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## AN BILLE COSANTA, 1949.

## DEFENCE BILL, 1949.

## EXPLANATORY MEMORANDUM.

1. The object of the Bill is to provide permanent legislation in relation to the defence of the State and the Defence Forces. The Defence Forces (Temporary Provisions) Acts, 1923 to 1950, are being repealed. Purpose of the Bill.

2. In addition to the usual sections relating to short title and commencement, definitions, repeals, regulations and expenses, Part I contains provisions regarding the application of the Act to persons subject to military law, the declaration of a state of emergency, active service, employment on State ships and the prosecution of certain offences by the Minister. This Part also provides that the Act shall come into operation on a date to be fixed by an order of the Minister for Defence. PART I  
Preliminary and General.

3. Part II provides for the Council of Defence; the Chief of Staff, the Adjutant-General and the Quartermaster-General; the principal military branches of the Department of Defence; the Inspector-General and the Judge Advocate-General. PART II.  
The Council of Defence, the Chief of Staff, the Adjutant-General, the Quartermaster-General, military branches of the Department of Defence, the Inspector-General and the Judge Advocate-General.

4. Section 11 contains provisions, in replacement of those in section 8 of the Minister and Secretaries Act, 1924, regarding the composition and functions of the Council of Defence. The proposed composition of the Council is as at present, with the addition of the Secretary of the Department of Defence as a member. The functions of the Council are stated to be "to aid and counsel the Minister on all matters in relation to the business of the Department of Defence on which the Minister may consult the Council". The functions of the Council, under the Ministers and Secretaries Act, 1924, were to some extent executive but the Council, as a collective body, has operated in an advisory manner only.

5. Section 12 provides for the offices of the Chief of Staff, the Adjutant-General and the Quartermaster-General, appointment to these offices and the conditions of appointment. Under the Ministers and Secretaries Act, 1924, the maximum tenure of appointment in these offices is three years. This is extended by section 12 to five years and provision is made, under subsection (2) (g), that an officer who has held the appointment of Chief of Staff, Adjutant-General or Quartermaster-General shall not be eligible for re-appointment to the same office within a period of twelve months after the date on which he ceased to hold it.

6. Section 13 provides for the branches of the Chief of Staff, the Adjutant-General and the Quartermaster-General as the three principal military branches of the Department of Defence. It provides also for the assignment of duties by the Minister to the Chief of Staff, the Adjutant-General and the Quartermaster-General.

7. Sections 14 and 15 contain provisions for the appointment of an Inspector-General of Oglagh na hEireann and of the Judge Advocate-General, respectively.

8. The raising, maintenance and organisation of Oglagh na hEireann are dealt with in Part III. This Part also contains provision in respect of the military education of members of Oglagh na hEireann and miscellaneous provisions related to military defence. PART III.  
Raising, Maintenance, Command, Constitution, Organisation, etc., of Oglagh na hEireann.



9. Chapter I (sections 16 and 17) repeats substantially the existing provisions in regard to the Government's authority to raise, train, equip, arm, pay and maintain defence forces and in regard to the exercise of military command over these forces. Section 16 provides that the entire Defence Forces, both permanent and reserve, will be called and known as Oglagh na hEireann. That title at present applies only to the Permanent Force.

10. Chapter II provides at section 18 that Oglagh na hEireann will consist of the Permanent Defence Force and the Reserve Defence Force. The constitution of the Permanent Defence Force is set out in section 19. With the exception of the addition of members of the Army Nursing Service, the constitution of the Permanent Defence Force is the same as at present. The addition of the Army Nursing Service is necessary to secure for its members in wartime the protection of the Geneva Conventions of 1949. The members of the Army Nursing Service are excluded, however, under section 288, from the application of the provisions of the Act except to the extent provided for in that section.

Sections 20 and 21 provide for the constitution of the Reserve Defence Force and for the division of that force into various classes. The classes of the Reserve Defence Force remain as at present but power is provided for the Minister to constitute new classes and to abolish classes at any time if they no longer contain any members. Sections 22 and 23 provide for the organisation of Oglagh na hEireann and the establishment of service corps.

Sections 24 and 25 (in conjunction with the Second and Third Schedules to the Bill) set out the commissioned and non-commissioned ranks in Oglagh na hEireann. Except for the addition of the two naval non-commissioned ranks of Senior Chief Petty Officer and Senior Petty Officer, the ranks remain as at present.

Section 26 empowers the Minister to make regulations in relation to certain scheduled matters.

11. Chapter III contains the provisions in relation to military education.

12. Chapter IV provides for miscellaneous powers exercisable by the Minister in connection with the organisation and maintenance of Oglagh na hEireann and military defence generally.

Section 30 repeats substantially the existing special powers in relation to defence. Some additional powers are included to meet the requirements of the Naval Service. Sections 31 to 34 inclusive contain new provisions relating to the inspection, acquisition and use of land for defence purposes. Sections 35 and 36 contain provisions (similar to those in relation to civil aerodromes in sections 13 and 14 of the Air Navigation and Transport Act, 1950 (No. 4 of 1950)) empowering the Minister for Defence to erect and maintain certain apparatus on land in the vicinity of military aerodromes and authorising him to impose certain restrictions on the use of such land. Section 37 and 38 contain provisions on the lines of existing legislation for billeting during an emergency and during peace-time. Sections 39 and 40 are administrative sections relating to the exercise of powers of holders of military offices and the persons by whom and the manner in which orders may be signified.

PART IV.  
Personnel of  
Oglagh na  
hEireann.

13. Part IV contains the provisions relating to the appointment of officers to Oglagh na hEireann, the enlistment of men and the conditions of service of personnel of Oglagh na hEireann.

14. Chapter I relates to officers. Section 41 sets out the persons eligible to be appointed as officers. Section 42 provides that officers will be appointed by the President and that a commission



will be issued to each officer. Section 43 provides for the taking of an oath by each officer on appointment. Section 44 contains provisions for the assignment of officers of the Reserve Defence Force to particular classes of that Force and for the transfer of officers, with their own consent, from one class to another. Section 45 provides for the promotion of officers. Sections 46 to 50 inclusive relate to the placing of officers on half-pay, the suspension of officers from duty, the retirement of officers of the Permanent Defence Force, the relinquishment of their commissions by officers of the Reserve Defence Force and the resignation and dismissal of officers. Provision is included, in the case of an officer retiring on grounds of age, for an extension (not exceeding 122 days) beyond the normal retiring age. This is the practice under regulations at present and the object is to enable an officer to complete a further short period of service which might be necessary to enable him to qualify for retired pay or for a higher rate of retired pay than that for which he would be eligible if he retired on the date on which he reached retiring age. Sections 51 and 52 contain administrative provisions relating to the effective dates of appointment, promotion, etc., of officers and as to the notices to be published in the *Iris Oifigiúil* in relation to such appointments, etc.

Apart from the extension under section 46 of the maximum period (from one year to three years) for which an officer may be placed on half-pay and the inclusion of specific powers in that section to suspend an officer from duty, the provisions of Chapter I are substantially similar to the present provisions in relation to the appointment, etc., of officers.

15. Division I of Chapter II relates to the enlistment and discharge, etc., of men.

Sections 53 to 59 inclusive contain the provisions in relation to enlistment. As at present, three types of enlistment are provided for under sections 53, 54 and 55, viz.:—

- (i) enlistment for a period of years, wholly for service in the Permanent Defence Force or partly for service in the Permanent Defence Force and partly for service in the Reserve Defence Force;
- (ii) enlistment in the Permanent Defence Force for a period of emergency;
- (iii) direct enlistment into the Reserve Defence Force.

Sections 56 to 59 inclusive provide for various matters in connection with enlistment, including the taking of an oath. Section 60 provides for the appointment of recruits to service corps. Section 61 contains provisions similar to those in existing legislation in relation to the transfer of men from one service corps to another. Section 62 provides for the assignment of reservists to particular classes of the Reserve Defence Force and permits the transfer of a reservist from one class to another of the Reserve Defence Force with his own consent.

Sections 63 to 68 inclusive contain the provisions under which the engagements of men of the Permanent Defence Force and reservists may be varied. Generally these provisions follow the lines of existing legislation. Section 63 provides for the variation, in accordance with regulations, of the engagement of a man enlisted in the Permanent Defence Force. Section 64 permits of the re-engagement under regulations of a man of the Permanent Defence Force for a period to complete twenty-one years' service and section 65 contains provision for continuation in service, by two-year periods, after twenty-one years' service but with a limit of ten years' continuation. Sections 66, 67 and 68 provide for the extension of service, re-engagement and continuance in service, after twenty-one years, of reservists on similar lines to the provisions for men of the Permanent Defence Force.



Sections 69 to 72 set out the conditions and circumstances under which men of the Permanent Defence Force may be transferred to the Reserve Defence Force and under which men of Oglaiġ na hEireann may be discharged.

Section 69 provides for forfeiture of service in certain cases when men of the Permanent Defence Force have been guilty of desertion or fraudulent enlistment.

Section 70 provides for the transfer to the Reserve Defence Force and discharge of men of the Permanent Defence Force. With one exception this section follows the provisions of existing legislation. The exception is that it is now being provided that during a period of emergency a man may be retained in service, on the termination of his engagement, for the duration of the emergency. At present, he may be retained for twelve months only. This provision will apply only to men enlisted after the operative date of the Act.

Section 71 provides for the discharge of men enlisted for the period of the emergency and section 72 for the discharge of reservists. In the case of reservists enlisted after the operative date of the Act, discharge may be deferred, if it becomes due during an emergency, until the termination of the emergency.

Section 73 contains general power for the discharge of a man on grounds other than termination of service. Sections 74 to 79 inclusive contain provisions for discharge of men by purchase and discharge of recruits, persons under eighteen years of age, apprentices and persons who have not been properly attested or re-engaged, etc., but who have accepted pay. Sections 80 to 83 inclusive cover the administrative arrangements for discharge.

16. Division II of Chapter II (section 84) relates to the promotion of men to higher non-commissioned rank and reduction in rank of non-commissioned officers.

17. Chapter III relates to the military service of members of Oglaiġ na hEireann, and provides for the calling out of reservists on permanent service, in aid of the civil power and for annual training. Provisions are also included for the voluntary attendance of reservists at additional training and their periodical attendance for inspection and other purposes. Substantially, the provisions are a repetition of existing legislation, except in the case of sections 88, 93 and 94. Section 88 empowers the Minister, on being so authorised by the Government, to call out, when operations for the defence of the State are in preparation or in progress but in advance of a proclamation calling out the Reserve Defence Force, a limited number (not exceeding 1,500) of reservists who have agreed in writing to answer such a call-out. The object is to obtain the services of "key" personnel to prepare for a general calling out.

Section 93 permits a reservist to attend voluntarily for additional training over and above his annual training and section 94 is intended to cover kit inspections, test mobilisations and other short attendances.

18. Chapter IV makes provision for matters concerning the pay, allowances, gratuities and grants of members or units of Oglaiġ na hEireann.

Section 97 provides for regulations to be made in relation to pay, etc., and the forfeitures, deductions and stoppages to which pay, etc., may be subjected. At present forfeitures and penal deductions are set out in the Defence Forces (Temporary Provisions) Acts. It is now proposed to prescribe them by regulations. All regulations made in relation to deductions, forfeitures or stoppages, will be laid before each House of the Oireachtas.



Sections 98 to 102 inclusive contain provisions substantially similar to those in existing legislation in relation to restrictions on deductions from pay.

19. Chapter V relates to the disqualifications, exemptions and privileges of members of Oglagh na hEireann. Section 103 prohibits members of Oglagh na hEireann from being members of or subscribing to any secret society. Under that section also, members of the Permanent Defence Force are prohibited from being members of, or subscribing to, any political organisation or society. These provisions are similar to existing provisions in the Defence Forces Act, 1937. Section 103 provides further that the Minister may by regulations restrict the participation in political activities of members of the Reserve Defence Force who are called out on permanent service.

Section 104 disqualifies members of the Permanent Defence Force from being nominated, elected or sitting as a member of Dáil Eireann, Seanad Eireann or any local authority. The existing provisions of the Electoral Act, 1923, in this regard are being repealed. Sections 105 to 108 inclusive continue existing provisions in relation to exemption from jury service of certain members of Oglagh na hEireann; the exemption of the equipment of a member from seizure under a court order or decree and the exemption of certain men of Oglagh na hEireann from imprisonment as a result of civil process. Section 109 provides, as in existing legislation, that a civil court shall have regard to punishment undergone following trial by courtmartial for an offence where the offender is subsequently tried and convicted by a civil court for the same offence. Section 110 provides for the protection, in the matter of legal actions, of persons acting under the Act and sections 111 and 112 exempt equipment and members of Oglagh na hEireann, when on duty, from tolls and certain provisions of the Road Traffic Act, 1933. Sections 110, 111 and 112 are repetitions of existing provisions.

20. Chapter VI makes provision in respect of the redress of wrongs where either an officer or a man considers himself wronged (Section 113) and for the collection and disposal of property of members of the Permanent Defence Force who die in service, of members of the Reserve Defence Force who die while on permanent service and of members of Oglagh na hEireann who desert or become of unsound mind (sections 114 and 115).

21. Part V relates to the discipline of members of Oglagh na hEireann. PART V.  
Discipline.

22. Chapter I makes provision as to the persons who are subject to military law as officers and as men (sections 117 and 118). Section 120 provides that where a person who is not a member of Oglagh na hEireann is subject to military law, he must be tried by court-martial and may not be tried summarily under the provisions of the Bill. Except for the provision in section 120, this Chapter is in accordance with existing legislation.

23. Chapter II sets out the offences against military law and the punishments which may be awarded in respect of these offences. In its form and drafting, this Chapter differs in many respects from the provisions in the existing Acts. This arises from the fact that the 1923 Act was in essence an Army Act. While it was possible to apply the disciplinary provisions of that Act to Air Corps personnel it was found necessary, on the establishment of a Naval Service, to provide specially for certain offences by members of that service and also to apply, by adaptation of terminology, etc., Army law to naval personnel. Chapter II has been so drafted as to provide a code of military law which will be common to all members of Oglagh na hEireann whether they are serving with army, air or naval components.

24. Chapter III contains provisions as to arrest generally and



courts of inquiry on absent men. The provisions of this Chapter are substantially a repetition of existing legislation.

25. Chapter IV sets out the procedure to be followed in the investigation of charges and provides for the summary disposition of charges, remands for court-martial and dispensation with trial by court-martial. The provisions of this Chapter are substantially in accordance with existing legislation except that the offences in respect of which officers and men may be tried summarily will be prescribed by regulations instead of being set out in the Act. Fines may be awarded, also, on summary trial for offences other than drunkenness. In existing legislation, a fine may be awarded only for drunkenness.

26. Chapter V provides for the establishment of courts-martial of two classes, viz.: general and limited, and for the constitution and jurisdiction of courts-martial. Except for the under-mentioned differences, the provisions of this Chapter follow very closely existing legislation. The differences are as follows:—

Sections 187 and 188. It is provided that where a member of the Naval Service is being tried by court-martial, at least one member of the court-martial will be an officer of the Naval Service.

Section 189. The persons disqualified to serve as members of or judge-advocate at courts-martial have been extended to include an officer who, in an advisory capacity, dealt with the charges or the evidence or the conduct of the prosecution.

Section 192. This empowers the court-martial to hold its proceedings in camera.

27. Chapter VI sets out the punishments which may be awarded by courts-martial for offences against military law. Sections 207 and 208 set out in descending order the punishments awardable to officers and men. "G" in the scale for officers (section 207)—forfeiture of seniority in rank—is new and there has been a transposition of the order of offences in section 208—"detention" as a punishment ranks higher than "discharge with ignominy". In present legislation, "detention" is lower than "discharge with ignominy" and higher than "discharge". Limits are placed on the fines which may be imposed by courts-martial. At present, fines are not limited.

There is provision in section 212 empowering the Minister to restore seniority lost or service forfeited by sentence of a court-martial.

28. Chapter VII provides for the action to be taken on the findings and sentences of courts-martial.

Section 213 provides that, except in the case of a finding of acquittal, the finding and sentence of a court-martial shall not be valid unless confirmed. Section 214 prescribes the persons who are to be confirming authorities. This section differs from existing legislation in that the Government (in the case of death sentences) and the Minister are omitted from the authorities having power to confirm findings and sentences of courts-martial. It is felt that neither the Government nor the Minister should exercise judicial functions in relation to courts-martial.

Section 215 which provides for the reference of the finding and sentence by a confirming authority to a superior confirming authority is new and would enable an officer, who felt himself to be prejudiced in dealing with a case, to refer it to a superior officer for confirmation. Sections 216 and 217 relating to the revision by courts-martial of findings and sentences and the powers of confirming authorities are repetitions of existing provisions.

Section 218 is new and confers an additional power on confirming authorities in that it gives them power to substitute a sentence of



penal servitude or less punishment for a death sentence. Section 219 is also new and provides for the mitigation and remission by a superior authority of a sentence passed by court-martial and confirmed. Section 220 also contains new provisions under which sentences of penal servitude or imprisonment imposed by courts-martial and confirmed may be suspended.

29. Chapter VIII provides for the action to be taken in regard to the execution of sentences imposed by courts-martial.

Section 225 provides that a sentence of death may not be executed unless and until the approval of the Government has been obtained for the execution of the sentence. This ensures that the Government will have an opportunity to advise the President to exercise his prerogative under Art. 13.6 of the Constitution, if the Government thinks this course to be advisable.

Section 228, which is new, authorises the suspension of the currency of a sentence if a prisoner escapes or is released without proper authority. Section 231, in relation to rules for the regulation of military prisons, contains an additional power to prescribe by regulations the circumstances and the conditions under which prisoners may be temporarily released from military prisons and detention barracks. The section provides that, where a prisoner has been temporarily released, the currency of his sentence shall be suspended for the period of his release.

Sections 232 to 234 inclusive contain new provisions prescribing as offences the assisting of prisoners in military prisons and detention barracks to escape, the carrying of liquor, drugs or tobacco into such institutions contrary to the rules and the carrying of letters, etc., into or out of military prisons or detention barracks, contrary to the rules.

In section 236 it is being provided that a coroner's inquest will be held whenever a person under sentence dies in a military prison or detention barrack.

30. Chapter IX contains power on the lines of existing legislation for the Minister to make rules of procedure for courts-martial with the addition of provision for the presentation of petitions by or on behalf of persons sentenced by courts-martial.

31. Chapter X sets out miscellaneous actions which constitute offences if committed by members of the Reserve Defence Force.

Section 239, which is new, prohibits a member of the Reserve Defence Force from accepting a commission in or joining the armed forces of another State. Sections 240 to 243 inclusive are substantially repetitions of provisions in existing legislation.

32. Chapter XI contains provisions necessary in connection with the proof of certain matters of evidence in proceedings before civil courts and courts-martial.

33. Chapter XII repeats the provisions of section 13 of the Defence Forces (Temporary Provisions) (No. 2) Act, 1940, relative to the apprehension of suspected deserters.

34. Part VI prescribes miscellaneous offences in relation to false answers by recruits; pretending to be a deserter or absentee without leave; incitement to disaffection and inducing members of Oglagh na hEireann to desert; unlawful recruiting or interfering with recruiting; interference with military duties; personation; false oaths in relation to pay; purchasing military property, except where it is sold by order of the Minister or with his consent; unlawful possession or forgery of discharge certificates, etc.; unlawful wearing of uniform; bringing contempt on uniform; dyeing and conversion of uniforms and unauthorised use of decorations.

PART VI.  
Offences in  
relation to  
Oglagh na  
hEireann  
and military  
property.

New provisions are included in sections 261 and 266. Section



261 prohibits the alienation of identity, life and other certificates issued to persons as evidence of their right to military pay, pension, etc. Section 266 makes it an offence for any person, without due authority, to sketch or photograph military fortifications or defence works or to enter on them with photographing or sketching equipment in his possession or to trespass on them.

**PART VII.**  
Manœuvres and  
artillery, rifle  
and bombing  
practice.

35. Part VII contains provisions empowering the Minister to authorise the holding of military manœuvres.

Section 268, which is a new provision, sets out the powers which may be exercised by the persons engaged in the manœuvres. Provision is made under section 269 for the payment of compensation to persons whose property is damaged or whose rights are interfered with in consequence of the manœuvres. Section 270 makes it an offence for a person to obstruct or interfere with the execution of manœuvres or to trespass on encampments, etc. Section 272 repeats provisions in existing legislation for the temporary stoppage of traffic during manœuvres.

**PART VIII.**  
Bye-laws as  
to Land  
used for  
Defence  
Purposes.

36. Part VIII contains new provisions empowering the Minister to make bye-laws for State lands appropriated for defence purposes and for other lands which the Minister has the right to use for any defence purpose. In addition, the Minister is empowered to make bye-laws for any foreshore, sea or tidal water adjoining such lands. The object of the bye-laws is to regulate the use of the land and to secure the public against danger arising from the use of the land for defence purposes.

Under this Part also the Minister is empowered, as in existing legislation, to make bye-laws restricting the use of roads in the vicinity of lands used for military purposes. Provision is made for the publication of notice of the intention to make bye-laws and for the consideration of objections. The Minister is required to publish the bye-laws in such a manner as he deems necessary to make them known to persons in the locality to which they relate and to make copies available at one shilling per copy. Penalties are prescribed for breach of the bye-laws and power is taken to remove persons contravening the bye-laws and animals or things found in an area in contravention of the bye-laws. It is made an offence for a person to obstruct or impede an authorised officer exercising his powers and duties in connection with the bye-laws. Part VIII will not apply to the Curragh of Kildare in respect of which separate legislation is contemplated.

**PART IX.**  
The Army  
Nursing  
Service.

37. Part IX relates to the Army Nursing Service. For the reasons already indicated, the Army Nursing Service has been made, under section 19, a constituent of the Permanent Defence Force but it is not considered desirable or necessary that the provisions of the Act should apply to the Service in peacetime, except to a very limited extent. Part IX, therefore, excludes the members of the Army Nursing Service from the provisions of the Act, except section 104, and provides that organisation, command, administration, control and conditions of service shall be governed by regulations. Provision is made in section 289 for the continuance of any agreements in force before the operative date of the Act.

Under existing legislation, members of the Army Nursing Service would have been subject to military law if they accompanied Oglagh na hEireann or any part of it on active service. Section 288, providing for the application of any of the provisions of the Act by an order of the Minister to the members of the Army Nursing Service, has been included primarily to enable the Minister to make the members subject to military law if they are on active service. Any such order will come into operation only after confirmation by a resolution of each House of the Oireachtas.



38. Part X provides that the existing Permanent Force and Reserve shall become the Permanent Defence Force and the Reserve Defence Force to be established under the Bill and secures for members serving before the operative date the continuance of their conditions of service under existing legislation.

PART X.  
Application of  
the Act to  
Defence Forces  
established  
under  
the Defence  
Forces  
(Temporary  
Provisions)  
Act, 1923.

Section 296 provides for the continuance of regulations made under the Defence Forces (Temporary Provisions) Acts which are in force on the operative date. Section 297 provides for the continuance of authorisations and directions in force on the operative date. Sections 298 and 299 continue the legality of convictions and sentences imposed under the Defence Forces (Temporary Provisions) Acts and the use of premises as military prisons and detention barracks.

39. Part XI provides for the necessary amendment and adaptation of enactments consequent on the provisions in the Bill.

PART IX.  
Amendment and  
Adaptation of  
certain  
Enactments.

40. Part XII repeats certain miscellaneous provisions already contained in the various Defence Forces (Temporary Provisions) Acts and which are not appropriate for inclusion in the other Parts of the Bill.

PART XII.  
Miscellaneous  
Provisions.

The only new provision in this part is an administrative provision in section 309 in relation to the recovery of moneys due or payable to the Minister.

41. This Schedule sets out the enactments repealed by the Bill.

First  
Schedule.

42. The Second Schedule sets out the commissioned ranks in Oglagh na hEireann.

Second  
Schedule.

43. The Third Schedule contains the various non-commissioned ranks in Oglagh na hEireann.

Third  
Schedule.

44. This sets out in detail the general matters in respect of which regulations may be made under section 26.

Fourth  
Schedule.

45. The forms of commission to an officer set out in this Schedule are substantially the same as those in existing legislation.

Fifth  
Schedule.

46. These Schedules set out the various forms of oath to be taken by officers and men of the Permanent Defence Force and the Reserve Defence Force. The forms of oath to be taken by officers and men are brought into conformity with the provisions of section 103 of the Bill.

Sixth to Tenth  
Schedules.

*Department of Defence.*  
*November, 1950.*



