



**AN BILLE COSANTA (LEASÚ), 1986
DEFENCE (AMENDMENT) BILL, 1986**

EXPLANATORY MEMORANDUM

1. As the long title indicates, the main purpose of the Bill is to increase the levels of maximum fines awardable — and, in certain cases, compensation payable — on conviction of offences under the Defence Act, 1954 (the Principal Act). These include both offences by persons subject to military law which are dealt with before a military tribunal (i.e. a court-martial or a commissioned officer exercising summary jurisdiction) and offences by persons not so subject which are triable by the District Court.

Provision is also made in the Bill for certain additions to and modifications of existing provisions of the Principal Act, principally in the disciplinary field.

Additionally, the introduction of new powers related to the safe navigation and security of military aircraft is provided for.

2. *Section 1* defines “a day’s pay” for the purposes of the new pay-related maximum fines in respect of offences against military law (vide *sections 3* and *4*). The exclusion of additional pay and allowances will ensure uniformity of treatment under the law of persons of equal rank and service.

3. *Section 2* provides for increases in the maximum fines which may be imposed on summary conviction in the District Court for offences in relation to military affairs or property under various sections of the Principal Act. The existing levels of maximum fines were set more than 30 years ago and, to compensate for the decline in money values since 1954, a ten fold increase is provided, in general.

4. *Section 3* provides for increases in the levels of the maximum fines awardable and (where such offences occasion any expense, loss, damage or destruction) compensation payable on summary conviction of offences against military law in the case of officers, non-commissioned officers and privates. Instead of prescribing increased monetary amounts, the increased maximum fines and compensation are expressed in terms of a stated number of days’ pay of the offender. Generally speaking, the numbers of days’ pay fixed for this purpose will restore the relativity between the pay rates of members of the Defence Forces and the maximum fines and compensation which existed in January 1955 (when the Principal Act came into operation).

5. *Section 4* provides for the following:—

Subsections (1) (a)
and *(1) (c)*:

The introduction of a new punishment of reduction in rank in the scale of punishments awardable to officers on conviction by courts-martial. This will provide an alternative penalty in appropriate cases between the very severe punishment of dismissal and the lesser punishment of forfeiture of seniority.

Subsections (1) (b) and (2) (b):

Increases in the maximum fines on conviction by courts-martial of offences against military law and, on the same basis as in *section 3*, the prescription of the new maxima in terms of a stated number of days' pay.

Subsections (1) (d) and (2) (c):

The modification of the existing total disqualification for State employment (civil or military) incurred under sections 209 (8) and 210 (11) of the Principal Act by persons dismissed or discharged with ignominy by sentence of court martial so as to put a time limit of 7 years on its operation insofar as civil employment is concerned and to give the Government power to lift this part of the disqualification at any time. The present disqualification which is without remission is considered to be too punitive. The proposed modification reflects the provisions of section 34 of the Offences Against the State Act, 1939, in regard to persons convicted by a Special Criminal Court of scheduled offences.

Subsection (2)(a):

The placing of the punishment of "detention" (which may not exceed 2 years) lower than those of "discharge" and "discharge with ignominy" in the scale of punishments awardable to non-commissioned personnel convicted by courts-martial.

This reversal of the order in which these punishments are prescribed will enable a sentence of detention for an appropriate period to be substituted on appeal or on petition in mitigation of a sentence of discharge or discharge with ignominy which are generally regarded as far more severe punishments.

6. *Section 5* provides for the creation of a new offence against military law of being under the disabling influence of any drug or volatile substance. It will be a defence to a charge under the section to prove that the drug or substance was prescribed by a medical doctor or was used in good faith for medical reasons.

The need for prescribing the offence arises from the fact that military personnel are liable for duty at all times and must be capable of undertaking such duty at any time. Under section 142 of the Principal Act, drunkenness is an offence against military law.

7. *Section 6* provides express powers for the captain of a service aircraft to take appropriate measures in relation to non-military passengers who may jeopardise the safety of the aircraft or of other passengers or property on board the aircraft. The section reflects powers already in existence in relation to the safety of civilian aircraft.

8. *Section 7* empowers the Minister to lop, cut or remove any tree, shrub, etc. on land in the vicinity of a military aerodrome which obstructs the safe take-off or landing of aircraft.

Under the section, the Minister is required to give not less than 21 days' notice of his intention to lop or cut trees, etc. to the occupier of the land concerned who will be entitled to undertake the work himself if he so wishes, and be paid his reasonable expenses for so doing.

9. *Section 8* provides that any civilian summoned pursuant to existing authority to attend as a witness before a court-martial or before an authorised officer or a commanding officer investigating a charge under Chapter IV of Part V of the Principal Act may be compelled to produce documents or other articles required as evidence. No such express power exists at present.

The section also provides that it will be an offence (punishable on summary conviction by a fine of up to £100) for a civilian witness before an authorised officer or a commanding officer to refuse or fail to produce documents, etc. when so required. New provisions relating to contempt of court-martial by civilians are provided in *section 12* of the Bill. Contempt by persons subject to military law is dealt with in *section 161* of the Principal Act.

10. *Section 9* provides for the extension of the existing power of the Minister under *section 35* of the Principal Act to erect and maintain signalling, etc. apparatus on lands or buildings in the vicinity of a *military aerodrome* so as to enable such apparatus, if required for air navigation purposes, to be placed on land or buildings in the vicinity of *any military post*.

11. *Section 10* amends *section 107 (1)* of the Principal Act, so as to limit to non-commissioned personnel of the P.D.F. only whilst on active service and to reservists on permanent service the protection against imprisonment for non-payment of debt currently afforded to non-commissioned personnel without restriction and to reservists on permanent service. *Section 107 (1)* of the Principal Act prohibits the making of orders directing the imprisonment of a man of the P.D.F. of a reservist on permanent service under any of the following provisions:—

- (a) *section 6* of the Debtors Act (Ireland), 1872, which enables a court to imprison for a period not exceeding 6 weeks a person who makes default in paying a *debt* or an *instalment of debt* due in pursuance of a court order or judgment;
- (b) *section 6* of the Enforcement of Court Orders Act, 1940, which enables a District Justice to order the imprisonment for up to 3 months of a person for the non-payment of *debt*;
- (c) *section 8* of the Act referred to at (b) above which enables a District Justice to imprison for up to 3 months a person who has defaulted in a desertion or affiliation order case.

The new subsection *107 (2)* which is designed to enhance the credit-worthiness of service personnel limits the protections at (a) and (b) above to non-commissioned personnel of the P.D.F. *on active service* and to reservists on permanent service.

12. *Section 11* provides for the inclusion in *section 206 (2)* of the Principal Act of the new punishment of reduction in rank in the case of officers which is being introduced by *section 4* of the Bill. This will enable the effective date of the new punishment to be fixed, regard being had to the possibility of an appeal or a petition against sentence.

13. *Section 12* provides for the replacement of *section 208 (1)* of the Principal Act by provisions on the lines of *section 3* of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 (No. 3 of 1979). These provide that any person not subject to military law, being duly summoned as a witness before court-martial, who is guilty of contempt shall be liable on summary conviction by the District Court to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

The present *section 208 (1)* purports to authorise the president of a court-martial to “certify” to the High Court an offence under the

section. Corresponding provisions in section 3 (4) of the Committee of Public Accounts of Dáil Éireann (Privilege and Procedure) Act, 1970 (No. 22 of 1970) were declared by the Supreme Court to be unconstitutional in 1971.

14. *Section 13* provides for the raising of the punishments awardable on conviction of an offence under section 264 of the Principal Act from the present maximum fine of £10 and/or up to 3 months' imprisonment to a fine not exceeding £1,000 and/or 6 months' imprisonment. The section makes it an offence for any person who is not a member of the Defence Forces to wear, without the Minister's permission, any uniform (including any distinctive part of a uniform) of the Defence Forces, or any colourable imitation of such uniform. The substantial increases in the penalties awardable on conviction of the offence and the inclusion of the presumption in the new *subsection (4)* are regarded as necessary reinforcement of the section.

15. *Section 14* provides for the expansion of the powers of the Minister under paragraph 20 of the Fourth Schedule to the Principal Act to make regulations in relation to the flying of service aircraft so as to enable the making of regulations in relation to the certification and maintenance of such aircraft and aircraft material.

16. *Section 15* provides that the increased penalties and other modifications provided by *sections 2, 3, 4, 8 (4), 12 and 13* of the Bill shall have effect *only* in relation to offences committed after the commencement of the Bill.

17. *Section 16* provides for short title, collective citation and construction and is self-explanatory.

An Roinn Cosanta,
Iúil, 1986.