
CHAPTER 211**DEFENCE**

LIST OF AUTHORISED PAGES

1 – 2	LRO 1/2008
3 – 8	Original
9 – 10	LRO 1/2006
11 – 12	LRO 1/2008
13 – 22	Original
23 – 24	LRO 1/2006
25 – 30	Original
31 – 34	LRO 1/2006
35 – 46	Original
47 – 52	LRO 1/2006
53 – 82	Original
83 – 84	LRO 1/2006
85 – 92	Original
93 – 98	LRO 1/2008
99 – 100	Original
101 – 104	LRO 1/2006
105 – 112	Original
113 – 117	LRO 1/2006

ARRANGEMENT OF SECTIONS**PART I
PRELIMINARY**

SECTION

1. Short title.
2. Interpretation.
3. Establishment of Royal Bahamas Defence Force.
4. Employment of Defence Force.
5. Member of Defence Force to have certain powers of customs officer under Chapter 295 and peace officer under section 31 of Ch. 228.
6. Employment of Defence Force outside The Bahamas.
7. Overseas training.

**PART II
NATIONAL SECURITY COUNCIL**

8. Establishment of National Security Council.
9. Membership of Security Council.
10. Performance of functions of Security Council.

**PART III
OFFICERS**

11. Conditions of appointing officers.
12. Power to grant commissions.
13. Appointment of officers.
14. Regulations for this Part.

**PART IV
ENLISTMENT AND TERMS OF SERVICE IN THE
REGULAR FORCE**

- 15. Recruiting officers.
 - 16. Enlistment.
- Terms and Conditions of Service*

- 17. Terms of enlistment.
 - 18. Re-engagement and continuation.
 - 19. Prolongation of service.
- Discharge*

- 20. Discharge.
- 21. Postponement of discharge or transfer pending proceedings for offences, etc.
- 22. Restrictions on reduction in rank of warrant officers and non-commissioned officers.
- 23. Discharge upon prescribed ground.
- 24. Right of marine to purchase discharge.

Miscellaneous and Supplementary Provisions

- 25. Rules for revoking service.
- 26. Validity of attestation and enlistment.
- 27. False answers in attestation papers.

**PART V
DISCIPLINE AND TRIAL AND PUNISHMENT OF SERVICE
OFFENCES**

- 28. Misconduct in action.
- 29. Assisting the enemy.
- 30. Obstructing operations, giving false air signals, etc.
- 31. Looting.
- 32. Offences by or in relation to sentries, persons on watch, etc.
- 33. Failure to attend for duty, neglect of duty, etc.

Mutiny

- 34. Definition of “mutiny”.
- 35. Offences of mutiny.
- 36. Failure to suppress mutiny.

Insubordination and Similar Offences

- 37. Insubordinate behaviour.
- 38. Disobedience to lawful commands.
- 39. Fighting and quarrelling.
- 40. Obstruction of provost officers.
- 41. Disobedience to standing orders.

Desertion and Absence without Leave

- 42. Definition of “desertion”.
- 43. Offences of desertion.
- 44. Absence without leave, etc.
- 45. Failure to report deserters and absentees.

Navigation and Flying Offences

- 46. Loss or hazarding of ship.
- 47. Dangerous flying, etc.
- 48. Low flying.
- 49. Annoyance by flying.

Prize Offences

- 50. Prize offences by commanding officers.
- 51. Other prize offences.

Other Offences in respect of Ships and Aircraft

- 52. Inaccurate certification.
- 53. Malingering.
- 54. Drunkenness.
- 55. Drug abuse.

Offences relating to Property

- 56. Damage to, and loss of, public or service property, etc.
- 57. Damage to, or loss of the Defence Force’s aircraft or aircraft material.
- 58. Misapplication and waste of public or service property.
- 59. Offences relating to issues and decorations.

Offences relating to Billeting and Requisitioning of Vehicles

- 60. Billeting offences.
- 61. Offences in relation to requisitioning of vehicles, etc.

Offences relating to, and by, Persons in Custody

- 62. Permitting escape, and unlawful release of prisoners.
- 63. Resistance to arrest.
- 64. Escape from confinement.

Miscellaneous C_offences

- 65. Unauthorised disclosure of information.
- 66. Falsification of documents.
- 67. Making false statements on enlistment.
- 68. Offences against civilian population.
- 69. Offences against morale.
- 70. Scandalous conduct by officers.
- 71. Gamful occupation.
- 72. Ill-treatment of persons of inferior rank, etc.
- 73. Disgraceful conduct.
- 74. Offences in relation to courts-martial.
- 75. Conduct to the prejudice of discipline.

Attempts and Aiding and Abetting

- 76. Attempt to commit naval offence.
- 77. Aiding and abetting, etc., and inciting.

Civil C_offences

- 78. Civil offences.

Punishments

- 79. Scale of punishments and supplementary provisions.
- 80. Power to impose imprisonment for default in payment of fines.
- 81. Duty to bring offenders to justice and powers of arrest.
- 82. Provisions for avoiding delay after arrest.

Investigation of, and Summary Dealing with, Charges

- 83. Investigation of charges by commanding officer.
- 84. Charges to be dealt with summarily or by court-martial.
- 85. Further proceedings on charges against non-commissioned officers and marines.
- 86. Further proceedings on charges against officers.
- 87. Dismissal of charges referred to higher authority.
- 88. Officers who are commanding officers and appropriate superior authorities.
- 89. Limitation of powers of summary dealings with charges.

Jurisdiction

- 90. Jurisdiction of courts-martial.
- 91. Commander to convene court-martial.
- 92. Constitution of courts-martial.
- 93. Supplementary provisions as to constitution of courts-martial.
- 94. Place for sitting of courts-martial and adjournment to other places.
- 95. Challenges by accused.
- 96. Administration of oaths.
- 97. Courts-martial to sit in open court.
- 98. Dissolution of courts-martial.
- 99. Decisions of courts-martial.
- 100. Finding and sentence.
- 101. Power to convict of offence other than that charged.
- 102. Rules of evidence.
- 103. Privilege of witnesses and others at court-martial.
- 104. Offences by civilians in relation to courts-martial.
- 105. Affirmations.

Confirmation, Revision and Review of Proceedings of Courts-Martial

- 106. Confirmation of proceedings of courts-martial.
- 107. Petitions against finding or sentence.
- 108. Revision of findings of court-martial.
- 109. Powers of confirming authorities.
- 110. Confirming authorities.
- 111. Approval of death sentence by Governor-General.
- 112. Review of findings and sentences of courts-martial.
- 113. Reconsideration of sentences of imprisonment and detention.

Review of Summary Findings and Awards

- 114. Review of summary findings and awards.

Findings of Insanity

- 115. Provisions where accused found insane.

Commencement, Suspension and Duration of Sentence

- 116. Commencement of sentences.
- 117. Duration of sentences of imprisonment or detention.
- 118. Serving of sentences of detention in prisons.
- 119. Special provisions as to civil prisons in The Bahamas.

-
120. Country in which sentence of imprisonment or detention to be served.
 121. Duties of officers in charge of prisons and others to receive prisoners.

Trial of Persons Ceasing to be Subject to this Act and Time Limit for Trials

122. Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto.
123. Limitation of time for trial of offences under this Act.

Relations between Military and Civil Courts and Finality of Trials

124. Powers of civil courts.
125. Persons not to be tried under this Act for offences already disposed of.

Inquiries

126. Boards of Inquiry.

Miscellaneous Provisions

127. Restitution or compensation for theft, etc.
128. Appointment of judge advocate.
129. Promulgation.
130. Custody of proceedings of court-martial and right of accused to a copy thereof.
131. Indemnity for prison officers, etc.

Interpretation of Part V

132. Interpretation of Part V.

Rules of Procedure

133. Rules of Procedure.
134. Imprisonment and Detention Regulations.
135. Board of Inquiry Rules.
136. Miscellaneous Regulations.

**PART VI
APPEALS FROM COURTS-MARTIAL**

137. Right of appeal.
138. Procedure for applying for leave to appeal or lodging appeal.
139. Determination of appeals in ordinary cases.

-
140. Powers of Court of Appeal in special cases.
 141. Commencement of sentence.
 142. Appeals to be final.
 143. Proceedings may be heard in absence of appellants.
 144. Defence of appeals.
 145. Right of appellant to present his case in writing.
 146. Suspension of death sentence.
 147. Person not to be tried again where conviction quashed.
 148. Removal on appeal, of prisoners for purposes of this Part.
 149. Furnishing, on appeal, of documents relating to trial.
 150. Duties of Registrar of Court of Appeal with respect to appeals, etc.
 151. Saving of powers of reviewing authorities.
 152. General provisions as to procedure.

PART VII FORFEITURE AND DEDUCTIONS

153. Forfeitures and deductions, general provisions.
154. Forfeiture of pay for absence from duty.
155. Deductions for payment of civil penalties.
156. Compensation for loss occasioned by wrongful act or negligence.
157. Deductions for barrack damage.
158. Review of orders and remission of forfeitures and deductions.
159. Enforcement of maintenance and affiliation orders by deduction from pay.
160. Deductions from pay for maintenance of wife or child.
161. Limit of deductions under sections 159 and 160 and effect on forfeiture.
162. Service of process in maintenance proceedings.

PART VIII GOVERNMENT AND GENERAL PROVISIONS COMMAND

163. Command and precedence.
164. Command of Force.
165. Regulations as to command.
166. Powers of command of members of co-operating forces.
167. Powers of members of the Defence Force with respect to vessels.
168. Redress of complaints.

Exemptions for Officers and Marines

169. Exemptions from jury service.
170. Exemptions from tolls, etc.
171. Exemption from taking in execution of property used for naval purposes.

Provisions relating to Deserters and Absentees without Leave

- 172. Arrest of deserters and absentees without leave.
- 173. Proceedings before a civil court where persons suspected of illegal absence.
- 174. Deserters and absentees without leave surrendering to police.
- 175. Certificates of arrest or surrender of deserters and absentees.
- 176. Duties of superintendents of prisons and others to receive deserters and absentees.

Offences relating to Military Matters Punishable by Civil Courts

- 177. Punishment for pretending to be a deserter.
- 178. Punishment for procuring and assisting desertion.
- 179. Punishment for obstructing officers or marines in execution of duty.
- 180. Punishment for aiding malingering.
- 181. Unlawful purchase, etc., of naval stores.
- 182. Illegal dealings in documents relating to pay, pensions, mobilisation, etc.
- 183. Unauthorised use of and dealing in decorations, etc.

Provisions as to Evidence

- 184. General provisions as to evidence.
- 185. Proof of outcome of civil trial.
- 186. Evidence of proceedings of court-martial.

Miscellaneous Provisions

- 187. Temporary reception in civil custody of persons under escort.
- 188. Avoidance of assignment, of, or charge on naval pay, pensions, etc.
- 189. Power of certain officers to take statutory declaration.

PART IX**THE ROYAL BAHAMAS DEFENCE FORCE RESERVE**

- 190. Composition of Reserve.
- 191. Enlistment and re-engagement in the Reserve.
- 192. Training of Reserve.
- 193. Call out of Reserve on temporary service.
- 194. Call out of Reserve on permanent service.
- 195. Attendance upon call out.
- 196. Effective time of call out.
- 197. Termination of service.
- 198. Posting of attachment of members of Reserve.
- 199. Punishment for non-attendance.
- 200. Wrongful sale, etc., of public property.
- 201. Discharge from Reserve.
- 202. Application of Part IV.

PART X
APPLICATION OF THE LAW AND SUPPLEMENTARY
PROVISIONS

- 203. Persons subject to this Act.
- 204. Application of the Act.
- 205. Regulations.
- 206. Powers exercisable in subsidiary legislation.
- 207. Execution of orders, instruments, etc.
- 208. Pension of person transferred from the Police Force to the Force.
- 209. Judgments obtained in foreign courts against Government in relation to Defence Force not enforceable in The Bahamas.
- 210. Protection of members of Defence Force acting in execution of duty
- 211. Exemption from Liquor Licences Act.
- 212. Validation of appointments made to the Force before establishment of Force.

FIRST SCHEDULE — Commissions.

SECOND SCHEDULE — Alternative Offences of which Accused may be Convicted
by Court-Martial.

THIRD SCHEDULE.

CHAPTER 211

DEFENCE

An Act to provide for the defence and the maintenance of order in The Bahamas by the establishment of a Defence Force and to provide for matters connected therewith and incidental thereto.

7 cf 1979
5 cf 1988
25 cf 1993
SI 36/2005
32 cf 2007

[Assent 4th September, 1979]
[Commencement 31st March, 1980]

PART I
PRELIMINARY

1. This Act may be cited as the Defence Act. Short title.
2. (1) In this Act — Interpretation.

“acting rank” means rank of any description (however called) such that under regulations a commanding officer has power to order the holder to revert from that rank;

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

“aircraft material” includes —

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

“arrest” includes open arrest;

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- “Board of Inquiry Rules” means rules made by the Minister under section 135;
- “civil court” means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside The Bahamas;
- “the Commander” means the officer appointed by the Governor-General under section 164 to have command of the Defence Force;
- “commanding officer” has the meaning assigned to it by section 88(1);
- “commission” means an instrument by which the authority of an officer is exercised;
- “Commonwealth force” means any military, naval or air force raised in any country or territory within the Commonwealth by the government of that country but does not include the Defence Force;
- “competent authority” means such officer as may be prescribed;
- “corresponding rank” in relation to any rank or rating in a Commonwealth force or other force, means such rank or rating in any other of those forces as may be declared by regulations under section 205 to correspond therewith;
- “court-martial” except where it is expressed to be under service law, means a court-martial under this Act;
- “Court of Appeal” means the Court of Appeal for The Bahamas;
- “damage” includes destruction and reference to damaging shall be construed accordingly;
- “date of attestation” in relation to any person means the date on which he is attested in accordance with the provisions of regulations;
- “decoration” includes medal, medal ribbon, clasp and good conduct badge;
- “Defence Force” means The Royal Bahamas Defence Force established under section 3;
- “desertion” has the meaning assigned to it by section 42 and desert shall be construed accordingly;

5 *cf* 1988, s 6

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- “enemy” includes all persons engaged in espionage or in armed operations against the country or the Defence Force or any force co-operating therewith and also includes all saboteurs, armed mutineers, armed rebels, armed rioters and pirates;
- “Imprisonment and Detention Regulations” means regulations made by the Minister under section 134;
- “judge advocate” means a counsel and attorney appointed under this Act as legal adviser to a court-martial;
- “judgment” means any judgment or order given or made by a court in any civil proceedings whether before or after the passing of this Act whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;
- “marine” does not include an officer but, with the modifications contained in this Act in relation to non-commissioned officers, includes a person who is a non-commissioned officer or of lower rank.
- “officer under instruction” means an officer of the Defence Force in attendance at a court-martial for instruction in the procedure and functions of the court;
- “provost officer” means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;
- “public property” means any property belonging to the Government or held for the purposes thereof;
- “recruiting officer” means a person authorised as such under the provisions of section 15;
- “Reserve” or “The Royal Bahamas Defence Force Reserve” means the body of officers and marines established under paragraph (b) of section 3; *5 cf 1988, s 6*

“Rules of Procedure” means the Rules of Procedure made by the Minister under section 133;

“service” when used adjectivally, means belonging to or connected with the Defence Force or any part thereof, or any force co-operating therewith;

“Security Council” means the National Security Council established under section 8;

“service law” means any law (including this Act) governing service in the Defence Force or any force co-operating therewith;

“statutory declaration” means a solemn declaration made by a person in lieu of an oath, affirmation or affidavit before a person duly authorised to take such a declaration and admissible in evidence under the provisions of this Act;

Ch. 84.

“steals” has the same meaning as in the Penal Code and cognate expressions shall be construed accordingly;

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

“unit” means any body of the Defence Force declared by the Minister to be a unit.

(2) References to officers and marines of the Defence Force shall, except in Part VII, be construed as including references to officers and marines attached or seconded to the Defence Force.

Establishment of
Royal Bahamas
Defence Force.

3. There shall be established and maintained in The Bahamas a force to be called The Royal Bahamas Defence Force consisting of —

5 cf 1988, s 6

(a) a regular Force to be known as The Royal Bahamas Defence Force; and

5 cf 1988, s 6

(b) a reserve Force to be known as The Royal Bahamas Defence Force Reserve.

Employment of
Defence Force.

4. The Defence Force shall be charged with —

(a) the defence of The Bahamas;

(b) the protection of the territorial integrity of The Bahamas;

(c) the patrol of the waters of The Bahamas;

- (d) generally with assistance and relief in times of disaster;
- (e) the maintenance of order in The Bahamas in conjunction with the law enforcement agencies of The Bahamas;
- (f) with such other duties as may from time to time be determined by the Security Council.

5. (1) A member of the Defence Force, shall, while on duty, have, exercise and enjoy all the powers, authorities, privileges and immunities and perform all the responsibilities of a customs officer under sections 96, 97, 98, 102, 109, 126 and 138 of the Customs Management Act, and shall be deemed to be a customs officer for the purposes of the said sections.

Member of Defence Force to have certain powers of customs officer under Chapter 293 and peace officer under section 31 of Ch. 228.

(2) A member of the Defence Force, shall, while on duty, have, exercise and enjoy all the powers, authorities, privileges and immunities of a peace officer under section 31 of the Dangerous Drugs Act, and shall be deemed to be a peace officer for the purposes of the said section.

Ch. 228.

6. Notwithstanding anything contained in this Act, the Governor-General may at any time order that the whole or any part of the Defence Force shall be employed out of or beyond The Bahamas.

Employment of Defence Force outside The Bahamas.

7. (1) The Minister may order that any officer or marine of the regular Force or any officer or marine of the Reserve, shall proceed to any place outside The Bahamas for the purpose of undergoing instruction or training or for duty or employment.

Overseas training.

(2) The Security Council may place any officer or marine of the Defence Force at the disposal of the military authorities of any other country or territory for the purpose of his being attached to the armed forces of that country or territory.

PART II NATIONAL SECURITY COUNCIL

8. (1) There shall be a council to be called the National Security Council which shall be responsible for the command, discipline and administration of the Defence Force and for all other matters in relation to the Defence Force.

Establishment of National Security Council.

(2) The authority for the command, discipline, and administration of the Defence Force shall, subject to subsection (1), be exercised by the Minister.

(3) The responsibility as regards the operational use of the Defence Force shall be vested in the Commander subject to the general and special directions of the Minister.

Membership of
Security Council

- 9.** (1) The members of the Security Council shall be —
- (a) the Prime Minister, who shall be the Chairman of the Security Council;
 - (b) the Minister responsible for Defence (if such Minister is not the Prime Minister);
 - (c) such other Ministers as may be appointed by the Prime Minister;
 - (d) such other persons as may be appointed by the Prime Minister for such periods, as he shall specify.

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

(3) The Chairman may, after consultation with the Minister responsible for Defence, summon any person who is not a member of the Security Council to attend any meeting of the Security Council whenever he considers it desirable so to do.

Performance of
functions of
Security Council

- 10.** (1) The Security Council may make rules for all or any of the following matters —
- (a) the organisation of the work of the Security Council and the manner in which it shall perform its functions and the duties and responsibilities of the several members thereof;
 - (b) the delegation, by notification in the *Gazette* of the powers or duties of the Security Council to any member thereof;
 - (c) any other matters for which the Security Council may consider it necessary or desirable to provide in order to secure the better performance of the functions of the Security Council.

(2) Nothing in this Act shall be deemed to require the publication in the *Gazette* of any rules made under subsection (1).

(3) Subject to any rules made under subsection (1) and to the provisions of this Act, the Security Council may regulate its own proceedings.

PART III OFFICERS

11. (1) There shall be a Commissions Board of three persons with which the Governor-General may consult in relation to the exercise of his powers conferred by section 12. Conditions of appointing officers.

(2) The members of the Commissions Board shall be —

- (a) a member appointed by the Security Council from among the officers of the Defence Force not below the rank of commander;
- (b) a member of the Public Service Commission appointed by the Minister;
- (c) one other person appointed by the Minister.

(2) A member of the Commissions Board shall hold office for a period not exceeding three years, and shall be eligible for re-appointment.

(3) The member mentioned in paragraph (a) of subsection (2) shall be Chairman of the Board.

12. (1) The power to grant commissions in the Defence Force shall be vested in the Governor-General. Power to grant commissions.

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

(3) Every officer on being granted a commission shall be issued with a commission in the form set out in the First Schedule which commission shall be signed by the Governor-General. First Schedule.

13. Every officer upon being granted a commission shall be appointed by the Minister either to the regular Force or the Reserve. Appointment of officers.

14. (1) Subject to this Act, the Minister may make regulations with respect to all or any of the following matters, that is to say, the commissioning of officers, their Regulations for this Part.

terms of service, appointment, transfer, promotion, retirement, resignation, removal from office and such other matters concerning officers as may seem to him necessary.

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

PART IV ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Recruiting
officers.

15. Any person authorised in that behalf by regulations, in this Act referred to as a recruiting officer, may enlist recruits in the regular Force in the prescribed manner.

Enlistment.

16. (1) A person offering to enlist in the regular Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him and a recruiting officer shall not enlist any person in that Force unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the age of eighteen years in the regular Force.

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

Terms and Conditions of Service

Terms of
enlistment.

17. The term for which a person enlisting in the regular Force may be enlisted shall be such term beginning with the date of his attestation and not exceeding twenty-five years or such other period as may be prescribed.

Re-engagement
and
continuation.

18. Notwithstanding anything in section 17, any marine of the regular Force who at any time has completed

twenty-five years of service or such other prescribed period may, with the approval of the competent authority, re-engage with the regular Force for such further period or periods of service as may be prescribed until he attains the age of fifty-five years.

19. Any marine of the regular Force whose service expires during a state of war, insurrection, hostilities or public emergency may be retained in that Force and his service prolonged for such further period as the Security Council may direct.

Prolongation of service

Discharge

20. (1) Save as in this Act provided, every marine of the regular Force upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged shall remain subject to this Act.

Discharge

(2) Where a marine of the regular Force is, when entitled to be discharged, serving out of The Bahamas, then —

- (a) if he requires to be discharged in The Bahamas, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or if he consents to his discharge being delayed, within six months from his arrival; but
- (b) if at his request he is discharged at the place where he is serving, he shall have no claim to be sent to The Bahamas or elsewhere.

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

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

21. (1) Notwithstanding anything in this Part, a marine of the regular Force shall not be entitled to be discharged at a time when he has become liable to be proceeded against for an offence against any of the provisions of this Act:

Postponement of discharge or transfer pending proceedings for offences, etc

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

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

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

22. (1) A non-commissioned officer of the regular Force shall not be reduced in rank except by a sentence of a court-martial or by order of an officer not below the rank of senior lieutenant or corresponding rank, authorised by regulations to act for the purposes of this subsection.

(2) An authorisation under subsection (1) may be given generally or subject to such limitations as may be prescribed.

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

Discharge upon prescribed ground.

23. A marine of the regular Force may be discharged by the competent authority at any time during the currency of any term of engagement upon such grounds as may be prescribed.

Right of marine to purchase discharge.

24. (1) Subject to this section, a marine of the regular Force shall be entitled to claim his discharge at any time within three months after the date of his first attestation and if he makes such a claim he shall on payment of a sum to be fixed by the Commander, but which shall not exceed two hundred dollars, be discharged with all convenient speed, but until discharged shall remain subject to this Act.

(2) Section 20 shall not apply to a marine discharged under this section.

(3) Notwithstanding this section, a marine of the regular Force shall not be entitled to claim his discharge pursuant to this section while marines of that Force are required to continue their service under section 19.

Miscellaneous and Supplementary Provisions

Rules for revoking service.

25. In reckoning the service of any marine of the regular Force towards discharge or re-engagement there shall be excluded therefrom —

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

26. (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a marine of the regular Force —

Validity of
attestation and
enlistment

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

(2) Where a person has received pay as a marine of the regular Force without having previously made such declaration as aforesaid then —

- (a) he shall be deemed to be a marine of that Force until discharged;
- (b) he may claim his discharge at any time and if he makes such claim the claim shall be submitted as soon as may be to the competent authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in subsections (1) and (2) shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

False answers
in attestation
papers

27. (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 shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars.

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

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF SERVICE OFFENCES

Misconduct in
action

28. (1) A person subject to this Act shall be guilty of an offence against this section if, without lawful excuse, he —

- (a) surrenders any place or thing to the enemy; or
- (b) abandons any place or thing which it is his duty to defend against the enemy or to prevent from falling into the hands of the enemy.

(2) A person subject to this Act shall be guilty of an offence against this section if, being in the presence or vicinity of the enemy, or being engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy, he —

- (a) fails to use his utmost exertions to carry the lawful orders of his superior officers into execution; or
- (b) while on guard duty and posted or ordered to patrol, or while on duty, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be; or
- (c) behaves in such a manner as to show cowardice, or induces any other person so to behave at a time when that other person, being a member of the Defence Force or of a force co-operating therewith, is in the presence or vicinity of the

enemy, or is engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy; or

(d) uses words likely to cause despondency or unnecessary alarm.

(3) A person guilty of an offence against this section shall be liable —

(a) if the offence consisted in an act or omission falling within subsection (1) or paragraph (a) of subsection (2) and was committed with intent to assist the enemy, to suffer death or any less punishment authorised by this Act;

(b) in any other case, to imprisonment or any less punishment authorised by this Act.

29. (1) A person subject to this Act shall be guilty of an offence against this section if, knowingly and without lawful excuse he — Assisting the enemy.

(a) communicates with, or gives intelligence to, the enemy; or

(b) fails to make known to the proper authorities any information received by him from the enemy; or

(c) furnishes the enemy with supplies of any description; or

(d) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities or of measures likely to influence morale, or in any other manner whatsoever not authorised by international usage; or

(e) having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking, any reasonable steps to rejoin the Defence Force which are available to him or, as the case may be, to that other person; or

(f) harbours or protects an enemy not being a prisoner of war.

(2) A person guilty of an offence against this section shall be liable —

- (a) if the offence consisted in an act or omission falling within paragraph (a), (b), (c), (d) or (f) of subsection (1) and was committed with intent to assist the enemy, to suffer death or any less punishment authorised by this Act;
- (b) in any other case, to imprisonment or any less punishment authorised by this Act.

Obstructing operations, giving false air signals, etc.

30. (1) A person subject to this Act shall be guilty of an offence against this section if he does any act likely to imperil the success of any action or operation on the part of the Defence Force, or wilfully delays or discourages upon any pretext whatsoever any such action or operation.

(2) A person subject to this Act shall be guilty of an offence against this section 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 guilty of an offence against this section shall be liable —

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

Looting.

31. Any person subject to this Act who —

- (a) steals from, or with intent to steal searches, the person of anyone killed, wounded or captured in the course of warlike operations, or killed, injured or detained in the course of operations undertaken by the Defence Force for the preservation of law and order or otherwise in aid of the civil authorities; or
- (b) steals any property which has been left exposed or unprotected in consequence of any such operations as are mentioned in paragraph (a); or
- (c) takes, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable to imprisonment or any less punishment authorised by this Act.

- 32.** Any person subject to this Act who —
- (a) while on guard duty and posted or ordered to patrol, or on watch, or under orders to regulate traffic by land, water or air, sleeps or, without having been regularly relieved, leaves any place where it is his duty to be; or
 - (b) strikes, or otherwise uses force against, a member of the Defence Force or of any forces co-operating therewith, who is on guard duty and posted or ordered to patrol or to watch, or under orders to regulate traffic by land, water or air; or
 - (c) by the threat of force compels any such person as is mentioned in paragraph (b) to let him or any other person pass, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.
- 33.** Any person subject to this Act who —
- (a) without reasonable excuse, fails to attend for any duty of any description, or leaves any such duty before he is permitted to do so;
 - (b) neglects to perform, or negligently performs, any duty of any description; or
 - (c) without reasonable excuse, fails to submit to a medical examination by a medical officer of the Defence Force, or to provide to a commissioned officer a specimen of urine for a laboratory test, when reasonably requested by the Commander to do so in the interests of defence,

Offences by or in relation to sentries, persons on watch, etc

Failure to attend for duty, neglect of duty, etc

5 cf 1988, s 2

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Mutiny

- 34.** In this Act “mutiny” means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law —
- (a) to overthrow or resist lawful authority in the Defence Force or any forces co-operating therewith, or in any part of any of the said forces;
 - (b) to disobey such authority in such circumstances as to make the disobedience subversive of

Definition of “mutiny”

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 Defence Force or in any forces co-operating therewith, or in any part of any of the said forces.

Offences of
mutiny

35. (1) Every person subject to this Act who takes part in a mutiny which has as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service, or who incites any other person subject to service law to take part in such a mutiny, whether actual or intended, shall, be liable to death or any less punishment authorised by this Act.

(2) Every person subject to this Act who takes part in a mutiny not described in subsection (1), or incites any other person subject to service law to take part in such a mutiny, whether actual or intended, shall be liable to imprisonment or any less punishment authorised by this Act.

Failure to
suppress mutiny

36. Every person subject to this Act who, knowing that a mutiny is taking place or is intended —

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

shall be liable if the offence is committed with intent to assist the enemy, to death or any less punishment authorised by this Act, and in any other case, to imprisonment or any less punishment so authorised.

Insubordination and Similar Offences

Insubordinate
behaviour

37. Every person subject to this Act who —

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

shall be liable to imprisonment or any less punishment authorised by this Act:

Provided that it shall be a defence for any person charged under this section to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was his superior officer.

38. Any person subject to this Act who, whether wilfully or through neglect, disobeys any lawful command (by whatever means communicated to him) shall be liable to imprisonment or any less punishment authorised by this Act.

Disobedience to lawful commands.

39. Every person subject to this Act who without reasonable excuse —

Fighting and quarrelling.

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

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

40. Every person subject to this Act who obstructs, or refuses, when called on, to assist, any provost officer, or any person (whether subject to this Act or not) legally exercising authority under or on behalf of a provost officer, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act;

Obstruction of provost officers.

Provided that it shall be a defence for any person charged under this section to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was a provost officer, or, as the case may be, a person legally exercising authority under or on behalf of a provost officer.

41. (1) Every person subject to this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him or which he might reasonably be expected to know, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Disobedience to standing orders.

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

Desertion and Absence without Leave

Definition of
“desertion”.

42. A person is guilty of desertion within the meaning of this Act if he —

- (a) leaves or fails to attend at his unit, ship or place of duty with the intention of remaining permanently absent from duty without lawful authority, or, having left or failed to attend at his unit, ship or place of duty, thereafter forms the like intention; or
- (b) absents himself without leave with intent to avoid serving at any place overseas, or to avoid service of any particular service when before the enemy.

Offences of
desertion.

43. (1) Every person subject to this Act who deserts, shall be liable to imprisonment or any less punishment authorised by this Act.

(2) A person convicted of desertion shall, except so far as the court or officer by whom he is tried may otherwise direct, forfeit all pay, bounty, salvages and allowances earned by him, all annuities, pensions and gratuities granted to him, and all clothes and effects left by him on board his ship or at his place of duty.

Absence without
leave, etc.

44. Every person subject to this Act —

- (a) absents himself without leave; or
- (b) improperly leaves his ship,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act, and to such other punishment by way of forfeiture of pay or other benefits as may be prescribed.

Failure to report
deserters and
absentees.

45. Every person subject to this Act who, knowing that any other person subject thereto has committed an offence, or is attempting to commit an offence, under section 43(1) or section 44 —

- (a) fails to report the fact without delay; or

- (b) fails to take any steps within his power to cause that person to be apprehended,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Navigation and Flying Offences

46. Every person subject to this Act who, either wilfully or by negligence, causes or allows to be lost, stranded or hazarded any ships or vessels belonging to the Defence Force shall be liable, if he acts wilfully or with neglect, to imprisonment or any less punishment authorised by this Act, and in any other case to imprisonment for a term not exceeding two years or any less punishment so authorised.

Loss or
hazarding of
ship

47. Every person subject to this Act who is guilty of an act or neglect in flying, or in the use of any aircraft or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person, shall be liable —

Dangerous
flying, etc

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

48. Every person subject to this Act who, being the pilot of any aircraft belonging to the Defence Force, flies it at a height less than such height as may be prescribed except —

Low flying

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

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act:

Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.

Annoyance by
flying

49. Every person subject to this Act, who being the pilot of any aircraft belonging to the Defence Force, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person, shall be liable to dismissal from the Defence Force or any less punishment authorised by this Act:

Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.

Prize Offences

Prize offences by
commanding
officers

50. Every person subject to this Act who, being in command of any of the ships, vessels or aircraft belonging to the Defence Force —

- (a) having taken any ship, vessel or aircraft as prize, fails to send to the Supreme Court, or to some other court having jurisdiction in the case, all the ship papers or aircraft papers, as the case may be, found on board;
- (b) unlawfully makes any agreement for the ransoming of any ship, vessel, aircraft or goods taken as prize; or
- (c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, vessel, aircraft, or goods taken as prize,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Other prize
offences

- 51.** Every person subject to this Act who —
- (a) strikes or otherwise ill-treats any person who is on board a ship, vessel or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession;
 - (b) removes out of any ship, vessel or aircraft taken as prize (otherwise than for safe keeping or for the necessary use and service of the Defence Force or any forces co-operating therewith) any goods not previously adjudged by the Supreme Court, or some other court having jurisdiction in the case, to be lawful prize; or

- (c) breaks bulk on board any ship, vessel or aircraft taken as prize, or detained in exercise of any belligerent right or under any enactment, with intent to embezzle or fraudulently misapply anything therein,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Other Offences in respect of Ships and Aircraft

52. Every person subject to this Act who makes or signs, without having ensured its accuracy — Inaccurate certification.

- (a) a certificate relating to any matter affecting the seagoing or fighting efficiency of any ships or vessels belonging to the Defence Force; or
- (b) any certificate relating to any aircraft or aircraft material, belonging to the Defence Force,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Malingering, Drunkenness and Drug Abuse

53. (1) A person is guilty of malingering within the meaning of this section if he falsely pretends to be suffering from sickness or disability, if he injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, if he injures another person subject to service law at the instance of that other person and with intent thereby to render that other person unfit for service or if, with intent to render or keep himself unfit for service, he does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability; and for the purposes of this subsection the expression “unfit” includes temporarily unfit. Malingering.

(2) Every person subject to this Act who malingers shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

54. (1) A person is drunk within the meaning of this section if owing to the influence of alcohol or any drug, Drunkenness.

whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he might reasonably expect to be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit on the Defence Force.

(2) Every person subject to this Act who is drunk, whether on duty or not, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Drug abuse.
5 cf 1988, s 3

55. (1) If any person subject to this Act smokes or otherwise uses any dangerous drug he shall be liable to dismissal from the Defence Force with disgrace or to any less punishment authorised by this Act.

(2) In any proceedings for an offence under subsection (1), the commanding officer or the court-martial, as the case may be, shall have regard to any evidence which may be given of the proportion or quantity of any dangerous drug which at any material time was present in the body of the accused, as ascertained by analysis of a specimen of urine provided by the accused to a commissioned officer of the Defence Force for a laboratory test.

(3) For the purposes of subsection (2), a certificate purporting to be signed by an analyst and certifying the proportion or quantity of any dangerous drug found in a specimen of urine identified by the certificate shall be evidence of the matters so certified and of the qualification of the analyst.

(4) For the purposes of subsection (2) a certificate purporting to be signed by a commissioned officer of the Defence Force and certifying that he took a specimen of urine from a person for a laboratory test shall be evidence of the matters so certified.

(5) In any proceedings for an offence under subsection (1), it shall be a defence to prove that at the time of the act alleged against the accused he was using the dangerous drug for medical purposes and that he used it on medical advice and complied with any directions given as part of that advice.

(6) In this section —

“analyst” means a person employed in the public service as an analyst;

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

Ch. 228.

“laboratory test” means the analysis of a specimen of urine provided for the purpose.

Offences relating to Property

56. (1) Any person subject to this Act who —

- (a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any public or service property, or any property belonging to another person so subject; or
- (b) by wilful neglect causes or allows damage to, or the loss of, any public or service property or property so belonging,

Damage to, and loss of, public or service property, etc.

shall be liable to imprisonment or any less punishment authorised by this Act.

(2) Any person subject to this Act who —

- (a) by negligent act or omission causes or allows damage to, or the loss of, any public or service property; or
- (b) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any such property,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

57. (1) Without prejudice to the generality of section 56, a person subject to this Act shall be guilty of an offence if he —

- (a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any of the aircraft or aircraft material belonging to the Defence Force; or
- (b) by wilful neglect causes or allows damage to, or the loss of, any of the aircraft or aircraft material belonging to the Defence Force; or
- (c) without lawful authority disposes of any aircraft or aircraft material belonging to the Defence Force; or

Damage to, or loss of the Defence Force’s aircraft or aircraft material.

- (d) by any negligent act or omission, causes or allows damage to, or the loss of, any aircraft or aircraft material belonging to the Defence Force; or
- (e) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any aircraft or aircraft material belonging to the Defence Force; or
- (f) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration by or under the authority of a neutral state, or the destruction in a neutral state, of any aircraft belonging to the Defence Force.

(2) A person guilty of an offence against this section shall be liable —

- (a) if his office consisted in an act or omission falling within paragraph (a), (b), or (c) of subsection (1), or if it consisted in an act or omission falling within paragraph (f) of that subsection and it is proved that he acted wilfully or with wilful neglect, to imprisonment or any less punishment authorised by this Act;
- (b) in any other case, to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Misapplication and waste of public or service property.

58. Any person subject to this Act who misapplies or wastefully expends any public or service property shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Offences relating to issues and decorations.

59. (1) Every person subject to this Act who makes away with (whether by pawning, selling, destroying or in any other way), or loses or by negligence damages or allows to be damaged —

- (a) any clothing, arms, ammunition or other equipment issued to him for his use for service purposes; or
- (b) any naval, military or air force decoration granted to him,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

(2) It shall be a defence for a person charged under this section with losing any property that he took reasonable steps for its care and preservation.

*Offences relating to Billeting and
Requisitioning of Vehicles*

- 60.** Every person subject to this Act who — Billeting
offences
- (a) knowing that no billeting requisition is in force under any law authorising him to demand any billets, or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;
 - (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under any law, any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or
 - (c) wilfully or by wilful neglect destroys or damages, or causes or allows to be destroyed or damaged, any premises in which he is billeted in pursuance of a billeting requisition under any law or any property being in such premises,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

- 61.** Every person subject to this Act who — Offences in
relation to
requisitioning of
vehicles, etc
- (a) knowing that no requisitioning order is in force under any law authorising him to give directions for the provision of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the whole of the vehicle or orders or procures another person to give such directions;
 - (b) in purported exercise of powers conferred by a requisitioning order under any law, takes, or orders or procures any other person to take possession of a vehicle, knowing that no requisition order is in force under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such an order; or

- (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order under any law,

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

(2) Subsection (1) shall apply in relation to horses, mules, food and forage and stores as it applies in relation to vehicles.

*Offences relating to, and by, Persons in
Custody*

Permitting
escape, and
unlawful release
of prisoners

62. (1) Every person subject to this Act who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall be liable to imprisonment or any less punishment authorised by this Act.

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

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Resistance to
arrest

63. (1) Every person subject to this Act, who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

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

(3) Every person guilty of an offence against this section shall be liable to imprisonment for a term not

exceeding two years or any less punishment authorised by this Act.

64 Every person subject to this Act who escapes from arrest, prison or other lawful custody (whether naval or not) shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Escape from confinement.

Miscellaneous Offences

65. (1) Every person subject to this Act who without lawful authority discloses or purports to disclose, whether orally, in writing, by signal or by any other means whatsoever, information relating to any matter upon which information would or might be useful to an enemy shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Unauthorised disclosure of information.

(2) It shall be a defence for a person charged with an offence under this section that he did not know and had no reasonable cause to believe that the information disclosed related to a matter upon which information would or might be directly or indirectly useful to an enemy.

66. Every person subject to this Act who —

- (a) makes, signs, or makes an entry in, any report, return, pay list or certificate or other official document, being a document or entry which is to his knowledge false in a material particular; or
- (b) alters any report, return, pay list or certificate or other official document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or
- (c) with intent to deceive, fails to make an entry in any such document,

Falsification of documents.

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

67. Every person who, when before a recruiting officer for the purpose of being attested, has knowingly made a false answer to any question contained in the

Making false statements on enlistment.

attestation paper and put to him by or by direction of the recruiting officer shall, if he has since become and remains subject to this Act, be liable to imprisonment for three months or to any less punishment authorised by this Act.

Offences against
civilian
population.

68. Every person subject to this Act who, in any country or territory outside The Bahamas, commits any offence against the person or property of any member of the civilian population shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Offences against
morale.

69. Any person subject to this Act who spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of the Defence Force, of any forces co-operating therewith, or of any part of any of those forces, being reports likely to create despondency or unnecessary alarm, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Scandalous
conduct by
officers.

70. Every officer subject to this Act who behaves in a scandalous manner unbecoming the character of an officer shall be liable to dismissal from the Defence Force with or without disgrace.

Gainful
occupation.
5 cf 1988, s 4

71. (1) Except with the authorisation of the Minister under subsection (2), no officer or marine shall directly or indirectly —

- (a) take and continue in any employment;
- (b) practise any profession;
- (c) carry on any trade; or
- (d) engage in any business or occupation, other than in service in the Defence Force.

(2) Where it appears to the Minister that any employment, profession, trade, business or occupation —

- (a) is in the public interest; and
- (b) cannot adequately be undertaken by a person other than an officer or marine,

the Minister may in writing authorise the officer or marine to undertake such employment, profession, trade, business or occupation subject to such conditions as may be specified in the authorisation.

(3) Any officer or marine who acts in contravention of subsection (1) is guilty of an offence and liable to a fine of a sum not exceeding the equivalent of twenty-eight days' pay.

(4) In this section “officer or marine” means officer or marine of the regular Force.

72. If —

- (a) any officer subject to this Act strikes or otherwise ill-treats any officer subject thereto of inferior rank or less seniority, or any marine so subject; or
- (b) any marine subject to this Act and of or above the rate of leading marine, strikes or otherwise ill-treats any marine subject thereto of inferior rate or less seniority,

Ill-treatment of persons of inferior rank, etc

he shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

73. Every person subject to this Act who is guilty of any disgraceful conduct of a cruel, indecent, or unnatural kind shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Disgraceful conduct

74. (1) Every person subject to this Act who —

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

Offences in relation to courts-martial

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

shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

(2) Where an offence against subsection (1) is committed in relation to a court-martial and that court is of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial under this Act, the court may by order under the hand of the president sentence the offender —

- (a) if he is an officer, to imprisonment for a term not exceeding twenty-one days, or to a fine not exceeding the amount of his pay for twenty-eight days (a day's pay being taken for this purpose as the gross amount which is, or would apart from any forfeiture be issuable to the offender in respect of the day on which the order is made);
- (b) in any other case, to imprisonment or detention for such a term as aforesaid, or to such a fine as aforesaid.

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

Conduct to the
prejudice of
discipline

75. Every person subject to this Act who is guilty of any act, conduct or neglect prejudicial to —

- (a) the discipline of the Defence Force;
- (b) the safety, interests or operations of the Defence Force,

not described in the foregoing provisions of this Act, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act.

Attempts and Aiding and Abetting

Attempt to
commit naval
offence

76. Every person subject to this Act who attempts to commit an offence against any of the foregoing provisions of this Act, shall be liable to the like punishment as for that offence:

Provided that a person shall not in any case be liable under this section to any greater punishment than imprisonment.

77. (1) Any person subject to this Act who aids, abets, counsels or procures the commission by another person of an offence against any of the foregoing provisions of this Act, or who incites another person to commit any such offence, shall himself be guilty of the offence in question, and shall be liable to be charged, tried and punished accordingly.

Aiding and abetting, etc., and inciting.

(2) A person may be guilty by virtue of subsection (1) of an offence against section 66 whether or not he knows the nature of the document in question.

Civil Offences

78. (1) Every person subject to this Act who is guilty of any civil offence (that is to say, any act or omission which is punishable by the law of The Bahamas or would be punishable if committed in The Bahamas) shall be liable on conviction under this Act —

Civil offences.

- (a) in the case of an offence of treason or murder, to death;
- (b) in the case of any other offence, to such punishments (being a punishment or punishments authorised by this Act) as could be imposed on the offender on conviction by a civil court of the like offence committed in The Bahamas, or to any punishment so authorised which is less than the maximum punishment which could be so imposed.

(2) A person subject to this Act may be charged an offence under this section notwithstanding that could on the same facts be charged with an offence any other provision of this Part.

Punishments

79. (1) The punishments which may be awarded persons convicted of offences under this Part are subject to the following provisions of this section as follows —

Scale of punishments and supplementary provisions.

- (a) death;
- (b) imprisonment;
- (c) dismissal with disgrace from the Defence Force;
- (d) dismissal from the Defence Force;
- (e) detention for a term not exceeding two years;

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- (f) forfeiture of seniority for a specified term or otherwise;
 - (g) dismissal from the ship to which the offender belongs;
 - (h) disrating;
 - (i) fine;
 - (j) severe reprimand;
 - (k) reprimand;
 - (l) in the case of an offence which has occasioned any expense, loss or damage, stoppages, that is to say, the recovery by deductions from the offender's pay, of a specified sum by way of compensation for the expense, loss or damage; and
 - (m) such minor punishments as may from time to time be prescribed,

and references in this Act to any punishment authorised by this Act are, subject to the limitation imposed in any particular case by the addition of the word "less", references to any one or more of the said punishments.

For the purposes of this Part a punishment specified in any of the above paragraphs shall be treated as less than the punishments specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs, following it:

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

- (2) Subsection (1) shall have effect —
 - (a) in relation to a convicted person who is an officer, with the omission of paragraphs (e), (h) and (m);
 - (b) in relation to a convicted person who is a warrant officer, with the omission of paragraphs (f), (g) and (m); and
 - (c) in relation to a convicted person who is a rating below the rate of warrant officer, with the omission of paragraphs (f) and (g) and, if he is below the rate of leading seaman or equivalent rate, of paragraphs (h), (j) and (k) also.
- (3) A person sentenced under this Act to imprisonment shall also be sentenced either to dismissal with

disgrace from the Defence Force or to dismissal from the Defence Force:

Provided that, if the sentencing authority fail to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of dismissal from the Defence Force.

(4) A marine of the rate of leading marine seaman or equivalent rate sentenced under this Act to imprisonment, to dismissal from the Defence Force (whether or not with disgrace), or to detention, shall also be sentenced to disrating:

Provided that, if the sentencing authority fail to give effect to this subsection, their sentence shall not be invalid but shall be deemed to include a sentence of disrating.

(5) A sentence of disrating awarded in compliance with subsection (4), or deemed to have been awarded by virtue of the proviso to that subsection, shall be one reducing the offender to such rate as may be prescribed in relation to persons of the class to which he belongs by regulations and any other sentence of disrating under this Act may reduce the offender to any rate not lower than that so prescribed.

(6) The amount of a fine that may be awarded under this Act by way of punishment for an offence, except in the case of an offence under section 78 hereof, shall not exceed the amount of the offender's pay for twenty-eight days; and in the said excepted case —

- (a) the amount of a fine that may be so awarded by a court-martial —
 - (i) where the civil offence constituting the offence under that section is punishable by a civil court in The Bahamas only on summary conviction, and is so punishable by a fine, shall not exceed the maximum amount of that fine; and
 - (ii) where the said civil offence is punishable by a civil court in The Bahamas on information (whether or not it is also punishable on summary conviction) by a fine shall not exceed the maximum amount of that fine;
- (b) the amount of a fine that may be so awarded where the offence is tried summarily —

- (i) in any case shall not exceed the amount of the offender's pay for twenty-eight days;
- (ii) where the said civil offence is punishable by a civil court in The Bahamas only on summary conviction, and is so punishable by a fine of a maximum amount less than the above mentioned in subparagraph (1) above, shall not exceed that maximum; and
- (iii) where the said civil offence is punishable by a civil court in The Bahamas on information by a fine or a maximum amount less than the amount so mentioned (whether or not it is also punishable on summary conviction) shall not exceed that maximum;

and for the purposes of this subsection a day's pay shall, as regards a person found guilty of an offence, be deemed to be the gross pay that is, or would (apart from any forfeiture) be, issuable to that person in respect of the day on which punishment is awarded in respect of that offence.

Power to impose imprisonment for default in payment of fines

80. (1) Subject to this section, if a court-martial imposes a fine on a person found guilty of any offence —

- (a) who is sentenced to imprisonment on the same occasion for the same or another offence; or
- (b) who is already serving or otherwise liable to serve a term of imprisonment,

it may make an order fixing a further consecutive term of imprisonment such as is specified in subsection (2) which the said person is to undergo if any such part of the fine is not duly paid or recovered on or before the date on which he could otherwise be released.

(2) The further term of imprisonment shall be such term, not exceeding twelve months, as the court in all the circumstances thinks fit.

(3) Where the whole amount of the said fine is paid or recovered in the prescribed manner, the order under subsection (1) shall cease to have effect, and the person subject to it shall be released unless he is in custody for some other cause.

(4) Where part of the said amount is paid or recovered in such manner as may be prescribed by regulations, the period of the further term of imprisonment specified under

subsection (1) shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid or recovered bears to the amount of the said fine.

(5) In calculating the reduction required under subsection (4) any fraction of a day shall be left out of account.

(6) In this section, references to the due recovery of any amount include references to deductions from pay under Part VII, but do not include references to amounts forfeited under the said Part VII.

81. (1) It shall be the duty of every person subject to this Act who knows or has reasonable grounds for suspecting that any other person subject thereto is committing or has committed an offence under any provision of this Part to take all reasonable steps within his power to cause that person to be brought to justice.

Duty to bring offenders to justice and powers of arrest

(2) Subject to standing orders of the commanding officer of any ship or establishment of the Defence Force, the following persons shall have power to arrest a person subject to this Act who is found committing or is alleged to have committed or is reasonably suspected of having committed any such offence as aforesaid, that is to say —

- (a) in the case of an officer, an officer subject to this Act who is his superior officer or, if the person to be arrested is engaged in a mutiny, quarrel or disturbance, any officer subject to this Act;
- (b) in the case of a marine, an officer subject to this Act, a warrant officer, chief petty officer, petty officer or leading marine subject to this Act who is of superior rate or senior to him in the same rate, and any marine exercising authority as a member of the regulating staff or a member or staff officer of the watch;
- (c) in any case, a provost officer and any officer or person legally exercising authority under or on behalf of a provost officer:

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

(3) Any power of arrest under this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provisions for
avoiding delay
after arrest

82. (1) Where any person subject to this Act is placed under arrest, it shall be the duty of the commanding officer of the ship or establishment in which he is serving to ensure that as soon as may be either proceedings are taken for his trial or he is released from arrest.

(2) Whenever any person subject to this Act, having been taken into custody, remains under close arrest for a longer period than eight days without being tried summarily under this Part or without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the Commander and a similar report shall be so made every eight days until the person under arrest is released from arrest or tried summarily or a court-martial is assembled.

(3) Any report to be made under this section shall be made by the quickest method which is reasonably available in the circumstances.

*Investigation cf, and Summary Dealing with,
Charges*

Investigation of
charges by
commanding
officer

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

25 *cf* 1993, s 2

(2) Without prejudice to any other powers conferred under this Act where an allegation has been made against a person subject to this Act that he has committed an offence against any provision of this Part or a criminal charge has been laid in a civil court against such a person the Governor-General, if that person holds a commission, or otherwise, the Commander may interdict from duty that person pending the determination of that allegation or charge if the Governor-General or the Commander, as the

case may be, considers that the interests of discipline require that such person shall forthwith cease to exercise the powers and functions of a member of the Defence Force.

(3) A person interdicted from duty shall not by reason of the interdiction cease to be a person subject to this Act but the powers, privileges and benefits vested in him as a member of the Defence Force shall be in abeyance during the period of interdiction. *25 cf 1993, s 2*

(4) A person who has been interdicted shall during the period of interdiction be allowed to receive such proportion of his pay, not being less than one-half, as the Governor-General or the Commander may think fit and if the proceedings following upon the allegation or the criminal charge do not result in his dismissal or conviction he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted. *25 cf 1993, s 2*

84. (1) After investigation, a charge against an officer below the rank of senior lieutenant may, if the commanding officer has power under the following provisions of this Part to deal with it summarily, be so dealt with by the commanding officer in accordance with those provisions.

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

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

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

(4) Notwithstanding anything in subsections (1), (2) and (3), where —

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

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

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

Further proceedings on charges against non-commissioned officers and marines.

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

(2) If—

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

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

(3) Otherwise the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the prescribed punishments.

Further proceedings on charges against officers.

86. (1) After investigating a charge against an officer the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to higher authority and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with subsections (2) and (3).

(2) If the charge is one which can be dealt with summarily, it may be referred back to the commanding officer by the higher authority to be dealt with summarily.

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

(4) If the commanding officer records a finding of guilty, he may award one or more of the following punishments, that is to say—

- (a) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;
- (b) severe reprimand or reprimand;

- (c) where the offence has occasioned any expense, loss or damage, stoppages.

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

87. (1) Notwithstanding anything in sections 85 and 86, where a charge—

Dismissal of charges referred to higher authority.

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

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

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

88. (1) In this Act the expression “commanding officer” in relation to a person charged with an offence means either the officer for the time being 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 which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his powers as commanding officer over it, the officer commanding that part of the unit.

Officers who are commanding officers and appropriate superior authorities.

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

Limitation of powers of summary dealings with charges.

89. (1) The charges which may not be dealt with by a commanding officer, and the charges which may not be dealt with summarily by a commanding officer except with the permission of higher authority, shall be such as may be specified by or under regulations. Any charge not so specified, and, upon obtaining such permission as aforesaid, any charge which may be dealt with summarily with such permission, may be dealt with summarily by a commanding officer.

(2) In such case as may be specified in that behalf by regulations, the powers of a commanding officer to award punishment shall be subject to such limitations as may be so specified.

Jurisdiction

Jurisdiction of courts-martial.

90. (1) Subject to this section, any offence under this Part may be tried and punished by court-martial; and a court-martial shall have jurisdiction to try any such offence whether committed within The Bahamas or elsewhere.

(2) A person shall not be tried by court-martial by virtue of section 78 for a civil offence of treason, murder, manslaughter, treason-felony or rape committed on shore within The Bahamas, and for the purposes of this subsection an offence of murder or manslaughter shall be deemed to have been committed at the place of the commission of the act or the occurrence of the neglect which caused the death, irrespective of the place of death.

(3) Except as provided by subsection (2) of section 74, a person who commits an offence under that section in relation to a court-martial shall not be dealt with by that court for that offence.

Commander to convene court-martial.

91. A court-martial may be convened by the Commander.

Constitution of courts-martial.

92. (1) A court-martial shall consist of the president and not less than two other members:

Provided that a court-martial shall consist of a Justice of the Supreme Court, appointed by the Commander after nomination by the Chief Justice, as president and not less than four other members if an officer or marine of the Defence Force is to be tried and the only punishment or the maximum punishment which can be awarded in respect

of the charge before the court is death or the maximum punishment which can be awarded in respect of the charge before the court is imprisonment for a term exceeding two years.

(2) Save as hereinafter provided, an officer shall not be appointed a member of a court-martial unless he belongs to the Defence Force, is subject to service law and has been an officer therein or in any Commonwealth force for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

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

(4) Save as provided in subsection (1), the president of a court-martial shall be appointed by order of the Commander and shall not be under the rank of captain unless, in the opinion of the Commander, a captain having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a court-martial shall not be under the rank of commander.

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

(6) Notwithstanding anything in this Part contained, an officer of the Royal Bahamas Police Force of or above the rank of superintendent may be appointed as a member of a court-martial.

93. (1) The Commander shall not be a member of a court-martial.

Supplementary provisions as to constitution of courts-martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an enquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a court-martial or act as judge advocate at such a court-martial.

(3) Save as provided in subsection (1) of section 92, if any court-martial is required to be convened at any place where, in the opinion of the Commander, the necessary number of persons having suitable qualifications is not

available to form the court, and cannot be made available with due regard to the public service, the Commander may, with the consent of the proper authority of a Commonwealth force, appoint any officer of a Commonwealth force as president in lieu of an officer belonging to the Defence Force or as any other member of the court in lieu of or in addition to an officer or officers belonging to the Defence Force:

Provided that no officer of a Commonwealth force shall be qualified to act in relation to a court-martial unless he is of corresponding rank to that which would have been required in the case of an officer belonging to the Defence Force and has been an officer in a Commonwealth force for the like period or periods as would have been so required.

- (4) Where the Commander —
- (a) appoints a senior commander to be president, being of opinion that an officer having suitable qualifications is not with due regard to the public service available.
 - (b) appoints an officer not being an officer belonging to the Defence Force as president or any other member of the court, being of opinion that the necessary number of officers belonging to the Defence Force having suitable qualification is not available to form the court and cannot be made available with due regard to the public service,

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

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

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

(2) A court-martial sitting at any place shall, if the Commander directs it to sit at some other place, adjourn for the purpose of sitting at that other place.

Challenges by accused.

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

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

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

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

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

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

Administration
of oaths

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

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

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

Courts-martial to
sit in open court

97. (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) shall affect the power of a court-martial to sit *in camera* on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power, a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

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

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

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

Dissolution of
courts-martial

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

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

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

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

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

(4) Without prejudice to the generality of subsection (1), if after the commencement of the trial it is represented

to the Commander 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 Commander may dissolve the court.

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

99. (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.

Decisions of
courts-martial

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

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

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

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

100.(1) Without prejudice to section 97, the finding of a court-martial on each charge shall be announced in open court.

Finding and
sentence

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

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

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

Power to convict
of offence other
than that
charged

of the offence as having been committed under circumstances involving a less degree of punishment.

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

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

(4) Where an accused is charged before a court-martial under section 78 in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section 78, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in The Bahamas, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against section 78 in respect of the commission of that other civil offence.

Second Schedule

(6) An accused 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.

Rules of
evidence

102. (1) Subject to this Act, the rules of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in The Bahamas, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in The Bahamas.

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

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

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- (a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has not less than seven days before the commencement of the trial, been served on the accused; or
 - (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused or the commanding officer of the accused has given his agreement in writing to its admission; or
 - (c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration; or
 - (d) in any case, if the court-martial is of opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.
- (3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in The Bahamas.

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

Privilege of witnesses and others at court-martial

104.(1) Where in The Bahamas any person other than a person subject to this Act —

Offences by civilians in relation to courts-martial

- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or
- (b) refuses to swear an oath when duly required by a court-martial to do so; or

-
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
 - (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
 - (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or
 - (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; or
 - (g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

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

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

Affirmations

105. If —

- (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 grounds of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

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

*Confirmation, Revision and Review of
Proceedings of Courts-Martial*

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

Confirmation of
proceedings of
courts-martial

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

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation, or the operation of sections 107 and 108 or the provisions of this Act as to confirmation or approval.

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

Petitions against
finding or
sentence

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

Revision of
findings of court-
martial

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

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

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

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

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

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

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

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

Powers of
confirming
authorities

109.(1) Subject to section 108 and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence or both, for confirmation to a higher confirming authority.

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

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

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

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

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

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

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

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

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

110. The following shall have power to confirm the finding and sentence of any court-martial, that is to say —

Confirming
authorities

- (a) the Commander; or
- (b) the successor of the Commander, or any person for the time being exercising the functions of the Commander; or
- (c) the Security Council.

Approval of
death sentence by
Governor-
General

Review of
findings and
sentences of
courts-martial

111. A sentence of death shall not be carried into effect unless it has been approved by the Governor-General acting on the advice of the advisory authority.

112.(1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section 107 against the finding or sentence then, subject to this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) The reviewing authority for the purpose of this Act shall be the Governor-General acting on the advice of the advisory authority.

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

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

- (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or
- (b) in so far as the review is of a sentence, quash the sentence; or
- (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming authority by subsections (2) to (4) of section 109,

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 determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

113.(1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Commander and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it may be remitted accordingly.

Reconsideration of sentences of imprisonment and detention

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

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

Review of Summary Findings and Awards

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

Review of summary findings and awards

(2) The said authority is —

(a) the Security Council; or

(b) any officer superior in command to the officer who dealt summarily with the charge.

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

(4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed, 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 such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

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

Findings of Insanity

Provisions where
accused found
insane

115.(1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations under this Part until the directions of the Minister are known or until any earlier time at which the accused is fit to stand his trial.

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

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

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

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

Commencement, Suspension and Duration of Sentence

116. A sentence of imprisonment or detention shall, subject to section 138 (which empowers the Court of Appeal in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

Commencement of sentences.

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

Duration of sentences of imprisonment or detention.

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Regulations that during any time during the last-mentioned period he was in the custody of a civil authority otherwise than on account of an offence committed by him while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the

period for which he is liable to be imprisoned or detained in pursuance of the sentence.

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

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

(4) A person who for any period is released as mentioned in subsection (3) or who is otherwise allowed, in pursuance of Imprisonment and Detention Regulations, out of 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 sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence, shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

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

118. A person may be required to serve any part of a sentence of detention awarded under this Act in a civil prison.

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

Serving of sentences of detention in prisons

Special provisions as to civil prisons in The Bahamas

and Detention Regulations 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.

120.(1) A person who is serving a sentence of imprisonment or detention in The Bahamas may (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of The Bahamas to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.

Country in which sentence of imprisonment or detention to be served

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

(3) Where a person has been sentenced under this Act by a court-martial held out of The Bahamas to imprisonment or detention for more than twelve months, the confirming or reviewing authority may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to The Bahamas until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction, and in determining whether or not to exercise the powers conferred by this subsection, a confirming or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

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

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

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

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

121.(1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison, to receive any person duly sent to that prison in pursuance of such rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in custody in pursuance of a sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of any such superintendent or other person as aforesaid or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined, to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

*Trial of Persons Ceasing to be Subject to this
Act and Time Limit for Trials*

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

122.(1) Subject to section 123, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed by any person while subject to this Act, then in relation to that offence he shall be treated, for the purposes 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 continuing subject to this Act notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of the Act

mentioned in subsection (1) and the provisions thereof as to the summary dealing with charges, as having been subject to this Act when the offence was committed or is suspected of having been committed and as continuing subject thereto thereafter.

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

- (a) if he holds any naval rank, as to a person having that rank;
- (b) otherwise as to a person having the rank which he had when last actually subject to this Act:

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

(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 to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

123.(1) No person shall be tried by court-martial for any offence, other than one against section 35 or 36 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent;

Limitation of
time for trial of
offences under
this Act

Provided that —

- (a) in the case of an offence against section 78, where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 78 in substitution for the foregoing provisions of this subsection;
- (b) subject to any such limit of time as is mentioned in paragraph (a), a person may be tried by court-martial for a civil offence committed outside The Bahamas notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General consents to the trial.

(2) Where a person who has committed an offence of desertion has since the offence served as a member of the regular Force continuously in an exemplary manner for not less than three years, he shall not be tried for the offence.

(3) A person shall not be triable by virtue of subsection (1) of section 122 unless his trial is begun within three months after he ceases to be subject to this Act or the trial is for a civil offence committed outside The Bahamas and the Attorney-General consents to the trial:

Provided that this subsection shall not apply to an offence against section 35 or section 36 or to desertion.

(4) A person shall not be arrested or kept in custody by virtue of subsection (1) of section 122 for an offence at any time after he has ceased to be triable for the offence.

*Relations between Military and Civil Courts
and Finality of Trials*

Powers of civil
courts

124.(1) Save as provided in section 147, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to this Act for any offence.

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

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

125.(1) Where a person subject to this Act —

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

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

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

- (2) For the purposes of this section —

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;
- (b) a case shall be deemed to have been dealt with summarily by the commanding officer notwithstanding that the finding of that officer has been quashed, or the award of that officer 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 the offence if, and only if, that officer or any person 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 subsection (2) of section 74 to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Subject to the provisions of subsection (2) of section 139, where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

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

*Inquiries*Boards of
Inquiry

126.(1) Subject to and in accordance with the provisions of rules made under this Part (hereinafter referred to as Board of Inquiry Rules), the Commander may convene a board of inquiry to investigate and report on the facts relating to —

- (a) the absence of any person subject to this Act; or
- (b) the capture of any such person by the enemy; or
- (c) the death of any such person where an inquiry into the death is not required to be held by any civil authority; or
- (d) any other matter of a class specified in such rules or referred to such a board by the Commander and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

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

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial or commanding officer other than proceedings for an offence against section 78 when the corresponding civil offence is perjury.

*Miscellaneous Provisions*Restitution or
compensation for
theft, etc

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

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

(3) If there has been found in the possession of the offender any property (other than money) appearing to

have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

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

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

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

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

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

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

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

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

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

(10) Notwithstanding anything in subsection (9), an order under this section shall not, so far as it relates to the delivery of the property to the person appearing to be the owner thereof, be suspended if the court or authority making the order directs to the contrary in any case in which, in the opinion of the court or authority, the title to the property is not in dispute.

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

Appointment of
judge advocate

128. Where a judge advocate is required to act at any court-martial such appointment may be made by the Minister.

Promulgation

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

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

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 shall be entitled to obtain from the Security Council on demand at any time within the relevant period and on payment therefor at such rate if any as may be prescribed a copy of the record of the proceedings of the court.

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

(4) If, on an application in pursuance of either subsection (2) or subsection (3) for a copy of the record of any proceedings, the Security Council certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

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

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

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

Indemnity for
prison officers,
etc

131. No action shall lie in respect of anything done by any person in pursuance of a 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.

Interpretation cf Part V

Interpretation of
Part V

132. (1) In this Part —

“the advisory authority” means the authority in accordance with whose advice the prerogative of mercy is, in relation to persons convicted by court-martial, required by the Constitution to be exercised by the Governor-General;

“civil prison” means a prison in The Bahamas in which a person sentenced by a civil court to imprisonment can for the time being be confined;

“prison” means a civil prison.

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

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

Rules cf Procedure

Rules of
Procedure

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

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

-
- (i) the procedure to be observed in the bringing of charges before commanding officers; and
 - (ii) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purposes of investigating or dealing summarily with such charges, or otherwise, as a preliminary to the trial thereof by court-martial, so however that the rules shall make provision for the application of section 96 in any case where the accused requires that evidence shall be taken on oath;
 - (iii) the addition to, or substitution for, a charge which has been investigated, of a new charge for an offence disclosed by evidence taken on the investigation as the investigation of the new charge;
 - (iv) the convening and constitution of courts-martial;
 - (v) the sittings, adjournment and dissolution of courts-martial;
 - (vi) the procedure to be observed in trials by court-martial;
 - (vii) the representation of the accused at such trials;
 - (viii) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (ii);
 - (ix) applying in relation to proceedings before commanding officers and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of sections 102, 103, 104 and 105;
 - (x) empowering a court-martial or the Commander in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (xi) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge, but are sufficient to support a finding of guilty of the

like offence as that charged to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;

- (xii) the forms of orders and other documents to be made for the purposes of any provision of this part or the rules relating to the investigation or trial of, or award of punishment for, offences cognizable by courts-martial, commanding officers or to the confirmation and revision of the findings and sentences of courts-martial.

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

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

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

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

134. The Minister may make regulations (in this Act referred to as Imprisonment and Detention Regulations) with respect to all or any of the following matters, that is to say —

Imprisonment
and Detention
Regulations

- (i) the places in which and the establishments or forms of custody (whether naval or not) in which persons may be required to serve the whole or any part of sentences of imprisonment and detention passed on them under this Act;
- (ii) the committal of persons under sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention.

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

Board of Inquiry
Rules

(2) Without prejudice to the generality of subsection (1) Board of Inquiry Rules may make provision with respect to the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence was being taken at a court-martial an oath could be dispensed with.

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

136. The Minister may make regulations with respect to all or any of the following matters, that is to say —

Miscellaneous
Regulations

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

treatment and removal of persons under sentence of death;

- (ii) any matter which by this Part is required or authorised to be prescribed or for which regulations may be made;
- (iii) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 133, 134 and 135 and in this section.

PART VI APPEALS FROM COURTS-MARTIAL

Right of appeal

137.(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, except in the case of a conviction involving sentence of death.

(2) An appeal to the Court of Appeal shall lie as of right without leave from any conviction of a court-martial involving a sentence of death.

Procedure for applying for leave to appeal or lodging appeal

138.(1) Leave to appeal to the Court of Appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, subject to subsection (3), within twenty-eight days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the Registrar of the Court of Appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

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

(3) Rules of court may provide that, in such circumstances as may be specified in the said rules, any such application or appeal which is lodged with such person (other than the Registrar) as is specified in the said rules shall be treated, for the purposes of subsections (1) and (2) as having been lodged with the Registrar.

(4) The Court of Appeal may extend the period within which an application for leave to appeal is required to be lodged, whether that period has expired or not.

(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 shall begin to run from the day on which the Court dismisses the application.

139.(1) Subject to section 140, 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 other case shall dismiss the appeal:

Determination of appeals in ordinary cases

Provided that 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.

(2) If the Court of Appeal allows an appeal under this Part it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding subsection (3) of section 125, a new trial by court-martial may be held within such time as the Court may order.

140.(1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one 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, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

Powers of Court of Appeal in special cases

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the 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, being a sentence which could lawfully have been passed for that other offence but not being 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, being a sentence which could lawfully have been passed for the offence being specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on appeal, it appears to the Court of Appeal that, although the appellant was guilty of the act charged against him, he was insane at the time the act was done, so as not to be responsible according to law for his actions,

the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section 115 in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

141. The term of any sentence passed by the Court of Appeal under any of the provisions of section 140 shall, unless the Court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Court of Appeal shall be deemed for the purposes of this Act to be a sentence passed by the court-martial, being a sentence that has been confirmed.

Commencement of sentence.

142. Save as otherwise provided by any law governing appeals to the Judicial Committee of the Privy Council from judgments of the Court of Appeal, any determination by the Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final and no appeal shall lie from the Court to any other court.

Appeals to be final.

143. An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal under this Part or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Court gives him leave to be present, and accordingly any power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

Proceedings may be heard in absence of appellants.

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

Defence of appeals.

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

Right of appellant to present his case in writing.

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

Suspension of death sentence.

- (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 shall be lodged;

- (b) if such an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal, the sentence shall not be executed until the appeal or application is determined or abandoned; and
- (c) if an application for leave to appeal to the Judicial Committee of the Privy Council is duly made, the sentence shall not be executed until the application is finally refused or is withdrawn or the appeal to the Judicial Committee of the Privy Council is determined or abandoned.

Person not to be tried again where conviction quashed.

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

Removal on appeal, of prisoners for purposes of this Part.

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

Furnishing, on appeal, of documents relating to trial.

149. In the case of every appeal, or application for leave to appeal, under this Part to the Court of Appeal against a conviction by court-martial, it shall be the duty of the court-martial concerned to furnish to the Registrar of the Court of Appeal in accordance with rules of court, the proceedings of the court-martial including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of subsection (1) of section 108, the proceedings with respect to the confirmation of the findings and the sentence of the court-martial and any petition presented by the person convicted.

Duties of Registrar of Court of Appeal with respect to appeals, etc.

150. (1) The Registrar of the Court of Appeal shall take all necessary steps for obtaining the determination of an appeal or application 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 was tried which appear necessary for the proper determination of the appeal or application.

(2) The Registrar of the Court of Appeal shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal under this Part.

151. Nothing in this Part shall affect the exercise by reviewing authorities of the powers conferred by section 112 in respect of a conviction of a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the Court of Appeal of an appeal or an application for leave to appeal to the Court against the conviction and nothing in this Part shall affect the exercise by the Governor-General of the prerogative of mercy.

Saving of powers of reviewing authorities

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

General provisions as to procedure

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

PART VII FORFEITURE AND DEDUCTIONS

153.(1) No forfeiture of the pay of an officer or marine of the Defence Force shall be imposed unless authorised by this Act, other service law or some other enactment and no deduction from such pay shall be made unless so authorised or authorised by regulations.

Forfeitures and deductions, general provisions

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

(3) Subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which sums may be deducted from pay to give effect to authorised deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

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

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

(6) Any amount authorised to be deducted from the pay of an officer or marine of the Defence Force may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or marine 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 offender's pay may be recovered by deduction from any such balance.

Forfeiture of pay
for absence from
duty

154.(1) The pay of an officer or marine of the Defence Force may be forfeited —

- (a) for any day of absence in such circumstances as to constitute an offence under section 43 or section 44, or, if the Commander so directs, of other absence without leave;
- (b) for any day of imprisonment or detention 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 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 marine of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Commander or an officer authorised by regulations is satisfied —

- (a) that he was made a prisoner of war through disobedience of orders or wilful neglect of his duty; or
- (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the 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 whatsoever not authorised by international usage,

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

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

155. Where a person sentenced or ordered by a civil court (whether within or without The Bahamas) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes an officer or marine of the Defence Force, then if the whole or any part of that sum is met by a payment made by or on behalf of any military or naval authority, the amount of the payment may be deducted from his pay.

Deductions for
payment of civil
penalties

156. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations, it

Compensation
for loss
occasioned by
wrongful act or
negligence

appears to an officer authorised by regulations (in this section and in sections 158, 159 and 160 referred to as “the authorised officer”) that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or marine of the Defence Force (hereinafter referred to as “the person responsible”).

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

(3) No order shall be made under subsection (2) if, in proceedings before a court-martial under service law, 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 of negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

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

Deductions for
barrack damage

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

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

158.(1) Any officer or marine of the Defence Force against whom an order has been made by the authorised officer under sections 156, 159 or 160 may, in accordance with regulations to be prescribed, apply to a board of officers for a further examination of the case; and that board shall consider the case, and thereafter may, in relation thereto, if it thinks fit, give directions to the authorised officer; and the authorised officer shall give effect to such directions.

Review of orders and remission of forfeitures and deductions

(2) Any forfeiture or deduction imposed under sections 154, 155, 156 and or 159 or under regulations may be remitted by the Security Council or in such manner and by such authority as may be provided by such regulations.

159.(1) Where any court in The Bahamas 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 —

Enforcement of maintenance and affiliation orders by deduction from pay

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

and the defendant is an officer or marine of the Defence Force, then (whether or not he was an officer or marine when the said order was made) the authorised officer may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the authorised officer may think fit.

(2) Where to the knowledge of the court making and such order as aforesaid, or an order varying, revoking, or reviving any such order, the defendant is an officer or marine of the Defence Force, the court shall send a copy of the order to the Minister,

(3) Where such an order as is mentioned in subsection (1) has been made by a court of a Commonwealth country outside The Bahamas, and the authorised officer is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the

authorised officer shall have the like power under subsection (1) as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to an order for payment of a sum for or in respect of the maintenance of a child born out of wedlock or for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) The 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 as mentioned in paragraph (a) of subsection (1) of section 154.

(5)(a) In this section —

references to an order made by a court in The Bahamas include references to an order registered in or confirmed by such a court under the provisions of any law which makes provision for the enforcement in The Bahamas of maintenance orders made outside The Bahamas; references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted;

references to a child of a person include references to a child of his wife, and to a child born out of wedlock or adopted child of that person or of his wife, and in this paragraph “adopted child” means a child adopted (whether alone or jointly) in pursuance of an adoption order made under the Adoption of Children Act.

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

160.(1) Where the authorised officer is satisfied that an officer or marine of the Defence Force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of sixteen, the authorised officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the authorised officer thinks fit.

Deductions from pay for maintenance of wife or child

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

(3) Where an order is in force under subsection (1) or subsection (3) of section 159 for the making of deductions in favour of any person from the pay of an officer or marine of the Defence Force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or marine is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section 159 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 as mentioned in paragraph (a) of subsection (1) of section 154.

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

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

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

(2) Where any deductions have been ordered under either section 159 or section 160 from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the

finding or sentence of a court-martial or the finding or award of a commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

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

Service of process
in maintenance
proceedings

162.(1) Any process to be served on an officer or marine of the Defence Force (in this section referred to as “the defendant”) in connection with proceedings for any such order of a court in The Bahamas as is mentioned in subsection (1) of section 159, or for the variation, revocation or revision of such an order, shall be deemed to be duly served on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) Where any such process is served in The Bahamas and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the court by which process was issued that the defendant is under orders for service at sea or out of The Bahamas or in some island in The Bahamas other than the one before the court of which he is due to appear and that in the commanding officer’s opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

PART VIII GOVERNMENT AND GENERAL PROVISIONS COMMAND

Command and
precedence

163.(1) Officers and marines of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the Minister.

(2) Officers and marines of any other military, naval or air force may, with the approval of the Security Council be —

- (a) attached to the Defence Force if the proper military authority in such territory has placed them at the disposal of the Security Council for that purpose; or
- (b) seconded to the Defence Force.

164.(1) The Governor-General shall appoint an officer, being a member of the Defence Force, in whom the command of the Defence Force shall be vested and subject to the terms of such appointment such officer shall have the command of that Force.

Command of Force.

(2) The Governor-General shall appoint an officer, being a member of the Defence Force as Deputy Commander, Defence Force to assist the Commander in the discharge of his duties as Commander and —

32 cf 2007, s 2

- (a) who as Deputy Commander, Defence Force, subject to the directions and instructions of the Commander shall have command of the Force during the temporary absence of the Commander;
- (b) references in the other provisions of this Act to the Commander shall include a reference to the Deputy Commander when acting in accordance with this subsection.

(3) The Commander, with the approval of the Minister, is authorised to issue supplementary instructions for the efficient administration of the Defence Force and, in particular, supplementary instructions with respect to —

5 cf 1988, s 5

- (a) the promotion of officers of the Defence Force;
- (b) the enlistment and advancement of marines of the Defence Force; and
- (c) the transfer, training, absence from duty and discipline of such officers and marines.

165. The Minister may make regulations as to the persons, being members of the Defence Force, in whom command over any part of the Defence Force or member thereof is vested and as to the circumstances in which such command as aforesaid is to be exercised.

Regulations as to command.

166.(1) In so far as powers to command depend on a rank, a member of a Commonwealth force who —

Powers of command of members of co-operating forces.

- (a) is acting with; or
- (b) is a member of a body of those forces which is acting with,

any body of the Defence Force shall have the like such powers as a member of the Defence Force of corresponding rank; and for the purposes of sections 38 and 81 any such member of the said forces shall be treated as if he were a member of the Defence Force of corresponding rank.

(2) If the whole or any part of the Defence Force is required to act with any other military, naval or air force, the Security Council may place the Defence Force or such part thereof under the command of the officer commanding such other force.

(3) Where any part of the Defence Force is acting in co-operation with any other force, the Commander or the officer commanding that part of the Defence Force may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers, non-commissioned officers and marines of the Defence Force in relation to the officers, non-commissioned officers and marines of such other force.

Powers of members of the Defence Force with respect to vessels.

167.(1) It shall be lawful for any officer in command of any ship belonging to the Defence Force, in any case where he reasonably suspects that any vessel within the waters of The Bahamas is engaged or employed in any unlawful operation or enterprise, to cause such vessel to be boarded, or stopped and boarded, and any and every part thereof searched with any assistance; and he may, for the purpose of any lawful examination, investigation or inquiry, direct that such vessel proceed to such place as he may specify.

(2) It shall be lawful for any officer acting in the execution of any of the provisions of this section —

- (a) to pursue and arrest without a warrant any person upon reasonable suspicion of his having committed, or being about to commit a criminal offence;
- (b) to take all such steps as are reasonably justifiable in the circumstances of the case in order to compel compliance with any directions given in pursuance of any such provisions.

(3) No officer shall be liable as a result of any loss or damage to any such vessel as aforesaid, or of any injury to any person on board the same, occasioned in consequence of any failure to comply with any directions given as aforesaid.

(4) When a person is arrested under this section without a warrant, he shall be taken before a magistrate as soon as practicable after he is taken into custody:

Provided that he may, as soon as practicable after his arrest, be delivered or conveyed and delivered into the custody of a police officer to be dealt with in accordance

with section 32 of the Police Act, and otherwise according to law. Ch. 205.

(5) Every person who assaults, obstructs, resists or wilfully delays any officer acting in execution of any of the provisions of this section, or without reasonable excuse (the proof whereof shall lie upon him) fails to comply with any directions given in pursuance of any such provisions, shall be guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for twelve months or to both such fine and such imprisonment.

168. (1) If a person subject to this Act thinks that he has suffered any personal oppression, injustice or other ill-treatment, he may make a complaint in accordance with the prescribed procedure and, if he does not obtain the redress to which he thinks he is entitled, a complaint to the Security Council. Redress of complaints.

(2) On receiving any complaint made by virtue of subsection (1), it shall be the duty of the Security Council to investigate the complaint and to grant any redress which appears to them to be necessary.

Exemptions for Officers and Marines

169. An officer or marine of the Defence Force shall be exempt from serving on any jury. Exemptions from jury service.

170. (1) Duties, tolls or dues for embarking from or disembarking on any pier, wharf, quay or landing place in The Bahamas, or for passing over any road or bridge in The Bahamas, shall not be payable in respect of — Exemptions from tolls, etc.

- (a) members of the Defence Force on duty;
- (b) vehicles in naval service;
- (c) goods carried in such vehicles;
- (d) animals in the naval service.

(2) In subsection (1) the expression “in naval service” means employed under proper authority for the purposes of the Defence Force or accompanying any body of the Defence Force.

171. No judgment, decree or order given or made against an officer or marine of the Defence Force by any court in The Bahamas shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon. Exemption from taking in execution of property used for naval purposes.

*Provisions relating to Deserters and
Absentees without Leave*

Arrest of
deserters and
absentees
without leave.

172.(1) Any police officer within The Bahamas may arrest without a warrant any person whom he has reasonable cause to suspect of being an officer or marine of the Defence Force who has deserted or is absent without leave.

(2) Where no police officer is available any officer or marine of the Defence Force or any other person may arrest without a warrant any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person in The Bahamas having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or marine of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

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

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

173.(1) Where a person who is brought before a magistrate's court is alleged to be an officer or marine of the Defence Force who has deserted or is absent without leave, the following provisions shall have effect.

(2) (a) If he admits that he is illegally absent from the Defence Force and the magistrate is satisfied of the truth of the admission then —

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

forthwith either cause him to be delivered into custody in such manner as the magistrate may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the magistrate may specify (not exceeding such time as appears to the magistrate reasonably necessary for the purpose of enabling him to be delivered into custody) or until sooner delivered into such custody.

(b) Any time specified by the magistrate may be extended by the magistrate from time to time if it appears to the magistrate reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid or the magistrate is not satisfied of the truth of the admission, the magistrate shall consider the evidence and any statement of the accused, and if satisfied that he is subject to this Act and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the magistrate shall cause him to be delivered into custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the magistrate shall have power, but shall not be required, to act in accordance with this subsection.

174.(1) Where in The Bahamas a person surrenders himself to a police officer as being illegally absent from the Defence Force, the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

Deserters and absentees without leave surrendering to police.

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid, he may cause him to be delivered into custody, without bringing him before a magistrate's court or may bring him before such a court.

175.(1) Where a magistrate's court in pursuance of section 173 deals with a person as illegally absent, then, when that person is delivered into custody, there shall be handed over a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court.

Certificates of arrest or surrender of deserters and absentees.

(2) Where a person is delivered into custody without being brought before a magistrate's court whether under the provisions of section 174 or under any other lawful power, there shall be handed over a certificate in the prescribed form, signed by the police officer who causes him to be delivered into custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 43 or section 44 —

- (a) a document purporting to be a certificate under either subsection (1) or subsection (2), or under the corresponding provisions of any service law (other than this Act) and to be signed as thereby required, shall be evidence of the matters stated in the document;
- (b) where the proceedings are against a person who has been taken into custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of a Commonwealth country, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

Duties of superintendents of prisons and others to receive deserters and absentees.

176.(1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a magistrate's court as illegally absent and to detain him until in accordance with the directions of the court he is delivered into custody.

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody as it applies to the superintendent of a prison.

*Offences relating to Military Matters
Punishable by Civil Courts*

Punishment for pretending to be a deserter.

177. Any person who falsely represents himself to any military, naval or civil authority to be a deserter from the Defence Force shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Punishment for procuring and assisting desertion.

178. Any person who —

- (a) procures or persuades any officer or marine of the Defence Force to desert or to absent himself without leave;

- (b) knowing that any such officer or marine is about to desert or absent himself without leave, assists him in so doing; or
- (c) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment, or on conviction on information to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

179. Any person who wilfully obstructs or otherwise interferes with any officer or marine of the Defence Force acting in the execution of his duty shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Punishment for obstructing officers or marines in execution of duty.

180. Any person who —

- (a) produces in an officer or marine of the Defence Force any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him or lead to the belief that he is permanently or temporarily unfit for service,

Punishment for aiding malingering.

with a view to enabling him to avoid service whether permanently or temporarily, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, or on conviction on information to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

181. (1) Any person who acquires any service stores or solicits or procures any person to dispose of any service stores, or acts for any person in the disposing of any service stores, shall be guilty of an offence, unless he proves either —

Unlawful purchase, etc., of naval stores.

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- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were service stores; or
 - (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe to have had, power to give the order of consent; or
 - (c) that those chattels had become the property of an officer of the Defence Force who had retired or ceased to be such an officer, or of a marine of the Defence Force who had been discharged, or of the personal representatives of a person who had died,

and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment, or on conviction on information to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search, shall be seized by the person charged with the execution of the warrant who shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(4) In 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);

“service stores” means any chattel of any description belonging to the Government, which has been issued for use for service purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

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

182.(1) Any person who —

- (a) as a pledge or a security for a debt; or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

Illegal dealings
in documents
relating to pay,
pensions,
mobilisation, etc.

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's service in the Defence Force shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such documents as aforesaid or any official document issued in connection with the mobilisation or demobilisation of the Defence Force or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

Unauthorised use
of and dealing in
decorations, etc.

183. (1) Any person who —

- (a) being a person who is not serving in the Defence Force or a Commonwealth force, without authority wears in a public place the uniform of any of those forces or any dress having the appearance or bearing any of the naval or other distinctive marks of any such uniform; or
- (b) without authority uses or wears any naval, military or air force decoration, or any badge, wound stripe or emblem supplied or authorised by the Security Council or by the Government of a Commonwealth country; or
- (c) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any decoration, badge, stripe or emblem mentioned in paragraph (b), as to be calculated to deceive; or
- (d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (b),

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall —

- (a) prevent any persons from wearing any uniform or dress in the course of a stage play performed in a place duly licensed or authorised for public performance of stage plays or in the case of a music hall or circus performance, or in the course of any *bona fide* military representation; or
- (b) prohibit the use and wearing of ordinary naval badges or of brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any naval, military or air force decoration awarded to any member of the Defence Force or any Commonwealth force, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a

term not exceeding three months or to both such fine and such imprisonment.

Provisions as to Evidence

184.(1) The following provisions shall have effect with respect to evidence in proceedings under this Act whether before a court-martial, a civil court or otherwise.

General provisions as to evidence.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person —

- (a) was or was not serving at any specified time or during any specified period in the Defence Force or in any Commonwealth force or was discharged from any part of those forces at or before any specified time; or
- (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Commander, be evidence of the matters stated in the document.

(5) A record made in the prescribed service book or other prescribed document being a record made in pursuance of service law or regulations, or otherwise in

pursuance of naval duty, and purporting to be signed by the commanding officer or by a person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid, 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, shall be evidence of the record.

(6) A document purporting to be issued by order or on the instructions of the Commander and to contain instructions or orders given or made by the Commander shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Commander or a person authorised by him, and stating —

- (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 Minister or by the Government of a Commonwealth country,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for —

- (a) any formation or unit or body of marines; or
- (b) any command or other area, establishment or place; or
- (c) any ship, or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

Proof of outcome
of civil trial.

185.(1) Where a person subject to this Act has been tried before a civil court (whether at the time of the trial he was so subject or not) a certificate signed by the registrar of the court or a judge, or a magistrate, and stating all or any of the following matters —

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgment or order was given or made by the court,

shall, for the purposes of this Act, be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the registrar of the court or a judge, or a magistrate, shall, unless the contrary is shown, be deemed to be such a certificate.

186.(1) The original record of the proceedings of a court-martial under service law purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

Evidence of proceedings of court-martial

(2) A document purporting to be a copy of the original record of the proceedings of a court-martial under service law or any part thereof and to be certified by the person having the lawful custody of the records to be a true copy, shall be evidence of the contents of the records or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous Provisions

187.(1) Where a person is in custody when charged with, or with a view to his being charged with, an offence against Part V, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody, to receive him into his custody for a period not exceeding seven days.

Temporary reception in civil custody of persons under escort

(2) In this section “civil prison” has the meaning ascribed to it in section 132.

188.(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 Defence Force shall be void at law.

Avoidance of assignment, of, or charge on naval pay, pensions, etc

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

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

Power of certain officers to take statutory declaration

189. (1) An officer of the Defence Force of a rank not below that of lieutenant commander (hereinafter referred to as an “authorised officer”) may, outside The Bahamas, take statutory declarations from persons subject to this Act.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer, shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

5 cf 1988, s 6

PART IX THE ROYAL BAHAMAS DEFENCE FORCE RESERVE

Composition of Reserve

190. The Reserve shall consist of —

- (a) officers appointed to the Reserve;
- (b) marines enlisted or deemed to be enlisted or re-engaged in pursuance of this Part for service in the Reserve.

Enlistment and re-engagement in the Reserve

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

(2) A person enlisting in the Reserve shall be attested in the same manner as a recruit in the regular Force and the following provisions of Part IV, that is to say —

- (a) section 16 (which relates to the mode of enlistment and attestation);

- (b) section 26 (which relates to the validity of attestation and enlistment), but omitting the references in that section to the receipt of pay; and
- (c) section 27 (which makes recruits punishable for false answers),

shall apply in like manner as if they were re-enacted in this Part with the substitution for references to the regular Force of references to the Reserve.

(3) A person enlisting in the Reserve may be attested by any officer and the provisions of Part IV mentioned in subsection (2), together also with section 67 (which relates to false answers on enlistment), shall in their application to the Reserve be construed as if the expression “Recruiting Officer” included any officer of the Defence Force.

(4) Any marine of the Reserve who at any time has completed, or is within six months before completing, the term for which he enlisted or re-engaged in pursuance of this Part may with the approval of the competent authority re-engage for such further period or periods of service in the Reserve as may be prescribed.

192.(1) Subject to this section, every officer and marine of the Reserve shall attend for training at such place or places and for such periods as may be determined by the Commander, and shall fulfil such conditions relating to training as may be prescribed.

Training of
Reserve

(2) The requirements of this section may be dispensed with in whole or in part as respects any unit of the Reserve, by the Commander, and as respects any individual officer or marine of the Reserve, by his commanding officer subject to any general directions of the Commander.

(3) Nothing in this section shall be construed as preventing an officer or marine of the Reserve, undergoing voluntary training in addition to any training referred to in subsection (1).

193.(1) The Security Council may, at any time when occasion appears to require, call out the Reserve, or as many officers and marines thereof as they think necessary, on temporary service.

Call out of
Reserve on
temporary
service

(2) Officers and marines called out for service under this section shall not be liable to serve at any one time for a period exceeding two months.

Call out of
Reserve on
permanent
service

194.(1) In the event of a state of war being declared or of insurrection, hostilities or public emergency, it shall be lawful for the Governor-General by proclamation to direct that the Reserve shall be called out on permanent service.

(2) Upon the making of a proclamation under subsection (1) the Minister shall call out the Reserve or as many officers and marines of the Reserves as he thinks is necessary, on permanent service.

(3) Every officer and marine of the Reserve when called out on permanent service shall be liable to continue in service until his services are no longer required.

Attendance upon
call out

195.(1) Where the whole or any part of the Reserve is called out on temporary service or on permanent service, it shall be the duty of every officer and marine belonging thereto, to attend in person at such place or places as may be prescribed:

Provided that no officer or marine of the Reserve shall be liable to be proceeded against for an offence under this Act by reason of his failure to attend as aforesaid unless he has been served with a notice under the provisions of subsection (2) requiring him to attend.

(2) In the event of a call out under sections 193 and 194, the Minister may cause any officer or marine liable to such call out to be served with a notice requiring him to attend at the time and place therein specified.

(3) A notice under subsection (2) may be served on any officer or marine by —

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

Effective time of
call out

196.Where an officer or marine of the Reserve is called out on temporary service or on permanent service, he shall, for the purposes of section 202 and paragraph (c) of subsection (1) of section 203, be deemed to be so called out with effect from either —

- (a) the time of his attendance under subsection (1) of section 195; or
- (b) the time specified in any notice served under subsection (2) of that section,

whichever shall be the earlier.

197.(1) Where an officer or marine of the Reserve has been called out on temporary service or on permanent service, the Minister may at any time thereafter give such directions as he may think fit for terminating the service of any officer or marine so called out but without prejudice to the power of the Security Council by notice served under section 195 to call out for further service any officer or marine whose service has been terminated by directions given under this section.

Termination of service

198. Every officer and marine of the Reserve may, when called out on temporary service or on permanent service or when undergoing training, be posted or attached to any unit of the regular Force or the Reserve.

Posting of attachment of members of Reserve

199.(1) Any officer or marine of the Reserve in The Bahamas who, without leave lawfully granted or other reasonable excuse, fails to appear at the time and place appointed for annual training, or at the time and place specified in any notice under subsection (2) of section 195 shall —

Punishment for non-attendance

- (a) if called out on permanent service, be guilty according to the circumstances, of desertion within the meaning of section 42 or of absenting himself without leave within the meaning of section 44; or
- (b) if called out on temporary service or due to attend annual training, be guilty of absenting himself without leave within the meaning of section 44.

(2) Any officer or marine of the Reserve who commits any offence under this section shall be liable —

- (a) to be tried by court-martial, and on conviction shall be punishable as for an offence under section 43 or, as the case may be, section 44; or
- (b) to be tried summarily and on conviction shall be liable to a fine not exceeding two hundred dollars and in default of payment to imprisonment for any term not exceeding three months.

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

(4) Where an officer or marine of the Reserve fails to appear at the time and place appointed for training or at the time and place specified in any notice under subsection (2) of section 195, and his absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books and such entry shall be *prima facie* evidence of the fact of such absence.

Wrongful sale,
etc., of public
property.

200. (1) If any person designedly makes away with, or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or marine of the Reserve, or wrongfully refuses or neglects to deliver upon demand anything issued to him as such officer or marine the value thereof shall be recoverable from him summarily on complaint by any officer of the Force.

(2) Without prejudice to subsection (1), any person who designedly makes away with, sells, pawns, or wrongfully destroys anything issued to him as aforesaid shall be liable on summary conviction to a fine not exceeding one hundred dollars.

Discharge from
Reserve.

201. (1) A marine of the Reserve may be discharged by the competent authority at any time during the currency of any term of service in the Reserve upon such grounds as may be prescribed.

(2) A marine of the Reserve shall, unless the Reserve is called out on permanent service, be entitled to be discharged before the end of his current term of service on complying with the following conditions —

- (i) giving to his commanding officer six weeks' notice in writing of his desire to be discharged; and
- (ii) delivering 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 the property aforesaid is impossible, paying the value thereof.

Application of
Part IV.

202. The provisions of Part IV relating to the award of fines and stoppages, and the provisions of sections 153 to 162 shall not apply to officers and marines of the Reserve except when called out on permanent service or on temporary service or when serving on the permanent staff of the Reserve.

PART X
APPLICATION OF THE LAW AND
SUPPLEMENTARY PROVISIONS

203.(1) Subject to section 204, the following persons are subject to this Act — Persons subject to this Act

- (a) officers and marines of the regular Force;
- (b) officers and marines when attached to the Defence Force or any part thereof;
- (c) officers and marines of the Reserve when called out on permanent service or temporary service or when undergoing or performing any training or other duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the Reserve.

(2) This Act shall apply to the persons subject thereto under this section and in relation to the Defence Force as well as outside as within The Bahamas.

204.(1) The Minister may by order declare that officers and non-commissioned officers who being members of the armed forces of any Commonwealth country are subject to the law of such country and are seconded to serve with the Defence Force or any part thereof, shall remain subject to the law of such country and shall not be subject to this Act. Application of the Act

(2) In the event of a person referred to in subsection (1) committing an offence against the law applicable to him, he may be held, tried and punished in The Bahamas according to such law for the offence thereunder.

205.(1) Subject to the foregoing provisions of this Act, the Minister may make regulations for the better carrying out of the provisions of this Act and generally for the government and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provisions with respect to all or any of the following matters, that is to say — Regulations

- (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;

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- (b) determining to what extent and under what conditions service in any Commonwealth force other than in the Defence Force may be counted as service in the regular Force;
 - (c) the pay, allowances, pensions and gratuities of officers and marines 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 any Commonwealth force other than in the Defence Force, prior to the commencement of service in that Force);
 - (d) the description, supply, use and disposal of arms, accoutrement, 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 marines of the Reserve on temporary service, on permanent service and for training, including prescribing the manner in which notification of the places and times appointed for training is to be given;
 - (g) requiring officers and marines of the Reserve to report themselves from time to time and generally for the carrying into effect of Part IX;
 - (h) prohibiting, restricting and regulating the holding of meetings within the limits of any camp or other establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;
 - (i) in respect of the appointment of a Chaplain to the Defence Force and of a Medical Officer to the Defence Force and for the medical treatment generally of officers and marines of the Defence Force;
 - (j) for the establishment and management of messes, canteens and recreation rooms for officers and marines of the Defence Force;
 - (k) for the establishment of outposts;
 - (l) for the establishment of a Defence Force Fines Fund into which all fines imposed for an offence against discipline may be paid and otherwise generally in connection therewith;

- (m) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under the provisions of Part III and Part VI.

(2) Any regulations made under this section with respect to the amounts of money payable under this Act on account of pay, allowances, pensions or gratuities or with respect to the rates payable under this Act in respect of pay, allowances, pensions or gratuities shall only be made with the approval of the Minister of Finance.

206.(1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purposes of any such instrument, classes or cases may be defined by reference to any circumstances specified in the instrument.

Powers exercisable in subsidiary legislation.

(2) Any such regulations, rules, orders or other instruments as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein whether or not such persons are members of the Defence Force or of any Commonwealth force, empower such persons to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

207. Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any officer or authority may be signified under the hand of any officer authorised in that behalf, and any instrument signifying such an 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.

Pension of person transferred from the Police Force to the Force.

SI 36/2005

Ch. 43.

Ch. 205.

208.(1) Where any police officer holding a pensionable office in the Police Force ceases to be the holder of such office by reason of his transfer to the service of the Defence Force and such person subsequently retires from the service of the Defence Force in such circumstances that, had he remained a police officer, he would have been eligible for pension under the provisions of the Pensions Act or the Police Act, then in any such case the following provisions of this section shall have effect.

(2) Any pension payable to any such person as is mentioned in subsection (1) by the Defence Force to whose service he has been transferred shall be calculated and granted to him in respect of his total service in the Police Force and with the Defence Force taken together and such service shall be reckoned as continuous for pension purposes.

(3) There shall be payable out of the Consolidated Fund upon the warrant of the Minister of Finance to the Defence Force as contribution to every pension paid in accordance with subsection (2) such amounts as would have been payable to the person concerned by way of pension under the Pensions Act or the Police Act, if such person had retired from the service of the Police Force and if he had been granted a pension under the Pensions Act or the Police Act, upon the date of his ceasing to be a police officer.

Ch. 43.

Ch. 205.

Judgments obtained in foreign courts against Government in relation to Defence Force not enforceable in The Bahamas.

209.Notwithstanding anything contained in any other Act, no judgment obtained in any court outside The Bahamas against the Government, in relation to the Defence Force or against any member of the Defence Force while on duty as such shall be enforceable in any court in The Bahamas.

Protection of members of Defence Force acting in execution of duty.

Exemption from Liquor Licences Act.

Ch. 372.

210.No action shall be brought against any member of the Defence Force in respect of anything done by him while in the execution of his duty as such, provided that such member acted *bona fide* in the execution of his duty.

211.None of the provisions of the Liquor Licences Act shall apply to any canteen, mess or other similar institution belonging to the Defence Force.

212. Any purported appointment of any person as an officer or marine of the Defence Force before the establishment of the Force shall have effect and operate as if the Force had been in existence at the date of the appointment and the Ministry of Defence had appointed the person to be an officer or marine of the Force, as the case may be, notwithstanding that this Act may not have been enacted at the time any such appointment was made.

Validation of appointments made to the Force before establishment of Force.

FIRST SCHEDULE (Section 12(3))

COMMISSIONS

FORM OF COMMISSION

I, Governor-General of The Bahamas do give to Greetings and reposing special trust in your loyalty, courage and good conduct, do by these presents constitute and appoint you to be an officer in the Defence Force for years¹ 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 may from time to time hereafter be promoted or appointed and you are in such manner and on such occasions to exercise and well discipline in their duties, such officers and marines 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 marines to obey you as their superior officer, and you to observe and follow such orders and directions as from time to time you shall receive from me or any of your superior officers in pursuance of the trust hereby reposed in you.

Given atthis day of, 20.....

Governor-General

¹ To be omitted in the case of a commission granted for an indefinite period.

SECOND SCHEDULE (Section 101(6))
**ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE
CONVICTED BY COURT-MARTIAL**

<i>C_jfence Charged</i>	<i>Alternative C_jfence</i>
1. Any offence against subsection (1) of section 29.	1. Any offence against subsection (2) of section 29.
2. Any offence against subsection (1) of section 35.	2. Any offence against subsection (2) of section 35.
3. Communication with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	3. Disclosing information without authority.
4. Striking his superior officer.	4. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer.
5. Using violence to his superior officer otherwise than by striking him.	5. Offering violence to his superior officer.
6. Using threatening language to his superior officer.	6. Using insubordinate language to his superior officer.
7. Disobeying in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.	7. Disobeying a lawful command.

<i>Offence Charged</i>		<i>Alternative Offence</i>	
8.	Desertion.	8.	Absence without leave.
9.	Attempting to desert.	9.	Absence without leave.
10.	Stealing any property.	10.	Fraudulently misapplying the property.
11.	Any offence against section 41 of this Act involving wilfulness.	11.	The corresponding offence involving negligence.
12.	Any offence against subsection (1) of section 62.	12.	Any offence against subsection (2) of section 62.
13.	Any offence against subsection (1) of section 63 involving striking.	13.	(a) The corresponding offence involving the use of violence other than striking. (b) The corresponding offence involving the offering of violence.
14.	Any offence against section 63 involving the use of violence other than striking.	14.	The corresponding offence involving the offering of violence.
