) Any person subject to military law under this Act who while on guard duty—

Offences
by or in
relation to
sentries,
etc.

- (a) sleeps at his post; or
- (b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep; or
- (c) is drunk; or
- (d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence against this section.

(2) For the purposes of this section a person shall be treated as being drunk if owing to the influence of alcohol or any drugs, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) Any person subject to military law under this Act who strikes or otherwise uses force against any person on guard duty, being a member of any of Her Majesty's forces or of any forces co-operating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

(5) References in this section to a person on guard duty are references to a person who—

- (a) is posted or ordered to patrol or has adopted the position of sentry at a post or has undertaken the patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any persons, premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol or who have adopted the position of sentries at a post or have undertaken the patrol, and to the members of a party mounted or ordered to patrol, for the purpose of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

Looting.

32. Any person subject to military law under this Act who—

- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations; or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any vehicles, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

Mutiny and Insubordination

Mutiny.

33. (1) Any person subject to military law under this Act who—

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connexion with operations against the enemy, or the impeding of the performance of any such duty or service; or
- (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act who, in a case not falling within subsection (1) of this section, takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act the expression "mutiny" means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

- (a) to overthrow or resist lawful authority in Her Majesty's forces or any forces co-operating therewith or in any part of any of the said forces; or
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (c) to impede the performance of any duty or service in Her Majesty's forces or in any forces co-operating therewith or in any part of any of the said forces.

34. Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended—^{Failure to suppress mutiny.}

- (a) fails to use his utmost endeavours to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended,

shall on conviction by court-martial—

- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act; and
- (ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

Insubor-
dinate
behaviour.

35. (1) Any person subject to military law under this Act who—

- (a) strikes, or otherwise uses violence to, or offers violence to, his superior officer; or
- (b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service, and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.

(2) In the foregoing provisions of this section the expression "superior officer", in relation to any person, means an officer, warrant officer or non-commissioned officer subject to service law of superior rank, and includes such an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person's superior.

Disobe-
dience to
particular
orders.

36. (1) Any person subject to military law under this Act who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

Obstruc-
tion of
provost
officers.

37. Any person subject to military law under this Act who—

- (a) obstructs; or
- (b) when called on, refuses to assist,

any person known to him to be a provost officer, or to be a person (whether subject to military law under this Act or not) lawfully exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

38. (1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Disobedience to standing orders.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of troops, or for any command or other area, garrison or place, or for any ship, train or aircraft.

Desertion, absence without leave, etc..

39. (1) Any person subject to military law under this Act who— Desertion.

- (a) deserts; or
- (b) persuades or procures any person subject to service law to desert,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that a person shall not be liable to be imprisoned for more than two years unless—

- (i) if the offence was against paragraph (a) of this subsection, he was on active service or under orders for active service at the time when it was committed; or

- (ii) if the offence was an offence against paragraph (b) of this subsection, the person in relation to whom it was committed was on active service or under orders for active service at that time.

(2) For the purposes of this Act a person deserts who—

- (a) leaves Her Majesty's service or, when it is his duty to do so, fails to join or rejoin Her Majesty's service, with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty; or
- (b) being an officer enlists in or enters any of Her Majesty's forces without having resigned his commission, or being a soldier enlists in or enters any of Her Majesty's forces without having been discharged from his previous enlistment; or
- (c) absents himself without leave with intent to avoid serving at any place in any of the Territories (other than the Territory in which he is serving) or at any place out of the Federation or to avoid service or any particular service when before the enemy,

and references in this Act to desertion shall be construed accordingly.

(3) In addition to or in lieu of any punishment authorised by subsection (1) of this section, the court-martial by whom a soldier is convicted of desertion may direct that the whole or any part of his service previous to the period as respect which he is convicted of having been a deserter shall be forfeited:

Provided that this subsection shall not apply to reservists called out on permanent service.

Absence
without
leave.

40. Any person subject to military law under this Act who—

- (a) absents himself without leave; or
- (b) persuades or procures any person subject to service law to absent himself without leave,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

41. Any person subject to military law under this Act who— Assisting and concealing desertion and absence without leave.

- (a) knowingly assists any person subject to service law to desert or absent himself without leave; or
- (b) knowing that any person subject to service law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

42. Any person subject to military law under this Act who without reasonable excuse fails to attend for any parade or other military duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Failure to perform military duties.

Malingering and drunkenness

43. (1) Any person subject to military law under this Act who— Malingering.

- (a) falsely pretends to be suffering from sickness or disability; or
- (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent; or

- (c) injures another person subject to service law, at the instance of that person, with intent thereby to render that person unfit for service; or
- (d) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section the expression "unfit" includes temporarily unfit.

Drunken-
ness.

44. (1) Any person subject to military law under this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that where the offence is committed by a soldier neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(2) For the purpose of this section a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty's service.

Offences relating to property

Offences in
relation to
public and
service
property.

45. Any person subject to military law under this Act who—

- (a) steals or fraudulently misapplies any public or service property, or is concerned in or

connives at the stealing or fraudulent misapplication of any public or service property; or

- (b) receives any public or service property knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any public or service property; or
- (d) by wilful neglect causes damage by fire to any public or service property,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

46. Any person subject to military law under this Act who—

Offences in relation to property of members of forces.

- (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives any such property knowing or having reason to believe the same to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to service law,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

47. Any person subject to military law under this Act who—

Miscellaneous offences relating to property.

- (a) loses any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care:

Provided that it shall be a defence for any person charged under this paragraph with losing any property, that he took reasonable steps for the care and preservation thereof; or

- (b) by negligence damages any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or
- (c) by negligence causes damage by fire to any public or service property; or
- (d) fails to take proper care of any animal or bird used in the public service which is in his charge; or
- (e) makes away (whether by pawning, selling, destruction or in any other way) with any military, naval or airforce decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences relating to billeting and requisitioning of
vehicles*

Billeting
offences.

48. Any person subject to military law under this Act who—

- (a) knowing that no billeting requisition is in force under Part VII of this Act authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under Part VII of

this Act any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or

- (c) commits any offence against the person or property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part VII of this Act or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

49. (1) Any person subject to military law under this Act who—

Offences in relation to requisitioning of vehicles.

- (a) knowing that no requisitioning order is in force under Part VII of this Act authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions, or
- (b) in purported exercise of powers conferred by a requisitioning order under Part VII of this Act takes, or orders or procures any other person to take, possession of a vehicle knowing that no requisitioning order is in force under the said Part VII under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such an order, or
- (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being

given, or possession of a vehicle not being taken or not being retained, under a requisitioning order under Part VII of this Act,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Subsection (1) of this section shall apply in relation to horses, mules, donkeys and oxen, food, forage and stores (within the meaning of Part VII of this Act) as it applies in relation to vehicles.

Flying, etc., offences

Dangerous flying, etc.

50. Any person subject to military law under this Act who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

Inaccurate certification of aircraft, etc.

51. Any person subject to military law under this Act who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Low flying.

52. Any person subject to military law under this Act, who, being the pilot of one of Her Majesty's aircraft, flies it at a height less than such height as may be provided by regulations except—

- (a) while taking off or alighting; or
- (b) in such other circumstances as may be so provided,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

53. Any person subject to military law under this Act who, being the pilot of one of Her Majesty's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Annoy-
ance by
flying.

Offences relating to, and by, persons in custody

54. (1) Any person subject to military law under this Act who, when another person subject thereto is under arrest—

Irregular
arrest and
confinement.

- (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or an appropriate superior authority or, as the case may be, tried by court-martial; or
- (b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, fails without reasonable cause to deliver—

- (a) at the time of the committal; or
- (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this section.

(3) Where any person (hereinafter referred to as "the prisoner") is committed to the charge of a person subject to military law under this Act who is in command

of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is duty to report—

- (a) a written statement containing so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and
- (b) if he has received it, the report required by subsection (2) of this section,

he shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Permitting
escape,
and
unlawful
release of
prisoners.

55. (1) Any person subject to military law under this Act who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who—

- (a) without proper authority releases any person who is committed to his charge; or
- (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Resistance
to arrest.

56. (1) Any person subject to military law under this Act who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or

otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

(2) Any person subject to military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to this Act or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

57. Any person subject to military law under this Act who escapes from arrest, prison or other lawful custody (whether military or not) shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Escape
from con-
finement.

*Offences in relation to courts-martial and civil
authorities*

58. (1) Any person subject to military law under this Act who—

Offences in
relation to
courts-
martial.

- (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or
- (b) refuses to swear an oath when duly required by a court-martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a

member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1) of this section, where an offence against paragraph (e) or paragraph (f) of that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial shall include references to a court-martial held in pursuance of service law.

False
evidence.

59. (1) Any person subject to military law under this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial under service law or before any board or person having power under service law to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

60. Any person subject to military law under this Act who at any place in the Commonwealth prevents or obstructs—

Obstruction of police officer arresting officer or soldier.

(a) the execution by a police officer of a warrant for the arrest of a person subject to service law who has committed or is suspected of having committed an offence punishable on conviction by a civil court; or

(b) the arrest of a person subject to service law by a police officer acting in the exercise of his powers of arrest without warrant,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Miscellaneous offences

61. (1) Any person subject to military law under this Act who without authority discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Injurious disclosures.

(2) In this section the expression "information useful to an enemy" means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say—

(a) the number, description, armament, equipment, disposition, movement or condition of any of Her Majesty's forces or of any forces co-operating therewith, or any of Her Majesty's ships or aircraft or of the ships or aircraft of any such co-operating force; or

(b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid;
or

- (c) any code, cipher, call sign, password or countersign; or
- (d) any measures for the defence or fortification of any place on behalf of Her Majesty; or
- (e) the number, description or location of any prisoners of war; or
- (f) munitions of war.

Making of
false state-
ments on
enlistment.

62. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part III of this Act has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall if he has since become and remains subject to military law under this Act be liable, on conviction by court-martial, to imprisonment for a term not exceeding three months or to any less punishment provided by this Act.

Making of
false
documents.

63. Any person subject to military law under this Act who—

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or
- (b) alters any service report, return, pay list or certificate or other service document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or
- (c) with intent to defraud, fails to make an entry in any such document; or
- (d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the appropriate service law, as the case may

be (whether or not he knows the nature of the document in relation to which that offence will be committed),

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

64. Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered. Scandalous conduct of officer.

65. If—

- (a) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority or any soldier subject to service law; Ill-treatment of officers or men of inferior rank.
- or
- (b) any warrant officer or non-commissioned officer subject to military law under this Act strikes or otherwise ill-treats any person subject to service law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a soldier,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

66. Any person subject to military law under this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Disgraceful conduct.

67. Any person subject to military law under this Act who— False accusation

- (a) makes an accusation against any officer or soldier subject to service law, which he knows to be false or does not believe to be true; or

- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer or soldier subject to service law, which he knows to be false or does not believe to be true or wilfully suppresses any material facts,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Attempts to commit military offences.

68. Any person subject to military law under this Act who attempts to commit an offence against any of the foregoing provisions of this Part of this Act shall, on conviction by court-martial, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

Conduct to prejudice of military discipline.

69. Any person subject to military law under this Act who is guilty of any conduct or neglect to the prejudice of good order and military discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Civil offences

Civil offences.

70. (1) Any person subject to military law under this Act who commits a civil offence, whether in the Federation or elsewhere, shall be guilty of an offence against this section.

(2) In this Act the expression "civil offence" means—

- (a) in relation to an act committed within the Federation, any act punishable by the law of the Territory where the person was at the time of the alleged act; and
- (b) in relation to an act committed without the Federation any act, which if committed in England, would be punishable by the law of England,

and in this Act the expression "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial of an offence against this section shall—

(a) if the corresponding civil offence is treason or murder, be liable to suffer death; and

(b) in any other case, be liable to suffer any punishment or punishments which a civil court in the Territory or, as the case may be, England could award for the corresponding civil offence, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or discharge with ignominy in the case of a soldier, as is so provided.

(4) A person shall not be charged with an offence against this section committed within the Federation if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.

(5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of subsection (4) of this section, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death,

Punishments

71. (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are, ^{Punishment of officers.} subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale; and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

- (2) The said scale is—
- (a) death;
 - (b) imprisonment;
 - (c) cashiering;
 - (d) dismissal from Her Majesty's service;
 - (e) fine of a sum not exceeding the equivalent of ninety days pay;
 - (f) severe reprimand or reprimand;
 - (g) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to a fine imposed under paragraph (e) of subsection (2) of this section.

(7) Where an officer is sentenced by a court-martial to imprisonment, he shall also be sentenced to be cashiered;

Provided that if the court-martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punish-
ment of
soldiers.

72. (1) The punishments which may be awarded to a soldier by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of courts-martial, those set out in the following scale; and in relation to a soldier references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is—

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from Her Majesty's service;
- (d) in the case of a warrant officer, dismissal from Her Majesty's service;
- (e) detention for a term not exceeding two years;
- (f) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
- (g) fine of a sum not exceeding the equivalent of ninety days pay;
- (h) where the offence is desertion, forfeiture of service;
- (i) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (j) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) A soldier sentenced by a court-martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from Her Majesty's service, and a warrant

officer sentenced by a court-martial to imprisonment may in addition thereto be sentenced to dismissal from Her Majesty's service.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment or detention, he shall also be sentenced to be reduced to the ranks:

Provided that if the court-martial fail to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(7) In the case of a warrant officer or non-commissioned officer a severe reprimand or reprimand may be awarded by a court-martial in addition to a fine imposed under paragraph (g) of subsection (2) of this section.

(8) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(9) Where an offender has been sentenced by a court-martial to detention, then if he is subsequently sentenced by a court-martial to imprisonment any part of the sentence of the detention which has not been served shall thereupon be remitted by virtue of this subsection.

(10) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

Field
punish-
ment.

73. (1) In relation to an offence committed by a soldier on active service, the scale set out in subsection (2) of section 72 of this Act shall have effect as if after paragraph (e) thereof there were inserted the following paragraph—

“(ee) field punishment for a period not exceeding ninety days;”,

and subsection (6) of section 72 shall apply to field punishment as it applies to imprisonment or detention.

(2) Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment,

and such loss of privileges, as may be provided by and under rules made under this Part of this Act, and may include confinement in such place and manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

74. Where in this Act it is provided that any person subject to military law under this Act is liable on conviction by court-martial to imprisonment and no term or maximum term of imprisonment is specified then such person shall be liable to imprisonment for any term. Imprisonment.

Arrest

75. (1) Any person subject to military law under this Act found committing an offence against any provision of this Act, or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section. Power to arrest offenders.

(2) An officer may be arrested by an officer subject to service law of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.

(3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer subject to service law:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer, non-commissioned officer or rating subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provisions
for avoid-
ing delay
after
arrest.

76. (1) The allegations against any person subject to military law under this Act who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.

(2) Wherever any person subject to military law under this Act, having been taken into military custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

(3) For the purposes of subsection (1) of section 54 of this Act the question whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of subsection (2) of this section.

Investigation of, and summary dealing with, charges

Investiga-
tion of
charges by
command-
ing officer.

77. Before an allegation against a person subject to military law under this Act (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

Charges to
be dealt
with sum-
marily or
by court-
martial.

78.(1) After investigation, a charge against an officer below the rank of lieutenant-colonel or against a warrant officer may, if an authority has power under the following provisions of this Part of this Act to deal with it summarily, be so dealt with by that authority (in this Act referred to as "the appropriate superior authority") in accordance with those provisions.

(2) After investigation, a charge against a non-commissioned officer or soldier may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.

(3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.

(4) Notwithstanding anything in the foregoing provisions of this section, where—

- (a) the commanding officer has investigated a charge against an officer or warrant officer; or
- (b) the commanding officer has investigated a charge against a non-commissioned officer or soldier, which is not one which can be dealt with summarily,

the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

79. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or soldier.

Further proceedings on charges against N.C.O.s and soldiers.

(2) If—

- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it; or
- (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,

he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) Otherwise the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments, that is to say—

- (a) if the accused is a non-commissioned officer—
 - (i) severe reprimand or reprimand;
 - (ii) where the offence has occasioned any expense, loss or damage, stoppages;
 - (iii) admonition;
- (b) if the accused is a soldier—
 - (i) detention for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;
 - (ii) a fine of a sum not exceeding the equivalent of twenty-one days pay;
 - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
 - (iv) confinement to barracks for a period beginning with the day of the sentence and not exceeding twenty-eight days;
 - (v) extra guards or piquets;
 - (vi) admonition.

(4) Where the accused is an acting warrant officer or acting non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank.

(5) Notwithstanding anything in subsection (3) of this section, where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award punishment other than severe reprimand, reprimand, admonition, confinement to barracks, extra guards or piquets or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding

until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(6) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference subsections (3), (4) and (5) of this section shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

80. (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, or the case is one where he has power, and proposes, to direct trial by field court-martial, submit it in the prescribed manner to a higher authority and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with subsections (2) and (3) of this section.

Further proceedings on charges against officers and warrant officers.

(2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.

(3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

(5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say—

- (a) a fine of a sum not exceeding the equivalent of twenty-one days pay;
- (b) severe reprimand or reprimand;
- (c) where the offence has occasioned any expense, loss or damage, stoppages.

(6) Notwithstanding anything in subsection (4) of this section, where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award a fine under paragraph (a) of subsection (5) of this section or stoppages, or where a finding of guilty will involve a forfeiture of pay, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

Dismissal
of charges
referred to
higher
authority.

81. (1) Notwithstanding anything in sections 79 and 80 of this Act, where a charge—

- (a) has been referred to higher authority with a view to its being tried by court-martial, or
- (b) has been submitted to higher authority for determination how it is to be proceeded with,

that authority may, subject to the provisions of this section refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.

(2) In a case falling within paragraph (a) of subsection (1) of this section, a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

(3) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

82. (1) In this Act the expression "commanding officer", in relation to a person charged with an offence, means the officer for the time being commanding the unit to which the person belongs or is attached.

Officers who are to act as commanding officers and appropriate superior authorities.

(2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say any general officer, flag officer, air officer or brigadier having power to convene ordinary courts-martial.

(3) Rules made for the purposes of this section may confer on officers, or any class of officers, who by or under the rules are authorised to exercise the functions of commanding officer, power to delegate those functions, in such cases and to such extent as may be specified in the rules, to officers of a class so specified.

83. (1) The charges which may not be dealt with summarily by a commanding officer, the charges which may not be dealt with summarily by an appropriate superior authority and the charges which may not be dealt with summarily by a commanding officer or an appropriate superior authority except with the permission of an officer authorised to convene a court-martial for the trial of the accused, shall be such as may be specified by or under rules. Any charge not so specified, and, upon obtaining such permission as aforesaid, any charge which may be dealt with summarily with such permission, may be dealt with summarily by a commanding officer or an appropriate superior authority, as the case may be.

Limitation on powers of summary dealing with charges.

(2) In such cases as may be specified in that behalf by or under such rules, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

Courts-martial: general provisions

Trial by,
and powers
of, ordi-
nary court-
martial.

84. Subject to the provisions of this Act, a court-martial under this Act (hereinafter referred to as an "ordinary court-martial") shall have power to try any person subject to military law under this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorised by this Act for that offence.

Trial by,
and powers
of, field
court-
martial.

85. (1) Where an officer commanding a body of troops on active service—

- (a) being an officer (whether military, naval or air force) to whom under subsection (1) of section 80 of this Act a charge has been submitted for determining how it is to be dealt with; or
- (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with; or
- (c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

is of opinion that it is not possible without serious detriment to the public service that the charge should be tried by an ordinary court-martial, the officer may (whether or not he is authorised to convene ordinary courts-martial) direct that the charge shall be tried by a field court-martial.

(2) A field court-martial shall have the powers of an ordinary court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years.

Officers
having
powers to
convene
courts-
martial.

86. (1) An ordinary court-martial may be convened by the Commander or any officer authorised to convene ordinary courts-martial by the Governor-General after consultation with such Minister as he may determine.

(2) A field court-martial may be convened by the officer who directed that the charge should be tried by field court-martial.

(3) Any authorisation under this section to convene ordinary courts-martial

- (a) may be made subject to restrictions, reservations, exceptions or conditions;
- (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and his successors;
- (c) may be varied or may be revoked either wholly or in part by the Governor-General after consultation with such Minister as he may determine.

87. (1) An ordinary court-martial shall consist of the president and not less than two other officers:

Constitution of ordinary courts-martial.

Provided that an ordinary court-martial shall consist of five members if

- (a) an officer is to be tried; or
- (b) the only punishment or the maximum punishment which can be awarded in respect of a charge before the court is death.

(2) Save as hereinafter provided, an officer shall not be appointed a member of an ordinary court-martial unless he belongs to Her Majesty's military forces, is subject to service law and has been an officer in any of the armed forces of the Crown for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) Not less than two of the members of an ordinary court-martial shall be of a rank not below that of captain.

(4) The president of an ordinary court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer unless in the opinion of the convening officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of an ordinary court-martial shall not be under the rank of a captain.

(5) The members of an ordinary court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

(6) An officer under the rank of captain shall not be a member of an ordinary court-martial for the trial of an officer above that rank.

Constitu-
tion of
field
courts-
martial.

88. (1) A field court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualifications are not available without serious detriment to the public service, shall consist of the president and one other officer.

(2) Save as hereinafter provided, the members of a field court-martial shall be persons belonging to Her Majesty's military forces and subject to service law.

(3) The president of a field court-martial shall be an officer appointed by the convening officer and shall not be under the rank of captain.

(4) The members of a field court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

Supple-
mentary
provisions
as to con-
stitution of
courts-
martial.

89. (1) The officer who convenes a court-martial shall not be a member of that court-martial:

Provided that if in the case of a field court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he may himself be president of the court-martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused,

and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of an ordinary court-martial or act as judge advocate at such a court-martial.

(3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with the consent of the proper naval or air force authority, appoint any naval or air force officer as president in lieu of a military officer or as any other member of the court in lieu of or in addition to a military officer or military officers:

Provided that no naval or air force officer shall be qualified to act in relation to a court-martial unless he is of corresponding rank to that which would have been required in the case of a military officer and has been an officer in any of the armed forces of the Crown for the like period or periods as would have been so required.

(4) Where—

- (a) the officer convening an ordinary court-martial appoints a captain to be president, being of opinion that a field officer having suitable qualifications is not with due regard to the public service available;
- (b) an officer directs that an offender shall be tried by a field court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by an ordinary court-martial, or the officer convening a field court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious detriment to the public service available, or

appoints himself to be president, being of opinion that it is not practicable to appoint another officer as president; or

- (c) the officer convening any court-martial appoints an officer not being a military officer as president or any other member of the court, being of opinion that the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service,

the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

(5) In this section the expression "military officer" means any officer belonging to Her Majesty's military forces and subject to service law.

Place for sitting of courts-martial and adjournment to other places.

90. (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without the Federation) as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the limits of his command.

(2) A court-martial sitting at any place shall, if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Courts-martial: Provisions relating to trial

Challenges by accused.

91. (1) An accused about to be tried by any court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers.

(3) Every objection made by an accused to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.

(5) If objection is made to a member of the court other than the president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

92. (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter. Adminis-
tration of
oaths.

(2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that, where the evidence is given on behalf of the prosecution, the accused shall not be liable to be convicted upon such evidence alone unless it is corroborated by some other material evidence in support thereof implicating the accused.

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

93. (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused. Courts-
martial to
sit in open
court.

(2) Nothing in subsection (1) of this section shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

Dissolution
of courts-
martial.

94. (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

(2) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then—

(a) if the senior member of the court is of the rank of captain or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but

(b) if he is not, the court shall be dissolved.

(4) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court-martial.

95. (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court. Decisions
of courts-
martial.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all members of the court; and where on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

96. (1) Without prejudice to the provisions of section 93 of this Act, the finding of a court-martial on each charge shall be announced in open court. Finding
and
sentence.

(2) Any finding of guilty shall be, and be announced as being, subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

Power to
convict of
offence
other than
that
charged.

97. (1) An accused charged before a court-martial with an offence under this Act, may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

(4) Where an accused is charged before a court-martial under section 70 of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section 70 of this Act, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in the Territory where he was at the time of the alleged act, or in the case of an act committed outside the Federation, if he had been tried by a civil court in England, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section 70 of this Act in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the Second Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

98. (1) Subject to the provisions of this Act the rules of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in England, and no person shall be required in proceedings before a court-martial 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 in England. ^{Rules of evidence.}

(2) Notwithstanding anything in subsection (1) of this section, a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence—

- (a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused; or
- (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial or such shorter time as the court-martial may allow, been served on the commanding officer of the accused; or
- (c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the

commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration; or

- (d) in any case, if the court-martial is of opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in England.

Privilege
of wit-
nesses and
others at
courts-
martial.

99. A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court of Justice in England.

Offences
by civilians
in relation
to courts-
martial.

100. (1) Where in the Federation any person other than a person subject to military law under this Act—

- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or
- (b) refuses to swear an oath when duly required by a court-martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; or
- (g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in the Federation, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified.

(2) In this section "court-martial" means a court-martial held under service law.

101. If—

Affirmations.

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be required to make a solemn affirmation in the prescribed form instead of taking an oath.

*Confirmation, revision and review of proceedings
of courts-martial*

102. (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming authority for confirmation of the finding and sentence of the court on that charge.

Confirmation of proceedings of courts-martial.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation, or the operation of sections 103 and 104 of this Act or the provisions of this Act as to confirmation or approval.

Petitions
against
finding or
sentence.

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

Revision
of findings
of courts-
martial.

104. (1) A confirming authority may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—

- (a) that the finding was against the weight of evidence; or
- (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.

(2) Any such direction shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.

(4) On any such revision the court shall not have power to receive further evidence.

(5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the

punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

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

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

105. (1) Subject to the provisions of section 104 of this Act and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming authority.

(2) In lieu of withholding confirmation of the finding of a court-martial, a confirming authority may, if—

- (a) some other finding of guilty could have been validly made by the court-martial on the charge before it; and
- (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) of this section should be exercised.

(3) Where it appears to a confirming authority that a sentence of a court-martial is invalid, he may in lieu of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or the greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, the confirming authority may—

- (a) remit in whole or in part any punishment awarded by the court; or
- (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5) A finding or sentence substituted by the confirming authority or any sentence having effect after the confirming authority has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(6) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(7) Where the confirming authority determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

Confirm-
ing autho-
rities.

106. (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say—

- (a) the officer who convened the court-martial or any officer superior in command to that officer; or

- (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer; or
- (c) failing any such officer as aforesaid—
 - (i) any officer appointed by the Governor-General, after consultation with such Minister as he may determine, to act as confirming authority, whether for the particular case or for a specified class of cases; or
 - (ii) the Governor-General acting in his discretion.

(2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say—

- (a) any officer who was a member of the court-martial; or
- (b) any person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or
- (c) any person who, as appropriate superior authority investigated the allegations against the accused:

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

(3) An authorisation empowering the convening of an ordinary court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the authorisation, and the powers conferred by subsection (1) of this section shall be exercisable subject to any such reservation.

Approval
as well as
confirmation
required
for
death
sentences.

107. A sentence of death shall not be carried into effect unless it has been approved by the Governor-General acting after consultation with such Minister as he shall determine.

Review of
findings
and
sentences
of courts-
martial.

108. (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section 103 of this Act against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) (a) The reviewing authorities for the purposes of this Act are—

(i) the Governor-General, or (so far as the delegation extends) any officer to whom the powers of the Governor-General as reviewing authority, or any of those powers, may be delegated by the Governor-General; or

(ii) any officer superior in command to the confirming authority.

(b) Reference in this subsection to the Governor-General mean the Governor-General acting after consultation with such Minister as he may determine.

(3) If an application for leave to appeal is received by the Registrar of the Federal Supreme Court under the provisions of Part V of this Act, so much of subsection (1) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.

(4) On a review under this section the reviewing authority may—

- (a) in so far as the review is of a finding, quash the finding and, if the sentences relates only to the finding quashed, the sentence; or
- (b) in so far as the review is of a sentence quash the sentence; or
- (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming authority by subsections (2) to (4) of section 105 of this Act,

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a sentence of the court duly confirmed.

(5) Where a reviewing authority exercises any of the powers conferred by subsection (4) of this section, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

109. (1) Sentences of imprisonment and detention may be reconsidered by the Commander or by such officers (not below the rank of brigadier or corresponding naval or air force rank) as may be from time to time appointed by the Governor-General acting after consultation with such Minister as he shall determine; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it may be remitted accordingly.

Reconsideration of sentences of imprisonment and detention.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after review, a sentence remains effective it shall be reconsidered at intervals of six months:

Provided that delay in complying with this subsection shall not invalidate the sentence.

Review of summary findings and awards

Review of
summary
findings
and
awards.

110. (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority herein-after mentioned may at any time review the finding or award.

(2) The said authority is —

- (a) the Governor-General acting after consultation with such Minister as he may determine; or
- (b) any military, naval or air force officer superior in command to the officer who dealt summarily with the charge.

(3) Where on a review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding; and if the finding is quashed the authority shall also quash the award.

(4) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

Findings of insanity, etc.

Provisions
where
accused
found
insane.

111. (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody

in such manner as may be provided by or under rules until the directions of the Governor-General are known or until any earlier time at which the accused is fit to stand his trial.

(2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under rules until the directions of the Governor-General are known.

(3) In the case of any such finding as aforesaid the Governor-General may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the Governor-General thinks fit.

(4) A finding under subsection (1) of this section shall not have effect unless and until the finding has been confirmed by an authority who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.

(5) Where the court or the confirming authority comes to or substitutes a finding of guilty but insane the confirming authority or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty; but save as aforesaid the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (2) of this section as those provisions apply in relation to other findings of guilty.

Commencement, suspension and duration of sentences

112. A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of section 136 of this Act (which empowers the Federal Supreme Court in certain cases to direct that a sentence shall

Commencement
of
sentences.

begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

Duration
of sen-
tences of
imprison-
ment or
detention.

113. (1) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into military, naval or air force custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was —

- (a) in the custody of a civil authority; or
- (b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any military, naval or air force authority of any country or territory outside the Federation as respects which arrangements have been made under section 116 of this Act,

otherwise than on account of an offence committed by him while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(2) In subsection (1) of this section the expression “civil authority” means a civil authority (whether of the Federation or any of the Territories or of any country or territory outside the Federation), authorised by law to detain persons, and includes a police officer.

(3) Without prejudice to subsection (1) of this section, where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Rules been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(4) A person who for any period is released as mentioned in subsection (3) of this section or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (1) of this section as being unlawfully at large.

(5) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(6) References in subsection (5) of this section to release or recall under civil law are references to release or recall in pursuance of the law of the country or territory in which he is serving his sentence.

114. A person shall not be required to serve any part of a military sentence of detention in a military or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Rules a person serving such a sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

Restrictions on serving of sentences of detention in prisons.

Special provisions as to civil prisons in the Federation.

115. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of rules made under this Part of this Act or of Imprisonment and Detention Rules shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special provisions as to carrying out or serving of sentences outside the Federation.

116. The Governor-General may from time to time make arrangements with the authorities of any country or territory outside the Federation whereby sentences of death passed by courts-martial may in accordance with rules made under this Part of this Act be carried out in establishments under the control of those authorities and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules be served wholly or partly in such establishments.

Country in which sentence of imprisonment or detention to be served.

117. (1) A person who is serving a military sentence of imprisonment or detention in any of the Territories may (in so far as the Colonial Prisoners Removal Act, 1884, allows and as may be specified by or under Imprisonment and Detention Rules) be removed out of that Territory—

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Vict. c. 31.

- (a) to the Territory in which he was enlisted; or
- (b) to any place out of the Federation where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve,

but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held out of the Federation, to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to one of the Territories.

(3) Where a person has been sentenced under this Act by a court-martial held out of the Federation, to imprisonment or detention for more than twelve months, the confirming or reviewing authority may, notwithstanding anything in subsection (2) of this section, direct that he shall not be required

to be removed to the Federation until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection, a confirming or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of a confirming authority under this section may at any time be revoked by the confirming authority or by a reviewing authority, or superseded by any direction of a confirming authority or a reviewing authority which the authority could have given under subsection (3) of this section; and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.

(5) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(6) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

118. (1) It shall be the duty, in so far as rules made under this Part of this Act or Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being a military prison) to receive any person duly sent to that prison in pursuance of such rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

Duties of officers in charge of prisons and others to receive prisoners.

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such superintendent or other person as aforesaid, of the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in

custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

Trial of persons ceasing to be subject to military law under the Act and time limited for trials

Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto.

119. (1) Subject to the provisions of section 120 of this Act, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to military law under this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigations of charges, trial and punishment by court-martial (including confirmation, review, and reconsideration) and execution of sentences as continuing subject to military law under this Act notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law under this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in subsection (1) of this section and the provisions thereof as to the summary dealing with charges, as having been subject to military law under this Act when the offence was committed or is suspected of having been committed and as continuing subject thereto thereafter.

(3) Where by virtue of either of subsection (1) or subsection (2) of this section a person is treated as being at any time subject to military law under this Act for the purpose of any provision of this Act, that provision shall apply to him —

(a) if he holds any military rank, as to a person having that rank;

- (b) otherwise as to a person having the rank which he had when last actually subject to military law under this Act:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a soldier.

(4) Where apart from this subsection any provision of this Act would under subsection (3) of this section apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

120. (1) No person shall be tried by court-martial for any offence, other than one against section 33 or section 34 of this Act or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent: Limitation of time for trial of offences under this Act.

Provided that—

- (a) in the case of an offence against section 70 of this Act, where proceedings for the corresponding civil offence must, by virtue of any written law, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 70 in substitution for the foregoing provisions of this subsection;
- (b) subject to any such limit of time as is mentioned in paragraph (a) of this proviso, a person may be tried by court-martial for a civil offence committed outside the Federation notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General of the Federation consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of Her Majesty's forces continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable by virtue of subsection (1) of section 119 of this Act unless his trial is begun within three months after he ceases to be subject to military law under this Act or the trial is for a civil offence committed outside the Federation and the Attorney-General of the Federation consents to the trial:

Provided that this subsection shall not apply to an offence against section 33 or section 34 of this Act or desertion.

(4) A person shall not be arrested, or kept in custody by virtue of subsection (1) of section 119 of this Act for an offence at any time after he has ceased to be triable for the offence.

*Relations between military and civil courts and
finality of trials*

Powers of civil courts. 121. (1) Save as provided in section 145 of this Act, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.

(2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial held under service law to punishment for any act constituting (whether wholly or in part) that offence, or in pursuance of this Act he has been punished for any such act by his commanding officer or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

122. (1) Where a person subject to military law under this Act—

- (a) has been tried for an offence by a competent civil court or a court-martial under service law, or has had an offence committed by him taken into consideration by any such court in sentencing him; or
- (b) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or an appropriate superior authority; or
- (c) has had an offence condoned by his commanding officer,

Persons
not to be
tried under
this Act
for
offences
already
disposed
of.

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section—

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court-martial is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or an appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised

by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

- (e) a person ordered under subsection (2) of section 58 of this Act or the corresponding provisions of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

Inquiries

Boards of
inquiry.

123. (1) Subject to and in accordance with the provisions of rules made under this Part of this Act (hereinafter referred to as Board of Inquiry Rules), the Governor-General or any military, naval or air force officer empowered by or under such rules so to do, may convene a board of inquiry to investigate and report on the facts relating to —

- (a) the absence of any person subject to military law under this Act; or
- (b) the capture of any such person by the enemy;
or
- (c) the death of any person where an inquiry into the death is not required to be held by any civil authority; or
- (d) any other matter of a class specified in such rules or referred to such a board by the Governor-General or any such officer as aforesaid,

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

(2) A board of inquiry shall consist of such number of persons as may be provided for by Board of Inquiry Rules, who shall be persons subject to service law and the president of a board of inquiry shall be an officer not below the rank of lieutenant or corresponding rank.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority other than proceedings for an offence against section 59 of this Act or for an offence against section 70 of this Act when the corresponding civil offence is perjury.

124. (1) Where a board of inquiry inquiring into the absence of an officer or soldier reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with Board of Inquiry Rules be entered in the service books. ^{Inquiries into absence.}

(2) A record entered in pursuance of subsection (1) of this section shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Governor-General acting after consultation with such Minister as he may determine, or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

Miscellaneous provisions

125. (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it or receiving it knowing or having reason to believe it to have been stolen, fraudulently misapplying it or otherwise. ^{Restitution or compensation for theft, etc.}

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted, by the confirming or by any reviewing authority; and in this section the expression "appearing" means appearing to the court, officer or authority making the order.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming authority; and the provisions of this Part of this Act as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended —

- (a) in any case, until the expiration of the period prescribed under Part IV of this Act as the period within which an application for leave to appeal to the Federal Supreme Court against the conviction must be lodged; and
- (b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of such an order as aforesaid is suspended under this section—

- (c) it shall not take effect if the conviction is quashed on appeal;
- (d) the Federal Supreme Court may by order annul or vary the order although the conviction is not quashed;
- (e) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under Part V of this Act.

(10) Notwithstanding anything in subsection (9) of this section, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court or authority

making the order directs to the contrary in any case in which, in the opinion of the court or authority, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

Appoint-
ment of
judge
advocates.

126. The appointment of a judge advocate to act at any court-martial may be made by the Governor-General acting in his discretion or by the convening officer.

Promul-
gation.

127. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by regulations or as the confirming authority or reviewing authority, as the case may be, may direct.

Custody of
proceed-
ings of
court-
martial and
right of
accused to
a copy
thereof.

128. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Commander for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsection (2) and subsection (3) of this section shall be capable of being exercised.

(2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Commander on demand at any time within the relevant period and on payment therefor at such rate as may be prescribed a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Commander ought to be treated for the purposes of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Commander on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rate a copy of the record of the proceedings of the court.

(4) If, on an application in pursuance of either subsection (2) or subsection (3) of this section for a copy of the record of any proceedings, the Governor-General acting after consultation with such Minister as he may determine certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section the expression "the relevant period," in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

129. No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence. Indemnity for prison officers, etc.

Interpretation

130. (1) In this Part of this Act—

'civil prison' means a prison in any of the Territories in which a person sentenced by a civil court to imprisonment can for the time being be confined; Interpretation of Part IV.

“convening officer,” in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor’s functions;

“military establishment” means a military prison or any other establishment under the control of the Governor-General where persons may be required to serve military sentences of imprisonment or detention, or a military establishment as defined in section 143 of the Imperial Act;

“military prison” means separate premises designated by the Governor-General for persons serving military sentences of imprisonment;

“prescribed” means prescribed by Rules of Procedure;

“prison” means a civil prison or a military prison.

(2) References in this Part of this Act to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.

(3) References in this Part of this Act to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender’s commanding officer.

(4) References in this Part of this Act to warrant officers do not include references to acting warrant officers.

(5) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

Rules of
Procedure.

131. (1) Subject to the provisions of this section, the Governor-General may make rules (in this Act referred to as Rules of Procedure) with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.

(2) Without prejudice to the generality of subsection (1) of this section, Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—

- (i) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
- (ii) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of section 92 of this Act in any case where the accused requires that evidence shall be taken on oath;
- (iii) the addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;
- (iv) the convening and constitution of courts-martial;
- (v) the sittings, adjournment and dissolution of courts-martial;
- (vi) the procedure to be observed in trials by court-martial;
- (vii) the representation of the accused at such trials;
- (viii) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (ii) of this subsection;

- (ix) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of sections 98, 99, 100 and 101 of this Act;
- (x) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
- (xi) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge, but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
- (xii) the forms of orders and other documents to be made for the purposes of any provision of this Part of this Act or the rules relating to the investigation or trial of, or award of punishment for, offences cognizable by courts-martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial.

(3) Rules made by virtue of paragraph (x) of subsection (2) of this section shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(4) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of the foregoing provision may make provision —

- (i) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;
- (ii) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

(5) In subsection (4) of this section references to questions of law include references to questions of joinder of charges and as to the trial of persons jointly or separately.

(6) Rules of Procedure may make provision for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.

(7) Where Rules of Procedure make provision for the matter mentioned in subsection (6) of this section, they may also make provision for conferring on the court taking one or more offences into consideration, the power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

(8) Until such time as Rules of Procedure are made under this section, the matters with respect to which such Rules may be made shall be governed, with such modifications

as shall be necessary for the purpose, by the Rules of Procedure made under sections 103, 104 and 105 of the Imperial Act.

Imprison-
ment and
Detention
Rules.

132. (1) The Governor-General may make rules (in this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters, that is to say—

(i) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;

(ii) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

(iii) the provision, classification, regulation and management of military establishments;

(iv) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;

(v) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;

(vi) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of military establishments.

(2) Until such time as Imprisonment and Detention Rules are made under this section, the matters with respect to which such rules may be made shall be governed, with

such modifications as shall be necessary for the purpose, by the Imprisonment and Detention Rules made under sections 122 and 123 of the Imperial Act.

133. (1) The Governor-General may make rules (in this Act referred to as Board of Inquiry Rules) with respect to the convening, constitution and procedure of boards of inquiry.

(2) Without prejudice to the generality of subsection (1) of this section, Board of Inquiry Rules may make provision with respect to all or any of the following matters, that is to say—

- (i) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence was being taken at a court-martial an oath could be dispensed with;
- (ii) without prejudice to the provisions of section 124 of this Act, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules.

(3) Board of Inquiry Rules shall contain provision for securing that any witness or other person subject to service law who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the rules.

134. The Governor-General may make rules with respect to all or any of the following matters, that is to say—

- (i) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;

- (ii) field punishment;
- (iii) any matter which by this Part of this Act is required or authorised to be prescribed or for which rules may be made;
- (iv) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 131, 132 and 133 of this Act and in this section.

Part V

Appeals from Courts-Martial

Right of
appeal.

135. Subject to the following provisions of this Part of this Act, a person convicted by a court-martial may, with the leave of the Federal Supreme Court, appeal to the Federal Supreme Court against his conviction.

Application
for leave to
appeal.

136. (1) Leave to appeal to the Federal Supreme Court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, within forty days of the date of the promulgation of the finding of the court-martial in respect of which the appeal is brought, with the Registrar of the Federal Supreme Court, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(2) Rules of court may provide that, in such circumstances as may be specified in the rules, any such application as aforesaid which is lodged with such person (other than the Registrar) as is specified in the rules shall be treated, for the purposes of the last foregoing subsection, as having been lodged with the Registrar.

(3) The Federal Supreme Court may extend the period within which an application for leave to appeal shall be lodged, whether that period has expired or not.

(4) In considering whether or not to give leave to appeal, the Federal Supreme Court shall have regard to any expression of opinion made by the judge advocate if any,

who acted at the court-martial that the case is a fit one for appeal, and, if any such expression is made, may without more give leave to appeal.

(5) Where the Federal Supreme Court dismiss an application for leave to appeal they may, if they consider the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismiss the application.

137. (1) Subject to the provisions of section 138 of this Act, on an appeal under this Part of this Act the Federal Supreme Court shall allow the appeal if they think that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal: Determination of appeals in ordinary cases.

Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) If the Federal Supreme Court allow an appeal under this Part of this Act, they shall quash the conviction.

138. (1) If it appears to the Federal Supreme Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one which could lawfully be passed by the court-martial for the offence of which he was convicted on the other charge, the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity. Powers of the Federal Supreme Court in special cases.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Federal Supreme Court that the court-martial must have been satisfied of facts, which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence which could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) When—

- (a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Federal Supreme Court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or
- (b) an appellant has been convicted of an offence and it appears to the Federal Supreme Court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations,

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Federal Supreme Court that, although the appellant was guilty of the act

charged against him, he was insane at the time the act was done, so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section 111 of this Act, in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

(5) The term of any sentence passed by the Federal Supreme Court under any of the foregoing provisions of this section shall, unless the Court otherwise direct, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Federal Supreme Court shall be deemed for the purposes of this Act to be a sentence passed by the court-martial being a sentence that has been confirmed.

139. If, in the case of an appeal under this Part of this Act, the Federal Supreme Court, upon an application in that behalf made to the Court within a period of fourteen days from the date when the decision of the Court was given, is of opinion that the decision of the Court involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought, the Court may grant leave to the appellant or the respondent to appeal to Her Majesty in Council from the decision of the Court; but subject to the provisions of this section the determination by the Federal Supreme Court of any appeal or other matter which they have power to determine under this Act shall be final, and no appeal shall lie from the Court to any other court.

Appeals to
Privy
Council.

140. For the purposes of this Part of this Act the Federal Supreme Court shall have and may exercise all the powers conferred on it under regulations 25 and 31 of the Federal Supreme Court Regulations, 1958.

Supple-
mentary
powers of
the Federal
Supreme
Court.

141. An appellant shall not be entitled to be present at the hearing of an appeal to the Federal Supreme Court under this Part of this Act or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Federal Supreme Court give him leave to be present, and

Procee-
dings to be
heard in
absence of
appellants.

accordingly any power of the Federal Supreme Court under this Part of this Act to pass a sentence may be exercised notwithstanding the absence of the appellant.

Defence of
appeals.

142. It shall be the duty of the Attorney-General of the Federation on an appeal against conviction by a court-martial to undertake the defence of the appeal.

Right of
appellant
to present
his case in
writing.

143. An appellant may if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Suspension
of death
sentences.

144. (1) Where a conviction by court-martial involves sentence of death—

- (a) the sentence shall not in any case be executed until the expiration of the period within which an application for leave to appeal to the Federal Supreme Court against the conviction shall be lodged; and
- (b) if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused or is withdrawn or the appeal is determined or abandoned; and
- (c) if leave to appeal is granted and the appeal is dismissed, the sentence shall not be executed until the expiration of the period within which an application may be made under section 139 of this Act for leave to appeal to Her Majesty in Council; and
- (d) if an application under the said section 139 is duly made, the sentence shall not be executed until leave is refused or the application is withdrawn or the further appeal that lies to Her Majesty in Council by virtue of the grant of leave is determined or abandoned.

(2) Any appeal to the Federal Supreme Court against a conviction by a court-martial involving sentence of death, any application for leave to appeal to the Federal Supreme Court against any such conviction and any appeal to Her

Majesty in Council against a decision of the Court on an appeal thereto against any such conviction shall be heard and determined with as much expedition as practicable.

145. Where the conviction of a person by a court-martial for an offence has been quashed under this Part of this Act, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Person not to be tried again where conviction quashed.

146. Imprisonment and Detention Rules may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Part of this Act or any place to which the Federal Supreme Court or a judge thereof may order him to be taken for the purpose of any proceedings of the Federal Supreme Court.

Removal of prisoners for purposes of proceedings under Part V.

147. In the case of every appeal, or application for leave to appeal, under this Part of this Act to the Federal Supreme Court against a conviction by court-martial, it shall be the duty of the Commander to furnish to the Registrar of the Federal Supreme Court in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the finding or sentence of the court-martial in pursuance of subsection (1) of section 104 of this Act) the proceedings with respect to the confirmation of the finding and sentence of the court-martial and any petition presented by the person convicted.

Furnishing, on appeal, of documents relating to trial.

148. (1) The Registrar of the Federal Supreme Court shall take all necessary steps for obtaining the determination of an appeal or application under this Part of this Act and shall obtain and lay before the Federal Supreme Court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

Duties of Registrar of the Federal Supreme Court with respect to appeals, etc.

(2) The Registrar of the Federal Supreme Court shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Part of this Act to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their

sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to make application for leave to appeal under this Part of this Act.

Saving of
Governor-
General's
powers.

149. Nothing in this Part of this Act shall affect the exercise by the Governor-General of the powers hereinbefore contained to quash a conviction by a court-martial, so far as regards the exercise thereof at a time before the receipt by the Registrar of the Federal Supreme Court of an application for leave to appeal to the Federal Supreme Court against the conviction and nothing in this Part of this Act shall affect the exercise by the Governor-General of the prerogative of mercy.

Composi-
tion of
Court.

150. Upon the hearing of any appeal from any court-martial the Federal Supreme Court shall consist of at least three judges.

Exercise of
certain
powers of
the Federal
Supreme
Court by
a judge.

151. Notwithstanding the provisions of section 150 of this Act, any judge of the Federal Supreme Court may—

- (a) give leave to appeal; or
- (b) subject to the provisions of subsection (2) of section 136 of this Act, extend the period within which an application for leave to appeal must be lodged; or
- (c) allow an appellant to be present at any proceedings under this Part of this Act,

but if the judge refuses an application on the part of an appellant to exercise in his favour any of the powers hereinbefore mentioned, the appellant, upon making a requisition in that behalf, within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined in accordance with the provisions of section 150 of this Act.

General
provisions.

152.(1) Subject to the provisions of this Part of this Act, any rules of court in force relating to the hearing of criminal appeals by the Federal Supreme Court shall apply to the hearing and determination of an appeal by the Court under this Part.

(2) Where under this Part of this Act anything is required or authorised to be prescribed it shall be prescribed by rules of court.

Part VI—Forfeitures and Deductions

153. (1) No forfeiture of the pay of an officer or soldier shall be imposed unless authorised by this Act, other service law or some other enactment and no deduction from such pay shall be made unless so authorised or authorised by regulations. Forfeitures and deductions: general provisions.

(2) Regulations shall not authorise the making of any penal deduction, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The foregoing provisions of this section shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or soldier he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding that forfeiture of pay of an officer or soldier for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such a minimum rate as aforesaid, but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of an officer or soldier may be deducted from any balance (whether or not representing pay) which may be due to

him as an officer or soldier and references in this Act to the making of deductions from pay shall be construed accordingly.

Forfeiture
of pay for
absence
from duty.

154. (1) The pay of an officer or soldier may be forfeited—

- (a) for any day of absence in such circumstances as to constitute an offence under section 39 or section 40 of this Act, or, if the Commander or an officer authorised by regulations so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial or commanding officer, or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;
- (c) where he is found guilty (whether by court-martial under service law, an appropriate superior authority or his commanding officer) of an offence under service law, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or soldier may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Commander or an officer authorised by regulations is satisfied—

- (a) that he was made a prisoner of war through disobedience of orders or wilful neglect of his duty; or
- (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty's service; or
- (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated

to influence morale or in any other manner whatsoever not authorised by international usage,

but, save as aforesaid, nothing in paragraph (a) of subsection (1) of this section shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

155. Where an officer or soldier charged with an offence before a civil court (whether within or without the Federation) is sentenced or ordered by the court to pay any fine, penalty, damages, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay. Deductions for payment of civil penalties.

156. Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations, it appears to the Governor-General or an officer authorised by regulations that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier (hereinafter referred to as "the person responsible"). Compensation for loss occasioned by wrongful act or negligence.

(2) The Governor-General or authorised officer, as the case may be, may order the person responsible to pay as or towards compensation for the loss or damage, such sum as may be specified in the order, and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the provisions of subsection (2) of this section if, in proceedings before a court-martial under service law, an appropriate superior authority or a commanding officer, the person responsible—

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

but save as aforesaid, the fact that such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2) of this section.

(4) References in this section to the Governor-General shall be constructed as references to the Governor-General acting after consultation with such Minister as he may determine.

Deductions
for barrack
damage.

157. (1) When damage occurs to any premises in which one or more units or parts of such units of the regiment are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, and it appears on investigation in accordance with the provisions of regulations that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation thereof, but that the said persons cannot be identified, any person belonging to any of such unit or parts of units of the regiment may be required to contribute towards compensation for the damage or loss such amount as may in accordance with regulations be determined to be just, and the amount may be deducted from his pay.

(2) The provisions of subsection (1) of this section shall extend to ships, trains, motor vehicles and aircraft in which units or parts of units of the regiment are being transported and reference to premises, quartering and occupation shall be construed accordingly.

Remission
of forfeit-
ures and
deductions.

158. Any forfeiture or deduction imposed under the provisions of sections 154, 155, 156, or section 157 of this Act or under regulations may be remitted by the Governor-General acting after consultation with such Minister as he may determine or in such manner and by such authority as may be provided by such regulations.

159. (1) Where any court in the Federation has made an order against any person (in this section referred to as "the defendant") for the payment of any periodical or other sums specified in the order for or in respect of—

Enforce-
ment of
mainten-
ance and
affiliation
orders by
deduction
from pay.

- (a) the maintenance of his wife or child or of any illegitimate child of whom he is the putative father; or
- (b) any costs incurred in obtaining the order; or
- (c) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order,

and the defendant is an officer or soldier then (whether or not he was a member of the regiment when the said order was made) the Commander or an officer authorised by him may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Commander or officer may think fit.

(2) Where to the knowledge of the court making any such order as aforesaid, or an order varying, revoking or reviving any such order, the defendant is an officer, or soldier of the regiment the court shall send a copy of the order to the Commander.

(3) Where such an order as is mentioned in subsection (1) of this section has been made by a court in Her Majesty's dominions outside the Federation, and the Commander or such officer as may be authorised by him, is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the Commander or such officer shall have the like power under subsection (1) of this section as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to an order for payment of a sum for or in respect of the maintenance of an illegitimate child or for the payment of costs

incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) The Commander or such officer as has been authorised by him may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section 154 of this Act.

(5) (a) In this section —

references to an order made by a court in the Federation include references to an order registered in or confirmed by such a court under the provisions of any law which makes provision for the enforcement in a Territory of maintenance orders made outside that Territory;

references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted.

(b) For the purposes of this subsection the expression "maintenance order" means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and the expression "dependants" means such persons as that person is, according to the law in force in that part of Her Majesty's dominions in which the maintenance order was made, liable to maintain.

Deductions
from pay
for main-
tenance of
wife or
child.

160. (1) Where the Commander or an officer authorised by him is satisfied that an officer, or soldier is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of sixteen, the Commander or officer may order

such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Commander or officer thinks fit.

(2) On an application made to the Commander or an officer authorised by him for an order under subsection (1) of this section the Commander or officer, if satisfied that a *prima facie* case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in the said subsection (1) to take effect pending the further examination of the case.

(3) Where an order is in force under subsection (1) or subsection (3) of section 159 of this Act for the making of deductions in favour of any person from the pay of an officer, or soldier, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer, or soldier is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section 159 of this Act was made.

(4) The Commander or an officer authorised by him may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section 154 of this Act.

(5) The power to make an order under this section for the deduction of any sum and its appropriation towards the maintenance of a child shall include power —

- (a) subject to the provisions of subsection (3) of this section, to make such an order after the child has attained the age of sixteen, if an order in favour of the child is in force under subsection (1) or subsection (3) of section 159 of this Act; or
- (b) to make such an order after the child has attained the age of sixteen if —

- (i) such an order of the court as is mentioned in subsection (1) of section 159 of this Act was in force in favour of the child at the time when the child attained that age, and
- (ii) the person from whose pay the deductions are ordered is in such a place as is mentioned in subsection (3) of this section, and
- (iii) the child is for the time being engaged in a course of education or training; or
- (c) to continue such an order from time to time after the child has attained the age of sixteen, if the child is for the time being engaged in a course of education or training;

but no order so made or continued shall remain in force after the child attains the age of twenty-one or shall, unless continued under paragraph (c) of this subsection, remain in force for more than two years.

Limit of deductions under sections 159 and 160 and effect on forfeiture.

161. (1) The sums deducted under sections 159 and 160 of this Act shall not together exceed —

- (a) in the case of an officer, three-sevenths of his pay;
- (b) in the case of a warrant officer or a non-commissioned officer not below the rank of sergeant, two-thirds of his pay;
- (c) in the case of a soldier or a non-commissioned officer below the rank of sergeant, three-fourths of his pay.

(2) Where any deductions have been ordered under either section 159 or section 160 of this Act from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of an appropriate superior authority or a commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

(3) For the purposes of paragraphs (b) and (c) of subsection (1) of this section a person having acting rank shall be treated as of that rank.

162. (1) Any process to be served on an officer or soldier (in this section referred to as "the defendant") in connection with proceedings for any such order of a court in the Federation as is mentioned in subsection (1) of section 159 of this Act, or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

Service of process in maintenance proceedings.

(2) Where any such process appoints a hearing at a place more than twenty miles from the place where the defendant is then stationed and his appearance in person will be required at the hearing, service of the process shall not be valid unless there is left with it, in the hands of the person on whom it is served, a sum of money sufficient to enable the defendant to attend the hearing and return.

(3) Where any such process as is mentioned in subsection (1) of this section is served in the Federation and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the court by which process was issued that the defendant is under orders for active service out of the Federation and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

Part VII

Billeting and Requisitioning of Vehicles

Billeting

163. At any time when this section is in operation any officer of the rank of major or above commanding any part of the regiment in the Federation may issue a billeting requisition requiring the chief officer of police in any Territory or part thereof specified in the requisition to provide billets at such places in that area, for such numbers of members of Her Majesty's forces and, if the requisition so provides, for such

Billeting requisitions.

number of vehicles in use for the purpose of Her Majesty's forces, being vehicles of any class specified in the requisition, as may be so specified.

Premises in which the billets may be provided.

164. (1) Billets, other than for vehicles, may be provided in pursuance of a billeting requisition —

- (a) in any hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;
- (b) in any building not falling within the last foregoing paragraph, being a building to which the public habitually have access whether on payment or otherwise or which is wholly or partly provided or maintained out of the funds of any local or parochial authority;
- (c) in any dwelling, out-house, warehouse, barn or stables;

but not in any other premises.

(2) Billets for vehicles may be provided as aforesaid in any building or on any land.

Provision of billets.

165. (1) Where a billeting requisition has been produced to the chief officer of police for the Territory or part thereof specified in the requisition he shall, on the demand of the officer commanding any portion of the regiment, or on the demand of an officer or soldier authorised in writing by such an officer commanding, billet on the occupier of premises falling within section 164 of this Act, being premises at such place in that Territory or part thereof as may be specified by the officer or soldier by whom the demand is made, such number of persons or vehicles as may be required by the officer or soldier by whom the demand is made, not exceeding the number specified in the requisition.

(2) A chief officer of police shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom billeting may take place.

(3) A chief officer of police may to such extent and subject to such restrictions as he thinks proper authorise any police officer not below the rank of assistant superintendent, to exercise his said functions on his behalf, and the foregoing provisions of this section shall apply accordingly.

166. (1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations. Accommodation to be provided and payment therefor.

(2) Where vehicles are billeted as aforesaid, the occupier of the premises shall furnish standing room for the vehicles.

(3) Where persons or vehicles have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as section 163 of this Act continues in operation, for such period as may be required, and the allotment of billets among the persons or vehicles in question may be varied from time to time.

(4) The occupier on whose premises any person or vehicle is billeted as aforesaid shall be entitled to receive for the billeting such payment as may be prescribed by regulations:

Provided that no payment shall be required in respect of vehicles billeted otherwise than in a building unless the land on which they are billeted—

- (a) has its surface made up for the passage or parking of vehicles, and
- (b) is not land where vehicles are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.

(5) Subject to the provisions of the next following subsection payment for billeting —

- (a) shall be made before the persons billeted finally leave, or the vehicles are finally removed from, the premises where they are billeted; and
- (b) where the billeting continues for more than seven days, shall be made at least once in every seven days.

(6) If for any reason payment for billeting cannot be made or fully made, as required by paragraph (a) of subsection (5) of this section, there shall be made up for the occupier an account, in such form as may be prescribed, of the amount due to him; and

- (a) on presentation of the account the Accountant General or other principal officer in charge of the Treasury of the Territory in which the premises are situated shall, on behalf of the Federal Accountant General pay to the occupier the amounts stated in the account to be due;
- (b) any sums paid by an Accountant General or other principal officer of a Treasury under the last foregoing paragraph shall be recoverable by him from the public funds of the Federation.

(7) In relation to premises of which there is no occupier the foregoing provisions of this section shall apply as if the person entitled to possession thereof were the occupier thereof.

Appeals
against
billeting.

167. (1) Any person who—

- (a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or
- (b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

may apply to such person or persons as shall be appointed by the Governor-General for the purposes of this section.

(2) On any application on the grounds mentioned in paragraph (a) of subsection (1) of this section the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.

(3) On any application on the grounds mentioned in paragraph (b) of subsection (1) of this section the person or persons to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect billeting pending the determination of the application.

168. (1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting requisition, the occupier of the premises, or if there is no occupier the person entitled to possession thereof, may recover from the Crown compensation of an amount equal to the depreciation caused by the damage in the value of the premises. Compensation for damage.

(2) Where any person other than the recipient of compensation under subsection (1) of this section has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

169. Any person who—

- (a) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him, or
- (b) gives or agrees to give any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicle or furnishing accommodation properly required for him, or
- (c) obstructs the billeting in his building or on his land of any vehicle,

Refusal to receive persons billeted, etc.

shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Applica-
tion to
civilians
employed
with the
regiment.

170. In relation to persons employed with any body of Her Majesty's forces and not entitled under the foregoing provisions of this Part of this Act to be billeted, being persons of such descriptions as may be prescribed by regulations, those provisions shall apply as they apply in relation to members of Her Majesty's forces.

Requisitioning of Vehicles

Requisi-
tioning
orders.

171. (1) At any time when this section is in operation any officer of the rank of major or above commanding any part of the regiment in the Federation may issue a requisitioning order authorising the requisitioning, from among vehicles in any Territory or part thereof specified in the order, of such vehicles, or such number of vehicles of such descriptions, as may be specified in the order.

(2) The purposes for which an order under this section may authorise vehicles to be requisitioned shall be such purposes for meeting the needs of any of Her Majesty's forces as may be specified in the order.

Provision
of vehicles.

172. (1) A requisitioning order may be issued to the officer commanding any portion of the regiment, and that officer, or any officer or soldier authorised by him in writing may give directions for the provision—

- (a) insofar as the requisitioning order authorises the requisitioning of particular vehicles, of all or any of those vehicles,
- (b) insofar as the order authorises the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.

(2) A direction under subsection (1) of this section given as respects any vehicle shall be either—

- (a) a direction given to the person having possession thereof to furnish it immediately at the place where it is, or
- (b) a direction given to the said person to furnish it at such place within fifty miles from the premises of the said person and at such time as may be specified by the officer or soldier by whom the direction is given:

Provided that no direction shall be given under paragraph (b) of this subsection as respects a vehicle which is neither mechanically-propelled nor a trailer normally drawn by a mechanically-propelled vehicle:

(3) If the officer to whom the requisitioning order was issued, or an officer or soldier authorised by him in writing, is satisfied that the said person has refused or neglected to furnish a vehicle in accordance with a direction under any of the provisions of subsection (1) of this section, or has reasonable ground for believing that it is not practicable without undue delay to give a direction to the said person, he may take, or authorise any officer or soldier to take, possession of the vehicle; and where possession is taken of a vehicle in pursuance of this subsection this Part of this Act shall with the necessary modifications apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

(4) The chief officer of police for any Territory or part thereof specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as practicable constables will be available, if required, for accompanying officers or soldiers requisitioning vehicles in pursuance of the order.

173. (1) Subject to the provisions of this section, where a vehicle has been furnished in pursuance of a requisitioning order it may be retained, so long as section 171 of this Act is in operation, for any period for which it is required for the purpose specified in the order or for any other purpose connected with the needs of any of Her Majesty's forces. Period for which vehicle to be furnished.

(2) During such time as the reserve is called out on permanent service, then insofar as a requisitioning order so provides the person by whom any vehicle is to be furnished may be required to furnish it for the purposes of its being purchased on behalf of the Crown.

Payment
for vehicle
furnished.

174. (1) A person by whom a vehicle is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—

- (a) a sum for the use of the vehicle calculated by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognised or generally prevailing in the Territory at the time at which the vehicle is furnished, or, in the default of such a rate, at such rate as may be just,
- (b) a sum equal to the cost of making good any damage to the vehicle not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and has not been made good during that period by a person acting on behalf of the Crown,
- (c) if during the said period, a total loss of the vehicle occurs a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss.

In paragraph (b) of this subsection and in the Third Schedule to this Act references to fair wear and tear shall be construed as references to such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(2) The person by whom a vehicle is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(3) Where a vehicle is furnished in pursuance of a direction under paragraph (b) of subsection (2) of section 172 of this Act, then—

- (a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if that subsection applies) the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (2) of this section (if that subsection applies) the vehicle shall be deemed to have been furnished at that time;
- (b) in addition to the payments provided for by subsection (1) or subsection (2) of this section, the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle is given under the said paragraph (b), and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in a total loss thereof), then if the damage prevents the furnishing of the vehicle in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle had been furnished, and (notwithstanding that it may have been required to be furnished for the purpose of being purchased) had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say —

- (a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage,
- (b) paragraph (b) of subsection (3) of this section shall have effect as if for the words “in complying with” there were substituted the words “by reason of anything done for the purpose of complying with”.

(5) Where any person (in this section referred to as a person interested) other than the person by whom a vehicle is required to be furnished has an interest in the vehicle, —

(a) the person by whom the vehicle is required to be furnished shall notify any person known to him to be a person interested that the vehicle has been requisitioned,

(b) any person interested shall be entitled to recover from the person by whom the vehicle was required to be furnished such part (if any) of the payment received by him for the vehicle as may be just.

(6) The Third Schedule to this Act shall have effect as to the time for the making of payments under this section and as to the determination of disputes arising thereunder.

(7) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section and of the Third Schedule to this Act the said period shall be deemed to have come to an end immediately after the occurrence of the loss, and

(b) no claim shall be made for the return of the vehicle (if it still exists) or for payment in respect thereof other than such as is provided for by subsection (1) of this section.

Avoidance
of hardship
in requisitioning
of vehicles.

175. In deciding which, of alternate vehicles, is to be specified in an order under section 171 of this Act, or is to be the subject of a direction under paragraph (b) of subsection (1) of section 172 thereof, the officer or soldier by whom the order is issued or direction given shall act in such manner as in his opinion will cause the least hardship.

Record and
inspection
of mechanically-
propelled
vehicles.

176. The Governor-General may by regulations require persons having in their possession in the Federation mechanically-propelled vehicles, or trailers normally drawn by mechanically-propelled vehicles, if required so to do by

such authority or person as may be specified in the regulations, —

- (a) to furnish to such authority or person as may be so specified a return containing such particulars as to the vehicles as may be required by or under the regulations, and
- (b) to afford all reasonable facilities for enabling any such vehicles in his possession to be inspected and examined, at such times as may be specified by or under the regulations, by such authority or person as may be so specified.

177. (1) If any person —

- (a) fails to furnish any vehicle which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle at the time and place at which he is directed to furnish it or, Enforcement of provisions as to requisitioning.
- (b) fails to comply with any regulations made under section 176 of this Act, or
- (c) obstructs any officer or other person in the exercise of his functions under this Part of this Act in relation to the inspection or requisitioning of vehicles,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

(2) Without prejudice to any penalty under subsection (1) of this section, if any person is obstructed in the exercise of powers of inspection conferred on him by regulations made under section 176 of this Act, a justice of the peace may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorising a constable named therein, accompanied by the said person, to enter the premises in respect of which the obstruction

took place at any time between six o'clock in the morning and nine o'clock in the evening to inspect any vehicles which may be found therein.

Application
to cattle,
food, forage
and stores.

178. (1) Subject to the provisions of this section, sections 171 to 177 of this Act and the provisions of the Third Schedule thereto, except such of those provisions as relate only to mechanically-propelled vehicles and trailers normally drawn thereby shall apply to horses, mules, donkeys, and oxen, food, forage and stores as they apply to vehicles.

(2) Where stores are required for, and can be conveyed with, a vehicle with respect to which a direction is given under paragraph (b) of subsection (2) of section 172 of this Act, such a direction may be given as well in relation to the stores as in relation to the vehicle, and the said foregoing provisions and Schedule shall apply accordingly:

Provided that subsection (4) of section 174 of this Act shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle such payment (if any) shall be made in respect of the stores as may be just in all the circumstances.

(3) Notwithstanding anything in section 173 of this Act, food, forage or stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase on behalf of the Crown.

(4) Section 176 of this Act shall apply in relation to horses, mules, donkeys, and oxen as it applies in relation to mechanically-propelled vehicles.

(5) In this section —

- (a) the expression "oxen" means oxen used, or kept principally, for draught purposes;
- (b) the expression "stores" means any chattel, other than a horse, mule, donkey or ox, a vehicle, food or forage, being a chattel required for, or for use in connection with —
 - (i) persons or vehicles billeted or to be bil-

- leted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated, or
- (ii) vehicles, horses, mules, donkeys or oxen furnished or to be furnished in pursuance of a requisitioning order.

179. The person using a vehicle for the purpose of its being furnished in pursuance of a direction under paragraph (b) of subsection (2) of section 172 of this Act shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle as a servant of the Crown, and the provisions of any law which prohibits or renders unlawful the use on any road of a motor vehicle unless there is in force in relation to the user of the vehicle a policy of insurance or security in respect of third-party risk, shall not apply to the use of the vehicle for the said purpose.

Liability of Crown for damage by vehicles being delivered for requisitioning.

180. (1) Whenever it appears to the Governor-General that the public interest so requires, he may by order direct that section 163 or section 171 of this Act, or both those sections, shall come into operation either generally or as respects such area in the Federation as may be specified in the order, and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.

Bringing into operation of sections 163 and 171.

(2) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the foregoing provisions of this subsection or of this proviso), it is resolved by each chamber of the Federal Legislature that the public interest requires the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

Appropriation of funds for moneys payable by the Crown.

181. All such sums of money as become payable by the Crown under sections 166, 168, 174, or 178 of this Act are hereby appropriated out of the public funds of the Federation and shall be paid therefrom on the warrant of the Governor-General.

Part VIII—Government and General Provisions

Command

Command and precedence.

182. (1) The officers, seconded and other warrant officers and seconded and other non-commissioned officers, and soldiers shall stand with each other in order of precedence and command in the same order as they are set out in this subsection.

(2) Officers and soldiers may be seconded to the regiment with the approval of the Governor-General acting in his discretion.

(3) Officers of the same rank shall stand with each other in order of precedence and command in accordance with any order which may be signified by the Governor-General and where no such order is signified then according to their seniority reckoned by the date of their respective appointments to the rank for the time being held by them.

Command of the regiment.

183. The Governor-General after consultation with the Prime Minister may appoint such officer as he think fit, being a member of Her Majesty's forces, in whom the command of all units of the regiment shall be vested and subject to the terms of such appointment such person shall have the command, direction and general superintendence of all such units.

Regulations as to command.

184. The Governor-General may make regulations as to the persons, being members of Her Majesty's military forces, in whom command over the units or any part or member thereof is vested and as to the circumstances in which such command as aforesaid is to be exercised.

Powers of command of members of co-operating forces.

185. In so far as powers of command depend on rank, a member of any of Her Majesty's military, naval or air forces who—

(a) is acting with any unit; or

- (b) is a member of a body of any of those forces which is acting with any unit,

shall have the like such powers as a member of the regiment of corresponding rank; and for the purposes of sections 35 and 75 of this Act any such member of the said military, naval or air forces shall be treated as if he were a member of the regiment of corresponding rank.

Redress of Complaints

186. (1) If an officer thinks himself wronged in any matter ^{Complaints by officers.} by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Governor-General.

(2) On receiving any such complaint it shall be the duty of the Governor-General to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Governor-General shall through the Secretary of State make his report on the complaint to Her Majesty in order to receive the directions of Her Majesty thereon.

(3) References in this section to the Governor-General shall be construed as references to the Governor-General acting after consultation with such Minister as he may determine.

187. (1) If a soldier thinks himself wronged in any matter ^{Complaints by soldiers.} by any officer other than his commanding officer or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) If a soldier thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) of this section or for any other reason, he may make a complaint with respect thereto to any military, naval or air force officer under whom the complainant is for the time being serving, being an officer not below the rank of colonel or corresponding rank.

(3) It shall be the duty of a commanding or other officer to have any complaint received by him under this section investigated and to take any steps for redressing the matter complained of which appear to him to be necessary.

Exemptions for members of the regiment

Exemption
from jury
service.

188. An officer or soldier shall be exempt from serving on any jury.

Exemptions
from tolls,
etc.

189. (1) Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place in the Federation, or for passing over any road, ferry or bridge in the Federation, shall not be payable in respect of —

- (a) members of Her Majesty's military forces on duty;
- (b) vehicles in military service, being vehicles belonging to the Crown or other vehicles driven by persons (whether members of Her Majesty's forces or not) in service of the Crown;
- (c) goods carried in such vehicles;
- (d) horses or other animals in military service.

(2) In subsection (1) of this section the expression "in military service" means employed under proper military authority for the purposes of any body of Her Majesty's military forces or accompanying any body of Her Majesty's military forces.

Exemption
from taking
in execution
of
property
used for
military
purposes.

190. No judgment, decree or order given or made against a member of the regiment by any court in the Federation shall be enforced by the levying of execution on any property of the person against whom it is given or made, being public property, used by him for military purposes.

Provisions relating to deserters and absentees without leave

Arrest of
deserters
and absen-
tees without
leave.

191. (1) Any police officer within the Federation may arrest without a warrant any person whom he has reasonable cause to suspect of being an officer or soldier who has deserted or is absent without leave.

(2) Where no police officer is available any officer or soldier of the regiment or any other person may arrest without a warrant any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person in the Federation having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or soldier of the regiment who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a court of summary jurisdiction.

192. (1) Where a person who is brought before a court of summary jurisdiction is alleged to be an officer or soldier who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings before a civil court where persons suspected of illegal absence.

(2) (a) If he admits that he is illegally absent from the regiment and the court is satisfied of the truth of the admission, then —

- (i) unless he is in custody for some other cause the court shall; and
- (ii) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such custody.

(b) Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to military law under this Act and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

(4) The provisions of law in force in the Territory in question relating to the constitution and procedure of courts of summary jurisdiction holding preliminary inquiries and conferring powers of adjournment and remand on such courts so acting, and the provisions as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to any proceedings under this section.

Deserters
and absen-
tees with-
out leave
surrender-
ing to
police.

193. (1) Where in the Federation a person surrenders himself to a police officer as being illegally absent from the regiment, the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction or may bring him before such a court.

Certificates
of arrest
or surren-
der of
deserters
and absen-
tees.

194. (1) Where a court of summary jurisdiction in pursuance of section 192 of this Act deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over a certificate in the pres-

cribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court.

(2) Where a person is delivered into military custody without being brought before a court, whether under the provisions of section 193 of this Act or under any other lawful power, there shall be handed over a certificate in the prescribed form, signed by the police officer who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 39 or section 40 of this Act —

- (a) a document purporting to be a certificate under either subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service law (other than this Act) and to be signed as thereby required, shall be evidence of the matters stated in the document;
- (b) where the proceedings are against a person who has been taken into military, naval or air force custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of a country in the Commonwealth, or by any other officer in charge of the guard-room or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

195. (1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a court of summary jurisdiction as illegally absent from the regiment and to detain him until in accordance with the directions of the court he is delivered into military custody.

Duties of
superin-
tendents of
prisons and
others to
receive
deserters
and absen-
tees.

(2) Subsection (1) of this section shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a prison.

Offences relating to military matters punishable by civil courts

Punish-
ment for
pretending
to be a
deserter.

196. Any person who falsely represents himself to any military, naval, air force or civil authority to be a deserter from the regiment shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

Punish-
ment for
procuring
and assist-
ing deser-
tion.

197. Any person who —

- (a) procures or persuades any officer or soldier to desert or to absent himself without leave;
- (b) knowing that any such officer or soldier is about to desert or absent himself without leave, assists him in so doing; or
- (c) knowing any person to be a deserter or absentee without leave from the regiment, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

Punish-
ment for
obstructing
members
of regiment
in execu-
tion of
duty.

198. Any person who wilfully obstructs or otherwise interferes with any officer or soldier acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

199. Any person who —

- (a) produces in an officer or soldier any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

Punishment for aiding malingering.

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment, or on conviction on indictment to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

200. (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall be guilty of an offence, unless he proves either—

Unlawful purchase, etc. of military stores.

- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or
- (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent; or
- (c) that those chattels had become the property of an officer who had retired or ceased to be an officer, or of a soldier who had been discharged, or of the personal representatives of a person who had died,

and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such a fine and such

imprisonment, or on conviction on indictment to a fine not exceeding two thousand five hundred dollars or imprisonment for a term not exceeding two years or to both such a fine and such imprisonment.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a court of summary jurisdiction.

(4) In this section—

the expression “acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

the expression “dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

the expression “military stores” means any chattel of any description belonging to Her Majesty, which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

(5) For the purposes of subsection (3) of this section property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

201. (1) Any person who—

- (a) as a pledge or a security for a debt; or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

Illegal dealings in documents relating to pay, pensions, mobilization, etc.

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid or any official document issued in connection with the mobilization or demobilization of any of Her Majesty's military forces or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

202. (1) Any person who—

- (a) without authority uses or wears any military decoration, or any badge, wound stripe or emblem supplied or authorised by the Army Council, the Admiralty, the Air Council, or the Governor-General; or

Unauthorised use of and dealing in decorations, etc.

- (b) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any military decoration, or any such badge, stripe or emblem as aforesaid, as to be calculated to deceive; or
- (c) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (a) of this subsection,

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall prohibit the use or wearing of ordinary regimental badges or of brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any naval, military or airforce decoration awarded to any member of Her Majesty's military forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months or to both such a fine and such imprisonment.

Provisions as to evidence

General
provisions
as to
evidence.

203. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person—

- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces or was discharged from any part of those forces at or before any specified time; or
- (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Governor-General, the Army Council, the Admiralty, the Air Council, or the Commander be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by regulations for the purposes of this subsection, being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in one of the said service books and a copy of such document, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or the original document, as the case may be, shall be evidence of the record.

(6) A document purporting to be issued by order of the Governor-General or the Commander and to contain instructions or orders given or made by the Governor-General or the Commander shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Governor-General, the Army Council, the Admiralty or the Air Council, and stating—

- (a) that a decoration of a description specified in or annexed to the certificate is a military, naval or airforce decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the Governor-General, the Army Council, the Admiralty, or the Air Council,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any formation or unit or body of troops; or
- (b) any command or other area, garrison or place; or
- (c) any ship, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

Proof of
outcome of
civil trial.

204. (1) Where a person subject to military law under this Act has been tried before a civil court (whether at the time of the trial he was so subject or not), a certificate signed by a judge or a magistrate and stating all or any of the following matters —

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgment or order was given or made by the court;
- (d) that other offences specified in the certificate were taken into consideration at the trial;

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

205. (1) The original proceedings of a court-martial under service law purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody. Evidence of proceedings of court-martial.

(2) A document purporting to be a copy of the original proceedings of a court-martial under service law or any part thereof and to be certified by any other person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous provisions

206. (1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part IV of this Act or the corresponding provisions of any other service law it shall be the duty of the superintendent or other person in charge of a prison (not being a military prison) or of the person having charge of any police station or other place in which prisoners may be law- Temporary reception in civil custody of persons under escort.

fully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

(2) In this section "military prison" has the meaning ascribed to it in section 130 of this Act.

Avoidance of assignment of, or charge on military pay, pensions, etc.

207. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, military award, grant, pension or allowance payable to any person in respect of his or any other person's service in Her Majesty's military forces shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

Power of certain officers to take statutory declarations.

208. (1) An officer of a rank not below that of major or corresponding rank (hereinafter referred to as an "authorised officer") may, outside the Federation, take statutory declarations from persons subject to military law under this Act.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

Part IX—Reserve

Reservists.

209. Notwithstanding the provisions of section 217 of this Act, this Part of this Act shall apply to every soldier who has been transferred to the reserve while he is subject to reserve liability or serving in the reserve.

210. (1) Every reservist shall be liable to be called out for training at such place and for such periods not exceeding twenty-eight days in any one year as may be specified in regulations made under this Part of this Act. Annual training.

(2) Every reservist may, during any training for which he may be called out, be attached to and trained with any unit.

211. (1) The Governor-General may, at any time when occasion appears to require, call out the reserve, or as many reservists as he thinks necessary, on temporary service. Calling out of the reserve on temporary service.

(2) Reservists called out for service under this section shall not be liable to serve at any one time for a period exceeding twenty-eight days.

212. (1) In the event of a state of war being declared or of insurrection, hostilities or public emergency it shall be lawful for the Governor-General, by proclamation, to call out the reserve on permanent service. Calling out of the reserve on permanent service.

(2) The Governor-General may, in any such proclamation as aforesaid, give or authorise the Governor of a Territory to give such directions as may seem necessary or proper for calling out the reserve or any reservist.

(3) Every such proclamation and the directions given in pursuance thereof shall be obeyed, and every reservist called out by such directions shall attend at the place and times fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4) Every reservist when called out on permanent service shall be liable to serve as a soldier until his services are no longer required, so, however, that he shall not be required to serve for a period exceeding in the whole the remaining unexpired term of service in the reserve and any further period not exceeding twelve months as a soldier may, under section 15 of this Act be retained in the regiment after the time at which he would otherwise be entitled to be discharged.

Punish-
ment for
non-atten-
dance.

213. (1) Any reservist in the Federation who, without leave lawfully granted or other reasonable excuse, fails to appear at the time and place appointed for annual training, or when called out on temporary service or on permanent service, shall—

- (a) if called out on permanent service, be guilty, according to the circumstances, of deserting within the meaning of section 39 or of absenting himself without leave within the meaning of section 40 of this Act; or
- (b) if called out on temporary service or for annual training, be guilty of absenting himself without leave within the meaning of the said section 40.

(2) Any reservist who commits any offence under this section shall be liable—

- (a) to be tried by court-martial, and on conviction to suffer imprisonment for a term not exceeding two years or such less punishment as is provided by this Act, or
- (b) to be tried by a court of summary jurisdiction and, on conviction, shall be liable to a fine not exceeding one hundred and twenty dollars, and in default of payment to imprisonment for any term not less than seven days and not more than the maximum term allowed by the law in force in the Territory in which the court is situated for non-payment of the fine.

(3) Section 75 of this Act shall apply to reservists who commit an offence against this section as it applies to persons otherwise subject to military law under this Act.

Record of
illegal
absence.

214. Where a reservist fails to appear at the time and place appointed for annual training or when called out on temporary or on permanent service, and his absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books and such entry shall be prima facie evidence of the fact of such absence.

215. A reservist may be discharged by the competent military authority at any time during the currency of any term of reserve service upon such grounds as may be prescribed.

216. The Governor-General may make regulations with respect to the government, discipline and pay of the reserve, and the discharge of reservists, and, without prejudice to the generality of the foregoing, may make regulations—

- (a) for the calling out for training of reservists;
- (b) for the calling out of the reserve on temporary service and on permanent service; and
- (c) requiring reservists to report themselves from time to time.

Part X.—Application of the Act and Supplementary Provisions.

Application, transfer and attachment

217. (1) The following persons are subject to military law under this Act —

- (a) officers and soldiers of the regiment;
- (b) officers and soldiers (other than persons who are subject to the Imperial Act) when attached to the regiment; and
- (c) officers of the reserve of officers when ordered out on duty or service for which, as such, they are liable; and
- (d) reservists called out for training, on temporary service and on permanent service.

(2) This Act shall apply to the persons subject thereto under the provisions of this section and in relation to the units as well outside as within the Federation.

218. (1) Subject to the modifications hereinafter specified, where any unit is on active service, Part IV of this Act shall apply to any person who is employed in the service of that unit or any part or member thereof, or accompanies the said

unit or any part thereof, and is not subject to service law, as the said Part IV applies to persons subject to military law under this Act.

(2) The said modifications are the following —

- (a) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding fifty dollars but no other punishment;
- (c) the following provision shall have effect in substitution for subsections (2) to (4) of section 75 of this Act, that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer subject to service law;
- (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;
- (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to soldiers;
- (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer shall be such officer as may be appointed by the officer authorised to convene a court-martial;

- (g) for references in sections 119 and 120 of this Act to being, continuing, or ceasing to be subject to this Act there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that the said Part IV applies, and subsection (3) of section 119 shall not apply.

(3) Any fine awarded by virtue of this section, whether by a court-martial or the commanding officer, shall be recoverable as a debt due to Her Majesty.

219. Notwithstanding any of the provisions of this Act to the contrary, whenever any unit, officer or soldier is stationed in any place outside the Federation, the Governor-General may, by order, direct that the provisions of Parts II, V and VI of the Imperial Act and of the rules and regulations made thereunder and the Queen's Regulations for the Army shall apply to such unit, officer and soldier in substitution for the provisions of Parts IV, VIII and X of this Act and rules and regulations made for the purposes of those Parts; and the Governor-General may by the same or any other order direct that any such unit, officer or soldier shall be placed under the orders and directions of the Army Council.

Financial provisions and regulations

220. All such sums of money as may from time to time become payable under this Act on account of pay, allowances, pensions or gratuities, are hereby appropriated out of the public funds of the Federation and shall be paid therefrom on the warrant of the Governor-General.

221. (1) Subject to the foregoing provisions of this Act, the Governor-General may make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the regiment and without prejudice to the generality of the foregoing such regulations may make provision with respect to all or any of the following matters, that is to say —

- (a) the commissioning of officers, their terms of service, promotion, retirement, resignation and such other matters concerning officers as may seem to him necessary;
- (b) the pay, duties, method of recall of officers of the reserve and other matters pertaining to such reserve of officers as may seem to him necessary;
- (c) the enlistment of persons into, and the discharge of persons from, the regiment and generally for the carrying into effect of Part III of this Act, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (d) determining to what extent and under what conditions colour service in any of Her Majesty's forces, other than the regiment, may be counted as colour service in the regiment;
- (e) the pay, allowances, and the deductions from and forfeiture of pay, of officers and soldiers;
- (f) the pensions and gratuities of officers and soldiers (including the reckoning for pensions and gratuities of service in Her Majesty's forces other than in the regiment, prior to the commencement of service in the regiment under this Act);
- (g) the description, supply, use and disposal of arms, accoutrements, clothing and other stores;
- (h) prohibiting, restricting or regulating the holding of meetings within the limits of any military establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;
- (i) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than Part IX; and

- (j) subject to the provisions of sections 130, 134 and 152 of this Act, prescribing anything which may be prescribed under this Act.

(2) Any regulations made by the Governor-General under this section with respect to the amounts of money payable under this Act on account of pay, allowances, retired pay, pensions or gratuities or with respect to the rates payable under this Act in respect of pay, allowances, retired pay, pensions or gratuities shall be provisional only and shall be of no effect until they have been laid before the Federal Legislature and have been approved by a resolution of each chamber.

(3) The regulations contained in the Fourth and Fifth Schedules to this Act shall be deemed to have been made under this section and may be added to, amended or revoked by regulations made by the Governor-General under and in accordance with this section.

222. (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purposes of any such instrument classes of cases may be defined by reference to any circumstances specified in the instrument. Powers exercisable in subsidiary legislation.

(2) Any such regulations, rules, orders or other instruments as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named therein whether or not such persons are members of the regiment or of Her Majesty's forces, empower such persons to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

223. Save as expressly provided by any rules or regulations under this Act, any order or determination required or authorised to be made under this Act by any military officer Execution of orders, instruments, etc.

or authority may be signified under the hand of any officer authorised in that behalf, and any instrument signifying such an order or determination and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised.

FIRST SCHEDULE

Section 8 (2)

Commissions

Form of Queen's Commission

I,.....Governor-General and
Commander-in-Chief of The West Indies acting under com-
mand of Her Majesty Queen Elizabeth the Second do give to
Greetings and reposing especial trust in
your loyalty, courage and good conduct, do by these presents
constitute and appoint you to be an officer in the West India
Regiment from theday of.....19....

You are therefore carefully and diligently to discharge
your duty as such an officer in the rank of.....
or in such other rank as you may from time to time hereafter
be promoted or appointed and you are in such manner and on
such occasions to exercise and well discipline in their duties,
such officers and soldiers as may be placed under your orders
from time to time and use your best endeavours to keep them
in good order and discipline. I do hereby command, all such
officers and soldiers to obey you as their superior officer, and
you to observe and follow such orders and directions as from
time to time you shall receive from me or any of your superior
officers in pursuance of the trust hereby reposed in you.

Given at.....The West
Indies, this.....day of....., 19....

Governor-General, and
Commander-in-Chief, The West Indies.

Form of Governor-General's Commission

To....., Greetings. I, reposing especial trust in your loyalty, courage and good conduct, do by these presents constitute and appoint you to be an officer in the West India Regiment, for.....years, from the..... day of....., 19....

You are therefore carefully and diligently to discharge your duty as such an officer in the rank of..... or in such other rank as you may from time to time hereafter be promoted or appointed and you are in such manner and on such occasions to exercise and well discipline in their duties, such officers and soldiers as may be placed under your orders from time to time and use your best endeavours to keep them in good order and discipline. I do hereby command, all such officers and soldiers to obey you as their superior officer, and you to observe and follow such orders and directions as from time to time you shall receive from me or any of your superior officers in pursuance of the trust hereby reposed in you.

Given at.....The West Indies, this.....day of....., 19....

Governor-General, and
Commander-in-Chief, The West Indies.

SECOND SCHEDULE

Section 97

Alternative Offences of which accused may be convicted by court-martial

| Offence Charged | Alternative Offence |
|--|---|
| 1. Any offence against subsection (1) of section 26 of this Act. | 1. Any offence against subsection (2) of section 26 of this Act. |
| 2. Any offence against subsection (1) of section 27 of this Act. | 2. Any offence against subsection (2) of section 27 of this Act. |
| 3. Any offence against subsection (1) of section 33 of this Act. | 3. Any offence against subsection (2) of section 33 of this Act. |
| 4. Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority. | 4. Disclosing information without authority. |
| 5. Striking his superior officer. | 5. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer. |
| 6. Using violence to his superior officer otherwise than by striking him. | 6. Offering violence to his superior officer. |
| 7. Using threatening language to his superior officer. | 7. Using insubordinate language to his superior officer. |
| 8. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally. | 8. Disobeying a lawful command. |
| 9. Desertion. | 9. Absence without leave. |

SECOND SCHEDULE—Cont'd.

| Offence Charged | Alternative Offence |
|---|---|
| 10. Attempting to desert. | 10. Absence without leave. |
| 11. Stealing any property. | 11. Fraudulently misapplying the property. |
| 12. Any offence against section 45 of this Act involving wilfulness. | 12. The corresponding offence involving negligence. |
| 13. Any offence against subsection (1) of section 55 of this Act. | 13. Any offence against subsection (2) of section 55 of this Act. |
| 14. Any offence against subsection (1) of section 56 of this Act involving striking. | 14. (a) The corresponding offence involving the use of violence other than striking. (b) The corresponding offence involving the offering of violence. |
| 15. Any offence against section 56 of this Act involving the use of violence other than striking. | 15. The corresponding offence involving the offering of violence. |

THIRD SCHEDULE Sections 174, 178.

Supplementary provisions as to payment for requisitioned vehicles.

1. (1) Subject to the provisions of this Schedule any payment under subsection (1) of section 174 of this Act shall (without prejudice to any agreement as to payment on account) become due on the expiration of the period for which possession of the vehicle in question is retained.

(2) Subject to the provisions of this Schedule, any payment under subsection (2) of section 174 of this Act shall become due on the furnishing of the vehicle.

(3) Any payment under paragraph (b) of subsection (3) of section 174 of this Act shall become due on the furnishing of the vehicle.

2. (1) As soon as may be after the furnishing of a vehicle there shall be given or sent to the person by whom it was furnished, by such person and in such form and manner as may be specified by regulations, a receipt for the vehicle specifying what payment, at what rate or of what amount, is offered in respect of the furnishing thereof under paragraph (a) of subsection (1), or, as the case may be, under subsection (2), of section 174 of this Act.

(2) As soon as may be after the end of the period for which possession of a vehicle is retained, there shall be given or sent to the person by whom the vehicle was furnished, by such person and in such form and manner as aforesaid, a notice stating whether any, and if so what, damage to the vehicle has occurred during the period for which possession of the vehicle was retained, other than damage which has been made good by a person acting on behalf of the Crown, or that the total loss of the vehicle has occurred, and specifying what payment is offered in respect of the damage or loss under paragraph (b) or paragraph (c) of subsection (1) of section 174 of this Act.

3. (1) A person to whom a receipt or notice under the last foregoing paragraph has been given or sent (hereinafter referred to as "the claimant") shall be deemed to have accepted the offer contained therein unless within three weeks from the time at which he received the receipt or notice he gives notice to the person by whom the receipt or notice was given or sent that he claims some specified greater amount or rate.

(2) Where a notice under the last foregoing paragraph has been given or sent stating that no damage has occurred to a vehicle during the period for which possession of the vehicle is retained, the claimant shall be deemed to have agreed that no damage has so occurred unless within three weeks from the time at which he received the notice he gives notice to the person by whom the notice was given or

sent claiming that damage has so occurred and stating what payment he claims under subsection (1) of section 174 of this Act in respect of the damage.

(3) On the making of a claim under either of the two last foregoing sub-paragraphs the Governor-General may notify the claimant that it is not proposed to make any further offer or by notice may make a specified further offer.

4. The regulations referred to in paragraph 2 of this Schedule shall secure that any receipt or notice under that paragraph, contains a statement of the effect of paragraph 3 of this Schedule.

5. In the foregoing provisions of this Schedule the expression "damage" does not include damage resulting in a total loss, or damage attributable to fair wear and tear.

6. Nothing in the foregoing provisions of this Schedule shall apply to a case falling within subsection (4) of section 174 or the proviso to subsection (2) of section 178 of this Act, and any sum payable by virtue of that subsection or proviso shall become due on the making, by the person by whom the vehicle is required to be furnished, of a claim therefor to such authority as may have been specified in that behalf in the direction requiring the furnishing of the vehicle (or if no such authority was specified to the Governor-General):

Provided that before making any such payment the said authority or the Governor-General, as the case may be, may require reasonable particulars of the damage in question and of the circumstances in which it occurred and may require a reasonable opportunity to be afforded to a person authorised by them to inspect the vehicle in question.

FOURTH SCHEDULE

Section 221(3)

PAY AND ALLOWANCES

Short title. 1. These Regulations may be cited as the Defence (Rates of Pay and Allowances) Regulations, 1958.

Inter-pretation. 2. (1) In these Regulations, unless the context otherwise requires:—

“child” means—

- (i) a legitimate or legitimated child,
- (ii) a step-child,
- (iii) an adopted child,
- (iv) an illegitimate child who is wholly or mainly dependent upon the member of the regiment for support, who has not attained the age of sixteen years;

“military qualification” means a qualification of a military nature which is laid down in orders of the Commander;

“reckonable service” means unforfeited unbroken paid colour service in Her Majesty’s military forces, after attaining the age of eighteen years;

“substantive rank” shall exclude brevet, honorary, local or acting rank;

“the Act” means the Defence Act, 1958;

“tradesman” means a soldier who is employed in a trade which is laid down in orders of the Commander.

(2) References to groups and classes of tradesmen mean groups and classes laid down in orders of the Commander.

OFFICERS

Rates of pay. 3. The rates of pay for officers shall be as laid down in Table I to these Regulations.

Rates of family allowance. 4. Family allowance shall be payable to male officers at the rates laid down in Table II to these Regulations on the conditions set out therein.

SOLDIERS

Rates of pay. 5. The rates of pay for soldiers shall be as laid down in Table III to these Regulations.

Rates of family allowance. 6. Family allowance shall be payable to male soldiers in the regiment at the rates laid down in Table IV to these Regulations on the conditions set out therein.

GENERAL

7. Ration allowance shall be payable to members of the regiment at such daily rate as may be fixed from time to time by the Governor-General, on the certificate of the commanding officer that rations have not been issued. Ration allowance.

8. A member of the regiment holding acting rank shall draw pay and allowances at the rate prescribed for the same substantive rank as his acting rank. Rates for acting ranks.

9. Where the rate of pay to which a member of the regiment is entitled under these Regulations depends upon his length of service, either in a particular rank or generally, any paid service in Her Majesty's military forces which immediately preceded service in the regiment shall be taken into account to the same extent as it would have been had it been service in the regiment. Other paid service in H.M. Forces to count.

10. Where a member of the regiment out of the Federation is attached to, serving with or attending a course with the forces of Her Majesty raised in the United Kingdom, he shall receive the rates of pay and allowances payable to a member of the regular forces of Her Majesty raised in the United Kingdom of the same rank as himself for every day while he is out of the Federation: Pay and allowances while attached to United Kingdom forces.

Provided that while a soldier is attending a course as an officer cadet he shall receive during all periods of leave from the course, a special allowance which will bring the total of his pay and ration allowance to the sum of \$7.20 or such other sum as may be fixed from time to time by the Governor-General.

11. An officer who has not been previously commissioned in Her Majesty's military forces shall on first commissioning be paid a uniform allowance of \$155 or such other sum as may from time to time be fixed by the Governor-General. Uniform allowance.

12. Upon the termination of each period of three years service outside his Territory of residence a member of the regiment shall be entitled, when proceeding on leave to that Territory, to free travel from his duty station to his Territory of residence and return for himself and his family up to a maximum of five full passages. Free travel on leave.

13. Allowances set out below shall be paid at the same rates and subject to the same conditions as are in force and apply on the 1st of January, 1959 in respect of the regular forces of Her Majesty raised in the United Kingdom, or at such other rates or subject to such other conditions as may be fixed from time to time by the Governor-General— Other allowances.

Motor mileage allowance
Daily and nightly subsistence allowance
Disturbance allowance

Lodging allowance
 Ration cash allowance
 Contingent allowance.

TABLE I
RATES OF PAY — OFFICERS

Regulation 3

| <i>Substantive Rank</i> | <i>Per Day</i> |
|--|----------------|
| Second Lieutenant | \$ 4.74 |
| Lieutenant (on promotion) | 5.34 |
| Lieutenant (after two years service as such) | 5.82 |
| Lieutenant (after three years service as such) | 6.30 |
| Acting Captain (during first year as such) | 7.26 |
| Captain (on promotion) | 7.74 |
| Captain (after two years service as such) | 8.22 |
| Captain (after four years service as such) | 8.70 |
| Captain (after six years service as such) | 9.18 |
| Major (on promotion) | 10.86 |
| Major (after two years service as such) | 11.34 |
| Major (after four years service as such) | 11.82 |
| Major (after six years service as such) | 12.30 |
| Major (after eight years service as such) | 12.78 |
| Lieutenant-Colonel (on promotion with less than nineteen years service) | 14.34 |
| Lieutenant-Colonel (with nineteen years service or after two years in the rank) | 15.06 |
| Lieutenant-Colonel (with twenty-one years service or after four years in the rank) | 15.78 |
| Lieutenant-Colonel (with twenty-three years service or after six years in the rank) | 16.50 |
| Lieutenant-Colonel (with twenty-five years service or after eight years in the rank) | 17.22 |
| Colonel (on promotion) | 19.14 |
| Colonel (after two years as such) | 20.10 |
| Colonel (after four years as such) | 21.06 |
| Colonel (after six years as such) | 22.02 |
| Brigadier | 23.22 |

TABLE II
RATES OF FAMILY ALLOWANCE — OFFICERS

Regulation 4

| | <i>Per Day</i> | |
|--|-----------------------------|-------------------------|
| | When not occupying quarters | When occupying quarters |
| | \$ | \$ |
| All officers between the ages of twenty-and over | 3.96 | 1.37 |
| All officers of the age of twenty-five and over | 3.96 | 3.24 |

[The inclusion of this page is authorised by S.I. 14/1959]
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CONDITIONS OF PAYMENT OF FAMILY ALLOWANCE

(i) Subject to the following conditions no officer shall be entitled to a family allowance unless he is maintaining his wife or dependent children.

(ii) An officer who—

(a) is a widower or is divorced, and

(b) has custody of any of his children

shall be entitled to draw family allowance.

(iii) In order to qualify for the payment of a family allowance an officer must make provision to the satisfaction of the Commander for the maintenance of his wife and/or children at least to the extent of the rate of family allowance appropriate to his case.

(iv) An officer in receipt of a family allowance shall be responsible for notifying his commanding officer immediately of any change in the circumstances of his family which affects his entitlement to the allowance.

TABLE III

Regulation 5

DAILY RATES OF PAY — SOLDIERS

A—Warrant and non-commissioned officers of or above the rank of sergeant

| Rank and appointment | Group A Class I tradesmen | Group B Class I tradesmen | Other tradesmen and non-trades men |
|-----------------------------------|---------------------------------|---------------------------------|--|
| | \$ | \$ | \$ |
| Warrant Officer, Class 1 | — | — | 5.16 |
| Warrant Officer, Class II (RQMS) | — | — | 4.86 |
| Warrant Officer, Class II | 4.98 | 4.86 | 4.56 |
| Staff Sergeant | 4.50 | 4.32 | 4.02 |
| Sergeant | 4.02 | 3.90 | 3.60 |

B—Corporals and below: Tradesmen

| Rank | Classes B IV and C III | Classes B III and C II | Classes A III B II and C I | Classes A II and B I | Class A I |
|------------------------|------------------------------|------------------------------|----------------------------------|----------------------------|-----------|
| | \$ | \$ | \$ | \$ | \$ |
| Corporal | 2.52 | 2.76 | 3.00 | 3.18 | 3.42 |
| Lance-Corporal | 1.92 | 2.16 | 2.40 | 2.58 | 2.82 |
| Private | 1.74 | 1.92 | 2.16 | 2.40 | 2.58 |

C—Corporals and below: Non-tradesmen

| Rank | Recruit | After 6 months' service with satisfactory progress | After 18 months' service with 2 military qualifications or on promotion to lance corporal or to corporal | After 18 months' service with 3 military qualifications | After 30 months' service with 4 military qualifications |
|----------------|---------|--|--|---|---|
| | \$ | \$ | \$ | \$ | \$ |
| Corporal .. | — | — | 2.52 | 2.76 | 3.00 |
| Lance-Corporal | — | — | 1.92 | 2.16 | 2.40 |
| Private .. | 1.38 | 1.56 | 1.74 | 1.92 | 2.16 |

D—Increments

- (a) **For length of service as a soldier after attaining the age of 18 years.** A soldier shall receive an increment to his basic rate of 12¢ a day on completion of five years' reckonable service and a further 12¢ a day on completion of ten years' reckonable service.

- (b) **For length of service as a warrant or non-commissioned officer.** In addition to any increments admissible under paragraph (a) a warrant or non-commissioned officer shall receive increments to his basic rates as follows:—

| | | |
|---------------------------------|-----|--|
| Warrant Officer, Class I .. | 24¢ | After each period of four years in the rank. |
| Warrant Officer, Class II .. | 12¢ | After each period of four years in the rank. |
| Staff Sergeant .. | 12¢ | After each period of four years in the rank. |
| Sergeant .. | 12¢ | After each period of four years in the rank. |
| Corporal .. | 12¢ | After each period of four years in the rank subject to a maximum of 36¢. |

- (c) **For length of service as Class I tradesman.** In addition to any increments admissible under paragraph (a) above, lance-corporals and soldiers shall receive an increment of 12¢ a day after each four years as a Class I tradesman, subject to a maximum of 36¢.

TABLE IV
RATES OF FAMILY ALLOWANCE —SOLDIERS Regulation 6

| | | | | <i>Per Week</i> | |
|------------------------------|----|----|----|-----------------------------------|------------------------------|
| | | | | When not occupying quarters | When occupy- ing quarters |
| | | | | \$ | \$ |
| Warrant officers | .. | .. | .. | 12.96 | 9.60 |
| Staff sergeants | .. | .. | .. | 11.94 | 9.00 |
| Sergeants | .. | .. | .. | 11.34 | 8.40 |
| Corporals | .. | .. | .. | 9.72 | 7.20 |
| Lance corporals and privates | .. | .. | .. | 9.30 | 7.20 |

CONDITIONS OF PAYMENT OF FAMILY ALLOWANCE

(i) No soldier shall be entitled to the payment of family allowance unless—

- (a) he has reached the age of twenty-one years;
- (b) he is maintaining a wife or dependant child:

Provided that if a soldier on enlisting in the regiment was in receipt of a rate of marriage allowance in Her Majesty's military forces, he shall be entitled to receive that rate under these Regulations, notwithstanding the fact that he would not be entitled to it under this condition.

(ii) A soldier who—

- (a) is a widower or is divorced, and
- (b) has custody of any of his children

shall be entitled to draw family allowance.

(iii) Family allowance shall be payable on the conditions that it is expended currently on the maintenance of the soldier's wife and/or children and the soldier makes an allotment from his pay at the rate prescribed in Table V to these Regulations to be deducted from his pay.

(iv) A soldier in receipt of family allowance shall be responsible for notifying his commanding officer immediately of any change in his family circumstances which affects his dependants' entitlement.

TABLE V
PRESCRIBED ALLOTMENTS

| | <i>Per Week</i> |
|-------------------------------------|-----------------|
| | \$ |
| Warrant officer | 7.56 |
| Staff sergeant and sergeant | 5.04 |
| Corporal and below | 2.52 |

FIFTH SCHEDULE

Section 221 (3)

RETIRED PAY, PENSIONS AND OTHER GRANTS

- Short title. 1. These Regulations may be cited as the Defence (Retired Pay, Pensions and Other Grants) Regulations, 1958.

Part I—General

- Inter-pretation. 2. (1) In these Regulations unless the context otherwise requires:—

“public claim” means any public debt or disallowance, including any over-issue or advance of pay, retired pay, pension or other emoluments made through an error as to the facts; or the sum required to make good any loss, deficiency or irregular expenditure of public money, any deficiency, loss, damage or destruction of public stores, buildings or other public property of which, after due investigation no explanation satisfactory to the Governor-General is given by the person who is responsible for the same;

“service claim” means any service debt or the sum required to make good any loss, deficiency or irregular expenditure of service money of which after due investigation no explanation satisfactory to the Governor-General is given by the person who is responsible for the same;

“substantive rank” shall exclude brevet, honorary, local or acting rank;

“officer on the active list” means an officer of the regiment before his retirement and does not include an officer who has retired and is subsequently recalled to service or re-employed, or who is a member of the reserve of officers.

(2) In the exercise of any of the functions conferred on him under these Regulations (otherwise than under regulation 4) the Governor-General shall act in his discretion.

3. No person shall have an absolute right to compensation or Pensions, etc. not of right.
to retired pay, pension or other grant under these Regulations.

4. When the computation of the retired pay, pension or other No payment from federal funds in respect of other service unless Federation reimbursed.
grant which may be awarded under these Regulations includes a period of reckonable service otherwise than in the regiment no payment shall be made from the public funds of the Federation in respect of such other service unless arrangements have been made to the satisfaction of the Governor-General for the reimbursement of the public funds of the Federation by or on behalf of the Government or other authority for whose benefit such service was given.

5. Except where otherwise provided, no person shall be entitled Revision of terms.
to claim any retired pay, pension, or other advantage conferred by any provision of these Regulations in the event of such provision being at any time added to, varied or cancelled.

6. Any retired pay, pension or other grant awarded under these Compulsory deductions.
Regulations to a person shall be liable to deduction on the order of the Governor-General to meet any public or service claim.

7. The payment of retired pay, pension or other grant awarded Payment of retired pay.
under these Regulations may be made provisionally or upon any other basis and for such period as the Governor-General may think fit and, either generally or in any particular case or class of case, any retired pay, pension, gratuity or other grant awarded in terms of a monthly amount may be paid quarterly or monthly in arrear.

8. (1) The Governor-General may withhold or reduce any retired pay, Power of Governor-General to reduce retired pay, etc. in certain cases.
pension or grant awarded under these Regulations—

(a) if he is satisfied that it was obtained by the wilful suppression of material facts or granted in ignorance of facts which, had they been known at the time of the grant, would have justified the reduction or withholding thereof; cases.

or

(b) if the person to, or in respect of whom such retired pay, pension or grant is awarded is sentenced to death or to any term of imprisonment by any court of competent jurisdiction whether in the Federation or elsewhere, for any crime or offence, or is in the opinion of the Governor-General unworthy of a grant from public funds.

(2) Where any retired pay, pension, or other grant has been withheld or reduced under the provisions of these Regulations, the Governor-General may, at any time, if in any case he considers it equitable so to do, grant or restore the whole retired pay, pension, or grant or a portion thereof.

Retired
pay, etc. to
cease on
bankruptcy.

9. (1) No retired pay, pension, or other grant shall be awarded to a person who, having been adjudicated a bankrupt or declared insolvent by a judgment of a court of competent jurisdiction, whether in the Federation or elsewhere, has not obtained his discharge from such adjudication or declaration.

(2) If any person to whom retired pay, pension, or other grant has been awarded under these Regulations is adjudicated a bankrupt or is declared insolvent by a judgment of a court of competent jurisdiction, whether in the Federation or elsewhere, then such retired pay, pension or other grant shall forthwith cease.

(3) Notwithstanding the provisions of paragraph (2) of this regulation, it shall be lawful for the Governor-General from time to time, during the remainder of the life of such member or during such shorter period or periods, either continuous or discontinuous, as he shall think fit, to cause all or any part of the moneys to which such member would have been entitled by way of retired pay, pension or other grant, had he not become a bankrupt or insolvent, to be paid to, or applied for the maintenance and personal support of, all or any, to the exclusion of the other or others, of the following persons, namely, such member himself and any wife, child or children of his, in such proportions and manner as the Governor-General thinks proper and such moneys shall be paid or applied accordingly; moneys applied for the discharge of the debts of the member or pensioner shall, for the purpose of this paragraph, be regarded as applied for his benefit.

(4) When a person to whom any retired pay, pension or other grant has not been awarded or whose retired pay, pension or other grant has ceased under the provision of this regulation, obtains a discharge from his bankruptcy or insolvency as the case may be, retired pay, pension or other grant may be awarded or restored to him as the case may be with effect from the date of such discharge.

Power to
dispense
with
probate.

10. Where a person to whom any payment could have been made under these Regulations before his death dies before the payment is made, and the amount unpaid does not exceed five hundred dollars, the amount so unpaid may be paid to the personal representative of the deceased person without probate or other proof of title or may be paid or distributed to or among the persons appearing to the Governor-General to be the persons beneficially entitled to the personal estate of the deceased person, or to or among any one or more of such persons, and in determining the persons to whom and the proportions in which the amount so unpaid shall be paid or distributed, the Governor-General may have regard to any payments made or expenses incurred by any such person for or on account of the funeral of the deceased person.

Service of
a foreign
power.

11. If a person enters the service of a foreign power without the consent of the Governor-General, or, if he continues in such service after the consent is withdrawn, he shall be liable to have his retired pay or pension, as the case may be, suspended or withheld as the Governor-General may decide.

Part II—Officers

12. It shall be compulsory for officers to retire on attaining the following ages, that is to say— Compulsory retirement.

A colonel or brigadier at the age of 54

A lieutenant-colonel at the age of 48

A major or lower rank at the age of 45

13. (1) An officer who retires within two years of the compulsory age for retirement in his rank and whose reckonable service is equal to or greater than the standard service period set out in paragraph (3) of this regulation, may be granted retired pay calculated in accordance with the provisions of paragraph (2) of this regulation. Retirement on retired pay at full rate.

(2) Retired pay at full rate shall be calculated on the basis of seven days pay at the average rate in issue to the officer over the three years immediately preceding the date of retirement for each year of reckonable service.

(3) The standard periods of service for the purpose of qualifying for retired pay shall be as set out in the following scale:—

| <i>Rank on retirement</i> | <i>Standard period of service</i> |
|---------------------------|-----------------------------------|
| Lieutenant | 20 years |
| Captain | 20 years |
| Major | 22 years |
| Lieutenant-Colonel | 24 years |
| Colonel | 26 years |
| Brigadier | 28 years |

14. An officer permitted to retire at his own request before the compulsory retirement age for his rank, with at least 20 years qualifying service may be granted retired pay as follows:— Early retirement at officer's request.

- (a) if he is within two years of the compulsory age for his retirement the award shall be computed as if he had retired in the circumstances mentioned in regulation 17;
- (b) if otherwise, the award shall be computed at the rate for which he would have been eligible had he continued to serve in his substantive rank on the date of his retirement until he retired at the compulsory retirement age for that rank, less one deduction of the scale laid down in regulation 19 for each period of three months or part of a period of three months by which the difference between his age on retirement and the compulsory retirement age limit exceeds two years, with a further deduction of 10 per cent from the amount so calculated.

Retired pay
on being
invalided.

15. An officer who is invalided from the regiment before the compulsory retirement age for his rank, with at least ten years qualifying service may be awarded retired pay as follows:—

- (a) if he has twenty or more years qualifying service, the award shall be computed as if he had retired in the circumstances mentioned in regulation 17;
- (b) if his qualifying service is less than twenty years the award shall be that for which he would have been eligible under sub-paragraph (a) had he completed twenty years qualifying service and then retired in the rank of major (or in his existing rank, if higher), less a deduction of twice the amount laid down in regulation 19 for each period of three months or part of a period of three months by which his qualifying service falls short of twenty years:

Provided that where the circumstances leading to an officer's being invalided out of the regiment are due to his own fault or to causes within his control, the grant and amount of award (not exceeding the amount which might otherwise have been awarded under this regulation) shall be determined by the Governor-General as he shall think fit.

Retirement
in the
interests of
the service.

16. An officer who is retired or called upon to retire or resign on the grounds of the interest of Her Majesty's service, and not due to causes within his own control, and who has had at least twenty years qualifying service, may be granted retired pay as if he had retired in the circumstances mentioned in regulation 17.

Retired pay
where
reckonable
service
less than
standard
service
period.

17. Where upon the date of an officer's compulsory retirement his reckonable service is less than the standard service period for his rank for retired pay purposes, he may be awarded retired pay reduced by one deduction according to the table set out in regulation 19, for each period of three months or part of a period of three months of the deficiency.

Retirement
for mis-
conduct,
etc.

18. An officer who is retired or called upon to retire or resign for misconduct, or who is cashiered or dismissed Her Majesty's service, and who has at least twenty years qualifying service, may be granted, if the Governor-General so decides, a compassionate award of retired pay at such rate as he may determine, but not in any event exceeding 90 per cent of the retired pay rate which would have been admissible had he retired at his own request.

Scale of
deductions.

19. For the purpose of the computation of retired pay when the officer's reckonable service is less than the standard service period set out in regulation 13, the scale of deductions shall be as follows:—

| <i>Rate of retired pay</i> | <i>Each deduction</i> |
|----------------------------------|-----------------------|
| Above \$3,840 a year | \$ 48.00 a year |
| \$3,840 and above \$2,880 a year | 36.00 a year |
| \$2,880 and above \$1,920 a year | 24.00 a year |
| \$1,920 and above \$1,440 a year | 18.00 a year |
| \$1,440 and above \$960 a year | 12.00 a year |
| \$960 a year and below | 5.00 a year |

Deductions shall be made successively until the number of deductions due to be made has been completed, and each deduction in turn shall be of the amount appropriate to the rate remaining after the preceding deduction.

20. (1) An officer awarded retired pay under this Part of these Terminal Regulations (otherwise than under regulation 18) may in addition, be grants. awarded a terminal grant in accordance with the following scale:—

| | | |
|--------------------|---|---|
| Majors and below | — | an amount equal to four times the annual rate of retired pay. |
| Lieutenant-Colonel | — | an amount equal to three and one half times the annual rate of retired pay. |
| Colonels and above | — | an amount equal to three times the annual rate of retired pay. |

(2) Where an officer, has been granted a compassionate award of retired pay under regulation 18 the Governor-General may in his discretion award a compassionate gratuity not exceeding three times the annual rate of the compassionate award of retired pay.

21. An officer (other than an officer of the quartermaster category) retiring and ineligible for retired pay may be granted, at the cessation of his service, a gratuity in accordance with the following provisions:—

(a) an officer—

- (i) who has retired at his own request or upon reaching the compulsory retirement age for his rank or who is retired or called upon to retire or resign on the grounds of the interest of Her Majesty's service, and not due to causes within his own control, and
- (ii) who has had at least ten years qualifying service, may be granted a gratuity of an amount equal to forty-two days pay at the average rate in issue to the officer over the three years immediately preceding the date of retirement for each year of reckonable service;

(b) an officer who is invalided from the regiment may be granted a gratuity of an amount equal to sixty-one days

pay at the average rate in issue to the officer over the three years immediately preceding the date of retirement for each year of reckonable service;

- (c) an officer who is retired or is called upon to retire or resign or who is cashiered or dismissed from Her Majesty's service may be granted, if the Governor-General so decides, a compassionate gratuity at such rate as he may determine but not in any event exceeding 90 percent of the gratuity which would have been admissible had he retired at his own request.

Qualifying service of an officer. 22. Subject to the conditions set out, the following periods may be included in assessing the qualifying service of an officer for the purposes of this Part of these Regulations:—

- (a) paid commissioned service in Her Majesty's military forces;
- (b) unforfeited paid colour service which would be service admissible for a soldier's pension under Part III of these Regulations to the following extent—
 - (i) service as a warrant officer, Class 1— in full;
 - (ii) service in any other rank—one half.

Service prior to a five year interval not normally counted. 23. Service preceding a five year interval in service shall not be included for the purpose of assessing qualifying service under this Part of these Regulations unless specially allowed by the Governor-General in exceptional circumstances, and eligibility to count such service shall normally be determined at the time service is resumed.

Reckonable service under Part II. 24. Reckonable service for service retired pay shall be so much of the officer's qualifying service as was given after he attained the age of twenty-one years:

Provided that where the officer served in the ranks before he was commissioned his reckonable service as another rank given before the age of twenty-one may be included providing that the total service, so reckoned, is not greater than would have been reckonable had he been commissioned at the age of twenty-one.

Part III—Soldiers

Full pension awarded after 22 years service. 25. A soldier may be awarded, upon completion of twenty-two years reckonable service, a full pension calculated in accordance with the provisions of regulation 26.

Calculation of full pension. 26. A full pension shall be an amount payable in respect of each calendar month equal to seven days pay at the average rate in issue to the soldier over the three years immediately preceding the date of completion of twenty-two years' service, discharge or invaliding out of the service, as the case may be.

27. A soldier who has completed a minimum of eighteen years reckonable service may be awarded a pension calculated in accordance with the provisions of regulation 26, but subject to the following modifications:—

Reduced pension after 18 years service.

- (a) the pension shall be calculated at the date of discharge as if the soldier had twenty-two years reckonable service;
- (b) a deduction shall be made at the rate of ten per cent (upon the amount remaining after the preceding deduction has been made) for each year or part of a year by which the reckonable service falls short of twenty-two years.

28. A gratuity of an amount equal to fourteen days pay at the average rate in issue over the preceding three years for each year of reckonable service may be awarded to—

Gratuity may be granted for service prematurely terminated.

- (a) a soldier discharged (other than for misconduct) after completing a period of twelve years or more but not exceeding eighteen years reckonable service;
- (b) a soldier invalided from the regiment after completing a period of four years or more but not exceeding eighteen years reckonable service:

Provided that where the circumstances leading to a soldier being invalided out of the regiment are due to his own fault or to causes within his control, the grant or amount of award shall be determined by the Governor-General as he shall think fit:

Provided further that where a soldier who is eligible for the award of a gratuity under this regulation had immediately prior to his enlistment in the regiment completed at least three years continuous service as a non-commissioned officer—

- (a) in a Volunteer Defence Force in any of the Territories, or
- (b) in the capacity of instructor in a Cadet Corps in any of the Territories,

his gratuity shall be calculated as if for the reference above to "fourteen days pay" there was substituted a reference to "twenty-eight days pay".

29. A soldier who has been permitted to serve for a period exceeding twenty-two years reckonable service may, upon his final discharge, be awarded a pension calculated in respect of his full reckonable service upon the rates of pay in issue on the date on which he achieved twenty-two years reckonable service.

Pension where service exceeds 22 years.

30. A soldier who has been awarded a pension under this Part of these Regulations may, in addition, be awarded a terminal grant of an amount equal to one hundred and fifty days pay at the rate in issue on the date of discharge:

Award of terminal grant.

Provided that where the soldier's reckonable service is less than twenty-two years deductions shall be made from the terminal grant (upon the amount remaining after the preceding deduction has been made) at the rate of ten per cent for each year or part of a year by which the reckonable service falls short of twenty-two years.

Reckonable service under Part III. 31. For the purposes of this Part of these Regulations reckonable service shall be—

- (a) unforfeited paid colour service after attaining the age of eighteen years, in Her Majesty's military forces;
- (b) service as an officer which would be reckoned as qualifying service for the purposes of Part II of these Regulations.

Service preceding a five year interval not normally counted. 32. Service preceding a five year interval of service shall not be included for the purpose of assessing reckonable service under this Part of these Regulations unless specially allowed by the Governor-General in exceptional circumstances and eligibility to count such service shall normally be determined at the time service is resumed.

Payment of pension of pensioner of unsound mind. 33. If any pensioner is or becomes of unsound mind the Governor-General may direct that his pension, or such part of it as appears necessary for his care and maintenance, be paid to his wife, son, daughter or other person in whose care he may be or who may be responsible for the cost of his care and maintenance. The receipt of the person or persons to whom the whole or part of the pension is so paid shall be sufficient voucher and discharge for so much money as is stated thereon to have been paid.

[The next page is 221]

STATUTORY INSTRUMENTS

THE DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS, 1958

THE DEFENCE (OFFICERS) REGULATIONS, 1958

**THE DEFENCE (ENLISTMENT AND SERVICE)
REGULATIONS, 1958.**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Recruiting officers.
4. Prescribed forms.
5. Method of attestation.
6. Competent military authorities.
7. Transfer between units.
8. Terms of enlistment.
9. Re-engagement.
10. Continuance in the service.
11. Discharge certificates.
12. Officers authorised under section 19 of the Act to reduce warrant officers and non-commissioned officers.

REGULATIONS made by the Governor-General in exercise of the S.I. powers conferred upon him by section 221 of the Defence Act, 1958, 18/1958 and of all other powers him thereunto enabling.

| | | | |
|-----------------------|---------|----------------|------|
| <i>Date of making</i> | | 18th December, | 1958 |
| <i>Commencement</i> | | 1st January, | 1959 |

1. These Regulations may be cited as the Defence (Enlistment Citation and Service) Regulations 1958.

2. In these Regulations unless the context otherwise requires:— Interpretation.

“the Act” means the Defence Act, 1958;

“commanding officer” means in relation to a soldier, the officer for the time being commanding the unit with which the soldier is serving;

“enlisted” means enlisted to serve in the regiment and the expression “enlistment” shall be construed accordingly.

3. Officers of the rank of captain and above who are—

Recruiting
Officers.

(a) officers of the regiment, or

[Statutory Instrument]

DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

(b) officers of Her Majesty's regular forces raised in the United Kingdom, or

(c) officers seconded for service with the regiment,

may act as recruiting officers.

Prescribed
forms.

4. The forms set out in the First Schedule to these Regulations or forms substantially to the like effect, shall be the forms to be used for the purpose of the Act and these Regulations in cases to which those forms are applicable.

Method of
attestation.

5. (1) The recruiting officer, after a person offering to enlist has been given a notice paper, shall satisfy himself that the person understands the contents of the notice paper and the conditions of engagement upon which he is about to enter and he shall warn the person to be enlisted that if he knowingly makes any false answers to the questions in the attestation paper which are to be put to him, he will be liable to be punished as provided by the Act.

(2) The recruiting officer shall satisfy himself that the person offering to enlist is, or as the case may be, is not, over the apparent age of eighteen years.

(3) The recruiting officer shall read or cause to be read to the person in a language which he understands, the questions set out in the attestation paper and shall ensure that the answers are duly recorded thereon.

(4) The recruiting officer shall then ask the person to make and sign the declaration set out in the attestation paper as to the truth of the answers and shall administer to him the oath of allegiance set out in the attestation paper:

Provided that if the person objects to be sworn and states as a ground for his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief or if it is not reasonable to administer an oath to such a person in the manner appropriate to his religious belief, the person shall be required to make a solemn affirmation instead of taking the oath.

(5) Upon signing the declaration in the attestation paper and upon taking the oath, or as the case may be, making the solemn affirmation, the person shall become a soldier and subject to military law under the Act.

(6) The recruiting officer shall by signature confirm on the attestation paper that the requirements of the Act and these Regulations have been duly complied with and shall deliver the attestation paper duly dated to the officer in charge of the records of the regiment who shall on receiving the attestation paper sign it in the appropriate place and thereby signify that the person is finally approved for service.

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

(7) The soldier on being finally approved for service shall be entitled to receive a certified true copy of the attestation paper.

6. (1) In relation to the provisions of the Act specified in the first column of the first Part of the Second Schedule to these Regulations and for the purposes specified opposite thereto in the second column thereof, the officer specified in the third column thereof shall be the competent military authority.

(2) The officers set out in the second column of the second Part of the said Second Schedule shall in pursuance of subsection (3) of section 16 and section 21 of the Act, be competent military authorities for the purpose of authorising the discharge of a soldier for the reasons set out in the first column thereof.

7. A soldier on enlistment shall be appointed to a unit and may be transferred from one unit to another by order of the Commander if it is in the interest of the regiment so to do.

8. (1) The terms of service for which in accordance with sub-section (2) of section 13 of the Act, a person who has apparently attained the age of eighteen years may be enlisted shall be:—

- (i) a term of six months, 1, 2, 3, 4, 5 or 6 years of colour service; or
- (ii) a term of 6 years being as to 3 years a term of colour service and as to the remainder, a term of service in the reserve.

(2) The terms of service for which in accordance with subsection (3) of section 13 of the Act, a person who has not apparently attained the age of eighteen years may be enlisted shall be one of the following, being a term beginning on the date of his attestation and ending with the expiration of a period of—

- (i) 6 years beginning with the day on which he attained the age of eighteen years, being a term of colour service; or
- (ii) 9 years beginning with the date on which he attained the age of eighteen years being as to 6 years, a term of colour service and as to the remainder, a term of service in the reserve.

9. The period or periods of colour service for which a soldier may re-engage in accordance with the provisions of subsection (1) of

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section 14 of the Act shall be not more than 1, 2, 3 or 6 years at a time up to a maximum of 12 years and thereafter for periods of 1, 2 or 3 years at a time until he has completed 22 years colour service:

Provided that where a soldier has immediately prior to enlisting in accordance with these Regulations served as a soldier in Her Majesty's military forces, the continuous period of such paid colour service shall, for the purposes of section 14 of the Act and this regulation, be treated as colour service under the Act.

Continu-
ance in the
service.

10. For the purpose of computing the period of 22 years colour service for the purpose of subsection (2) of section 14 of the Act, a soldier who immediately before he enlisted into the regiment was serving as a soldier of Her Majesty's military forces shall be entitled to count any continuous period of such paid colour service as colour service.

Discharge
certifi-
cates.

11. The particulars to be contained in a certificate of discharge shall be:—

- (a) number;
- (b) name, including christian or forenames;
- (c) date and place of enlistment;
- (d) physical description of soldier on leaving colour service;
- (e) rank of soldier on leaving colour service;
- (f) assessment of conduct and character on leaving colour service with the signature of the officer making the assessment;
- (g) date of transfer to the reserve;
- (h) rank on transfer to the reserve;
- (i) date of discharge;
- (j) rank on discharge;
- (k) reason for discharge;
- (l) total service on discharge, both colour service (including where appropriate prior service in accordance with regulations 9 and 10), and service in the reserve; and
- (m) signature of issuing officer:

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Provided that the particulars specified in paragraphs (g) and (h) shall be omitted in the case of a soldier who has not served in the reserve.

12. The Commander and any officer (not below the rank of brigadier) under whom a warrant officer or non-commissioned officer is serving, is authorised to reduce a warrant officer or non-commissioned officer in accordance with the provisions of section 19 of the Act.

Officers authorised under section 19 of the Act to reduce warrant officers and non-commissioned officers.

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

FIRST SCHEDULE

Form I

THE WEST INDIA REGIMENT

NOTICE PAPER

NOTICE TO BE GIVEN UNDER SECTION 12 OF THE DEFENCE ACT, 1958 TO A PERSON OFFERING TO ENLIST IN THE WEST INDIA REGIMENT

This paper sets out the questions you will be required to answer before the officer who will attest you for the West India Regiment, and the general conditions of the various engagements.

Under the provisions of sections 25 and 62 of the Defence Act 1958, if any person knowingly makes a false answer to any question contained in the attestation paper he is liable to punishment.

QUESTIONS TO BE PUT TO THE RECRUIT BEFORE ENLISTMENT

- Q. 1. What is your full name?
- Q. 2. What is your address?
- Q. 3. State, day, month and year of your birth.
- Q. 4. Where were you born?
- Q. 5. What is your nationality now.
- Q. 6. What was the nationality at birth of:—(a) yourself? (b) your father? (c) your mother? (d) your wife/husband?
- Q. 7. Are you single, married, widowed, divorced?
- Q. 8. How many children are dependent on you?
- Q. 9. What is your trade or calling?
- Q. 10. Do you belong to, or have you ever served in, Her Majesty's naval, military or air forces or in any Commonwealth force, or in any police force? If so, state which, and the periods of service and the reasons for dates of discharge.
- Q. 11. Have you ever been cashiered, dismissed, discharged with disgrace, with ignominy or for misconduct from Her Majesty's naval, military or air forces or from any Commonwealth force or from any police force?
- Q. 12. Have you truly stated the whole, if any, of your previous service?
- Q. 13. Have you at any time been found guilty by any civil court of any offence? If so, give particulars.
- Q. 14. Have you ever been rejected for service in Her Majesty's naval, military or air force or in any Commonwealth force or in any police force? If so, on what grounds?

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- Q. 15. Are you willing to be vaccinated or re-vaccinated?
- Q. 16. Have you received a notice paper setting out the questions to be answered on attestation, and the general conditions of the engagement to be entered into, and do you understand the contents of the notice paper and wish to be enlisted?
- Q. 17. Are you willing to serve Her Majesty in the West India Regiment or in such other of Her Majesty's military forces as may be raised under the Defence Act 1958, provided Her Majesty shall so long require your services, for:—

a term of.....years with the colours; or

a term of.....years with the colours and....years in the reserve;

or

if you are a boy (that is if your age is under 18 years) the period from your date of attestation up to the date on which you attain the age of 18 years and thereafter for either:—

a period of 6 years with the colours; or

a period of 6 years with the colours and 3 years in the reserve.

You will be required to make the following declaration,
“I.....do solemnly declare that the above answers made by me to the above questions are true, and that I am willing to fulfil the engagements made”. On signing the declaration and taking the oath or making a solemn affirmation you will become a soldier of the West India Regiment subject to military law under the Defence Act, 1958.

GENERAL CONDITIONS OF ENGAGEMENT

1. You will be required to engage to serve Her Majesty in the West India Regiment or in such other of Her Majesty's military forces as may be raised under the Defence Act, 1958 for such time as is agreed on attestation, provided that Her Majesty shall so long require your services. You will be liable to serve in any part of The West Indies and may be ordered to serve outside the Federation.

2. You may engage to serve:—

- (a) for a term of 6 months, 1, 2, 3, 4, 5 or 6 years with the colours when any of these terms of service are currently open;
- (b) for a term of 3 years with the colours and 3 years in the reserve;
- (c) if you are under the age of 18 years, for a term up to your 18th birthday and thereafter for a term:—
- (i) of 6 years with the colours; or

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(ii) 6 years with the colours and 3 years in the reserve.

3. At any time within two years of your completing your colour service, you may apply to serve for a further term with the colours until you have completed a continuous period of 22 years with the colours.

4. After you have completed 22 years with the colours, you may apply to continue to serve with the colours from year to year and during such continued service you may give three months' notice to claim your discharge.

5. If at the time you enlist you are serving in Her Majesty's military forces you will be discharged from those forces but you will be entitled to count your prior continuous service in those forces in computing the period of colour service for re-engagement and continuation under paragraphs 3 and 4 and for computing your pension.

6. You will be enlisted in the rank of private. Subsequent promotion will depend on vacancies in the establishment but if you had prior service in Her Majesty's military forces, such service will be considered.

7. When you have been attested you will be subject to the provisions of the Defence Act, 1958, for the time being in force, and you will be required to carry out whatever duties may be ordered by those in authority over you.

8. No guarantee can be given that you will be employed on any particular duties but where you are enlisted with a view to performing particular duties or to being trained in a particular trade, you will be employed on these duties or, as the case may be trained and employed in that trade, so far as the requirements of the service permit.

9. Where you are enlisted with a view to being employed on particular duties or in a particular trade and through no fault of your own you fail to qualify or are unable to be employed on those duties or in that trade, except for periods of limited duration, you may apply for discharge which will be granted to you so long as the requirements of the service permit. Employment in a trade depends on passing a specified trade test and there being a vacancy in the trade.

10. If you are enlisting for the first time in The West India Regiment or such other of Her Majesty's military forces as may be raised from under the Defence Act, 1958 and have not had any prior service in Her Majesty's military forces you will be entitled to claim your discharge subject to sections 15 and 22 of the Defence Act, 1958, at any time within six months of your attestation on payment of a sum not exceeding one hundred dollars.

11. In computing your service for the purpose of discharge, re-engagement or transfer to the reserve, periods during which you have been away from your duty because of imprisonment, desertion or

DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

absence without leave exceeding 28 days will be excluded and, further, any period which you are ordered by a court-martial to forfeit, will be disregarded.

12. You may be discharged at any time during your engagement by order of a competent military authority as a result of irregularities concerning your enlistment, for misconduct, for unfitness on medical grounds or for the benefit of the public service.

13. If at the time when your term of colour service expires there is a state of war, insurrection or hostilities, or a public emergency, you may be retained and your service prolonged for such further period as a competent military authority may direct.

14. If you are transferred to the reserve at the end of your colour service you will be liable when in the reserve to be called out:—

- (a) by proclamation if a state of war has been declared or insurrection or hostilities or public emergency, in which event you are liable to serve for the whole of the remaining unexpired term of service in the reserve and such further period not exceeding 12 months as a soldier may be retained under the Defence Act, 1958.
- (b) on temporary service at any time when the Governor-General thinks necessary.

15. If at the time you are due to be discharged or transferred to the reserve you are liable to be proceeded against for an offence against service law, your discharge or transfer to the reserve will be postponed until after the proceedings have been concluded.

16. If at the time when you are entitled to be discharged or transferred to the reserve you are serving out of the Territory in which you were enlisted, you will be sent to that Territory free of all costs. In certain circumstances you may be sent free of costs to a place in The West Indies which you select as your residence.

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

FORM 2

THE WEST INDIA REGIMENT ATTESTATION PAPER

Regiment No.....Nature of Engagement¹.....years with the
colours.....years in the reserve.

General Instructions for completing the Attestation Paper

1. The recruit will first be given a copy of the notice paper.
2. Any alterations in this attestation paper will be initialled in ink by the recruiting officer.
3. The recruiting officer will delete all paragraphs referring to types of engagement which are not appropriate.

Under the provisions of sections 25 and 62 of the Defence Act, 1958, if a person knowingly makes a false answer to any of the questions contained in the attestation paper, he renders himself liable to punishment.

QUESTIONS TO BE PUT TO THE RECRUIT BEFORE ENLISTMENT

Q. 1. What is your full name? : (a) Christian or Fore- : (b) Surname
names

Q. 2. What is your address?

Q. 3. State the day, month and year
of your birth.

Q. 4. Where were you born?

Q. 5. What is your nationality now?

Q. 6. What was the nationality at birth of:

(a) yourself?

(b) your father?

(c) your mother?

(d) your wife/husband?

Q. 7. Are you single, married,
widowed, divorced?
(State which).

Q. 8. How many
children are
dependent on
you?

Q. 9. What is
your trade
or calling?

Q. 10. Do you belong to, or have you ever served in, Her Majesty's naval, military or air forces, or in any Commonwealth force, or in any police force? If so, state which, and the periods of service and the reasons for and dates of discharge.²

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Q. 11. Have you ever been cashiered, dismissed, discharged with disgrace; with ignominy or for misconduct from Her Majesty's naval, military or air forces or from any Commonwealth force or from any police force?

Q. 12. Have you truly stated the whole if any, of your previous service?

Q. 13. Have you at any time been found guilty by a civil court of any offence? If so, give particulars.

Q. 14. Have you ever been rejected for service in Her Majesty's naval, military or air forces or in any Commonwealth force, or in any police force? If so, on what grounds?

Q. 15. Are you willing to be vaccinated or re-vaccinated?

Q. 16. Have you received a notice paper (.....) setting out the questions to be answered on attestation, and the general conditions of the engagement to be entered into?

Do you understand the contents of the notice paper and wish to be enlisted?

Q. 17. Are you willing to serve Her Majesty in the West India Regiment or in such other of Her Majesty's military forces as may be raised under the Defence Act, 1958, provided Her Majesty shall so long require your services, for:—

a term of.....years with the colours,³

or,

a term of 3 years with the colours and 3 years in the reserve?³

or

A.....⁴

If you are a boy (that is if your age is under 18 years) the period from the date of your attestation up to the date on which you attain the age of 18 years and thereafter for either:—

a period of 6 years with the colours,³

or,

a period of 6 years with the colours and 3 years in the reserve?³

A.....⁴

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

SOLEMN DECLARATION

I,.....do solemnly declare that the above answers made by me to the above questions are true, and that I am willing to fulfil the engagement made.

.....
(DATE)

.....
(Signature of recruit)

.....
(Signature of
witness)

(OATH TO BE TAKEN) (AFFIRMATION TO BE MADE)³ BY
RECRUIT ON ATTESTATION

I,.....(swear by Almighty God) (do solemnly sincerely and truly declare and affirm)³ that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend Her Majesty, her heirs and successors, in person, crown and dignity against all enemies, and will observe and obey all orders of Her Majesty, her heirs and successors, and of the officers set over me.

DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

CERTIFICATE OF RECRUITING OFFICER

The recruit named overleaf was cautioned by me that if he knowingly made any false answer to any of the questions overleaf he would be liable to be punished as provided in the Defence Act, 1958.

The questions overleaf were then read to the recruit in my presence.

I have taken care that he understands each question, and that his answer to each question has been duly entered.

I have taken care to see that the recruit has received a copy of the notice paper and I am satisfied that he is fully aware of the terms and general conditions of service on which he has entered.

I am satisfied from the evidence produced or the statements made by the recruit that he (has) (has not)³ attained the age of 18 years.

The said recruit has made and signed the declaration and (taken the oath) (made a solemn affirmation)³ before me at..... on this.....day of.....19....

.....
(Signature and rank)
Recruiting Officer.

Identification particulars of.....on enlistment.

Apparent age.....years.....months. Eyes.....Hair.....
(to be determined by the examining medical officer)

Height.....inches. Distinctive marks, and
(without boots/shoes, to nearest ¼ inch) marks indicating congenital
Weight.....lbs. peculiarities of previous
disease.

Height.....
(without boots/shoes to nearest lb)

Description of features

.....

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

Religious denomination

CERTIFICATE OF MEDICAL EXAMINATION

I/WE have examined this recruit in accordance with current instructions and have assessed him as follows:—

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P | U | L | H | E | E | M | S |
| | | | | | | | |

Date.....

Place.....

(Signature(s) of medical officer(s)).

CERTIFICATE OF APPROVING OFFICER

I certify that this attestation paper of the above-named recruit is properly completed and that the required forms relative to his enlistment appear to have been complied with. I accordingly approve his enlistment in the West India Regiment.

Date.....

Place.....

(Signature of approving officer)

NOTES FOR RECRUITING OFFICERS

1. Insert type of engagement.
2. If the recruit has former service he is to be asked particulars of his former service, and will produce, if possible, all certificates issued on discharge. All certificates will be returned to the recruit and certificates will be conspicuously endorsed in red ink that he has been enlisted into The West India Regiment.
3. Delete whichever is inappropriate.
4. Answer yes to appropriate question.

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DEFENCE (ENLISTMENT AND SERVICE) REGULATIONS

SECOND SCHEDULE

Part I

| Provision of the Act | Purpose | Competent military authority |
|-------------------------|---|---|
| Section 14(1) | Approving re-engagement | the commanding officer. |
| Section 14(2) | Approving continuance in colour service | the officer in charge of records. |
| Section 15 | Prolonging service during emergency | in the Federation — the Commander; outside the Federation— the commander of the force with which the soldier is serving. |
| Section 17(3) | Discharging a soldier when he falls to be transferred to the reserve | the commanding officer. |
| Section 24(2) | Receiving claim and discharging a person who has not made a declaration on attestation. | the commanding officer. |

Part II

| Reason | Competent military authority |
|--|---------------------------------|
| For inefficiency during the first 6 months of service | the commanding officer. |
| For inefficiency at any other time | the Commander. |
| Services no longer required | the Commander. |
| Conviction of civil court | the Commander. |
| Medically unfit | the commanding officer. |
| On compassionate grounds | the Commander. |
| On purchase under section 22 of the Act | the commanding officer. |
| On being unable to qualify for a trade | the commanding officer. |

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THE DEFENCE (OFFICERS) REGULATIONS, 1958.

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Eligibility of officers.
4. Eligibility for promotion.
5. Promotion examinations.
6. Grant of ante-date.
7. Acting rank.

REGULATIONS made by the Governor-General in exercise of the S.I. powers conferred upon him by section 221 of the Defence Act, 1958, 19/1958 and of all other powers him thereunto enabling.

| | | | |
|-----------------------|---------|----------------|------|
| <i>Date of making</i> | | 18th December, | 1958 |
| <i>Commencement</i> | | 1st January, | 1959 |

1. These Regulations may be cited as the Defence (Officers) Citation. Regulations 1958.

2. In these Regulations, save where the context otherwise Interpretation requires "the Act" means the Defence Act, 1958.

3. No person shall be commissioned as an officer unless he— Eligibility of officers.

(a) is a British subject or a British protected person whose parents would themselves have been British subjects or British protected persons if the Imperial British Nationality Act, 1948 and the British Protectorates, Protected States and Protected Persons Order in Council, 1949 had been in force at the time of his birth; and

(b) has resided in the territory comprised in the Federation and the British Virgin Islands for a period of, or periods amounting in the aggregate to, not less than three years before the date of his commission:

Provided that an officer who was commissioned in the Jamaica Regiment at the date of his application may be commissioned notwithstanding the provisions of this regulation.

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DEFENCE (OFFICERS) REGULATIONS

Eligibility
for promotion.

4. (1) Officers will be eligible for promotion to substantive rank as follows:—

to lieutenant after two years commissioned service;
to captain after six years commissioned service; and

to major after thirteen years commissioned service:

Provided that commissioned service in Her Majesty's military forces immediately prior to appointment to a commission shall count as service for the purpose of this regulation.

(2) Promotion to lieutenant-colonel and above shall be by selection by the Governor-General acting in his discretion.

Promotion
examinations.

5. No officer shall be eligible for promotion to the ranks of captain or major unless he has passed a promotion examination similar to the promotion examination for the time being in force in Her Majesty's regular forces raised in the United Kingdom:

Provided that

(i) an officer who on the 31st December, 1958 was holding a commission in the Jamaica Regiment may be promoted (from the rank held on that date) without passing a promotion examination if he has sufficient commissioned service referred to in regulation 4; and

(ii) the Commander may within one year from 1st January, 1959, exempt an officer from taking a promotion examination.

Grant of
ante-date.

6. The commission of an officer into the regiment may in special circumstances upon the recommendation of the Board set up under section 7 of the Act be ante-dated.

Acting
rank.

7. An officer may be promoted to acting rank to fill a vacancy in the establishment of a unit.