



AN BILLE UM ACHOMHAIRC ARMCHÚIRTEANNA, 1983

COURTS-MARTIAL APPEALS BILL, 1983

EXPLANATORY MEMORANDUM

Introduction

1. The purposes of the Bill are:

(a) to provide a system of appeal for persons convicted by court-martial

and

(b) to provide legal aid in connection with court-martial proceedings subject to certain conditions.

2. As the law stands at present, convicted persons may petition the Minister for Defence against the finding or the finding and sentence of a court-martial. Under the provisions of the Defence Act, 1954, where it appears to the Minister that the proceedings of a court-martial are illegal or the petitioner was wrongfully convicted, the Minister is empowered to quash the finding and sentence of the court-martial.

Provision does not, however, exist for appeal to a higher court for persons convicted by courts-martial.

3. Under this Bill a Courts-Martial Appeal Court, modelled on the Court of Criminal Appeal and with similar powers, will replace the petition against findings or findings and sentence and the Minister's powers to quash findings and sentence of courts-martial.

(Provision also exists in the Defence Act, 1954, under which a superior authority—the Minister, the Adjutant-General or other general officer appointed by the Minister for the purpose—may mitigate or remit, in whole or in part, punishments awarded by a court-martial. This provision will remain in force).

4. The Bill also provides for a scheme of legal aid, for qualified persons being tried by court-martial, on the lines of the scheme already in operation for persons being tried on criminal charges by the civil courts.

Defence legislation does not provide for free legal aid for persons tried by court-martial. The Defence Act, 1954, provides that any person being tried by court-martial may be represented by counsel (meaning a barrister-at-law or a solicitor) or, if not represented by counsel, by an officer of the Defence Forces subject to military law. If represented by counsel the person being tried by court-martial would be liable for the cost involved. Representation by an officer of the Defence Forces is free.

5. PRELIMINARY AND GENERAL — PART I

Section 1 provides for the short title of the Bill.

Section 2 provides that *Part III* of the Bill will come into operation on a day to be fixed by the Minister for Defence.

Section 3 provides for necessary definitions.

Section 4 deals with expenses incurred in the administration of the Bill and is a normal financial provision.

Sections 5 and 6 amend sections 202 and 203 of the Defence Act, 1954, dealing with findings by courts-martial of unfitness to stand trial by reason of insanity or of guilty but insane. The amendments are considered necessary to remove doubts about the arrangements currently provided in those sections.

Section 7 is an amendment consequential to the amendment of Sections 202 and 203 of the Defence Act, 1954.

Section 8 provides that Section 224 of the Defence Act, 1954, which section empowers the Minister for Defence to quash the findings and sentences of courts-martial, shall not have effect after the institution of the new appeals arrangements.

6. COURTS-MARTIAL APPEAL COURT — PART II

Sections 9, 10, 11 and 12 provide for the establishment of the Courts-Martial Appeal Court, and for its constitution, Registrar, sittings and procedure. The Court will be similar in structure to the Court of Criminal Appeal.

Section 13 provides for the right of a person convicted by court-martial to appeal to the Courts-Martial Appeal Court against the findings and/or sentence of the court-martial by which he was convicted.

Section 14 provides for the right of the convicted person to appeal to the Supreme Court on a point of law. It also provides that where, on a question of law, an appeal is decided in favour of the appellant, the respondent to the appeal may, without prejudice to the decision in favour of the appellant, refer the question of law to the Supreme Court for determination.

Sections 15 to 19 provide for the jurisdiction of the Court and for its powers in relation to the disposal of appeals.

Section 20 provides that where the Courts-Martial Appeal Court substitutes a conviction of a different offence or substitutes a different sentence, such conviction or sentence shall be deemed to be a duly confirmed conviction or sentence of a court-martial. This provision is necessary to ensure that any conviction or sentence imposed by the Court will have the same force and effect as if imposed by a court-martial.

Section 21 providing for postponement of execution of a sentence of death in the case of an appeal to the Courts-Martial Appeal Court follows the lines of a similar provision relative to appeals to the Court of Criminal Appeal.

Section 22 provides for the defence of an appeal by the person who convened the court-martial.

Section 23 enables the making of Rules of Court by the Superior Courts Rules Committee for the purposes of the Courts-Martial Appeal Court.

Section 24 provides for the introduction of the appeals procedure.

7. LEGAL AID —PART III

Section 25 provides necessary definitions for the purposes of *Part III*.

Sections 26 to 29 provide, subject to conditions, for the grant of free legal aid certificates at preliminary proceedings, for trial by court-martial, on appeal from conviction by court-martial and on appeal to the Supreme Court. These provisions correspond to those applicable to criminal cases in the civil courts.

Section 30 provides for payment of expenses of legal aid out of moneys provided by the Oireachtas and is a normal financial provision.

Section 31 provides that the Courts-Martial Appeal Court shall not have power to award costs to a person who has been granted a legal aid certificate.

Section 32 provides that an applicant for legal aid may be required, by the authority examining the application, to furnish a written statement of his means.

Section 33 provides for the making of regulations for the purpose of carrying the legal aid provisions of the Bill into effect.

Section 34 provides that a person who, for the purpose of obtaining free legal aid, knowingly makes a false statement or conceals a material fact shall be guilty of an offence and provides for the punishment of such offence on summary conviction.

*An Roinn Cosanta,
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Section 22 provides for the defence of appeal by the person who concerned the court-martial.

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