

No. 10 of 2006.

The Defence Act, 2006.

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ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

6th October, 2006

ANTIGUA AND BARBUDA

No. 10 of 2006

AN ACT to revise the law relating to the Antigua and Barbuda Defence Force and for related matters.

*[Published in the Official Gazette Vol. XXVI
No. 57 dated 12th October, 2006]*

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I
Preliminary

1. This Act may be cited as the *Defence Act, 2003*. Short title.
2. For the purposes of this Act Interpretation.

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

“acting rank” means rank of any description (however called) in respect of which a commanding officer may, pursuant to regulations made under section 229, order the holder to revert from, and “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 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 section 89(1) and section 93(2);

“arrest” includes open arrest;

“Force” means the Antigua and Barbuda Defence Force established by section 4;

“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;

“civil court” means a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction;

“civil offence” has the meaning assigned to it by section 81(2);

“colour service” means service in the regular Force under this Act;

“Chief of Defence Staff” means the officer appointed by the Governor- General under section 174 to have command of the Antigua and Barbuda Defence Force;

“commanding officer” has the meaning assigned to it by section 93(1):

“Commonwealth Force” means any of the naval, military or air forces of a Commonwealth country;

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

“constable” means a member of the Police Force;

“corresponding civil offence” has the meaning assigned to it by section 81(2);

“corresponding rank”, in relation to any rank or rating in the Antigua and Barbuda Defence Force, means such rank or rating in any part of that Force as is prescribed;

“court-martial” means a court-martial held under this Act;

“damage” includes destruction;

“date of attestation”, in relation to any person, means the date on which he is attested pursuant to regulations;

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

“Defence Board” means the Antigua and Barbuda Defence Board established by Part II;

“desertion” shall be construed in accordance with section 51(2);

“enemy” includes

- (a) persons engaged in armed operations against the Antigua and Barbuda Defence Force or any force co-operating there with; and
- (b) armed mutineers, armed rebels, armed rioters and pirates;

"Her Majesty" means Her Majesty in right of Antigua and Barbuda;

"military" means connected to or belonging to land, sea or air forces;

"mutiny" means a combination between two or more persons who are 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 the Antigua and Barbuda Defence Force or any forces co-operating therewith or in any part of any such force,
- (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 the Antigua and Barbuda Defence Force;

"on active service"

- (a) in relation to a unit, means that it is engaged in operations against the enemy, and
- (b) in relation to a person means that he is serving in or with such a unit;

"Permanent Secretary" means the Permanent Secretary within the Ministry with responsibility for Defence and Security;

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

"recruiting officer" means a person authorised to enlist members in the regular Force pursuant to section 19;

"Reserve" or "Antigua and Barbuda Defence Force Reserve" means the body of officers and soldiers established under paragraph (b) of section 4;

“Reserve Class I” means that Unit of the Force formerly referred to as the “Volunteer Element”.

“service” means belonging to or in connection with the Antigua and Barbuda Defence Force;

“service law” means

- (a) this Act, and
- (b) the following Acts of the United Kingdom Parliament, any amendments thereto, and any enactments substituted therefor
 - (i) the *Army Act, 1955*,
 - (ii) the *Air Force Act, 1955*, and
 - (iii) the *Naval Discipline Act, 1957*;

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“ship” means any vessel;

“soldier” does not include an officer, but, subject to this Act, includes a warrant officer and a non-commissioned officer;

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

“unit” means

- (a) any independent portion of the Antigua and Barbuda Defence Force which is not higher in the organization of that Force than a battalion or any equivalent body of troops, or
- (b) any other body of that Force declared by the Defence Board to be a unit.

(2) References to officers and soldiers of the Antigua and Barbuda Defence Force, except in Part VII, include references to officers and soldiers attached or seconded thereto.

Active service

3.(1) Where it appears to the Governor-General that, by reasons of the imminence of active service or of the recent existence of active service, it is necessary in the public interest that a unit should be deemed to be on active service, he may by proclamation declare that for a specified period, not exceeding three months commencing with the date of the coming into force of the proclamation, that unit shall be deemed to be on active service.

(2) Where it appears to the Governor-General that it is necessary in the public interest that the period specified in a proclamation made under subsection (1) should be extended, or, if previously extended under this section, should be further extended, he may extend that period by such further period, not exceeding three months, as is specified in the proclamation.

(3) Where a unit is deemed to be on active service pursuant to subsection (1) and it appears to the Governor-General that there is no necessity for the unit to continue to be deemed to be on active service, he may declare that as from such date as is specified the unit shall cease to be deemed to be on active service.

Establishment and
maintenance of
Force.

4. There shall be established and maintained in Antigua and Barbuda a body of military forces styled the Antigua and Barbuda Defence Force comprising

- (a) a regular Force and
- (b) a reserve Force to be known as the Antigua and Barbuda Defence Force Reserve; and
- (c) 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 prescribe by order.

Powers of officers,
Petty Officers and
men of the Coast
Guard.

5. (1) An Officer, Petty Officer or man in command of any unit of the Coast Guard, in any case where he has reasonable cause to suspect that any vessel is engaged in any unlawful operation whatever within the territorial waters of Antigua and Barbuda, may stop and board and search, with any assistance, any and every part of such vessel and if he thinks it necessary may direct such vessel to proceed to such place as he may specify.

(2) In exercise of the power conferred by subsection (1), such Officer or Petty Officer or man may

- (a) pursue and detain with any assistance any person whom he has reason to believe is engaged in or assisting in the carrying on of any unlawful operation as aforesaid;
- (b) use such force as may be necessary to comply with any directions he may give as to such vessel's movements.

6. (1) The Antigua and Barbuda Defence Force is responsible for the defence of Antigua and Barbuda and such other duties as the Defence Board determines.

Duties of Defence Force.

(2) In the event of public emergency the Governor-General may, on the advice of the Prime Minister by proclamation direct that the Antigua and Barbuda Defence Force or part thereof be employed in aid of the civil community.

7. The Antigua and Barbuda Defence Force may, by order of the Defence Board, be formed into units or other military bodies.

Formation into units.

8. The Governor-General may at the time order that the whole or any part of the Antigua and Barbuda Defence Force shall be employed outside Antigua and Barbuda; but no officer or soldier of the Antigua and Barbuda Defence Force Reserve is liable to be employed outside Antigua and Barbuda unless

Employment of Defence Force outside Antigua and Barbuda.

- (a) he is an officer or soldier who was transferred from the regular Force to the Reserve; or
- (b) he has entered into an agreement in writing accepting such a liability.

9. (1) The Defence Board may order any officer or soldier of the regular Force, or, with his consent, any officer or soldier of the Reserve, to proceed to a place outside Antigua and Barbuda for the purpose of undergoing instruction or training or to take up duty or employment.

Overseas training.

(2) The Defence Board may, with the consent of an officer or soldier, place him at the disposal of the military authorities of any country or territory for the purpose of his being attached to the armed forces of that country or territory.

PART II
ANTIGUA AND BARBUDA DEFENCE FORCE

Establishment of
Defence Board.

10. (1) There shall be an Antigua and Barbuda Defence Board which is, subject to subsection (2), responsible for the command, discipline and administration of, and all other matters relating to, the Antigua and Barbuda Defence Force.

(2) The Chief of Defence Staff of the Antigua and Barbuda Defence Force is, subject to the directions of the Governor-General, responsible for the operational use of the Force, but the Prime Minister may where no directions have been given by the Governor-General give the Chief of Defence Staff directions to the operational use of the Antigua and Barbuda Defence Force in Antigua and Barbuda for the purpose of maintaining and securing public order and public safety as the Prime Minister thinks fit.

(3) “Where any member of the Antigua and Barbuda Defence Force is acting pursuant to directions given under subsection (2) such members shall, while so acting, enjoy all such immunity privileges and protection as are enjoyed by members of the Royal Antigua and Barbuda Police Force.”

Membership of
Defence Board

11. (1) The members of the Defence Board are

- (a) the Prime Minister, who shall be the Chairman, *ex officio*;
- (b) the Minister responsible for Defence and National Security;
- (c) such other Minister as the Prime Minister appoints;
- (d) the Chief of Defence Staff, *ex officio*; and
- (e) the Permanent Secretary, in the Ministry responsible for Defence *ex officio*, or such other public officer as the Prime Minister designates.

Secretary.

(2) The Chairman of the Defence Board may nominate any member thereof to perform the duties of Chairman at any meeting of the Defence Board from which the Chairman is absent, and such nomination may be either general or in respect of a particular occasion.

Performance of
functions of
Defence Board.

12. The Secretary of the Defence Board shall be the Permanent Secretary, or such other person as the Chairman nominates to perform the duties of Secretary at any meeting of the Defence

Board in the event of the absence or inability to perform those duties, of the Permanent Secretary.

13. The Defence Board may

Performance of
functions of
Defence Board.

- (a) regulate its work, the manner in which it shall perform its functions, and the duties and responsibilities of the members thereof;
- (b) delegate, by notice published in the *Official Gazette*, any powers or duties of the Board to any member of the Board;
- (c) consult with such persons, other than members thereof, as it thinks fit, including officers commanding units of the Force, on matters relating to their units, and the officers shall attend such meetings of the Defence Board as the Board requires;
- (d) determine the procedure to be followed in conducting its business; and
- (e) make provision for any other matter which it considers necessary or desirable for attaining the better performance of its functions.

PART III

Officers

14. (1) No person shall be granted a commission in the Antigua and Barbuda Defence Force unless he has been recommended by a Board (in this Act referred to as the Commissions Board) comprising

Commissions.

- (a) a Chairman appointed by the Chief of Defence Staff;
- (b) the Chairman of the Public Service Commission; or in his absence the Vice Chairman of the Public Service Commission; and
- (c) a person appointed by the Defence Board for such period as the Board specifies.

(2) The validity of any proceedings of the Commissions Board is not affected by any vacancy in the membership thereof or any defect in the appointment of a member.

ANTIGUA 10
AND
BARBUDA

The Defence Act, 2006.

No. 10 of 2006.

First Schedule.

(3) The Chief of Defence Staff may nominate a member of the Antigua and Barbuda Defence Force, not below the rank of Major or corresponding rank, to perform the duties of Chairman at any meeting of the Commissions Board.

Power to grant commissions.

15. (1) The power to grant commissions in the Antigua and Barbuda Defence Force is vested in Her Majesty, and may be exercised on Her Majesty's behalf by the Governor-General.

(2) A commission may be granted either for an indefinite period or for a specified period.

(3) Every officer, upon being granted a commission, is entitled to be issued with a commission in the form set out in the First Schedule, and the commission shall be issued under the Public Seal and signed by the Governor-General.

Appointment and transfer of officers.

16. (1) Every officer, upon being granted a commission, shall be appointed by the Governor-General either to the regular Force or to the first or second class of the Antigua and Barbuda Defence Force Reserve.

(2) The Governor-General may, subject to such terms and conditions as he determines, transfer any officer between the regular Force and the Reserve, and between the first class and the second class of the Reserve; but no officer shall be transferred to the regular Force or the first class of the Reserve without his consent.

Power to make regulations for this Part.

17. (1) Subject to this Act, and section 229 (2) (a) to (g), the Governor-General may make regulations

(a) respecting the commissioning of officers, their term of service, appointment, transfer, promotion, retirement, resignation, removal from office, and such other matters concerning officers as he considers necessary; and

(b) for the better carrying into effect of this Part.

(2) The appointment, transfer, substantive promotion, retirement, resignation, removal from office, of any officer shall be notified by the Defence Board in the *Official Gazette*.

PARTIV*Enlistment and Terms of Service in Regular Force**Enlistment*

18. For the purpose of this part, (other than section 31) "Reserve" means the second class of the Antigua and Barbuda Defence Force Reserve. Interpretation.

19. Any person authorised in that behalf by regulations may, in the prescribed manner, enlist recruits in the regular Force. Recruiting Officer.

20. (1) Any person who desires to enlist in the regular Force shall be given a notice in the prescribed form, and a recruiting officer shall not enlist any person in the Force unless that officer is satisfied that the person has been given such a notice, understands it, and wishes to be enlisted. Enlistment.

(2) a recruiting officer shall not enlist a person under the age of 18 years in the regular Force unless consent to the enlistment has been given in writing

- (a) in the case of a person who is living with both parents; by at least one parent;
- (b) in the case of a person who is not living with more than one parent by any person (whether a parent or not) who has parental rights and powers in respect of him and whose whereabouts are known or can after reasonable enquiry be ascertained; or
- (c) in the case of a person to whom paragraph (a) or (b) does not apply, by any person in whose care, whether in law or in fact, the person offering to enlist is.

(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 18 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.

(4) A document purporting to be a certificate signed by a recruiting officer, stating that he is satisfied as to the age of

a person pursuant to subsection (3) is sufficient proof that he is so satisfied in the absence of evidence to the contrary.

Terms and Conditions of Service

Term of
Enlistment.

21. The term for which a person may enlist in the regular Force is

- (a) in the case of a person who has, at the time of his enlistment, attained the age of 18 years
 - (i) such term of colour service not exceeding 12 years as is prescribed;
 - (ii) such term not exceeding 12 years as is prescribed, being as to such part thereof as is prescribed a term of colour service and as to remainder a term of service in the Reserve;
- (b) in the case of a person who has not, at the time of his enlistment, attained the age of 18 years
 - (i) a term of colour service not exceeding 12 years, as is prescribed, beginning with the date on which he attains such age, or
 - (ii) a term not exceeding 12 years, as is prescribed, beginning with the date on which he attains such age, being as such part thereof as is prescribed a term of colour service, and as to the remainder a term in the Reserve

Re-engagement
and continuance
of service.

22. (1) Any soldier who, being of good character, has at any time completed or is within 2 years before completing the term of his colour service may, with the approval of the competent military authority, re-engage for such further period of colour service and service in the Reserve as is prescribed; but the further period of colour service together with the original period of colour service may not, subject to subsection (2), exceed a total continuous period of 22 years colour service from the date of the soldier's original attestation or the date on which he attained the age of 18 years, whichever is later.

(2) Any soldier who completes a period of 22 years colour service may, if he so desires and with the approval of the competent military authority, continue to serve in all respects as if his term of colour service was still unexpired; but such a

soldier may claim his discharge at the expiration of the period of 3 months beginning with the date on which he gives his commanding officer notice of his wish to be discharged.

23. Any soldier whose term of colour service expires during a state of war, insurrection, hostilities or public emergency, or at a period when the exigencies of the service require his services may be retained in the Force, and his service may be extended for such further period as the competent military authority, with the approval of the Defence Board, directs.

Extension of
service.

Discharge and Transfer to the Reserve

24. (1) Subject to this Act, every soldier of the regular Force entitled to be discharged shall be discharged with all convenient speed, but until discharged is subject to military law under this Act.

Discharge.

(2) Where a soldier of the regular Force is at the time when he is entitled to be discharged, serving outside Antigua and Barbuda, then, if he wishes to be discharged in Antigua and Barbuda, he shall be sent to Antigua and Barbuda free of cost with all convenient speed and shall be discharged on his arrival in Antigua and Barbuda, or, if he consents to his discharge being delayed, within 6 months after his arrival; but if he wishes to be discharged at the place where he is serving, he shall be so discharged.

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

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

25. (1) Subject to this Act, every soldier of the regular Force due to be transferred to the Reserve shall be transferred thereto, but until so transferred is subject to military law.

Transfer to the
Reserve.

(2) Where a soldier of the regular Force due to be transferred to the Reserve is serving out of Antigua and Barbuda he shall be sent to Antigua and Barbuda free of cost with all convenient

speed and shall be transferred to the Reserve on his arrival in Antigua and Barbuda, or, if he consents to his transfer being delayed, within 6 months after his arrival; but if he so wishes, he may be transferred to the Reserve without being required to return to Antigua and Barbuda.

(3) Notwithstanding subsections (1) and (2), the competent military authority may, when a soldier of the regular Force is to be transferred to the Reserve, discharge him forthwith without giving any reason, and in such case section 23 applies.

Postponement of discharge or transfer pending proceedings for offences etc.

26. (1) Notwithstanding this part, a soldier of the regular Force is not entitled to be discharged or transferred to the Reserve during any period that he is liable to be proceeded against for an offence under this Act; but if it is decided that the offence is to be tried by court-martial this subsection does not apply.

(2) Notwithstanding this Part, a soldier of the regular Force who is serving a sentence of imprisonment or detention awarded by a court-martial or by his commanding officer is not entitled to be discharged or transferred to Reserve during the currency of the sentence.

Restrictions on reductions in rank of warrant officer and non-commissioned officer.

27. (1) A warrant officer or non-commissioned officer shall not be reduced in rank except

- (a) by sentence of a court-martial;
- (b) by an order of the Defence Board; or
- (c) by an order of an officer who, not below the rank of Major or corresponding rank, is authorised by the commanding officer to act for the purposes of this subsection.

(2) An officer may be authorised under subsection (1) generally or subject to such limitations as are prescribed.

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

Right of warrant officers to discharge on reduction in rank.

28. A warrant officer of the regular Force who is reduced to the ranks may, on such reduction, claim his discharge unless a state of war, insurrection, hostilities or public emergency exists.

29. A soldier of the regular Force may be discharged by the competent military authority at any time during the currency of the soldier's term of engagement upon such grounds as are prescribed.

Discharge upon prescribed grounds.

30. (1) Subject to this section, a soldier of the regular Force is entitled to claim his discharge at any time within 3 months after the date of his first attestation, and if he makes such claim, shall on payment of such sum not exceeding \$500 be discharged with all convenient speed, but until discharged remains subject to military law under this Act.

Right of soldier to purchase discharge.

(2) This section does not apply to a soldier of the regular Force who was, at any time within 3 months prior to the date of his first attestation, a member of a Commonwealth Force.

(3) Section 23 does not apply to a soldier discharged under this section.

(4) Notwithstanding this section, a soldier of the regular Force is not entitled to claim his discharge pursuant to this section during any time when soldiers of that Force are required to continue their colour service under section 22.

31. (1) A soldier of the regular Force may, at any time after the expiration of the period mentioned in section 30(1), make application for the purchase of

Further provisions relating to purchase of discharge or transfer.

- (a) his discharge under this section; or
- (b) his transfer under this section to either class of the Reserve.

(2) Every application made under subsection (1) shall be considered by the Defence Board, and, after considering the application, it may

- (a) refuse the application; or
- (b) direct that the applicant, upon payment of such sum, not exceeding \$2,000, as the Defence Board specifies,
 - (i) be discharged or transferred to such class of the Reserve as the Board specifies, where he seeks his discharge; or

- (ii) be transferred to such class of the Reserve as the Board specifies, where he seeks a transfer to the Reserve.

(3) Where the Defence Board directs under subsection (2) that a soldier of the regular Force be discharged, the soldier shall, on payment of the sum specified by the Board in respect of his discharge, be discharged with all convenient speed; but until discharged he remains subject to military law under this Act.

(4) Where the Defence Board directs under subsection (2) that a soldier of the regular Force be transferred to a specified class of the Reserve, the soldier shall, on payment of the sum specified by the Defence Board in respect of his transfer, be transferred with all convenient speed to that class of the Reserve, and subject to section 211 (1), shall serve therein for a term equal to the unexpired portion of his colour service, as determined immediately before his transfer; but until so transferred he remains subject to military law under this Act.

(5) Nothing in this section relating to transfer to the Reserve nor in any direction by the Defence Board affects the liability of a soldier who enlisted for a term consisting as to part of colour service and, as to the remainder, of service in the second class of the Reserve, to serve the remainder of his service in the second class of the Reserve, and accordingly, but subject to section 211(1),

- (a) if the soldier is transferred under this section to the first class of the Reserve, he shall, at the expiration of the term mentioned in subsection (4), be transferred therefrom to the second class to serve therein for the remainder of his engagement; and
- (b) if the soldier is transferred under this section to the second class of the Reserve shall, at the expiration of the term mentioned in subsection (4), continue to serve in that class for the remainder of his engagement.

(6) A soldier who is serving outside Antigua and Barbuda at the time of his discharge or transfer to the Reserve under this section is not entitled to be returned to Antigua and Barbuda or to be sent elsewhere at the expense of the Antigua and Barbuda Defence Force.

(7) Subsections (1), (2) and (3) of section 24 do not apply to a soldier discharge under this section, and section 24 does not apply to a soldier transferred to the Reserve under this section.

32. (1) Notwithstanding section 30 and paragraph (a) of section 31(1), and any other provision relating to discharge from the Antigua and Barbuda Defence Force, where a member of the Force undergoes a training course under the auspices of the Force, he shall, on completion of the training course, serve with the Force for such period as may be prescribed.

Rules for
reckoning service.

33. (1) In reckoning the service of any soldier of the regular Force in relation to discharge, re-engagement, or transfer to the Reserve, there shall be excluded there from

Service after
training course.

- (a) any period during which he was absent from duty by reason of imprisonment or desertion;
- (b) any period during which he was absent without leave for more than 28 days; and
- (c) any period ordered by a court-martial to be forfeited.

34. (1) Where a person made the prescribed declaration upon his attestation and thereafter received pay as a soldier of the regular Force

Validity of
attestation and
enlistment.

- (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;
- (b) after the expiration of a period of 3 months from the date on which he made the declaration he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or the regulations relating to enlistment or attestation, or any other ground (not being an error or omission in his attestation paper), and he shall be deemed to be a soldier of the Force until his discharge.

(2) Where a person receives pay as a soldier of the regular Force without having previously made the declaration referred to in subsection (1), he shall be deemed to be a soldier of the Force until discharged, and may claim his discharge at any time; but if

he claims his discharge, the claim should be submitted as soon as possible to the Defence Board, who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in this section affects the determination of any question as to the term for which a person was enlisted or prevents the discharge of a person who has not claimed his discharge.

False answers in
attestation papers.

35. (1) If a person appearing before a recruiting officer for the purpose of being enlisted in the regular Force 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 commits an offence and liable on summary conviction to a fine of \$100 or imprisonment for 3 months.

(2) Notwithstanding that a person has become subject to military law under this Act, he may be prosecuted for an offence under subsection (1) in a civil court.

**PART V
DISCIPLINE AND TRIAL AND PUNISHMENT OF
MILITARY OFFENCE**

*Treachery, Cowardice and Offences Arising out of
Military Service*

Interpretation.

36. (1) For the purposes of this Part

“civil prison” means a prison in Antigua and Barbuda in which a person sentenced by a civil court to imprisonment may be confined;

“convening officer”, in relation to a court-martial, means the officer convening that court-martial or his successor;

“military establishment” means a military prison or any other establishment under the control of the Defence Board where persons may be required to serve military sentences of imprisonment or detention;

“military prison” means a place designated by the Defence Board for persons serving military sentences of imprisonment;

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

“private soldier” means a soldier who is not a warrant officer nor a non-commissioned officer.

(2) For the purposes of this part

- (a) a reference to a military sentence of imprisonment includes a reference to a sentence of imprisonment passed by a court-martial;
- (b) a reference to a military sentence of detention includes a reference to a sentence of detention passed by a court-martial or awarded by an offender's commanding officer;
- (c) a reference to a warrant officer does not include a reference to an acting warrant officer;
- (d) a reference to a non-commissioned officer includes a reference to an acting non-commissioned officer and to an acting warrant officer.

37. (1) Subject to subsection (2), where any person who is subject to military law under this Act does any of the following things with intent to assist the enemy, that is to say

Aiding the enemy.

- (a) abandons or delivers up any place or post that it is his duty to defend, or includes any person to abandon or deliver up any place or post that it is that person's duty to defend;
- (b) does any act calculated to imperil the success of operations of the Antigua and Barbuda Defence Force, or any part thereof;
- (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 not authorised by international usage;
- (d) furnishes the enemy with arms and ammunition or with supplies of any description, or with any other thing likely to assist the enemy; or

- (e) harbours or protects an enemy who is not a prisoner of war,

he commits an offence and is liable on conviction by court-martial to suffer death or any other punishment provided by this Act.

(2) Where any person who is subject to military law under this Act knowingly and without lawful excuse does anything specified in paragraphs (a) to (e) of subsection (1), he, notwithstanding that it is not proved that he acted with intent to assist the enemy, commits an offence and is liable on conviction by court-martial to imprisonment or less punishment provided by this Act.

Communicating
with the enemy.

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

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

(3) For the purposes of this section, "intelligence" includes information that is or purports to be informed of such nature as would or might be, directly or indirectly, useful to an enemy, and

- (a) the number, description, armament, equipment, disposition, movement or condition, of the Antigua and Barbuda Defence Force, or forces co-operating therewith;
- (b) any operations or projected operations of any force referred to in paragraph (a);
- (c) any code, cipher, call sign, password or counter-sign;
- (d) any plans for defence or fortification of any place;
- (e) the number, description or location of any prisoners of war; and

(f) munitions of war.

39. Any person who, being subject to military law under this Act. Cowardice.

(a) when before the enemy, leaves the post, position or other place where it is his duty to be;

(b) when before the enemy, throws away his arms, ammunition or tools, or otherwise behaves in such manner as to show cowardice; or

(c) when before the enemy, includes any other person, being subject to service law, when the other person is before the enemy, to contravene paragraph (a) or (b),

commits an offence and liable to conviction by court-martial to imprisonment or any less punishment provided by this Act.

40. Any person who, being subject to military law under this Act. Offence against morale.

(a) publishes reports relating to operations of the Antigua and Barbuda Defence Force or any forces co-operating therewith or any part of any of those forces; or

(b) when before the enemy, uses words calculated to cause despondency or unnecessary alarm,

commits an offence and liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

41.(1) A person commits an offence under this section if, being subject to military law under this Act, through disobedience to orders or wilful neglect of his duty is captured by the enemy. Becoming a prisoner of war through disobedience or wilful neglect and failure to rejoin forces.

(2) A person who, being subject to military law under this Act, having been captured by the enemy, fails to take, or prevents or discourages any other person being subject to service law who has been captured by the enemy from taking, any reasonable steps available to him or that other person, as the case may be, to rejoin the Antigua and Barbuda Defence Force or any force co-operating therewith, is guilty of an offence.

(3) Any person who commits an offence under this section is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

Offences by, or in
relation to
sentries.

42. (1) A person commits of an offence who, being subject to military law under this Act

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

(2) For the purposes of this section, a person is drunk 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.

(3) A person commits of an offence who, being subject to military law under this Act

- (a) strikes or otherwise uses force against a member of the Antigua and Barbuda Defence Force or of any forces co-operating therewith while such member is on guard duty; or
- (b) by the threat of force, compels any such member to allow that person or any other person to pass a guard post.

(4) A person who commits an offence under this section is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act; but where the offence was not committed on active service, he is not liable to imprisonment for more than two (2) years.

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

- (a) a person who is posted, ordered to patrol, or has adopted the position of sentry, at a post, or has undertaken the patrol; or

- (b) a person who is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any person, premises or place.

(6) This section applies in relation to

- (a) persons posted, ordered to patrol, or who have adopted the position of sentries, at a post or have undertaken the patrol; and
- (b) the members of the 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, rail or on any inland navigation, as it applies to persons on guard duty.

43. Any person who being subject to military law under this Act

Looting.

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

commits looting, and is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

44. (1) A person subject to military law commits an offence if he does any act calculated to imperil the success of any action or operation on the part of the Force or wilfully delays or discourages upon any pretext whatsoever any such action or operation.

Obstructing operations, giving false air signals.

(2) A person subject to military law commits an offence if, knowingly and without lawful excuse he gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal.

(3) A person who commits an offence against this section is, on conviction by court-martial, liable

- (a) if the offence was committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act;
- (b) in any other case, to a term of imprisonment not exceeding or any less punishment provided by this Act.

Mutiny and Insubordination

Mutiny.

45. (1) Any person who being subject to military law under this Act

- (a) takes part in a mutiny
 - (i) involving the use or threat of the use of violence;
 - (ii) involving the refusal or avoidance of any duty or service, or impeding the performance of any such duty or service;
 - (iii) in connection with operations against the enemy; or
- (b) incites any person who is subject to service law to take part in a mutiny, whether actual or intended,

commits an offence and liable on conviction by court-martial to suffer death or any other punishment provided by this Act.

(2) In circumstances other than those specified in subsection (1) a person who, being subject to military law under this Act

- (a) takes part in a mutiny; or
- (b) incites any person who is subject to service law to take part in a mutiny, whether actual or intended,

commits of an offence and is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

46. (1) A person commits an offence who, being subject to military law under this Act, 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.

(2) A person who commits an offence under subsection (1) is liable

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

47. (1) Any person who, being subject to military law under this Act

Insubordinate behaviour.

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

commits an offence and liable on conviction by court-martial to imprisonment or any less punishment provided by this Act; but he is not liable to be imprisoned for more than two (2) years if the offence was not committed on active service, and did not involve the striking or use or offer of violence to a superior officer exercising authority as such.

(2) For the purposes of this section, "superior officer", in relation to any person

- (a) means an officer, warrant officer or non-commissioned officer of superior rank who is subject to service law; and
- (b) such an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as that person's superior.

Disobedience to particular orders.

48. (1) Any person who, being subject to military law under this Act, a wilful defiance of authority disobeys any lawful command given or sent to him personally commits an offence, and is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

(2) Any person who, being subject to military law under this Act, disobeys any lawful command, whether wilfully or negligently, commits an offence and is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act, but if the offence was not committed on active service he is not liable to be imprisoned for more than two (2) years.

Obstruction of provost officer.

49. Any person who, being subject to military law under this Act, obstructs, or, when called on, refuses to assist, a provost officer, or any other person, whether subject to military law under this Act or not, lawfully exercising authority under or on behalf of a provost officer, commits an offence and liable on conviction by court-martial to a term of imprisonment for two (2) years or any less punishment provided by this Act.

Disobedience to standing orders.

50. Any person who, being subject to military law under this Act, knowingly contravenes any standing order or other routine order 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 vessel, vehicle or aircraft, commits an offence and liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Desertion.

51. (1) Any person who, being subject to military law under this Act

(a) deserts; or

(b) aids, abets, counsels or procures any other person who is subject to service law to desert,

commits an offence and liable on conviction by court-martial to imprisonment or any less punishment provided by this Act; but he is not liable to imprisonment for more than two (2) years unless he deserts while on active service or while under orders for active service, or aids, abets, counsels or procures any other person who is subject to service law to desert while that other person is on active service or under orders for active service.

(2) For the purpose of this Act, a person deserts who

- (a) leaves the Antigua and Barbuda Defence Force, or, when it is his duty to do so, fails to join or rejoin that Force with intention, whether subsisting at the time of his leaving or formed thereafter, or remaining permanently absent from his duty;
- (b) being an officer in the Antigua and Barbuda Defence Force, enlists in or enters any Commonwealth Force or foreign force without having been discharged from his previous enlistment; or
- (c) absents himself without leave with intent to avoid serving at any place overseas or to avoid service or any particular service before the enemy.

(3) The court-martial by which a soldier is convicted of desertion may, in addition to or in lieu of any punishment imposed under subsection (1), direct that the whole or any part of his service prior to the period in respect of which he is convicted shall be fortified; but this subsection does not apply to the Reserve called out on permanent service.

52. (1) Any person who, being subject to military law under this Act

Absence without leave.

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

commits an offence and liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

53. Any person who, being subject to military law under this Act

Assisting and concealing desertion and absence without leave.

- (a) knowingly assists any person who is subject to service law to desert or absent himself without leave; or
- (b) knowing that any person who is subject to service law has deserted or absented himself without leave, or is attempting to desert or absent himself without

leave, fails to take any steps within his power to cause that person to be apprehended,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Failure to perform military duties.

54. Any person who, being subject to military law under this Act, without reasonable excuse fails to attend any parade or other military duty of any description or leaves any such parade or duty before he is permitted to do so commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Malingering and drunkenness

Malingering.

55. (1) Any person who, being subject to military law under this Act

- (a) falsely pretends to be suffering from sickness or disability;
- (b) injures himself with intent to render himself unfit for service, or causes himself to be injured by any person with that intent;
- (c) injures any person who is subject to service law, at the instance of the other 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, prolongs or aggravates, any sickness or disability,

commits the offence of malingering and liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

(2) For the purpose of this section "unfit" includes temporarily unfit.

Drunkenness.

56. (1) Any person who, being subject to military law under this Act, is guilty of drunkenness, whether on duty or not, is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act; but where the

offence is committed by a soldier who is not on active service or on duty, the sentence imposed must not exceed detention for a period of 6 months.

(2) For the purposes 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 that he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on the Antigua and Barbuda Defence Force.

Disorderly conduct

57. Any person subject to military law who, without reasonable excuse

Fighting,
threatening
words, etc.

- (a) fights with any other person, whether subject to military law or not, or
- (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

commits an offence and is liable, on conviction by court-martial, to imprisonment for a term not exceeding two (2) years or any less punishment provided by this Act.

Offences relating to property

58. Any person who, being subject to military law under this Act

Public or service
property.

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

commits an offence and is liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

Property of
members of
Force.

59. Any person who, being subject to military law under this Act

- (a) steals or fraudulently misapplies any property belonging to any other person who is subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives any property referred to in paragraph (a) knowing or having reason to believe such property 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 such other person,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Other offences
relating to
property.

60. (1) Any person who, being subject to military law under this Act

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

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

(2) Where a person is charged under paragraph (a) of subsection (1) with losing any property, it is a defence to prove that he took reasonable steps for the care and prevention thereof.

Flying, etc., offences

61. Any person who, being subject to military law under this Act, either wilfully or by negligence, causes or allows to be lost, stranded or hazarded any of Her Majesty's ships commits an offence, and is liable on conviction by court-martial,

Lost or hazarding
of ships.

- (a) if he acts wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act;
- (b) in any other case, to imprisonment for a term not exceeding two (2) years or any less punishment so provided.

62. Any person who, being subject to military law under this Act does or omits to do anything relating to the flying or to the use of any aircraft, or in relation to any aircraft, or aircraft material, that causes or is likely to cause loss of life or bodily injury to any person commits an offence and is liable on conviction by court-martial to a term of imprisonment or any less punishment provided by this Act; but where the person has not acted wilfully or recklessly he is not liable to be imprisoned for more than two (2) years.

Dangerous flying,
etc.

63. Any person who, being subject to military law under this Act, signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Inaccurate
certification of
aircraft, etc.

64. Any pilot who, being subject to military law under this Act

Low flying and
annoyance by
flying.

- (a) flies one of Her Majesty's aircraft at a height less than the prescribed height except
 - (i) while taking off or landing, or

(ii) in such other circumstances as are prescribed;
or

(b) flies one of Her Majesty's aircraft in a manner likely to cause unnecessary annoyance to any person,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Irregular arrest
and confine-
ment.

65. (1) Where a person who is subject to military law under this Act is under arrest, any other person who is subject to military law under this Act commits an offence who

(a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against him 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 first mentioned person when it is the other person's duty to do so.

(2) A person commits an offence who, being subject to military law under this Act having committed a person (in this section 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 at any time of the committal, or if it is not practicable to do so, then within twenty-four (24) hours thereafter, to the person to whose custody the prisoner was committed, a report in writing signed by him of the offence the prisoner is alleged to have committed.

(3) Where a prisoner is committed to the charge of a person who is subject to military law under this Act and in command of a guard then, that person commits an offence, if without reasonable cause he does not as soon as he is relieved from his guard and further duty, or, if he is not sooner relieved, within twenty-four (24) hours after the committal, give to the officer to whom it is his duty to report

(a) a written statement containing, so far as is known to him, the prisoner's name and alleged offence and the name and rank or other description of the officer or other person who alleges that the prisoner has committed the offence; and

- (b) if he has received it, the report required by subsection (2).

(4) Any person guilty of an offence under this section is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

66. Any person who, being subject to military law under this Act

Permitting
escape and
unlawful release
of prisoners

- (a) wilfully or without lawful excuse allows any person committed to his charge, or whom it is his duty to guard, to escape; or

- (b) without proper authority, releases any person who is committed to his charge,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

67. (1) A person commits an offence who, being subject to military law under this Act, is involved in any quarrel or disorder and

Resisting arrest.

- (a) refuses to obey any officer subject to service law who orders him into arrest; or

- (b) strikes or otherwise uses violence to, or offers violence to, the officer referred to in paragraph (a),

whether or not the officer is the person's superior officer.

(2) A person commits an offence who, being subject to military law under this Act, strikes or otherwise uses violence to, or offers violence to, any other person whose duty it is to apprehend him or in whose custody he is.

(3) Any person who commits an offence under this section is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

68. Any person who, being subject to military law under this Act, escapes from arrest, prison or other lawful custody, whether military or not, commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Escape.

Offences relating to court-martial and civil authorities

Offences
relating to
court-martial

69. (1) Any person who, being subject to military law under this Act

- (a) fails to comply with a summons or an order to attend as a witness before a court-martial, having been duly summoned or ordered to attend as a witness before a court-martial;
- (b) refuses to take an oath when duly required by a court-martial to do so;
- (c) refuses to produce any document in his custody that a court-martial has lawfully required to him to produce;
- (d) when a witness, refuses to answer any question that a court-martial has lawfully required him to answer; or
- (e) wilfully insults a member of a court-martial, a witness, or any other person whose duty it is to attend on or before the court-martial while that member, witness or person, as the case may be
 - (i) is acting as a member thereof or is so attending, or
 - (ii) is going to or returning from the proceedings of the court-martial; or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court-martial,

commits an offence and is liable on conviction by court-martial, other than the court-martial in relation to which the offence was committed, to imprisonment for two (2) years or any less punishment provided by this Act.

(2) Notwithstanding subsection (1), where a person commits an offence under paragraph (e) or (f) of that subsection the court-martial, if it is of the opinion that it is expedient that he should be dealt with summarily by that court-martial instead of being brought to trial before another court-martial, may, by order signed by the president of the court-martial, order the person to be

imprisoned, for a period of twenty-one (21) days, or in the case of a soldier, to be imprisoned, or to undergo detention, for a like period.

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

70. (1) Any person who, being subject to *military law under this Act* and having been lawfully sworn as a witness or as an interpreter in proceedings before a court held under service law or before any board or person having power under service law to administer oaths, makes a statement material in those proceedings that he knows to be false or does not believe to be true commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

False statement.

(2) No person may be convicted of an offence under this section solely on the evidence of one witness.

71. Any person who, being subject to military law under this Act, prevents or obstructs

Obstructing police officer, arresting officer or soldier.

- (a) the execution by a constable of a warrant for the arrest of a person who is subject to service law and 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 who is subject to service law, by a constable acting in the exercise of his powers of arrest without warrant,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Miscellaneous Offences

72. (1) Any person who, being subject to *military law under this Act*, discloses, without authority, whether orally, in writing, by signal or by any other means, any information that is, or that he believes to be, useful to an enemy commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Disclosing information.

(2) For the purpose of this section “information useful to an enemy” includes information concerning any matter that would or might, directly or indirectly, be useful to an enemy, and information concerning

- (a) the number, description, armament, equipment, disposition, movement or condition of the Antigua and Barbuda Defence Force or any unit thereof or of any force co-operation therewith;
- (b) any operations or projected operations of the Antigua and Barbuda Defence Force or any force co-operating therewith;
- (c) any code, cipher, call sign, password or countersign;
- (d) any plans for the defence or fortification of any place;
- (e) the number, description or location of any prisoners of war; and
- (f) any munitions of war.

False answers on enlistment

73. Any person who, at the time of his attestation, knowingly gives a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer is, if the person becomes and remains subject to *military law under this Act*, commits an offence and liable on conviction by court-martial to imprisonment for three (3) months or to any less punishment provided by this Act.

False documents.

74. Any person who, being subject to *military law under this Act*

- (a) makes, signs or makes an entry in, any official report, return, pay list or certificate or other service document, being a document or entry that is to his knowledge false in a material particular;
- (b) alters any official report, return, pay list or certificate or other service document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any

document or entry that it is his duty to preserve or produce; or

- (c) with intent to deceive, fails to make an entry in any document,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

75. Every officer who, being subject to *military law under this Act*, behaves in a “scandalous manner” unbecoming the character of an officer commits an offence and is, liable on conviction by court-martial, to be cashiered.

Scandalous
conduct of
officer.

76. Where

- (a) any officer who, being subject to *military law under this Act* strikes or otherwise ill-treats any other officer of inferior rank or less seniority, or any soldier who is subject to service law; or
- (b) any warrant officer or non-commissioned officer being subjected to *military law under this Act* strikes or other ill-treats any other warrant officer, or non-commissioned officer, of inferior rank or less seniority, or a private soldier,

Ill-treatment of
officers or men
of inferior rank.

he commits of an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

77. Any person who is subject to *military law under this Act*, and is found guilty of disgraceful conduct of cruel, indecent or unnatural kind, is liable on conviction by court-martial, to imprisonment for two (2) years or any less punishment provided by this Act.

Disgraceful
conduct.

78. Any person who, being subject to *military law under this Act*

False accusation.

- (a) makes against any officer or soldier who is subject to service law, an accusation that the person knows to be false or does not believe to be true; or
- (b) makes in a complaint where he thinks himself wronged, a statement that affects the character of an

officer or soldier who is subject to service law, that the complaint knows to be false or does not believe to be true, or wilfully suppresses any material facts in making a complaint,

commits an offence and is liable on conviction by court-martial to imprisonment for two (2) years or any less punishment provided by this Act.

Attempts to
commit military
offences

79. Any person who, *being subject to military law under this Act*, attempts to commit an offence under this Part is liable on conviction by court-martial to the like punishment as for the full offence; but where the offence is one punishable by death, he is not liable to any greater punishment than imprisonment.

Conduct to
prejudice of
military
discipline.

80. Any person who, *being subject to military law under this Act*, does, or omits to do, any act or thing that is prejudicial to good order and military discipline commits an offence and is liable on conviction by court-martial to two (2) years imprisonment or any less punishment provided by this Act.

Civil Offences

Civil offences.

81. (1) A person commits an offence under this section who, being subject to *military law under this Act*, commits a civil offence, whether in Antigua and Barbuda or elsewhere.

(2) For the purpose of this Act, a civil offence is an offence punishable by the law of Antigua and Barbuda, or that, if committed in Antigua and Barbuda, would be punishable by its law; and the corresponding civil offence is one the commission of which constitutes an offence under this section.

(3) A person convicted by court-martial of an offence under this section

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

(b) is, in any other case, liable to suffer any punishment provided by this Act that a civil court may award for the corresponding civil offence if committed in Antigua and Barbuda, or such punishment, not exceeding the maximum punishment that a civil court may so award, but if a civil court could not

award imprisonment, a person so convicted is 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 provided.

(4) Where a person commits an offence under this section in Antigua and Barbuda and the corresponding civil offence is high treason, murder, manslaughter, or rape, the person shall not be charged with an offence under this section.

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

82. (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are, subject to this section, those set out in subsection (2); and in relation to an officer, a reference in this Act to a punishment provided by this Act is a reference to such a punishment.

Punishment of
officers.

(2) The punishment referred to in subsection (1) are

- (a) death;
- (b) imprisonment;
- (c) cashiering;
- (d) dismissal from the Antigua and Barbuda Defence Force;
- (e) a fine of a sum not exceeding the equivalent of 90 days' pay;
- (f) severe reprimand or reprimand; and
- (g) stoppages, if the offence has occasioned any expense, loss or damage.

(3) For the purpose of this part, a punishment specified in any paragraph of subsection (2) shall be treated as less than the punishment specified in any preceding paragraph of that subsection and greater than that specified in any ensuing paragraph of that subsection.

(4) Subject to this Act, not more than one punishment may be awarded by a court-martial for an offence.

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

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to a fine.

(7) Where an officer is sentenced by a court-martial to imprisonment, he shall also be sentenced to be cashiered, but if the court-martial omits to sentence him to be cashiered, the sentence of imprisonment is not valid but shall be deemed to include a sentence of cashiering.

Punishment of
soldier.

83. (1) Subject to this section, a court-martial may sentence a soldier to

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from the Antigua and Barbuda Defence Force;
- (d) dismissal from the Antigua and Barbuda Defence Force in the case of a warrant officer;
- (e) detention for 2 years;
- (f) field punishment for a period not exceeding 90 days, if he is on active service on the day of the sentence;
- (g) reduction to the ranks or any less reduction in rank, in the case of a warrant officer or non-commissioned officer;
- (h) a fine of a sum not exceeding the equivalent of 90 days' pay;
- (i) forfeiture of service if the offence is desertion;
- (j) a severe reprimand, in the case of a warrant officer or non-commissioned officer; or

(k) stoppages, if the offence has occasioned any expense, loss or damage.

(2) For the purpose of this Part, a punishment specified in any paragraph of subsection (1) shall be treated as less than the punishment specified in any preceding paragraph of that subsection, and greater than that specified in any ensuing paragraph of that subsection; but detention is not a lesser punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(3) In relation to a soldier, a reference in this Act to a punishment provided by this Act is a reference to a punishment specified in subsection (1).

(4) Subject to this Act, not more than one punishment may be awarded by a court-martial for an offence.

(5) A soldier sentenced by a court-martial to imprisonment may, in addition to the sentence, *be discharged with ignominy* from the Antigua and Barbuda Defence Force, and a warrant officer sentenced by a court-martial to imprisonment may, in addition to the sentence, *be dismissed from* the Antigua and Barbuda Defence Force.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the ranks; but if the court-martial omits to sentence him to be so reduced, the sentence is not 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.

(8) Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.

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

(10) Where an offender who has been sentenced by a court-martial to detention is subsequently sentenced by a court-martial

to imprisonment, any part of the sentence of detention that has not yet been served shall be remitted.

(11) Without affecting the validity of any sentence imposed on him, an offender may not be kept continuously in detention under this Act for more than two (2) years.

Field Punishment.

84. Field punishment consist of

- (a) such duties or drills, in addition to those the offender might be required to perform if he were not undergoing punishment;
- (b) such loss of privileges as is provided by rules made under this Part;
- (c) confinement in such place and manner as is provided by rules made under this Part;
- (d) such personal restraint as is necessary to prevent the escape of the offender as is provided by rules made under this Part.

Imprisonment where no term specified.

85. Where in this Act it is provided that any person who is subject to *military law under this Act*, is liable on conviction by court-martial to imprisonment and no term of imprisonment is specified, then that person is liable to imprisonment for life.

Power of arrest.

86. (1) A person may be arrested in accordance with this section who, being subject to *military law under this Act*,

- (a) commits an offence under this Act; or
- (b) is alleged to have committed, or is reasonably suspected of having committed, an offence under this section.

(2) An officer may be arrested by another officer who is subject to service law and is of superior rank, but where the officer to be arrested is engaged in a quarrel or disorderly conduct, he may be arrested by an officer of any rank.

(3) A soldier may be arrested by an officer, a warrant officer or non-commissioned officer who is subjected to service law; but

a soldier may not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer or non-commissioned officer who, being subject to service law, is lawfully exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer or soldier; but an officer may 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.

87. (1) Allegations against any person who, being subject to military law under this Act, is under arrest shall be duly investigated without unnecessary delay, and as soon as possible thereafter proceedings shall be instituted against him, or he must be released from arrest.

Avoidance of
delay after
arrest.

(2) Where any person who, being subject to military law under this Act, is taken into military custody and is under arrest for a period exceeding 8 days without a court-martial being convened for his trial, a special report as to the reasons for any further delay in convening a court-martial for his trial 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 like manner every eighth day thereafter until a court-martial is convened or the matter is otherwise disposed of ; but if the person under arrest is 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), the question as to 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 regards to subsection (2).

Investigation of, and summary dealing with, charges

88. Before an allegation that a person who is subject to military law under this Act (in this Part referred to as the "accused") has committed an offence under this Part is proceeded with, the allegation shall be reported in the form of a charge to the accused's

Investigation of
charges by
commanding
officer

commanding officer, and the commanding officer shall investigate the charge in the prescribed manner.

Charges to be dealt with summarily or by court-martial.

89. (1) Subject to this Part, after investigation of a charge against an officer below the rank of lieutenant-colonel or against a warrant officer, an authority (in this Act referred to as the "appropriate superior authority") may deal with the charge summarily.

(2) Subject to this Part, a charge against a non-commissioned officer or private soldier may, after investigation thereof, be dealt with summarily by his commanding officer.

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

(4) Notwithstanding subsections (1) to (3), where a commanding officer

- (a) investigates a charge against an officer or warrant officer; or
- (b) investigates a charge against a non-commissioned officer or private soldier, that is not a charge that can be dealt with summarily

the commanding officer may dismiss the charge if he is of the 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 trial and adjudication of the charge by the appropriate superior authority or the commanding officer of the accused, as the case may be.

Further proceedings on charges against non-commissioned officer and soldier.

90. (1) This section applies to any case where a commanding officer has investigated a charge against a non-commissioned officer or private soldier.

(2) Where

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

the commanding officer shall take the prescribed step to have the charge tried by court-martial.

(3) Where a commanding officer deals with a charge summarily, and records a finding of guilty against an accused, the commanding officer may award one or more of the following punishments

- (a) if the accused is a non-commissioned officer
 - (i) a fine of a sum not exceeding the equivalent of 28 days' pay,
 - (ii) a severe reprimand or reprimand,
 - (iii) stoppages if the offence has occasioned any expense, loss or damage,
 - (iv) an admonition;
- (b) if the accused is a private soldier
 - (i) detention for a period not exceeding 42 days if he is not on active service,
 - (ii) field punishment for a period not exceeding 42 days if he is on active service,
 - (iii) a fine of a sum not exceeding the equivalent of 42 days' pay,
 - (iv) stoppages, if the offence has occasioned any expense, loss or damage,
 - (v) confinement to barracks for a period commencing with the day of the sentence and not exceeding 28 days
 - (vi) extra guards or picquets,
 - (vii) an admonition;
- (c) reduction to the ranks or to a lower rank, if the accused is a Corporal or Lance Corporal and no other

punishment or no punishment other than stoppages is awarded; or

- (d) if the accused is an acting warrant officer or acting non-commissioned officer, and no other punishment or no punishment other than stoppages is awarded
 - (i) reversion to his permanent rank, or
 - (ii) assumption of an acting rank lower than that held by him but higher than his permanent rank.

(4) Notwithstanding paragraphs (a) and (b) of subsection (3), where after summary trial a commanding officer finds an accused guilty and awards a punishment other than severe reprimand, reprimand, admonition, confinement to barracks, extra guards or picquets, or where a finding of guilty (whatever the punishment awarded) involves 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 the prescribed manner, withdraw his election, the commanding officer shall not record a finding, but shall take the prescribed steps to have the charge tried by court-martial.

(5) Where a charge can be dealt with summarily, but the commanding officer has taken steps to have it tried by court-martial, any authority superior to the commanding officer 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) and (4) apply; but where the accused has elected to be tried by court-martial and has not withdrawn his election, a charge shall not be referred back.

Charges against
officers and
warrant officers

91. (1) A commanding officer, after investigating a charge against an officer or warrant officer, shall, unless he has dismissed the charge or the case is one in respect of which he may direct trial by field court-martial, submit it in the prescribed manner to an authority superior to himself, and the authority shall decide how the charge is to be dealt with.

(2) Where a charge referred to in subsection (1) can be dealt with summarily, it may be referred to the appropriate superior authority, and if it is so referred, the prescribed steps shall be taken to have it tried by court-martial.

(3) Where a charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and try the charge; but if in the course of investigating the charge the authority considers that it is desirable that the charge be tried by court-martial; the authority shall have the charge so tried.

(4) Where the appropriate superior authority finds the accused guilty, it may award one or more of the following punishments

- (a) a fine of a sum not exceeding the equivalent of 56 days' pay;
- (b) a severe reprimand or reprimand; or
- (c) stoppages, where the offence has occasioned any expense, loss or damage.

(5) Where the accused is an acting warrant officer or non-commissioned officer, and the appropriate superior authority finds him guilty, the appropriate superior authority may, if it awards no other punishment or no punishment other than stoppages, order the the accused to be reduced to the ranks or to lower rank.

(6) Notwithstanding subsection (3), where the appropriate superior authority on summary trial finds the accused guilty and awards a fine or stoppages, or where a finding of guilty involves a forfeiture of pay, the appropriate superior authority shall not record a finding until after the accused is afforded an opportunity of electing to be tried by court-martial, and if the accused so elects, the appropriate superior authority shall not record a finding, but shall have the charge tried by court-martial.

92. (1) Notwithstanding sections 90 and 91, where a charge

- (a) has been referred to higher authority for trial by court-martial; or

Dismissal of
charges referred
to a higher
authority.

- (b) has been submitted to higher authority for determining how it is to be proceeded with,

that authority may refer the charge back to the commanding officer of the accused with a direction that it be dismissed, and the commanding officer shall act accordingly.

(2) The reference back of a charge in pursuance of this section does not affect the preferring of another charge if the higher authority directs that another charge be preferred or the commanding officer thinks that another charge ought to be preferred.

Commanding officer and appropriate superior authority.

93. (1) For the purposes of this Act “commanding officer”, in relation to a person charged with an offence, means the officer commanding the unit to which the person belongs or is attached, or if the person belongs or is attached to a part of a unit that is so separated from the unit to which the part belongs that the officer commanding the unit cannot effectively exercise his powers as commanding officer over the part, the officer commanding that part.

(2) Any officer having power to convene ordinary courts-martial may act as appropriate superior authority in relation to a person charged with an offence.

(3) Power may be conferred by regulations on officers, or any class of officers, who by or under the regulations are authorised to exercise the functions of commanding officer, to delegate those functions of commanding officer, to delegate those functions in such cases and to such extent as is specified in the regulations to officers of a class so specified.

Limitation on powers as to the summary dealing with charges.

94. (1) The charges that may not be dealt with

- (a) by a commanding officer;
- (b) by an appropriate superior authority; or
- (c) summarily by a commanding officer or an appropriate superior authority except with the permission of a higher authority,

are such charges as are prescribed; and any charge not so prescribed, may, upon obtaining permission, be dealt with summarily by a commanding officer or an appropriate superior authority, as the case may be.

(2) Any charge not prescribed pursuant to subsection (1) and any charge that may, with such permission as is referred to in that subsection, be dealt with summarily by a commanding officer or appropriate superior authority, as the case may be, may be so summarily dealt with.

(3) The powers of a commanding officer or appropriate superior authority to award punishment are subject to such limitations as are prescribed.

Court-martial: general provisions

95. Subject to this Act, an ordinary court-martial may try any person who is subject to *military law under this Act*, for any offence triable under this Act by court-martial, and may award for any such offence any punishment authorised by this Act for that offence.

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

96. (1) Where an officer commanding a body of troops that is on active service

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

- (a) is an officer to whom, under section 91(1), a charge has been submitted for determining how it is to be dealt with; or
- (b) is the accused's commanding officer who has investigated a charge that cannot be dealt with summarily or that in his opinion ought not to be dealt with summarily; or
- (c) is 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,

and is of the opinion that it is not possible without serious detriment to the public interest 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 be tried by a field court-martial.

(2) A field court-martial has the powers of an ordinary court-martial, except that where a field court-martial consists of less than three (3) officers the sentence may not exceed two (2) years.

Officers who
may convene
courts-martial.

97. (1) An ordinary court-martial may be convened by the Chief of Defence Staff, or by any officer authorised by the Defence Board to convene ordinary courts-martial.

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

(3) An unauthorisation under this section to convene an ordinary court-martial

(a) may be made subject to restrictions, reservations exceptions or conditions; or

(b) may be addressed to an officer by name or by the designation of his office.

Constitution of
ordinary court-
martial.

98. (1) An ordinary court-martial shall consist of 3 officers, one of whom shall be the president; but shall consist of five (5) members

(a) if an officer is to be tried; or

(b) if the only punishment or the maximum punishment that can be awarded in respect of the charge before the court is death.

(2) Subject to this section, an officer may not be appointed to be a member of an ordinary court-martial unless

(a) he is a member of a Commonwealth Force; and

(b) he has been an officer in a Commonwealth Force for a period of not less than 2 years or for a period amounting in the aggregate to not less than 2 years

(3) Two or more members of an ordinary court-martial must be of the rank of captain or higher.

(4) The president of an ordinary court-martial shall be appointed by order of the convening officer, and must not be

below the rank of field officer, unless in the opinion of the convening officer, a suitably qualified field officer is not available having regard to the exigencies of the service; and in any event the president of an ordinary court-martial must not be of a lower rank than that of 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 below the rank of captain may not be a member of an ordinary court-martial for the trial of an officer above the rank of captain.

99. (1) A field court-martial shall consist of three (3) officers of whom one shall be the president, or, if the convening officer is of the opinion that three (3) suitably qualified officers are not available having regard to the exigencies of the service, 2 officers of whom one shall be the president.

Constitution of
field court-
martial.

(2) The members of a field court-martial must be officers in a Commonwealth Force.

(3) The president of a field court-martial shall be an officer appointed by the convening officer and must not be below 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 such other manner as may be prescribed.

100. (1) The officer who convenes a court-martial may not be a member of that court-martial; but if, in the case of a field court-martial, it is not practicable, in his opinion, to appoint another officer as president, he may himself be president of the court-martial.

Supplementary
provisions.

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

- (a) has been the commanding officer of the accused;
- (b) has investigated the charge against the accused; or
- (c) under service law, has held, or has been one of the persons who held, an enquiry into matters relating to the subject-matter of the charge against the accused,

may not sit as a member of an ordinary court-martial or act as Judge Advocate at such a court-martial.

(3) If a court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of suitably qualified officers of the Antigua and Barbuda Defence Force is not available having regard to the exigencies of the service, the convening officer may, with the consent of the proper authority of a Commonwealth country, appoint any officer of that country's military, naval or air forces to be president of the court in lieu of an officer of the Antigua and Barbuda Defence Force, or to be a member of the court in lieu of, or in addition to, an officer of the Antigua and Barbuda Defence Force; but no officer of the military, naval or air forces of a Commonwealth country shall be the president or a member of a court-martial unless he satisfies the requirement of section 98(2).

(4) Where the officer convening a court-martial

- (a) appoints a captain as president of an ordinary court-martial because the officer convening that court-martial is of the opinion, having regard to the exigencies of the service, that a field officer having suitable qualification is not available;
- (b) directs that the accused be tried by a field court-martial because the officer is of the opinion, having regard to the exigencies of the service, that it is not possible for the accused to be tried by an ordinary court-martial;
- (c) appoints two (2) officers only to be a field court-martial because he is of the opinion, having regard to the exigencies of the service, that three (3) officers having suitable qualifications are not available;
- (d) appoints himself as president of a field court-martial because he is of the opinion that, it is not practicable to appoint another officer to be president; or
- (e) appoints an officer as president or other member to any court-martial because he is of the opinion, having regard to the exigencies of the service that the necessary number of military officers having suitable qualifications is not available to form the court,

the order convening the court-martial must contain a statement of that opinion, and that statement is conclusive.

101. (1) Subject to this section, a court-martial shall sit at such place, within or outside Antigua and Barbuda, as is 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.

Place for siting of court-martial.

(2) A court-martial sitting at any place

- (a) shall adjourn to another place if the convening officer so directs;
- (b) may, without any such direction, adjourn to another place if it appears to the court that the interests of justice so require.

Courts-martial: Provisions relating to trial

102. (1) An accused is entitled to object, on any reasonable ground, to any member of the court, whether appointed originally or in lieu of another member.

Challenges by accused.

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

(3) An objection made by an accused to a member of a court-martial shall be considered by the other members.

(4) If an accused objects to the president, and not less than one-third of the other members of the court allow the objection, the court shall adjourn and the convening officer shall appoint another person as president.

(5) If an accused objects to a member of the court, other than the president, and not less than one-half of the other members allow the objection, the member objected to shall retire; and the vacancy may, and, if the number of members would be reduced below the legal minimum, shall, be filled in the prescribed manner.

Administration
of oaths

103. (1) An oath shall be administered to

- (a) every member of a court-martial;
- (b) any person in attendance on a court-martial;
- (c) the Judge Advocate and officers under instruction;
- (d) the short-hand writers; and
- (e) the interpreters.

(2) Every witness before a court-martial shall be examined on oath, but where any child of tender years who is called as a witness does not, in the opinion of the court understand the nature of an oath, the child's evidence may be received, though not given on oath, if in the opinion of the court the child understands the duty of speaking the truth and is sufficiently intelligent to justify the reception of his evidence; but where the evidence of a child is given on behalf of the prosecution, the accused may not be convicted upon such evidence alone unless it is corroborated by some other material evidence in support thereof that implicates the accused.

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

Court-martial to
sit in open
court.

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

(2) Nothing in subsection (1) affects the power of a court-martial to sit *in camera* if it is necessary or expedient in the interest of the administration of justice to do so; and a court-martial may order that, subject to any exceptions the court specifies, the public 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 might otherwise lead to the disclosure of any information that would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit *in camera* while deliberating on its finding or sentence.

(4) A court-martial may sit *in camera* on any other deliberation by the members.

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

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

Dissolution of
court-martial.

(2) If, after the commencement of a 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, the court-martial shall be dissolved.

(3) If, after the commencement of a trial, the president of a court-martial dies or is otherwise unable to attend, but the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or corresponding rank or of a higher rank, the convening officer may appoint the senior member as president and the trial shall proceed accordingly; but if the senior member is not of that rank, the court shall be dissolved.

(4) 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 this section, the accused may be tried by another court-martial.

106. (1) Subject to 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; and in the case of an equality of votes the accused shall be acquitted.

Decision of
court-martial.

(2) Where the only punishment that the court can award is death, a finding of guilty shall not take effect unless it is unanimous; and where such a finding is reached by a majority of the

members, the court shall be dissolved and the accused may be tried by another court.

(3) 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.

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

Finding and
sentence

107. (1) The finding of a court-martial on each charge shall be announced in open court.

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

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

Power to
convict of
offence other
than that
charged.

108. (1) Where, upon trial of a person charged before a court-martial with an offence under this Act, it appears from the evidence that the offence was not committed under circumstances involving a higher degree of punishment, he may be convicted of the offence as having been committed under circumstances involving a lesser degree of punishment.

(2) Upon the trial of a person by court-martial

(a) if he is charged with an offence, he may be convicted of attempting to commit that offence; or

(b) if he is charged with attempting to commit an offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the full offence.

(3) Upon the trial of a person by a court-martial under section 81

(a) for attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed full offence; or

- (b) if he is charged with an offence under that section, and the corresponding civil offence is one for which, if he had been tried by a civil court for committing the offence in Antigua and Barbuda, he might have been found guilty of another civil offence, then, he may be convicted of an offence under that section in respect of the commission of that other civil offence if the court finds that he has committed that other civil offence.

(4) A person charged before a court-martial with an offence specified in the first column of the Second Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

109. (1) Subject to this Act, the rules of evidence to be observed in proceedings before courts-martial are the rules of evidence observed in civil courts in Antigua and Barbuda, and no person may be required in proceedings before a court-martial to answer any question or to produce any document that he could not be required to answer or produce in similar proceedings before a civil court in Antigua and Barbuda.

Rules of
evidence.

(2) Notwithstanding subsection (1), a statutory declaration is, in a trial by court-martial, admissible as evidence of the facts stated in the declaration where, and to the extent to which, oral evidence to the like effect would be admissible in that trial; but a statutory declaration is not admissible in evidence in any such trial on behalf of the prosecution or the defence

- (a) in the case of a declaration on behalf of the prosecution, unless a copy of the declaration has, not less than seven (7) days before the commencement of the trial, been served on the accused;
- (b) in the case of a declaration on behalf of the defence, unless a copy of the declaration has, not less than seven (7) days before the commencement of the trial, been served on the commanding officer of the accused, or the commanding officer of the accused has given his consent in writing to its admission;
- (c) in any case, if, not later than three (3) days before the commencement of the trial or within such further

time as the court-martial in special circumstances allows, the accused serves a notice on his commanding officer, or, as the case may be, the commanding officer serves a notice on the accused, requiring that oral evidence 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 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 all other matters of which judicial notice would be taken in a civil court in Antigua and Barbuda.

Privileges of witnesses and others at court-martial.

110. A witness before a court-martial or any other person whose duty it is to attend on or before the court is entitled to the same immunities and privileges as a witness before the Supreme Court.

Offences by civilians in relation to court-martial.

111. (1) Where in Antigua and Barbuda any person, other than a person who is subject to military law under this Act,

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

- (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, constitute contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to the Supreme Court.

(2) The Supreme Court may inquire into an offence certified under subsection (1), and after hearing any witnesses produced against or on behalf of the person charged with the offence, and, after hearing any statement offered in defence, punish that person in like manner as if he had been guilty of contempt of the Supreme Court.

(3) For the purposes of this section "court-martial" means a court held under service law.

112. (1) Where

Affirmation.

- (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 his taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to that person 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 court-martial*

113. (1) Where a court-martial finds the accused guilty of 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
court-martial.

(2) A finding of guilty or a sentence of a court-martial shall not be treated as a finding or sentence of the court-martial until confirmed; but this subsection does not affect the keeping of the accused in custody pending confirmation, or the operation of this section and section 109, or the provisions of this Act as to confirmation or approval.

Petition against findings or sentence.

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

Revision of findings of court-martial.

115. (1) A confirming authority may direct a court-martial to revise any finding of guilty reached by the court-martial in any case where it appears to the confirming authority.

(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) A direction referred to in subsection (1) shall be accompanied by an order for the reconvening of the court, and shall contain a statement of the reasons for the direction.

(3) On the revision of a finding, the court shall reconsider the finding, and, unless the court adheres thereto, may substitute therefor a finding of not guilty or any other finding that the court could originally have reached at the trial, and may vary the sentence.

(4) On a revision referred to in subsection (1) the court may not receive further evidence.

(5) Where on any revision referred to in subsection (1) the court upholds the finding, substitutes therefor a finding of guilty of a different offence or of the same offence as having been committed in different circumstances, the court may substitute a different sentence for the original sentence; but the court has no power to substitute a sentence of the punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence that in the opinion of the court is more severe than the original sentence.

(6) The confirming authority has no power to direct

- (a) the revision of a substituted finding reached by the court on a previous direction of the confirming authority; or
- (b) the revision of the original finding if adhered to by the court on such a previous direction.

(7) Subject to this section, this Act applies to proceedings of a court-martial on a revision as it applies to 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; but the decision of a court on the revision of a finding is not required to be announced in open court.

116. (1) Subject to section 114 and this section, a confirming authority shall deal with the finding or sentence of a court-martial

Power of
confirming
authorities.

- (a) by withholding confirmation, if the authority is of the opinion that the finding of the court
 - (i) is unreasonable or cannot be supported having regard to the evidence, or
 - (ii) involves a wrong decision on a question of law, or constitutes a miscarriage of justice; or
- (b) by confirming the finding and 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

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

substitute that other finding, and, if he does so, he shall consider in what manner, if at all, the powers offered by subsection (4) are to 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 that could have been awarded by the court-martial, if it is not greater than the punishment or the greatest punishment, as the case may be, awarded by the court and not in his opinion more severe than that punishment.

(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 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-martial duly confirmed.

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

(7) Where the confirming authority decides to withhold confirmation, that decision shall be promulgated, and has effect as from the promulgation thereof.

Confirming
authorities.

117. (1) The following may confirm the finding and sentence of any court-martial

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

- (b) the successor of any officer or superior officer referred to in paragraph (a), or any person exercising the functions of any such officer or superior officer; or
- (c) in the absence of an officer referred to in paragraph (a) or (b)
 - (i) any officer appointed by the Defence Board to act as confirming authority, whether for the particular case or for a specified class of cases,
 - (ii) the Defence Board.

(2) The following persons may not confirm the finding or sentence of a court-martial

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

(3) Notwithstanding subsection (2), a person referred to in that subsection may act as confirming authority for a field court-martial, if otherwise competent to do so, when he is of the opinion that it is not practicable, having due regard to the exigencies of the service, to delay the case for the purpose of referring it to another confirming authority.

(4) An authorisation empowering the convening of an ordinary court-martial may reserve for confirmation by a 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) are exercisable subject to any such reservation.

118. A sentence of death shall not be carried into effect unless it has been approved by the Governor-General acting on the recommendation of the Advisory Committee established under section 85 of the Constitution.

Approval of
sentence of
death by
Governor-
General.

Review of
findings and
sentences of
court-martial.

119. (1) A finding or sentence that 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 114 against the finding or sentence, then, the finding or sentence shall be reviewed as soon as possible after the presentation of the petition and after consideration of the matter alleged therein.

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

- (a) the Governor-General acting on the recommendation of the Advisory Committee,;
- (b) the Defence Board or any officer to whom the powers of the Defence Board as reviewing authority are delegated by regulations; or
- (c) any officer superior in command to the confirming officer.

(3) Subsection (1) does not apply where an appeal or an application for leave to appeal is received by the Registrar of the Supreme Court under Part VI.

(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 sentence relates only to the finding quashed, quash the sentence;
- (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 section 116(2) to (4),

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), the decision of the authority shall be promulgated, and has effect as from the promulgation thereof.

120. (1) A sentence of imprisonment or detention passed by a court-martial may be reconsidered by the Chief of Defence Staff or by an officer, not being below the rank of Lieutenant Colonel or corresponding rank, appointed by the Defence Board, 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 whole or in part, the sentence may be remitted accordingly.

Reconsideration
of sentences.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and, if after any review a sentence remains effective, it shall be reconsidered at intervals of 6 months; but delay in complying with this subsection does not invalidate the sentence.

Review of Summary Findings and Awards

121. (1) Where a charge is dealt with summarily and it is not dismissed, the finding or award may be reviewed by

Review of
summary
findings and
awards.

- (a) the Defence Board; or
- (b) any officer superior in command to the officer who dealt summarily with the charge.

(2) The authority reviewing a finding of a summary trial may quash the finding if it appears to the authority that there has been an error of law in the proceedings on the summary trial that involved a substantial miscarriage of justice.

(3) Where a finding on any proceedings is quashed under subsection (2) and the award made in the proceedings relates only to that finding, the authority shall also quash the award, and if the award relates also to any other finding and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting, as the authority thinks proper, a punishment that could have been included in the original award in relation to that other finding and that is not, in the opinion of the authority, more severe than the punishment included in the original award.

(4) Where on a review under this section it appears to the authority that a punishment awarded was invalid or too severe, or, where the award included two (2) 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, as the authority thinks proper, a punishment that could have been included in the original award and that is not, in the opinion of the authority, more severe than the punishment included in the original award.

Findings of insanity, etc.

Where accused
found insane.

122. (1) Where on the trial of a person by court-martial it appears to the court that the person is by reason of insanity unfit to stand trial, the court shall so find; and, if the finding is confirmed in accordance with this section, the accused shall be kept in custody in the prescribed manner until the directions of the Governor-General are known or until the accused is fit to stand trial, whichever is sooner.

(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, would support a finding that the accused was guilty of an offence, but that at the time he committed the offence he was insane, the court shall find that the accused was guilty of that offence but was insane at the time, and shall sentence him to be kept in custody in the prescribed manner until the directions of the Governor-General are known.

(3) In the case of a finding of insanity under subsection (1) or (2), the Governor-General may give directions for the safe custody of the accused during the Governor-General's pleasure in such place and in such manner as he thinks fit.

(4) A finding under subsection (1) shall not be acted upon until

(a) it is confirmed by an authority who may confirm a finding of guilty arrived at by the court-martial in question; and

(b) it is promulgated.

(5) Where a court-martial or confirming authority, as the case may be, arrives at or substitutes a finding of guilty but insane, the

confirming authority, or, as the case may be, reviewing authority, has no power to substitute for that finding a finding of guilty, except that the provisions of this Act as to revision, confirmation and review, and, in particular, the provisions of this Act that confer power to substitute for any finding any other finding that could have been arrived at by the court-martial in question, apply in relation to such finding as are provided for by subsection (2), as those provisions apply in relation to other findings of guilty.

Commencement, suspension and duration of sentence

123. A military sentence of imprisonment or detention, or a sentence of field punishment, begins, subject to section 146(5), to run from the day on which the sentence was originally pronounced by the court-martial, or, as the case may be, was originally awarded by his commanding officer.

Commencement
of sentence.

124.(1) Where any person serving a military sentence of imprisonment or detention is 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 the period during which he was unlawfully at large; but if he satisfies the prescribed authority that during the period for which he was unlawfully at large he was, otherwise than for an offence committed by him while he was unlawfully at large

Sentence of
imprisonment or
detention.

- (a) in the custody of a civil authority; or
- (b) in the custody of any military, naval or air force authority of any country or territory outside Antigua and Barbuda pursuant to regulations made under section 142,

the period during which he was unlawfully at large shall be counted in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(2) In subsection (1), “civil authority” means a civil authority, whether of Antigua and Barbuda, or of any country or Territory beside Antigua and Barbuda authorised by law to detain persons, and includes a constable.

(3) Where any person serving a military sentence of imprisonment or detention is, in accordance with the regulations referred

to in subsection (1), 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 any period during which he was so released.

(4) A person released pursuant to subsection (3) or otherwise allowed 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) 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) A reference in subsection (5) to release or recall under civil law is a reference to a release or recall under the law of the country or territory in which a person is serving his sentence.

Confinement in
civil prison.

125. A person shall not be required to serve any part of a military sentence of detention but in such cases, and subject to such conditions as specified in regulations made under section 142, a person serving such a sentence may be temporarily detained in a military or civil prison for a period not exceeding 7 days.

Special
provisions
respecting
sentences
outside Antigua
and Barbuda.

126. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under this Part 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.

Restriction on
serving of sen-
tence of deten-
tion in prison.

127. The Minister may make arrangements with the authorities of any country or territory outside Antigua and Barbuda whereby sentence of death passed by courts-martial may, in accordance with regulations made under this Part, be carried out in establishments under the control of those authorities and the Military sentences of imprisonment or detention may, in accordance with regulations made under section 142, be served wholly or partly in such establishments.

128. (1) A person who is serving a military sentence of imprisonment or detention in Antigua and Barbuda may, in so far as specified by regulations made under section 142, be taken out of Antigua and Barbuda to any place where the unit or any part thereof to which he belongs is serving or is under orders to serve, but not to any other place.

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

(2) Subject to subsections (3) to (6), a person sentenced under this Act by a court-martial held outside Antigua and Barbuda to imprisonment or detention for more than 12 months shall, as soon as practicable after the confirmation of the sentence, be brought to Antigua and Barbuda.

(3) Where a person is sentenced under this Act by a court-martial held outside Antigua and Barbuda to imprisonment or detention for more than twelve (12) months, the confirming or reviewing authority may direct that the person shall not be required to be brought to Antigua and Barbuda until he has served such part of his sentence as is specified in the direction, not exceeding two (2) years in the case of a sentence of more than two (2) years imprisonment; 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) A direction given by a confirming authority under this section may

- (a) be revoked by the confirming authority or by a reviewing authority; or
- (b) be superseded by another direction of the confirming authority or a reviewing authority, that any such authority could have given under subsection (3),

and any direction given by a reviewing authority under this section may at any time be revoked or suspended by the reviewing authority.

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

(6) In ascertaining for the purpose of this section the nature or length of a sentence, regard shall be had to any communication or remission of the sentence previously directed.

Duty of officers
in charge of
prisons to
receive
prisoners.

129. (1) The superintendent or other person in charge of a prison, other than a military prison, shall, in so far as regulations made under this Part provide, receive any person duly sent to that prison and confine him until the sentence expires, or the prisoner is discharged or delivered over to another authority in due course of law.

(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, the superintendent referred to in subsection (1), or the officer in charge of a police station, or any other person in charge of any other place in which prisoners may be lawfully confined, shall keep that person in custody for a period not exceeding 7 days unless that person is sooner discharged or delivered over to another authority in due course of law.

***Trial of persons ceasing to be subject to military law
under this Act***

Trial and
punishment of
offences where
offender cease
to be subject to
this Act.

130. (1) Subject to section 131, where an offence triable by court-martial under this Act has been committed, or is reasonably suspected of having been committed, by any person who was subject to military law under this Act at the time the offence was committed but has since ceased to be so subject, 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, investigation of charges, trial and punishment by court-martial, including confirmation, review, and reconsideration, and execution of sentences, as being subject to military law under this Act, notwithstanding his ceasing at any time to be subject thereto.

(2) Where a person in military custody by virtue of this section, whether before, during or after trial, commits or is reasonably suspected of having committed an offence that, 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 section 131 and the provisions of this Act relating to summary trial, as having been subject to military law under this Act when the offence was committed or is suspected of having been committed.

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

- (a) if he holds any military rank, as it applies to any other person holding that rank;
- (b) if he holds no military rank, as it applies to any other person who holds the rank he held when he was subject to military law under this Act,

but as respects any time after he is sentenced for an offence and the sentence is confirmed, that provision applies to him, in any case, as it applies to a private soldier.

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

131. (1) Subject to this section, no person shall be tried by a court-martial for any offence, other than one against section 45 or 46, or for desertion, unless the trial commences within three (3) years after the commission of the offence; but any period during which that person was a prisoner of war and any time during which he was illegally absent shall be disregarded.

Limitation of
time for trial of
offences under
this Act.

(2) Subject to subsection (3), a person may be tried by a court-martial for a civil offence committed outside Antigua and Barbuda notwithstanding that it was committed more than three (3) years before the commencement of the trial if the Minister responsible for Defence consents to trial.

(3) Where in the case of an offence against section 81 proceedings for the corresponding civil offence is by virtue of any enactment to be brought within a limited time, that limited time applies to the trial of the offence under that section.

(4) Where a person who committed the offence of desertion, other than desertion on active service, has, since the offence, served as a member of the regular Force continuously in an exemplary manner for not less than three (3) years without a trial being held, he shall not be tried for that offence.

(5) Notwithstanding section 130(1), no person may be tried by a court-martial unless

- (a) the trial commences within three (3) months after he ceases to be subject to military law under this Act; or

- (b) the trial is for a civil offence committed outside Antigua and Barbuda and the Minister for Defence consents to the trial.

(6) Subsection (5) does not apply to an offence against section 43 or 45, or to desertion.

(7) After he ceases to be triable for an offence, no person shall be arrested or kept in custody by virtue of section 130 (1) for that offence.

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

Powers of civil court.

132. (1) Subject to section 154, nothing in this Act restricts

- (a) the offences for which persons may be tried by any civil court; or
- (b) the jurisdiction of any civil court to try a person who is subject to military law under this Act for any offence.

(2) Where a person is tried by a civil court for any offence, and

- (a) he has previously been sentenced by a court-martial held under service law to punishment for any act consisting, whether wholly or in part, that offence; or
- (b) he has been punished for any act referred to in paragraph (a) by his commanding officer or an appropriate superior authority in pursuance of this Act,

the civil court shall, in awarding punishment, have regard to the punishment previously awarded.

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

133. (1) Where a person who is subject to military law under this Act

- (a) has been tried for an offence by a competent civil court or by a court-martial under service law;
- (b) has been charged with an offence under service law, and has had the charge dismissed, or has been found

guilty of the charge by his commanding officer or an appropriate superior authority; or

- (c) has had an offence condoned by his commanding officer,

he is not 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 an appropriate superior authority.

(2) For the purposes of this section

- (a) a person shall be deemed not to have been tried by a court-martial if confirmation of a finding by the court-martial that he is guilty of the offence is withheld;
- (b) 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;
- (c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed an offence 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;
- (d) a person ordered under section 69 (2) or the corresponding provisions of any service law to be imprisoned or to undergo detention for an offence against that section or provision, as the case may be, shall be deemed to have been tried by court-martial for the offence.

(3) Subject to section 147 (2), 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 latter court-martial is issued not later than 28 days after the promulgation of the decision to withhold confirmation.

(4) Except as provided in 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

Board of inquiry.

134. (1) Subject to, and in accordance with, rules made under section 143, the Defence Board or any officer authorised by the rules, may convene a board of inquiry to investigate and report on

- (a) the absence of any person who is subject to military law under this Act;
- (b) the capture of any such person by the enemy;
- (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 the rules or referred to such a board by the Defence Board or any such officer,

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

(2) A board of inquiry must consist of such number of persons who are subject to service law as is specified in rules made under section 143.

(3) The president of a board of inquiry must be an officer not below the rank of lieutenant or a corresponding rank.

(4) Evidence given before a board of inquiry is not admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, except in proceedings for an offence against section 70 or 81 when the corresponding civil offence is perjury.

Inquiries into
absence.

135. (1) Where a board of inquiry that is inquiring into the absence of an officer or soldier of the Antigua and Barbuda Defence Force reports that he has been absent without leave or other sufficient cause for a period of not less than twenty-one (21)

days, a record of the report shall, in accordance with rules made under section 143 be entered in the service books.

(2) A record entered in pursuance of subsection (1), has, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Board or a subsequent board of inquiry, the like effect as a conviction by court-martial for desertion.

Miscellaneous

136. (1) This section applies where a person (in this section referred to as the “offender”) is convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it, fraudulently misapplying it, or in any other way.

Restitution or
compensation
for theft, etc.

(2) Where any property referred to in subsection (1) is 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) Where there is found in the possession of an offender any property, other than money, that appears to have been obtained by him by the conversion or exchange of any property unlawfully obtained, the property so found may be ordered to be delivered to the person appearing to be the owner thereof.

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

(5) Where any 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 of that property, there be paid to that 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 suffered by that other person in consequence of the sale or giving in pawn, as the case may be.

(6) Where any property unlawfully obtained has been given in exchange for any other property to a person who did not at the time of the exchange know that the property had been unlawfully obtained, an order may be made that, subject to the restitution to the owner of the property, there be restored to that 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 which the offender is convicted or by a confirming or reviewing authority.

(8) For the purposes of this section, "appears" means appears to a court, officer or authority authorised to make the order.

(9) An order made under this section by a court-martial is of no effect until confirmed by a confirming authority, and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial apply to an order under this section as they apply to a sentence.

(10) The operation of any order under this section is suspended

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

(11) Where an order is suspended under subsection (10)

- (a) it does not take effect if the conviction is quashed on appeal;
- (b) the Court of Appeal may annul or vary such order notwithstanding that the conviction is not quashed; and
- (c) the property to be restored or the money to be paid over, as the case may be, shall be kept in safe custody during the period for which the operation of the order is suspended.

(12) Notwithstanding subsection (10), an order under this section is not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, suspended if the court or authority making the order so directs in any case in which, in the opinion of the court or authority, the title to the property is not in dispute.

(13) An order under this section does not prevent any person, other than the offender or a person claiming through him, from recovering any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

137. The appointment of a Judge Advocate to act at a court-martial may be made by the Defence Board or by the convening officer.

Appointment of
Judge Advocate

138. Any finding, sentence, determination or other thing required by this Act to be promulgated, shall be promulgated by being communicated to the accused or in such manner as the confirming authority or reviewing authority, as the case may be, directs, or in such manner as is prescribed.

Promulgation.

139. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Board for not less than the prescribed period.

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

(2) Subject to this section, any person tried by a court-martial is entitled to obtain from the Defence Board on demand at any time within the prescribed period and on payment of such fee as is prescribed a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the prescribed period, his personal representative or any person who in the opinion of the Defence Board ought to be treated for the purposes of this subsection as his personal representative is, subject to this section, entitled to obtain from the Defence Board on demand at any time within the period of twelve (12) months from the date of death and on payment of the prescribed fee, a copy of the record of the proceedings.

(4) Where on an application pursuant to subsection (2) or (3) the Minister certifies that for reasons of security the proceedings or any part thereof ought not to be disclosed, the applicant is not entitled to a copy of the proceedings, or, as the case may be, the part to which the certificate relates.

(5) For the purpose of this section "relevant period" in relation to any person tried by court-martial means the period of 5 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; but where the proceedings relate to two (2) 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 is the period of 5 years beginning with the date of the promulgation

- (a) of the finding or findings of guilty and the sentence thereon; or
- (b) of the withholding of confirmation of that finding or those findings.

(6) A 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.

Indemnity for
prison officers,
etc.

140. No action lies 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.

Rules of
procedure.

141. (1) Subject to this section, the Defence Board may make rules respecting

- (a) the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities; and
- (b) the confirmation and revision of findings and sentences of courts-martial.

(2) Provision may be made by rules made under subsection (1)

- (a) for the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;

- (b) for the manner in which charges referred to in paragraph (a) 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 the charges, or otherwise as a preliminary to the trial thereof by court-martial, but the rules must provide for the application of section 103 in any case where the accused requires that evidence be taken on oath;
- (c) for the addition to, or substitution for, a charge that 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;
- (d) for the convening and constitution of courts-martial;
- (e) for the sittings, adjournment and dissolution of courts-martial;
- (f) for the procedure to be observed in trials by courts-martial;
- (g) for the representation of the accused at such trials;
- (h) for procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (b);
- (i) for the application of sections 109, 110, 111, and 112 in relation to proceedings before commanding officers and appropriate superior authorities, and otherwise in relation to proceedings prior to trial by courts-martial;
- (j) for empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge that is being tried by the court;
- (k) for 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; and

- (l) for the forms of orders and other documents to be made for the purpose of any provision of this Part 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 pursuant to paragraph (j) of subsection (2) must provide that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments may be amended by the Supreme court or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments may be amended, and is not exercisable by courts-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) Provision may be made by rules made under this section

- (a) respecting the exercise by a Judge Advocate of his functions at a trial by court-martial;
- (b) respecting the effect of advice or ruling given to the court by a Judge Advocate on questions of law;
- (c) requiring or authorising the president of a court-martial, in such cases as are specified in the rules, to direct that questions of law 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 the proceedings on any such determination such provisions of this Act relating to the court or its members and the proceedings of the court as are specified in the rules.

(5) In subsection (4) a reference to a question of law includes a reference to a question of joinder of charges and to the trial of persons jointly or separately.

142. The Defence Board may make regulations respecting

Imprisonment and
detention
regulations.

- (a) 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 imposed upon them under this Act;
- (b) 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 expiry of any term of imprisonment or detention;
- (c) the provision, classification, regulation and management of military establishments;
- (d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;
- (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or in custody, 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 any part of any such sentence for good conduct and industry;
- (f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of staff, of military establishments.

143. (1) The Defence Board may make rules respecting the convening, constitution and procedure of boards of inquiry, and may in those rules make provision respecting

Board of inquiry
rules.

- (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, but the rules must provide for the taking of evidence on oath or affirmation except in such circumstances that if the evidence was being taken at a court-martial on oath could be dispensed with;
- (b) the making in service books of records of findings of boards of inquiry in cases specified by the rules.

(2) Rules made under this section must provide that any witness or other person who is subject to service law and who may be affected by the findings of a board of inquiry shall have an opportunity of being present and represented at the sitting of the board or such part thereof as is specified by or under the rules.

Regulations.

144. The Defence Board may make regulations respecting

- (a) the execution of sentences of death imposed pursuant to this Act, including the manner in which, and place where, such executions are to be carried out, and the custody, treatment and removal of persons under sentence of death;
- (b) field punishment;
- (c) any matter which by this Part is required or authorised to be prescribed;
- (d) such other matters as appear requisite for carrying the provisions of sections 141, 142, and 143 into effect.

PART VI

Appeals from a court-martial

Right of appeal.

145. (1) Subject to this Part, a person convicted by a court-martial may, with the leave of the Court of Appeal, appeal to that court against his conviction.

(2) An appeal lies as of right from any conviction of court-martial involving a sentence of death.

Leave to appeal.

146. (1) Subject to subsection (3), an application for leave to appeal to the Court of Appeal shall be in the prescribed form and

shall be lodged with the Registrar of the Supreme court within 40 days after the date of promulgation of the finding of the court-martial in respect of which leave to appeal is sought.

(2) An appeal against a conviction that involves a sentence of death may not be entertained by the Court of Appeal unless the appeal is lodged with the Registrar in the prescribed manner, by or on behalf of the appellant within 10 days after the date of promulgation of the finding of the court-martial in respect of which the appeal is brought.

(3) It may be provided by rules of court that in circumstances specified in the rules an application for leave to appeal or an appeal, as the case may be, that is lodged with a person other than the Registrar, as is specified in the rules, shall be treated for the purposes of subsections (1) and (2) as having been lodged with the Registrar.

(4) The Court of Appeal

- (a) may extend the period referred to in subsection (1) whether or not that period has expired;
- (b) may extend the period referred to in subsection (2) where the appellant is outside Antigua and Barbuda or has not had a reasonable opportunity of lodging his appeal within that period.

(5) Where the Court of Appeal dismisses an application for leave to appeal, it may, if it considers 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, begin to run from the day on which the Court dismisses the application.

147. (1) Subject to section 148, on an appeal under this Part against a conviction, the Court of Appeal shall allow the appeal if it thinks 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 case it shall dismiss the appeal; but the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

Determination
of appeals in
ordinary cases.

(2) Where the Court of Appeal allows an appeal under this Part it shall

- (a) quash the conviction; or
- (b) direct that the finding of the court-martial be treated as if confirmation thereof had been withheld, and notwithstanding section 132(2), a new trial by court-martial may be held within such time as the court orders.

Power of Court
of Appeal in
certain cases.

148. (1) Where it appears to the Court of Appeal that an appellant, though not properly convicted on a charge preferred against him before the court-martial by which he was tried was properly convicted on another charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one that 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 it thinks proper, if it is a sentence that might lawfully be passed in respect of the charge on which the appellant was properly convicted, and is not a sentence of greater severity.

(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 Court of Appeal 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 it thinks proper if it is a sentence which could lawfully have been passed for that other offence and is not a sentence of greater severity.

(3) Where

- (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 Court of Appeal 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 Court of Appeal 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 it thinks proper, if it is a sentence that could lawfully have been passed for the offence specified or involved in the substituted finding, and is not a sentence of greater severity.

(4) Where on an appeal it appears to the Court of Appeal that although the appellant was guilty of the offence charged against him he was insane at the time the offence was committed, the Court may quash the sentence and order the appellant to be kept in custody under section 122 in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

149. (1) A sentence passed by the Court of Appeal under section 148, unless the court otherwise directs, begins to run from the time 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 Court of Appeal shall be deemed, for the purposes of this Act, to be a sentence that was passed by the court-martial, and has been confirmed.

Commencement
of sentence

150. Subject to any law relating to appeals to Her Majesty in Council from judgements of the court of Appeal in criminal matters, any determination by the Court of any matter other than a criminal matter that it has power to determine under this Part is final, and no appeal lies from the Court to any other court.

Appeal final

151. Subject to rules of court, an appellant is not entitled to be present at the hearing of an appeal under this part or at any proceedings preliminary or incidental to such an appeal; and the power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

Proceedings in
absence of
appellants

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

Appellant may
present his case
in writing

Suspension of
sentence of death

153. Where a conviction by court-martial involves a sentence of death

- (a) the sentence shall not in any case be executed until the expiration of the period within which an appeal to the Court of Appeal against the conviction may be lodged;
- (b) the sentence shall not be executed until the application, as the case may be, is determined or abandoned, if an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal; and
- (c) the sentence shall not be executed until the application is finally refused or is withdrawn, or the appeal to Her Majesty in Council is determined or abandoned if an application for leave to appeal to Her Majesty in Council is duly made.

Person not to be
tried twice for
same offence.

154. Where the conviction of a person by a court-martial for an offence is quashed under this Part, that person shall not be tried a second time for that offence by a court-martial or by any other court.

Removal of
prisoners for
purposes of this
Part.

155. The Defence Board may, by regulations, provide the manner in which 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, or any place to which the Court of Appeal or a Judge thereof orders the appellant to be taken for the purposes of any proceedings of the Court.

Furnishing on
appeal of
documents
relating to trial.

156. The Secretary of the Defence Board shall, in the case of every appeal or application for leave to appeal under this Part to the Court of Appeal against conviction by court-martial, furnish to the Registrar of the Supreme Court the proceedings of the court-martial, including the proceedings with respect to the revision of the finding or sentence of the court-martial in pursuance of section 115 (1), the proceedings with respect to the confirmation of the finding and sentence of the court-martial and any petition presented by or on behalf of the person convicted.

Application for
registration.

157. The Registrar of the Supreme Court shall take all necessary steps for the determination of an appeal or application for

leave to appeal under this Part, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant, as the case may be, was tried that appear necessary for the proper determination of the appeal or application, as the case may be.

158. (1) The Registrar of the Supreme Court shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal, as the case may be, under this Part

Registrar to
furnish forms, etc.

- (a) to any person who requests them;
- (b) to any person in charge of any place where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences; and
- (c) to such other persons as he thinks fit.

(2) Every person in charge of a place referred to in subsection (1) shall cause the forms and instructions referred to in that subsection to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal, as the case may be, under this Part.

159. (1) Nothing in this Part

Saving of powers
of reviewing
authority.

- (a) affects the exercise by a reviewing authority of the powers conferred on it by section 119 in respect of a conviction of a court-martial regarding the exercise of those powers at a time before the lodging with the Registrar of the Supreme Court of an appeal or an application for leave to appeal to the Court against the conviction;
- (b) affects the exercise by the Governor-General of the prerogative of mercy.

160. A single judge of the Court of Appeal may

Exercise of
certain powers
of Court of
Appeal by a
single Judge.

- (a) give leave to appeal; or
- (b) extend the period within which an application for leave to appeal or an appeal is required to be lodged by section 146 (1) or (2), as the case may be; or

- (c) allow the applicant or appellant to be present at any proceedings under this Part.

Refusal of application

161. Where a single Judge refuses an application on the part of an applicant or appellant, the applicant or appellant, as the case may be, upon making a requisition in that behalf within the prescribed period and in the prescribed manner, is entitled to have the application determined by the Court of Appeal.

General provisions as to procedure

162. (1) Subject to this Part, rules of court relating to the hearing of criminal appeals by the court of appeal apply to the hearing and determination of an appeal by that Court under that Part.

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

PART VII *Forfeiture and Deduction*

Forfeiture and deduction.

163. (1) The pay of an officer or soldier shall not be forfeited unless authorised by this Act or some other enactment; and no deduction from his pay shall be made unless it is so authorised.

(2) The Defence Board may not authorise by regulations the making of deduction from an officer's soldier's salary of any amount by way of penalty in respect of the commission of any offence or other wrongful act, or in consequence of any negligence.

(3) This section does not apply to the making of regulations providing

- (a) for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised;
- (b) 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 sum or amount when deducted; or

(c) for the determination of questions relating to forfeiture or deduction.

(4) Notwithstanding that a deduction from the pay of an officer or soldier is authorised to be made, he is entitled to receive pay, subject to any forfeiture, at not less than the prescribed minimum rate.

(5) Notwithstanding that forfeiture of the pay of an officer or soldier for any period is ordered in pursuance of this Act, he is entitled to receive pay at the prescribed minimum rate; but the amount paid to him for that period may be recovered 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, that is due to him; and references in this Act to the making of deductions from pay shall be construed accordingly, and the whole or any part of any sum forfeited from an officer's or soldier's pay may be recovered by deduction from any balance due to him.

164. (1) The pay of an officer or soldier is liable to be forfeited

Forfeiture of
pay.

- (a) for any day of his absence in circumstances constituting an offence under section 51 or 52, or, if the Chief of Defence Staff 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 is liable to be forfeited for any day of absence by reason of his having been made a prisoner

of war if the Chief of Defence Staff 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 duty; or
- (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Antigua and Barbuda Defence Force; 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 not authorised by international usage.

(3) Nothing in paragraph (a) of subsection (1) applies to absence by reason of having been made a prisoner of war.

(4) The Defence Board may provide by regulations for the computation of time for the purpose of this section, and in particular for the counting or disregarding of a part of a day.

Deduction for payment of civil penalty.

165. Where a person who is sentenced or ordered by a civil court, whether within or outside Antigua and Barbuda, to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of his being charged before a court with an offence, is at that time of the sentence or order, or subsequently becomes, an officer or soldier, then, if the whole or any part of that sum 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.

Compensation for loss caused by wrongful act or negligence.

166. (1) Without affecting the provisions of this Act relating to the imposition of stoppages as a punishment, this section applies where, after such investigation as is prescribed by regulations, it appears to an authorised officer that loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier.

(2) For the purposes of this section and sections 168, 169 and 170

“authorised officer” means an officer authorised by regulations; and

“person responsible” means an officer or soldier who, by any wrongful act or by negligence causes any loss of, or damage to, public or service property.

(3) An authorised officer may order a person to pay, as or towards compensation for the loss or damage, such sum as is specified in the order, and any sum, in so far as it is not paid by the person responsible, may be deducted from his pay.

(4) No order shall be made under subsection (3) 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 loss or damage referred to in that subsection.

(5) Except as provided in this section, the fact that proceedings have been brought in respect of a wrongful act or negligence does not prevent the making of an order or of deductions under subsection (3).

167. (1) Where damage occurs to any premises in which a unit or part of a unit of the Antigua and Barbuda Defence Force is quartered or billeted, or any fixtures, furniture or effects in or belonging to the premises are damaged or lost, and it appears, on investigation in accordance with the regulations that the damage or loss was occasioned by the wrongful act or negligence of any person belonging to any unit or part of a unit in occupation of the premises, but that the person cannot be identified, any person belonging to any such unit or part of a unit may be required to contribute towards compensation for the damage or loss, such amount as may be deducted from the person's pay.

Deduction for
barrack damage.

(2) subsection (1) extends to vessels, vehicles and aircraft in which units or parts of units are being transported; and reference to premises, quartering and occupation shall be construed accordingly.

Review of orders
and remission of
forfeitures and
deduction

168. (1) Where an authorised officer makes an order under section 166, 169, or 170 against a person responsible, the person responsible may, in the prescribed manner, apply to a board of officers for further examination of the case, and the board shall consider the case, and if it thinks fit, give directions to the authorised officer; and the authorised officer shall give effect to those directions.

(2) Any forfeiture or deduction imposed under section 164, 165, 167, or under regulations, may be remitted by the Defence Board, or in such manner and by such authority as may be prescribed.

Enforcement of
maintenance and
affiliation orders

169. (1) Where a court in Antigua and Barbuda 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

- (a) the maintenance of his or her spouse or child;
- (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 an officer or soldier when the order was made, the authorised officer may order such sum as the authorised officer thinks fit 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.

(2) Where there is evidence before the court that made the order referred to in subsection (1), or an order varying, revoking or reviving that order, that the defendant is an officer or soldier, the court shall direct that a copy of the order be sent to the Defence Board.

(3) Where an order referred to in subsection (1) was made by a court of a Commonwealth country other than Antigua and Barbuda, and the authorised officer is satisfied that the defendant had a reasonable opportunity of appearing in person, or had appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the authorised officer has the like power under subsection (1) as if the order had been made by such a court as is mentioned in that subsection.

(4) An authorised officer may vary or revoke any order 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 in the circumstances specified in paragraph (a) of section 164 (1).

(5) for the purposes of this section

- (a) a reference to an order made by a court in Antigua and Barbuda includes a reference to an order registered in or confirmed by such a court under the provisions of any law that provides for the enforcement in Antigua and Barbuda of maintenance orders made outside Antigua and Barbuda;
- (b) a reference to a spouse or child includes, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, a reference to a person who would have been the spouse or child of the defendant if the marriage had subsisted;
- (c) a reference to a child of a person includes a reference to a child of his or her spouse, and to an adopted child of that person or his wife; and in this paragraph “adopted child” means a child adopted, whether alone or jointly, in pursuance of an adoption order, under the *Adoption Act*;
- (d) “maintenance order” means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the spouse or other dependant of the person against whom the order is made; and in this paragraph “dependant” means such persons as that person is, according to the law in force in that part of the Commonwealth in which the maintenance order was made, liable to maintain.

170. (1) Where an authorised officer is satisfied that an officer or soldier of the Antigua and Barbuda Defence Force is neglecting, without reasonable cause, to maintain his or her spouse or a child of his under the age of 18, the authorised officer may order a sum to be deducted from the pay of that officer or soldier, as the case may be, and appropriate towards the maintenance of the spouse or child.

Maintenance of
spouse or child.

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

(3) Where an order is in force under section 169(1) or (3), as the case may be, for the making of deductions in favour of any person from the pay of an officer or soldier of the Antigua and Barbuda Defence Force, no deduction from his pay in favour of any person shall be ordered under 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 169 was made.

(4) The authorised officer 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 in circumstances specified in paragraph (a) of section 164(1).

Limit of deduction under sections 169 and 170 and effect on forfeiture.

171. (1) The amounts that may be deducted under sections 169 and 170 are such as are prescribed.

(2) Where any deduction has been ordered under section 169 or 170 from a person's pay, and, whether before or after the deduction has 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, the forfeiture applies only to so much of his pay as remains after the deductions are made.

Service of process in maintenance proceedings.

172. (1) Where process is to be served on an officer or soldier of the Antigua and Barbuda Defence Force (in this section referred to as the "defendant") in connection with proceedings for an order mentioned in section 166(3) of a court in Antigua and Barbuda or for the variation, revocation or revival of such an order, it shall be deemed to be duly served on him if served either on him personally or his commanding officer, and may, without affecting any other method of service, be served by registered post.

(2) Where process is served in Antigua and Barbuda and the defendant is 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 service out of Antigua and Barbuda 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 process shall be deemed not to have been effected.

PART VIII

GOVERNMENT AND GENERAL PROVISIONS

Command

173. (1) Officers and soldiers of the Antigua and Barbuda Defence Force shall stand in relation to each other in such order of precedence as the Defence Board prescribes.

Precedence.

(2) Officers and soldiers of Commonwealth Forces and foreign forces may be attached or seconded to the Antigua and Barbuda Defence Force with the approval of the Defence Board.

174. The Governor-General may appoint an officer who is a member of the Antigua and Barbuda Defence Force in whom the command of the Antigua and Barbuda Defence Force will be vested, and, subject to the terms of his appointment, that officer has the command of the Force during the pleasure of the Governor-General.

Command of Force.

175. The Defence Board may make regulations respecting the members of the Antigua and Barbuda Defence Force in whom command over any part of the Force or members thereof is vested and as to the circumstances in which such command is to be exercised.

Regulations respecting command.

176. In so far as powers of command depend on rank

Powers of Command.

- (a) a member of a Commonwealth force or a foreign force who is acting with; or
- (b) a member of a Commonwealth Force or a foreign force who is a member of a force that is acting with,

the Antigua and Barbuda Defence Force has the like powers as a member of the Antigua and Barbuda Defence Force of corresponding rank; and for the purposes of sections 43 and 81 any such member shall be treated as if he were a member of the Antigua and Barbuda Defence Force of corresponding rank.

(2) If the whole or any part of the Antigua and Barbuda Defence Force is required to act with any other force, the Governor-General may place the Antigua and Barbuda Defence Force or part thereof, as the case may be, under the command of the officer commanding the other force.

(3) Where any part of the Antigua and Barbuda Defence force is acting with any other force, the Chief of Defence Staff or the officer commanding that part of the Antigua and Barbuda Defence Force may, in agreement with the officer commanding the other force, define the powers of command and the order of precedence of the officers, warrant officers and non-commissioned officers of that part of the Antigua and Barbuda Defence force in relation to the officers, warrant officers and non-commissioned officers of the other force.

Redress of Complaints

Complaints by
officers.

177. (1) Where an officer of the Antigua and Barbuda Defence Force thinks himself wronged in any matter by a superior officer or authority, he may refer the matter to his commanding officer; and if he does not obtain the redress to which he thinks he is entitled he may make a complaint with respect to that matter to the Defence Board.

(2) The Defence Board shall, on receiving any complaint mentioned in subsection (1), investigate it and give any redress that appears to it to be necessary, or, if the complaint so requires, the Defence Board shall make its report on the complaint to the Governor-General who shall give the Defence Board directions thereon.

Complaints by
soldiers

178. (1) Where a soldier of the Antigua and Barbuda Defence Force thinks himself wronged in any matter by any officer other than his commanding officer nor by any soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) Where a soldier of the Antigua and Barbuda Defence Force thinks himself wronged in any matter by his commanding

officer by reason of redress not being given to his satisfaction on a complaint made under subsection (1) or for any other reason, he may make a complaint with respect thereto to any officer not below the rank of Lieutenant Colonel or corresponding rank under whom he is serving.

(3) Every commanding officer or other officer shall investigate any complaint received by him pursuant to this section and take all necessary steps for redressing the matter complained of; and if the complaint so requires the commanding officer shall refer the complaint to the Chief of Defence Staff who shall seek the opinion of the Defence Board thereon.

Exemptions for officers and soldiers

179. Every officer and soldier of the Antigua and Barbuda Defence Force is exempt from jury service.

Exemption from jury service.

180. (1) Duties or tolls for embarking from, or disembarking on, any pier, wharf, quay or landing place in Antigua and Barbuda or for passing over any road, ferry, or bridge in Antigua and Barbuda are not payable in respect of

Exemption from tolls, etc.

- (a) members of the Antigua and Barbuda Defence Force while on duty;
- (b) vehicles, ships and aircraft in military service, being vehicles, ships and aircraft belonging to the Government, or other vehicles, ships and aircraft driven by persons, whether members of the Antigua and Barbuda Defence Force or not, for the purposes of the Government;
- (c) goods carried in vehicles, ships and aircraft for military purposes; and
- (d) animals in military service.

(2) For the purposes of subsection (1) "in military service" means employed under proper military authority for the purposes of the Antigua and Barbuda Defence Force, or accompanying any unit of the Antigua and Barbuda Defence Force.

Service property
not to be taken
in execution

181. A judgement, decree or order given or made against an officer or soldier of the Antigua and Barbuda Defence Force by any court in Antigua and Barbuda shall not be enforced by the levying or execution on any service property, nor shall any distress be made thereon.

***Provisions relating to deserters and persons
absent without leave***

Arrest of
deserters and
persons absent
without leave.

182. (1) Any constable within Antigua and Barbuda may arrest without a warrant any person whom the constable has reasonable cause to suspect of being an officer or soldier of the Antigua and Barbuda Defence Force who has deserted or is absent without leave.

(2) Where no constable is available, any officer or soldier of the Antigua and Barbuda Defence Force or any other person may arrest without a warrant any person whom the officer, soldier or other person, as the case may be, has reasonable cause to suspect of being an officer or soldier referred to in subsection (1).

(3) Any person in Antigua and Barbuda having authority to issue a warrant for the arrest of any other person charged with a crime, may issue a warrant for the arrest of an officer or soldier, as the case may be, if the first-mentioned person is satisfied by evidence on oath that there is or is reasonably suspected of being within his jurisdiction an officer or soldier of the Antigua and Barbuda Defence Force who has deserted or is absent without leave, or is reasonably suspected of having deserted or of being absent without leave.

(4) Any person who is in custody in pursuance of this section shall, as soon as practicable, be brought before a magistrate's court.

Proceedings
before a civil
court where
person suspected
of illegal
absence.

183. (1) This section applies where a person who is alleged to be an officer or soldier of the Antigua and Barbuda Defence Force and who has deserted or is absent without leave, is brought before a magistrate's court.

(2) If a person referred to in subsection (1) admits that he is illegally absent from the Antigua and Barbuda Defence Force and the magistrate is satisfied of the truth of the admission, then

- (a) unless the person is in custody for some other cause, the magistrate shall; and
- (b) notwithstanding that he is in custody for some other cause, the magistrate may,

cause him to be delivered into military custody in such manner as the magistrate thinks fit, or commit him to a prison, police station or other place provided for the confinement of persons in custody, to be kept there for such time as the magistrate specifies, not exceeding such time as appears to the magistrate necessary for the purpose of enabling the person to be delivered into military custody, or until sooner delivered into military custody.

(3) The time specified by a magistrate under subsection (2) may be extended by the magistrate if it appears to him necessary to do so.

(4) Where a person referred to in subsection (1) does not admit that he is illegally absent, or the magistrate is not satisfied of the truth of the admission referred to in subsection (2), the magistrate shall consider the evidence and any statement made by the accused, and if the magistrate is satisfied that the accused is subject to military law under this Act and is of the opinion that there is sufficient evidence to justify the trial of the accused under this Act for desertion or absence without leave, then, unless the accused is in custody for some other cause, the magistrate shall cause the accused to be delivered into military custody, or commit him as specified in subsection (2), or discharge him.

(5) Where a person is in custody for some cause other than desertion or being absent without leave, a magistrate may act in accordance with subsection (4).

184. (1) Where a person who, being absent without leave from the Antigua and Barbuda Defence Force, surrenders himself to a constable in Antigua and Barbuda the constable shall take the person to a police station unless the surrender is at a police station.

Deserters and persons absent without leave surrendering to police.

(2) The constable in charge of a police station at which a person surrenders himself or to which a person who surrenders himself is taken, shall inquire into the case, and if it appears to the constable that the person is absent without leave, the constable

may cause the person to be delivered into military custody without taking him before a magistrate's court.

Certificate of
arrest or surrender
of deserters and
absentees.

185. (1) Where a magistrate's court in pursuance of section 183 deals with a person who is absent without leave, then, when the person is delivered into military custody there shall be handed over to an officer of the Antigua and Barbuda Defence Force a certificate in the prescribed form, signed by a magistrate containing the prescribed particulars relating to the person's arrest or surrender, as the case may be, and the proceedings before the court.

(2) Where a person is delivered into military custody without being taken before a magistrate's court, whether under section 184 or under any other law, there shall be handed over to the officer mentioned in subsection (1) a certificate in the prescribed form, signed by the constable who caused the person to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 51 or section 52, a document purporting to be a certificate under subsection (1) or (2) or under the corresponding provisions of any service law, other than this Act, is evidence of the matter stated.

(4) Where proceedings referred to in subsection (3) are against a person who has been taken into military, naval or air force custody on arrest or surrender, as the case may be, a certificate in the prescribed form, stating the fact, date, time and place of arrest or surrender and purporting to be signed by a provost officer or any corresponding officer of a Commonwealth Force, or by any other officer in charge of the guardroom or other place where the person was confined on being taken into custody, is evidence of the matter stated in the certificate.

Superintendents
of prisons and
others to receive
deserters and
absentees.

186. (1) The superintendent or other person in charge of a civil prison shall receive any person duly committed to that prison by a magistrate's court as being absent without leave and detain him until, in accordance with the directions of the court, he is delivered into military custody.

(2) Subsection (1) applies to the person in charge of any police station or other place provided for the confinement of persons in

custody, not being a prison, as it applies to the superintendent of a prison.

***Offences relating to military matters punishable
by civil courts***

187. Any person who falsely represents himself to any military or civil authority to be a deserter from the Antigua and Barbuda Defence Force commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment not exceeding three (3) months or both.

Penalty for pretending to be deserter.

188. Any person who

Penalty for procuring and assisting desertion

- (a) procures or persuades any officer or soldier of the Antigua and Barbuda Defence Force to desert or to absent himself without leave;
- (b) assists an officer or soldier referred to in paragraph (a) knowing that the officer or soldier is about to desert or absent himself without leave; or
- (c) conceals or assists any other person in concealing himself, or assists the other person in his rescue from custody, knowing the other person to be a deserter or to be absent without leave from the Antigua and Barbuda Defence Force.

commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment not exceeding three (3) months, or both, or on conviction on indictment to a fine not exceeding \$2000 or to imprisonment not exceeding two (2) years, or both.

189. Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Antigua and Barbuda Defence Force acting in the execution of his duty of an offence and liable on summary conviction to a fine of \$200 or to imprisonment three (3) months, or both.

Penalty for obstructing officers or soldiers in execution of their duty.

190. Any person who

Penalty for aiding malingering

- (a) produces in an officer or soldier of the Antigua and Barbuda Defence Force any sickness or disability; or

- (b) supplies to or for an officer or soldier any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid military service, whether permanently or temporarily, commits an offence and is liable on summary conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding three (3) months, or both, or on conviction on indictment to a fine not exceeding \$5000 or to imprisonment for a term not exceeding two (2) years, or both.

Unlawful purchase,
etc., of military
store.

191. (1) Any person who acquires, or solicits or procures any other person to dispose of, or acts for any person in disposing of, any military stores commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to a term of imprisonment not exceeding three (3) months, or both, or on conviction on indictment to a fine not exceeding \$5000 or to a term of imprisonment not exceeding two (2) years, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove

- (a) that he did not know and could not reasonably be expected to know, that the stores in question were military stores;
- (b) that the stores 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 had, power to give the order or consent; or
- (c) that those stores had become the property of
- (i) an officer of the Antigua and Barbuda Defence Force who had retired or ceased to be an officer,
 - (ii) a soldier of the Antigua and Barbuda Defence Force who had been discharged, or
 - (iii) the personal representatives of a person who is dead.

(3) A constable may arrest without warrant any person whom he has reasonable grounds to suspect has committed an offence under this section, and may seize any property that he has reasonable grounds to suspect is the subject of the offence.

(4) Any person having authority to issue a warrant for the arrest of a person charged with an offence 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 that is the subject of an offence under this section, issue a warrant to search for such property as in the case of stolen goods, and any property suspected to be the subject of such an offence and found on the search shall be seized by the person executing the warrant, who shall bring the person in whose possession or custody the property is found before a magistrate's court.

(5) For the purposes of this section

“acquire” means buy, take in exchange, take in pawn or otherwise receive, whether apart from this section the receiving is lawful or not;

“dispose” means sell, give in exchange, pledge or otherwise hand over, whether apart from this section the handing over is lawful or not;

“military stores” means any chattel of any description belonging to the Government, 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 that had so belonged or had been so issued or held.

(6) For the purposes of subsection (3), property shall be deemed to be in the possession of a person if he has it under his control, whether he has it for his own use or benefit or for the use or benefit of another person.

192. (1) A person commits an offence 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.

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 service in the Antigua and Barbuda Defence Force.

(2) Any person who has in his possession without lawful authority or excuse, the proof of which lies on him, any document mentioned in subsection (1) or any official document issued in connection with the mobilisation or demobilisation of the Antigua and Barbuda Defence Force or any member thereof, commits an offence.

(3) Any person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding three (3) months or both.

(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, whether he has it for his own use or benefit or for the use or benefit of another person.

Unauthorised use
of, and dealing
in, decorations,
etc.

193. (1) A person commits an offence under this section if he

- (a) wears in a public place, without authority, the uniform of the Antigua and Barbuda Defence Force, not being a member of the Force, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniforms;
- (b) wears without authority
 - (i) any uniform or part thereof, or any article of clothing made from any of the disruptive pattern materials used for making the military uniform commonly called the "camouflage uniform" or from any other material so nearly resembling any of those materials as is likely to deceive, or
 - (ii) any uniform or part thereof worn by any military organisation of any country, whether in being or disbanded;
- (c) has in his possession without authority

- (i) any uniform or part thereof, article of clothing or material mentioned in sub-paragraph (i) or (ii) of paragraph (b), or
- (ii) any military equipment prescribed by regulations made by the Defence Board;
- (d) uses or wears, without authority, any naval, military or air force decoration, or any badge, wound strips or emblem supplies or authorised by the Defence Board;
- (e) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, stripe or emblem mentioned in paragraph (d), as to be calculated to deceive; or
- (f) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem.

(2) Nothing in subsection (1) prevents any person from wearing any uniform or dress in the course of a stage play or performed in a place duly licensed or authorised for the public performance of stage plays, or in the course of a music hall or circus performance.

(3) A person commits an offence under this section if he

- (a) purchases or takes in pawn; or
- (b) solicits or procures any other person to sell or pledge, or acts for any person in the sale or pledging of

any naval, military or air force decoration awarded to any member of the Antigua and Barbuda Defence Force.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that at the time of the alleged offence the person to whom the decoration referred to in that subsection was awarded was dead or had ceased to be a member of the Antigua and Barbuda Defence Force.

(5) Any person who commits an offence under this section is liable on summary conviction to a fine of \$2000 or to imprisonment for one year.

Provisions as to evidence

General provisions as to evidence.

194. (1) This section applies to evidence taken in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of an attestation paper signed by a person attested and certified to be a true copy by a person stated in the certificate as having the custody of attestation papers is evidence of the enlistment of the person attested.

(3) An attestation paper purporting to be signed by a person on his enlistment is 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 a specified time or during a specified period in the Antigua and Barbuda Defence Force, or was discharged from any part of that Force at or before a specific time;

(b) held, or did not hold, at a specified time, a specified rank or appointment in the Antigua and Barbuda Defence Force, or had at or before a specified time been attached, posted, or transferred to any part of the Antigua and Barbuda Defence Force or a specified time or during a specified period was, or was not, serving, or held, or did not hold, any rank or appointment in that Force; or

(c) was, or was not, at a specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

is, if purporting to be issued by or on behalf of the Defence Board or the Chief of Defence Staff, evidence of the matters stated therein.

(5) A record made in any prescribed service book or other prescribed document in pursuance of service law or military duty

and purporting to be signed by the commanding officer or by a person whose duty it was to make the record is evidence of the facts stated therein, and a copy of a record, including the signature thereto, in any such book or other 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 other document, is evidence of the record.

(6) A document purporting to be issued by order of the Defence Board or the Chief of Defence Staff and containing instructions or orders given or made by the Defence Board or the Chief of Defence Staff is evidence that the Defence Board or Chief of Defence Staff, as the case may be, gave the instructions or made the orders, and the matters contained therein.

(7) A certificate is evidence of the matters stated therein if it purports to be issued by or on behalf of the Defence Board and states

- (a) that a decoration of a description specified in, or annexed to, the certificate is a military, naval or air force 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 Defence Board.

(8) A certificate is, in proceedings against any person, evidence of the matters stated in the certificate

- (a) if it purports to be signed by a person's commanding officer or an officer authorised by the commanding officer to give the certificate; and
- (b) if it states the content of, or any part of, standing orders or other routine orders of a continuing nature made for
 - (i) any formation, unit or body of troops,
 - (ii) any command or other area, garrison or place, or
 - (iii) any vessel, vehicle or aircraft.

Proof of result of
civil trial.

195. (1) Where a person being subject to military law under this Act was tried before a civil court, whether or not at the time of the trial he was so subject to military law, a certificate signed by the Registrar of the court, a Judge, a Magistrate or a Justice of the Peace and stating

- (a) that the person was tried before the court for an offence specified in the certificate;
- (b) the result of the trial; or
- (c) the judgement or order given or made by the court, is, for the purposes of this Act, evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and purporting to be signed by the Registrar of the Court, a Judge, a Magistrate or a Justice of the Peace, shall, unless the contrary is proved, be deemed to be a certificate under this section.

Evidence of
proceedings of
court-martial.

196. (1) The original record of the proceedings of a court-martial held under service law purporting to be signed by the president of the court and produced from lawful custody is admissible in evidence.

(2) A document purporting to be a copy of the original record of the proceedings or any part thereof of a court-martial held under service law and certified by the person having the lawful custody of the record to be a true copy, is evidence of the contents of the record 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

Temporary
reception into
civil custody of
person in
military custody.

197. (1) If a person is in military custody when charged with, or with a view to his being charged with, an offence under Part V or the corresponding provisions of any other service law, the superintendent or other person in charge of a civil prison, or the person in charge of any police station or other place in which prisoners may be lawfully detained shall, upon delivery to him of a written order purporting to be signed by the commanding officer

of the person in custody, receive the person into the custody of the superintendent, the other person in charge of a civil prison or the person in charge of any police station or other place in which prisoners may be lawfully detained, as the case may be, for a period not exceeding seven (7) days.

(2) For the purposes of this section, “civil prison” has the meaning assigned to it by section 36.

198. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Antigua and Barbuda Defence Force is void.

Assignment of or charge on military pay, pensions, etc.

(2) Subject to this Act, no court may make an order the effect of which would be to restrain any person from receiving anything that by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section limits the operation of any law providing for the payment of any sum of a bankrupt's trustee in bankruptcy for distribution among the bankrupt's creditors.

199. (1) An officer of the Antigua and Barbuda Defence Force of a rank not below that of major or corresponding rank (in this section referred to as an “authorised officer”) may, outside Antigua and Barbuda, take statutory declarations from persons who are subject to military law under this Act.

Certain officers to take statutory declarations.

(2) A document purporting to be signed by an authorised officer in pursuance of this section and containing in the jurat or attestation a statement of the date on which, and the place where, the declaration was taken, and of the full name and rank of the officer, is admissible in evidence without proof of the signature or of the facts stated in the document.

PART IX

The Antigua and Barbuda Defence Force Reserve

200. (1) The Antigua and Barbuda Defence Force Reserve consists of two classes.

Composition of Defence Force Reserve.

(2) The first class comprises

- (a) the officers appointed or transferred to that class;
- (b) the soldiers enlisted or deemed to be enlisted or re-engaged in pursuance of this Part for service in that class;
- (c) the soldier of the second class of the Reserve who have, after written application made by them in that behalf to the competent military authority, been accepted by that authority for service in the first class; and
- (d) the soldiers transferred to the first class pursuant to section 31.

(3) The second class comprises

- (a) the officers appointed or transferred to that class;
- (b) the soldiers who are members of that class by virtue of Part IV;
- (c) the soldier enlisted or deemed to be enlisted or to be re-engaged in pursuance of this Part for service in that class.

Enlistment and re-engagement in the Reserve.

201. (1) The term for which a person may be enlisted in the Reserve in such a term, beginning with the date of his attestation, as may be prescribed.

(2) A person enlisted in the Reserve may be attested in the same manner as a recruit in the regular force; and, except references in section 34 to the receipt of pay, sections 19, 33, 34 and 35 apply *mutatis mutandis*, to this Part.

(3) A person enlisting in the Reserve may be attested by an officer, and, except references in section 34 to the receipt of pay, sections 19, 33, 34, 35 and 73 apply, *mutatis mutandis*, to this Part.

(4) Any soldier of the Reserve who has completed, or is within six months of completing, the term for which he enlisted or re-engaged in pursuance of this Part, or the term for which he is liable

to serve in the Reserve under Part IV, as the case may be, may, with the approval of the competent military authority, re-engage for such further period of service in the Reserve as is prescribed.

202. (1) Subject to this section, every officer and soldier of the first class of the Reserve shall

Training of
Reserve.

- (a) attend for training at such place and for such period as the Defence Board determines; and
- (b) fulfil such conditions relating to training as are prescribed.

(2) The requirements of this section may be dispensed in whole or in part

- (a) as respect any unit of the first class of the Reserve, by the Defence Board; and
- (b) as respects any individual officer or soldier of the first class of the Reserve, by his commanding officer, subject to any general directions of the Defence Board.

(3) Nothing in this section prevents an officer or soldier of the Reserve from undergoing voluntary training in addition to any training referred to in subsection (1).

203. (1) The Defence Board may, when necessary, call out on temporary service the first class of the Reserve, or as many officers and soldiers of that class as the Board thinks necessary.

Call-out of first
class of Reserve
on temporary
service.

(2) Officers and soldiers called out for service under this section are not liable to serve for a period exceeding ninety days at any one time.

(3) No employer shall dismiss or give notice of dismissal to any employee by reason of the fact that the employee is a member of the Reserve who is called out under this section.

(4) An employer who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5000 or imprisonment for a term not exceeding two (2) years, or both.

Called-out in the
event of war, etc.

204. (1) In the event of a state of war being declared or of insurrection, hostilities or public emergency, the Governor-General may, on the advice of the Prime Minister, by proclamation, direct that the Reserve, or either class thereof, be called out on permanent service; and the Defence Board shall act accordingly.

(2) Every officer and soldier of the Reserve when called out on permanent service is liable to remain on permanent service until he is otherwise ordered.

Attendance at
call-out

205. (1) Where

- (a) the whole or any part of the first class of the Reserve is called out on temporary or permanent service; or
- (b) the whole or any part of the second class of the Reserve is called out on permanent service,

every officer and soldier belonging to such a class, as the case may be, to the part of any class so called out, shall attend in person at the place specified.

(2) Where

- (a) the first class of the Reserve is called out on temporary service ; or
- (b) the Reserve is called out on permanent service,

the Defence Board shall cause every officer or soldier liable to such call-out to be served with a notice requiring him to attend at the time and place specified in the notice.

(3) A notice under subsection (2) may be served on any officer or soldier

- (a) by being delivered to him personally;
- (b) by being left at his last known address; or
- (c) by being sent by registered post addressed to him at his last known address.

(4) Any officer or soldier who fails to comply with a notice served on him pursuant to this section is guilty of an offence.

206. Where an officer or soldier of the Reserve is called out on temporary or permanent service, he shall, for the purpose of section 212 and paragraph (c) of subsection (1) of section 226, be deemed to be so called out with effect from the time of his attendance under section 205 or the time specified in any notice served under subsection (2) of that section, whichever is earlier.

Effective time
of call-out

207. (1) Where any officer or soldier of the Reserve is called out on temporary or permanent service, the Defence Board may at the time thereafter give such directions as it thinks fit for terminating the service of any such officer or soldier.

Termination

(2) subsection (1) does not affect the power conferred on the Defence Board by notice served under section 205 (2), to call out for further service any officer or soldier whose service has been terminated by directions given under subsection (1).

208. Every officer and soldier of the reserve may be posted or attached to any unit of the regular Force or the Reserve

Posting or
attachment of
members of
Reserve.

- (a) when called out on temporary or permanent service; or
- (b) when undergoing training.

209. (1) Any officer or soldier of the Reserve who when called out fails, without leave having been granted to him or without a reasonable excuse, to attend at the time and place appointed for annual camp, or at the time and place specified in any notice served on him pursuant to section 205(2), is

Failure to attend
when called out

- (a) if called out on permanent service, guilty, according to the circumstances, of desertion within the meaning of section 51 or of absenting himself without leave within the meaning of section 52; or
- (b) if called out on temporary service for the purpose of attending annual camp, guilty of absenting himself without leave within the meaning of section 52.

(2) Any officer or soldier of the Reserve guilty of an offence under this section

- (a) is liable, on conviction by court-martial, to the penalty specified in section 50 or 51, as the case may be; or

(b) is liable on summary conviction to fine not exceeding \$500 and in default of payment to imprisonment for a term not exceeding six (6) months.

(3) Section 81 applies to officers and soldiers of the Reserve who commit an offence against this section as it applies to officers and soldiers of the regular Force.

(4) Where an officer or soldier of the Reserve fails to appear at the time and place appointed for training or at the time and place specified in any notice served on him, pursuant to section 205(2) and his absence continues for not less than 21 days, an entry of the absence shall be made by an officer in the service books, and entry is *prima facie* proof of the facts of the absence.

Wrongful sale,
etc., of public
property.

210. (1) Where any person deliberately makes away with pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or soldier of the Reserve, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or soldier, the value thereof is recoverable from him summarily on complaint by an officer of the Antigua and Barbuda Defence Force as a debt due to the Crown, notwithstanding that the amount exceeds the normal monetary limit on the jurisdiction of a magistrate.

(2) Without affecting the operation of subsection (1), any person who deliberately makes away with, sells, pawns or wrongfully destroys anything issued to him as an officer or soldier of the Reserve is guilty of an offence and liable on summary conviction to a fine of \$1000 or to imprisonment for twelve (12) months, or both.

Discharge from
Reserve

211. (1) A soldier of the Reserve, may be discharged by the competent military authority at any time during the currency of any term of service in the Reserve upon such grounds as are prescribed.

(2) A soldier of the Reserve, other than a soldier who is a member thereof by virtue of Part IV is, unless the class of the Reserve of which he is a member is called out on permanent service, entitled to be discharged before the end of his current term of service if

(a) he gives his commanding officer 6 weeks' notice in writing of his desire to be discharged; and

- (b) he delivers up in good order, fair wear and tear only excepted, all arms, clothing and equipment, being public property issued to him, or, in cases where for any good or sufficient cause the delivery of such property is impossible, pays the value thereof.

212. (1) Subject to this section, this Act applies to officers and soldiers of the Reserve.

Application of
Act to officers
and soldiers of
Reserve.

(2) Where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by an officer or soldier of the Reserve during any period when he was undergoing training, then

- (a) in relation to that offence, he may, without affecting the operation of any other provision of this Act, be dealt with in accordance with the provisions of this Act respecting the summary dealing with charges during any subsequent period of training if proceedings against him in respect of the offence are commenced within 3 months after the date when the offence is alleged to have been committed; and
- (b) section 90(4) does not apply in relation to any proceedings taken against him in respect of such an offence.

(3) Where an officer or soldier of the Reserve has been found guilty of any offence under this Act triable by court-martial and the offence was committed during any period when he was undergoing training, then

- (a) no fine exceeding \$1,000 shall be awarded by a court-martial in respect of any such offence;
- (b) if the charge is dealt with summarily, no fine exceeding \$500 may be awarded in respect of any such offence.

(4) Where

- (a) an officer or soldier of the Reserve is, by reason of anything done or omitted to be done during any period when he was undergoing training, liable under

Part V or Part VII to pay any fine or any money by way of compensation for any expense, loss or damage, whether or not the fine or money is to be recovered by deductions from his pay;

- (b) subsequently to his becoming so liable, he has ceased to be a member of the Reserve; and
- (c) at the time when he ceased to be such a member the whole or any part of the fine or any sum of money remains unpaid,

then, the fine or sum of money, or, as the case may be, such part thereof as remains unpaid, is recoverable summarily on complaint by any officer of the Antigua and Barbuda Defence Force as a debt due to the Crown, notwithstanding that the amount due exceeds the normal monetary limit on the jurisdiction of a magistrate.

(5) Sections 164, 165, 169, 170, 171 and 172 apply to officers and soldiers of the Reserve only when called out on permanent or temporary service or when serving on the permanent staff of the Reserve.

(6) Nothing in subsection (3) shall be taken as authorising the imposition of a fine of an amount in excess of the maximum amount that may be imposed under the provisions of this Act other than this section.

PART X

The Antigua and Barbuda Defence Force Coast Guard

Special duties of
coast Guard.

213. (1) The officers and soldiers of the Antigua and Barbuda Defence Force Coast Guard shall

- (a) enforce the provisions of every law relating to
 - (i) the regulation of any harbour or port of Antigua and Barbuda,
 - (ii) quarantine,
 - (iii) immigration,

- (iv) fisheries,
 - (v) territorial waters and economic zones,
 - (vi) safety at sea;
- (b) detect and prevent contravention of laws relating to revenue and customs;
- (c) prevents persons from boarding, holding or climbing on to any vessel without the permission of the master of the vessel, and, if necessary, remove any such person from the vessel.

(2) For the purposes of carrying out their duties, the members of the Antigua and Barbuda Defence Force Coast Guard have the same powers, authorities, immunities and privileges as are conferred by law on members of the Police Force.

(3) The power conferred on the Coast Guard by this section does not affect the power conferred on the Royal Antigua and Barbuda Police Force.

214. Any person who, being subject to military law under this Act, causes or allows to be lost, stranded or hazarded any ship belonging to the Force or being used by the Force is liable, if he acts wilfully or with wilful neglect, to imprisonment for any term or less punishment, and in any case to imprisonment for two (2) years or less punishment.

Hazarding or
loss of ship.

215. (1) Any person who

- (a) being subject to military Law under this Act;
- (b) being attached to any ship of the Antigua and Barbuda Defence Force; and
- (c) being in the presence of the enemy or under orders to be prepared for action by or against the enemy,

Sleeping on
watch or
abandoning post

abandons his post improperly, or sleeps while on watch, is guilty of an offence and liable on conviction by court-martial to imprisonment for any term or less punishment.

Powers in
respect of
vessels

216. (1) An officer or soldier in command of any ship of the Antigua and Barbuda Defence Force may

- (a) cause any vessel within the territorial waters or in any port, harbour, bay, river, roadstead or creek in Antigua and Barbuda that he suspects is being used or employed in any unlawful operation or enterprise, to be boarded, or stopped and boarded and searched;
- (b) search any vessel, and, after demand and refusal of any key, break open any receptacle or break down any door, if he reasonably suspects that there is on board the vessel any property that has been stolen or unlawfully obtained, or any article prohibited to be exported or imported;
- (c) direct, for the purposes of any lawful examination, investigation or inquiry, that the vessel be taken to such place as he specifies;
- (d) remain on board any such vessel for such reasonable time as he thinks necessary;
- (e) deliver any property that he reasonably suspects to have been stolen or unlawfully obtained, or any article prohibited to be imported or exported, and the person in whose possession it is found, with all practicable speed, into the custody of a constable to be dealt with in according to law.

(2) Any officer or soldier acting in the execution of any of the provisions of this section may

- (a) pursue and arrest without warrant, whether he has landed or not, any person upon reasonable suspicion on having committed or being about to commit a criminal offence; and
- (b) take such steps as are reasonably justified in the circumstances of the case in order to compel compliance with any directions given in pursuance of any such provisions.

(3) No officer or soldier is liable for any loss or damage to any vessel referred to in subsection (1), or any loss or injury to any

person on board any such vessel, occasioned in the execution of his duty.

(4) Any person who

- (a) assaults, obstructs, resists or wilfully delays an officer or soldier acting in pursuance of this section; or
- (b) fails to comply, without reasonable excuse, the proof of which lies on him, with any directions given in pursuance of this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1000, or imprisonment for a term not exceeding twelve (12) months, or both.

217. For the purpose of this Act the The Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996 apply *mutatis mutandis* in Antigua and Barbuda.

Application of
S.I. 1965 No.
1525 U.K.

218. (1) Any member of the Coast Guard may, in pursuance of his duties, arrest without a warrant any person who commits an offence against any enactment specified in the Third Schedule.

Power of arrest.
Third Schedule.

(2) An officer or a soldier who arrests any person pursuant to subsection (1) shall deliver the person to a constable to be dealt with according to law.

PART XI

Antigua and Barbuda National Cadet Corps

219. For the purposes of this Part

Interpretation.

“authorised secondary school” means a secondary school recommended by the Ministry of Education and approved by the Defence Board as a school from which pupils may be enrolled in the Antigua and Barbuda National Cadet Corps;

“independent company” means a company not attached to a school, but administered direct from Headquarters of the Antigua and Barbuda Defence Force.

ANTIGUA 120
AND
BARBUDA

The Defence Act, 2006.

No. 10 of 2006.

Composition of
Antigua and
Barbuda
National Cadet
Corps.

220. The Antigua and Barbuda National Cadet Corps consists of two types of units, comprised of

- (a) school companies of pupils of authorised secondary schools enrolled with the approval of the headmaster, and of the officers commanding those companies;
- (b) independent companies of persons enrolled with the approval of the officers commanding the companies.

Enrolment in
Cadet Corps.

221. (1) No person under the age of 12 years may be enrolled in the Antigua and Barbuda National Cadet Corps.

(2) A person who desires to enrol in the Cadet Corps shall be given a notice in the prescribed form setting out the general conditions of enrolment; and the officer commanding shall not enrol any such person unless satisfied that the person understands the notice and wishes to be enrolled.

(3) No person may be enrolled unless consent to his enrolment is given in the prescribed manner by his parent or guardian.

Command and
training of
Cadet Corps.

222. The command and training of the units of the Antigua and Barbuda National Cadet Corps are the responsibility of the officers and Non-commissioned officers of the Antigua and Barbuda Defence Force who are posted or attached to the Cadet Corps.

Regulations for
Cadet Corps.

223. Subject to this Act, the Defence Board may make regulations with respect to

- (a) the length of service and maximum age of cadets;
- (b) the sizes, establishment and organisation of school and independent companies
- (c) the disciplinary code to be followed in respect of cadets, which must be prepared in collaboration with the Ministry of Education and the headteachers of the schools;
- (d) the safety of Government property, and penalties for loss or damage thereto;

- (e) the orders of dress to be worn by cadets;
- (f) the establishment, terms of reference and functions of a Cadet Advisory Committee;
- (g) the programme of training, projects and qualification tests to be undertaken by cadets;
- (h) discharge of cadets;
- (i) inspection of cadet companies;
- (j) attendance at training and other parades;
- (k) any other matters necessary for the good management of the cadet corps.

224. In the event of a public emergency the Governor-General may, on the advice of the Prime Minister, by proclamation, direct that the Cadet Corps or any part thereof be called out for service in aid of the civil community, but no cadet may be required to bear arms.

Call-out of
Cadet Corps in
emergency.

225. Any parent or guardian, having given consent for his child or ward to be enrolled as a cadet, and having accepted liability for any uniform and equipment issued at any time to the child or ward, is liable for such uniform and equipment, and section 210 applies to the parent or guardian as if he were an officer or soldier of the Reserve.

Parent liable for
uniform and
equipment.

PART XII

Application of Act and Supplementary Provisions

226. (1) Subject to section 215, this Act applies to the following persons, whether they are within or outside Antigua and Barbuda

Persons subject
to military law

- (a) officers and soldiers of the regular Force;
- (b) officers and soldiers when attached to the Antigua and Barbuda Defence Force or any part thereof;

- (c) officers and soldiers of the Reserve when called out on permanent or temporary service, or when undergoing or performing any training or other duty, whether in pursuance of an obligation or not.

(2) This Act applies to the persons subject thereto and in relation to the Antigua and Barbuda Defence Force, as well outside as within Antigua and Barbuda.

Application of
Act to civilians.

227. (1) Subject to this section, where any unit is on active service, Part V applies to any person

- (a) employed in the service of that unit, or any part, or member thereof; or
- (b) accompanying such unit or any part thereof,

who is not subject to service law, as it applies to soldiers who are subject to military law under this Act.

(2) The following apply to any person referred to in subsection (1)

- (a) the punishments that may be awarded by a court-martial include a fine, but do not include any other punishment less than imprisonment;
- (b) the punishment that may be awarded where a charge is dealt with summarily is, in the case of any offence, a fine not exceeding \$500, but no other punishment;
- (c) he may be arrested
 - (i) by a provost officer,
 - (ii) by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf; or
 - (iii) by order of any officer who is subject to service law;
- (d) where a charge is being dealt with summarily and the accused is found guilty, a finding shall not be re-

corded 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 the prescribed steps shall be taken to have the charge tried by court-martial;

- (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences apply to such persons 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 is appointed by the officer authorised to convene a court-martial;
- (g) for references in sections 130 and 131 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 Part V applies, and section 130 (3) does not apply.

(3) Any fine awarded by virtue of this section, whether by a court-martial or a commanding officer, is recoverable as a debt due to the Crown in civil proceedings before a magistrate for District "A" by any officer of the Antigua and Barbuda Defence Force, notwithstanding that it exceeds the normal monetary limit on the jurisdiction of a magistrate.

228. The Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957, and all amendments to those Acts have effect in Antigua and Barbuda in respect of any matter for which this Act does not provide.

Application of U.k legislation 3 & 4 Eliz. 2 C.19 5 & 6 Eliz. 2. C.53.

229. (1) Notwithstanding any other provision of this Act relating to the making of regulations by the Defence Board, the Defence Board may make regulations

Regulations for the Government etc. of the Antigua and Barbuda Defence Force.

- (a) for the good government and organisation of the Antigua and Barbuda Defence Force;
- (b) prescribing matters authorised or required by this Act to be prescribed; and
- (c) for the better carrying out of the provisions of this Act.

(2) Regulations made under this section may provide for

- (a) the enlistment of persons into, and the discharge of persons from, the regular Force, and generally for the carrying into effect of Part IV, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) determining to what extent and under what conditions colour service in a Commonwealth Force, other than the Antigua and Barbuda Defence Force, may be counted as colour service in the regular force;
- (c) the pay, allowances, pensions and gratuities of officers and soldiers and of their dependants surviving them, and the deductions therefrom and the forfeiture thereof, including the reckoning for pay, pensions and gratuities, of service in a commonwealth Force, other than the Antigua and Barbuda Defence Force, prior to the commencement of service in that Force;
- (d) the description, supply, use and disposal of arms accoutrements, clothing and other stores;
- (e) the enlistment of persons into, and the discharge of persons from, the Reserve, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (f) the calling out of officers and soldiers of the Reserve on temporary or permanent service, and for training, including the manner in which notification of the places and times appointed for training is to be given;
- (g) requiring officers and soldiers of the Reserve to report to their commanding officers, and generally for the carrying into effect of Part IX; and
- (h) prohibiting, restricting and regulating the holding of meetings within the limits of any camp or other military establishment, and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting.

(3) Regulations made under this section with respect to salaries, allowances, pensions or gratuities are subject to negative resolution.

(4) Regulations referred to in subsection (3) may be given retrospective effect.

230. Unless otherwise prescribed by regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any military officer or authority may be signified under the hand of any officer authorised in that behalf; and any instrument signifying such order, determination, direction or appointment 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.

Execution of orders, instruments, etc.

231. (1) Where the Chief of Defence Staff is removed from office in accordance with section 174 he shall be deemed to have retired and is entitled to immediate payment of pension and other retiring allowances.

Retirement of Chief of Defence Staff in certain cases

(2) For the purposes of subsection (1), the Chief of Defence Staff shall be deemed to have retired at the age appropriate to his rank.

232. (1) The Defence Board may appoint such civilian staff as the Board deems necessary to carry out certain duties within the Defence Force.

Civilian staff.

(2) Subject to subsection (3), staff appointed pursuant to subsection (1) are subject to such terms and conditions of service as the Defence Board prescribes by regulations.

(3) The Pensions Act and the Pensions Regulations, apply, with the necessary modifications, to staff appointed under this section.

233. (1) For the purposes of this Act, all regulations made under the *Army Act, 1955*, the *Queen's Regulations*, and all the amendments thereto

Application of regulations made under Army Act, 1955 3 & 4 Eliz 2c.18

(a) have effect in Antigua and Barbuda; and

ANTIGUA 126
AND
BARBUDA

The Defence Act, 2006.

No. 10 of 2006.

(b) apply *mutatis mutandis* for the purpose of giving the necessary effect to this Act,

until regulations are made under this Act in substitution therefor.

(2) In this section the “*Queen's Regulations*” has the meaning assigned to it by section 225 (1) of the *Army Act, 1955* of the United Kingdom.

Certain Acts not to apply.

234. The *Explosives Act* and the *Firearms Act* do not apply to the Antigua and Barbuda Defence Force].

Transitional provision.

235. (1) “Subject to subsection (2) the Defence Act, Cap. 132 is repealed.

(2) All Statutory Instruments made under the Defence Act, Cap. 132 shall remain in force with any necessary changes until such time as they are revoked by instruments made under this Act.”

FIRST SCHEDULE

(Section 14 (3))

FORM OF QUEEN'S COMMISSION

I Governor-General of Antigua and Barbuda acting under command 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 Antigua and Barbuda Defence Force (for years)* from the day of 20.....

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 are in such manner and on such occasion 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 officers, 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.....
this.....day of.....20.....

* to be committed in the case of a commission granted for an indefinite period.

SECONDSCHEDULE

(Section 108(4))

**Alternative Offences of which accused
may be convicted by court-martial**

Offence Charged	Alternative Offence
1. Any offence against section 37(1).	Any offence against section 37(2).
2. Any offence against section 38(1).	Any offence against section 38(2).
3. Any offence against section 45(1).	Any offence against section 45(2).
4. Communicating with or giving intelligence to the enemy with intent to assist the enemy or without authority.	Disclosing information without authority.
5. Striking his superior officer.	<p>(a) Using violence to his superior officer otherwise than by striking him.</p> <p>(b) Offering violence to his superior officer.</p>
6. Using violence to his superior officer otherwise than by striking him.	Offering violence to his superior officer.

Offence Charged	Alternative Offence
7. Using threatening language to his superior officer.	Using insubordinate language to his superior officer.
8. Disobeying a lawful command given or sent to him personally in such manner as to show wilful defiance of authority.	Disobeying a lawful command.
9. Desertion.	Absence without leave.
10. Attempting to desert.	Absence without leave.
11. Stealing property.	Fraudulently misapplying property.
12. Any offence against section 58 committed wilfully.	The corresponding offence caused through negligence.

SECOND SCHEDULE (Cont'd)

Offence Charged	Alternative Offence
13. Any offence against section 66(1).	Any corresponding offence involving the use of violence other than striking.
14. Any offence against section 67(1) involving striking.	<p>(a) The corresponding offence involving the use of violence other than striking.</p> <p>(b) The corresponding offence involving the offering of violence.</p>
15. Any offence against section 67 involving the use of violence other than striking.	The corresponding offence involving the offering of violence.

No. 10 of 2006.

The Defence Act, 2006.

129 ANTIGUA
AND
BARBUDA

THIRDSCHEDULE

(Section 218 (1))

Merchant Shipping Act

Misuse of Drugs Act

Proceeds of Crime Act

Money Laundering Prevention Act

Terrorism Prevention Act

Fisheries Act

Immigration and Passport Act.

Passed the House of Representatives this
2nd day of August, 2006.

Passed the Senate this 23rd day
of August, 2006.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
Clerk to the House of Representatives.

Yvonne Henry,
Clerk to the Senate.

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ANTIGUA AND BARBUDA

THE DEFENCE ACT, 2006

ARRANGEMENT OF SECTIONS

PART I

Preliminary

1. Short title.
2. Interpretation.
3. Active service.
4. Establishment and maintainance of Force.
5. Powers of officers, Petty Officers and men of the Coast Guard.
6. Duties of Defence Force.
7. Formation unto units.
8. Employment of Defence Force outside Antigua and Barbuda.
9. Overseas training.

PART II

Antigua and Barbuda Defence Force

10. Establishment of Defence Board.
11. Membership of Defence Board.
12. Secretary.
13. Performance of functions of Defence Board.

PART III

Officers

14. Commissions.
15. Power to grant commission
16. Appointment and transfer of officers.
17. Power to make regulations for this Part.

PART IV

Enlistment and Terms of Service in Regular Force

Enlistment

18. Interpretation.
19. Recruiting Officer.
20. Enlistment.

Terms and Conditions of Service

21. Term of enlistment.
22. Re-engagement and continuance of service.
23. Extension.

Discharge and Transfer to the Reserve

24. Discharge.
25. Transfer to the Reserve.
26. Postponement of discharge or transfer pending proceedings for offences etc.
27. Restrictions on reductions in rank of warrant officer and non-commissioned officer.
28. Right of warrant officers to discharge on reduction in rank.
29. Discharge upon prescribed grounds.
30. Right of soldier to purchase discharge.
31. Further provisions relating to purchase of discharge or transfer.
32. Service after training course.

Miscellaneous and Supplementary Provisions

33. Rules for reckoning service.
34. Validity of attestation and enlistment.
35. False answers in attestation papers.

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Treachery, cowardice and Offences Arising out of Military Service

36. Interpretation.
37. Aiding the enemy.
38. Communicating with the enemy.
39. Cowardice.
40. Offences against morale.
41. Becoming a prisoner of war through disobedience or wilful neglect, and failure to rejoin forces.
42. Offences by, or in relation to sentries.
43. Looting.
44. Obstructing operations, giving false air signals.

Mutiny and Insubordination

45. Mutiny.

46. Failure to suppress mutiny.
47. Insubordinate behaviour.
48. Disobedience to particular orders.
49. Obstruction of provost officer.
50. Disobedience to standing orders.

Desertion, absence without leave, etc.

51. Desertion.
52. Absence without leave.
53. Assisting and concealing desertion and absence without leave.
54. Failure to perform military duties.

Malingering and drunkenness

55. Malingering.
56. Drunkenness.
57. Fighting, threatening words, etc.

Offences relating to property

58. Public or service property.
59. Property of members of Force.
60. Other offences relating to property.

Flying, etc., offences

61. Loss or hazarding of ship.
62. Dangerous flying, etc.
63. Inaccurate certification of aircraft, etc.
64. Low flying and annoyance by flying.

Offences relating to, and by, persons in custody

65. Irregular arrest and confinement.
66. Permitting escape and unlawful release of prisoners.
67. Resisting arrest.
68. Escape.

Offences relating to court-martial and civil authorities

69. Offences relating to court-martial.
70. False statement.
71. Obstructing police officer, arresting officer or soldier.

Miscellaneous Offences

72. Disclosing information.

73. False answers on enlistment.
74. False document.
75. Scandalous conduct of officer.
76. Ill-treatment of officers or men of inferior rank.
77. Disgraceful conduct.
78. False accusation.
79. Attempts to commit military offences.
80. Conduct to prejudice of military discipline.

Civil Offences

81. Civil offences.
82. Punishment of officers.
83. Punishment of soldier.
84. Field punishment.
85. Imprisonment where no term specified.

Arrest

86. Power of arrest.
87. Avoidance of delay after arrest.

Investigation of, and summary dealing with, charges

88. Investigation of charges by commanding officer.
89. Charges to be dealt with summarily or by court-martial.
90. Further proceedings on charges against non-commissioned officer and soldier.

91. Charges against officers and warrant officers.
92. Dismissal of charges referred to a higher authority.
93. Commanding officer and appropriate superior authority.
94. Limitation on powers as to the summary dealing with charges.

Court-martial: general provisions

95. Trial by, and powers of, ordinary court-martial.
96. Trial by, and powers of, field court-martial.
97. Officers who may convene courts-martial.
98. Constitution of ordinary court-martial.
99. Constitution of field court-martial.
100. Supplementary provisions.
101. Place for siting of court-martial.

Court-martial: Provisions relating to trial

102. Challenges by accused.
103. Administration of oaths.

104. Court-martial to sit in open court.
105. Dissolution of court-martial.
106. Decision of court-martial.
107. Finding and sentence.
108. Power to convict of offence other than that charged.
109. Rules of evidence.
110. Privileges of witnesses and others at court-martial.
111. Offences by civilians in relation to court-martial.
112. Affirmations.

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

113. Confirmation of proceedings of court-martial.
114. Petition against finding or sentence.
115. Revision of findings of court-martial.
116. Power of confirming authorities.
117. Confirming authorities.
118. Approval of sentence of death by Governor-General.
119. Review of findings and sentences of court-martial.
120. Reconsideration of sentences.

Review of Summary Findings and Awards

121. Review of summary findings and awards.

Findings of insanity, etc.

122. Where accused found insane.

Commencement, suspension and duration of sentence

123. Commencement of sentence.
124. Sentence of imprisonment or detention.
125. Restriction on serving of sentence of detention in prison.
126. Confinement in civil prison.
127. Special provisions respecting sentences outside Antigua and Barbuda.
128. Country in which sentence of imprisonment or detention may be served.
129. Duty of officers in charge of prisons to receive prisoners.
130. Trial and punishment of offences where offenders ceases to be subject to this Act.
131. Limitation of time for trial of offences under this Act.

Relations between military and civil courts and finality of trials

132. Powers of civil courts.
133. Persons not to be tried under this Act for offences already disposed of.

Inquiries

- 134. Board of inquiry.
- 135. Inquiries into absence.

Miscellaneous

- 136. Restitution or compensation for theft, etc.
- 137. Appointment of Judge Advocate.
- 138. Promulgation.
- 139. Custody of proceedings of court-martial and right of accused to a copy thereof.
- 140. Indemnity for prison officers, etc.
- 141. Rules of procedure.
- 142. Imprisonment and detention regulations.
- 143. Board of inquiry rules.
- 144. Regulations.

PARTVI

Appeals from court-martial

- 145. Right of appeal.
- 146. Leave to appeal.
- 147. Determination of appeal in ordinary cases.
- 148. Power of Court of Appeal in certain cases.
- 149. Commencement of sentence.
- 150. Appeal final.
- 151. Proceeding in absence of appellants.
- 152. Appellant may present his case in writing.
- 153. Suspension of sentence of death.
- 154. Person not to be tried twice for same offence.
- 155. Removal of prisoners for registration.
- 156. Furnishing on appeal of documents relating to trial.
- 157. Application for registration.
- 158. Registrar to furnish forms, etc.
- 159. Saving of powers of reviewing authority.
- 160. Exercise of certain powers of Court of Appeal by a single Judge.
- 161. Refusal of application.
- 162. General provisions as to procedure.

PARTVII

Forfeiture and Deduction

- 163. Forfeiture and deduction.
- 164. Forfeiture of pay.
- 165. Deduction for payment of civil penalty.
- 166. Compensation for loss caused by wrongful act or negligence

- 167. Deduction for barrack damage.
- 168. Review of orders and remission of forfeiture and deduction.
- 169. Enforcement of maintainance and affiliation orders.
- 170. Maintainance of spouse or child.
- 171. Limit of deduction under 169 and 170 and effect on forfeiture.
- 172. Service of process in maintainance proceedings.

PART VIII

GOVERNMENT AND GENERAL PROVISIONS

Command

- 173. Precedence.
- 174. Command of Force.
- 175. Regulations respecting command.
- 176. Powers of command of member of co-operating forces.

Redress of Complaints

- 177. Complaints by officers.
- 178. Complaints by soldiers.

Exemptions for officers and soldiers

- 179. Exemption from jury service.
- 180. Exemption from tolls, etc.
- 181. Service property not to be taken in execution.
- 182. Arrest of deserters and persons absent without leave.
- 183. Proceedings before a civil court where person suspected of illegal absence.
- 184. Deserters and persons absent without leave surrendering to police.
- 185. Certificate of arrest or surrender of deserters and absentees
- 186. Superintendents of prisons and others to receive deserters and absentees.

Offences relating to military matters punishable by civil courts

- 187. Penalty for pretending to be deserter.
- 188. Penalty for procuring and assisting desertion.
- 189. Penalty for obstructing officers or soldiers in execution of their duty.
- 190. Penalty for aiding malingering.
- 191. Unlawful purchase, etc., military stores.
- 192. Illegal dealings in documents.
- 193. Unauthorised use of, and dealing in, decorations, etc.

Provisions as to evidence

- 194. General provisions as to evidence.

195. Proof of proceedings of court-martial.
196. Evidence of proceedings of court-martial.

Miscellaneous

197. Temporary reception into civil custody of person in military custody.
198. Assignment of or charge on military pay, pensions, etc.
199. Certain officers to take statutory declarations.

PARTIX

The Antigua and Barbuda Defence Force Reserve

200. Composition of Defence Force Reserve.
201. Enlistment and re-engagements the Reserve.
202. Training of Reserve.
203. Call-out of first class of Reserve on temporary service.
204. Called-out in the event of war, etc.
205. Paid-up policies.
206. Effective time of call-out.
207. Termination of service.
208. Posting or attachment of members of Reserve.
209. Failure to attend when called out.
210. Wrongful sale, etc., of public property.
211. Discharge from Reserve.
212. Application of Act to officers and soliders of Reserve.

PARTX

The Antigua and Barbuda Coast Guard

213. Special duties of Coast Guard.
214. Hazarding or loss of ship.
215. Sleeping on watch or abandoning post.
216. Powers in respect of vessels.
217. Application of S.I. 1965 No. 1525 U.K.
218. Power of arrest.

PARTXI

Antigua and Barbuda Cadet Corps

219. Interpretation.
220. Composition of Antigua and Barbuda Cadet Corps.
221. Enrolment in Cadet Corps.
222. Command and training of Cadet Corps.
223. Regulations for Cadet Corps.
224. Call-out of Cadet Corps in emergency.
225. Parent liable for uniform and equipment.

PART XII

Application of Act and Supplementary Provisions

- 226. Persons subject to military law.
- 227. Application of Act to civilians.
- 228. Application of U.K. legislation 3 & 4 Eliz. 2. C. 195 & 6 Eliz. 2. C. 53.
- 229. Regulations for the government etc. of the Antigua and Barbuda Defence force.
- 230. Execution of orders, instruments, etc.
- 231. Retirement of Chief of Defence Staff in certain cases.
- 232. Civilian staff.
- 233. Application of regulations made under Army Act 1955. 3 & 4 Eliz 2. C. 18.
- 234. Certain Acts not to apply.
- 235. Transitional Provision

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE