



AN BILLE COSANTA (LEASÚ) (UIMH. 2) 2006
DEFENCE (AMENDMENT) (NO. 2) BILL 2006

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As initiated

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AN BILLE COSANTA (LEASÚ) (UIMH. 2) 2006
DEFENCE (AMENDMENT) (NO. 2) BILL 2006

BILL

entitled

5 AN ACT TO PROVIDE FOR THE SUMMARY DISPOSAL OF
CHARGES OF OFFENCES AGAINST MILITARY LAW;
TO PROVIDE FOR THE ESTABLISHMENT AND JURIS-
10 DICTION OF THE SUMMARY COURT-MARTIAL; TO
PROVIDE FOR THE APPOINTMENT OF THE COURT-
MARTIAL ADMINISTRATOR, THE DIRECTOR OF
MILITARY PROSECUTIONS AND A MILITARY JUDGE;
TO PROVIDE FOR THE CONSTITUTION OF COURTS-
15 MARTIAL AND MEMBERSHIP OF A COURT-MARTIAL
BOARD; TO PROVIDE FOR MATTERS OF PROCEDURE
BEFORE COURTS-MARTIAL, THE AWARD AND
EXECUTION OF PUNISHMENTS BY COURTS-MARTIAL
AND THE SUSPENSION OF SENTENCES; TO PROVIDE
20 FOR THE ESTABLISHMENT OF THE COURTS-MAR-
TIAL RULES COMMITTEE AND THE MAKING OF
COURT-MARTIAL RULES; AND FOR THOSE AND
OTHER PURPOSES TO AMEND AND EXTEND THE
DEFENCE ACTS 1954 TO 2006, TO MAKE CONSEQUEN-
TIAL AMENDMENTS TO OTHER ENACTMENTS AND
TO PROVIDE FOR RELATED MATTERS.

25 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Defence (Amendment) (No. 2) Act 2006.

Short title,
commencement,
collective citation
and construction.

30 (2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

35 (3) This Part and *sections 6 to 9, 12, 14 to 17, 31 to 34 and 65* shall come into operation on the passing of this Act.

(4) The Defence Acts 1954 to 2006 and this Act may be cited together as the Defence Acts 1954 to 2006 and shall be read together as one.

Definition.

2.—In this Act “Principal Act” means the Defence Act 1954.

Saving and transitional provisions.

3.—The saving and transitional provisions in *Schedule 1* have effect. 5

PART 2

AMENDMENTS AND REPEALS

CHAPTER 1

Miscellaneous Amendments to Principal Act 10

Principal Act: repeals and amendments.

4.—(1) Sections 142A, 180, 188 and 215 to 224 of the Principal Act are repealed.

(2) The Principal Act is amended as indicated in *Schedule 2*.

References to judge advocate in certain Acts and instruments.

5.—Every reference in the Defence Acts 1954 to 2006 or in any instrument made under those Acts to a judge-advocate shall be read as a reference to a military judge. 15

Amendment of section 2 of Principal Act (interpretation generally).

6.—Section 2 of the Principal Act is amended—

(a) by inserting the following definitions:

“ ‘a day’s pay’ means—

(a) in relation to a person who is convicted by a court-martial of an offence against military law or in respect of whom a determination is made or confirmed under Chapter IV of Part V of this Act and who is a member of the Defence Forces, the basic pay, excluding any additional pay or allowance, that is, or would be, payable to that person in respect of the day on which punishment is awarded in respect of the offence, or 20 25

(b) in relation to a person who is convicted by a court-martial of an offence against military law or in respect of whom a determination is made or confirmed under Chapter IV of Part V of this Act and who is not a member of the Defence Forces but who was a member of the Defence Forces when the offence was committed (not being a person to whom paragraph (c) of this definition applies), the basic pay, excluding any additional pay or allowance, that would be payable to that person in respect of the day on which punishment is awarded in respect of the offence if he were a member of the Defence Forces on that day and his rank and service (or service in rank, if appropriate) 30 35 40

were the same as those on the last day of his service in the Defence Forces, or

- 5 (c) in relation to a person who is convicted by a court-martial of an offence against military law or in respect of whom a determination is made or confirmed under Chapter IV of Part V of this Act and who is not a member of the Defence Forces but who is, or was when the offence was committed, subject to military law as an officer pursuant to section 118(d) or (e) 10 or as a man pursuant to section 119(c) or (d), the basic pay, excluding any additional pay or allowance, that would be payable to an officer in the rank of second lieutenant who is in receipt of the maximum pay applicable to that rank, or to a man in the rank of private of the highest grade who is in receipt of the maximum pay applicable to that rank, as the case may be, in respect of the day on which punishment is awarded in respect of the offence; 20

25 ‘assisting person’ means in relation to proceedings for an offence under Part V of this Act, subject to the consent of the member concerned, such member of the Defence Forces who is subject to military law as the person charged with the offence may choose for the purposes of providing assistance to that person as provided for in the said Part V;

‘court-martial’, when used without qualification, means a general court-martial, a limited court-martial or a summary court-martial;

30 ‘Court-Martial Administrator’ means the Court-Martial Administrator appointed under Chapter IVA of Part V of this Act;

‘court-martial rules’ means rules made under section 240B with respect to courts-martial;

35 ‘Director’ means the Director of Military Prosecutions appointed under Chapter IVB of Part V of this Act;

‘document’ includes—

(a) a map, plan, graph, drawing, photograph or record, or

40 (b) a reproduction in permanent legible form, by a computer or other means (including enlarging), of information in non-legible form;

‘intoxicant’ includes any alcohol, drug, solvent or any other substance or combination of substances;

45 ‘military judge’ means a military judge appointed under Chapter IVC of Part V of this Act;

‘scheduled offence’, for the purposes of Part V of this Act, shall have the meaning assigned to it by section 176A;”;

- 50 (b) in the definition of “prescribed”, in paragraph (a), by substituting “(other than Chapters IV and X or in the case of any matter or thing referred to in Part V as prescribed

by court-martial rules)” for “(except Chapters IV and X)”,

(c) in the definition of “service” by inserting “or any other matter” after “property”,

(d) by deleting the definition of “steal”, 5

(e) by substituting the following for the definition of “superior officer”:

“ ‘superior officer’ includes—

(a) when used in relation to a member of the Permanent Defence Force, an officer or non-commissioned officer of the Permanent Defence Force of equal or higher rank who is authorised, in relation to that member, by or under this Act or by custom of the service, to exercise authority over that member, 10 15

(b) when used in relation to a member of the Reserve Defence Force, an officer or non-commissioned officer of the Permanent Defence Force or of the Reserve Defence Force, of equal or higher rank, who is authorised, in relation to that member, by or under this Act or by custom of the service, to exercise authority over that member;”, 20

and

(f) by inserting the following after subsection (3): 25

“(4) In this Act, a reference to stealing shall be construed as a reference to theft within the meaning of section 2 of the Criminal Justice (Theft and Fraud Offences) Act 2001.”.

Amendment of section 26 of Principal Act (general regulations in relation to Defence Forces).

7.—Section 26 of the Principal Act is amended— 30

(a) by renumbering the existing provision as subsection (1) of that section, and

(b) by inserting the following subsection:

“(2) Regulations under this section may—

(a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations or for giving full effect to this Act, 35

(b) apply either generally or by reference to a specified category or categories of persons.”. 40

8.—Section 61 of the Principal Act is amended in subsection (1) by substituting “who were enlisted under section 53 before the commencement of *section 8 of the Defence (Amendment) (No. 2) Act 2006*” for “enlisted under section 53”.

Amendment of section 61 of Principal Act (transfer of men of Permanent Defence Force enlisted under section 53 from one service corps to another).

5 9.—Section 114 of the Principal Act is amended by inserting the following after subsection (4):

Amendment of section 114 of Principal Act (redress of wrongs).

“(5) This section shall not apply to—

10 (a) any determination made, punishment awarded or compensation order made under section 177C, 178C or 179C, or

(b) the decision of a summary court-martial under section 178G following an appeal under section 178E.”.

CHAPTER 2

Miscellaneous Amendments to other Acts and Instruments

15 10.—(1) The Act specified in *Part 1 of Schedule 3* is amended as indicated in that Schedule.

References to ignominy in certain Act and instruments.

(2) The instruments specified in *Part 2 of Schedule 3* are amended as indicated in that Schedule.

20 (3) Every reference in any Act or in any instrument made under any Act (other than an Act or instrument to which *subsection (1)* or *(2)* relates) to ignominy, as it applies to dismissal or discharge (however expressed) from the Defence Forces, shall be read as a reference to disgrace.

25 11.—The Acts specified in *Schedule 4* are amended as indicated in that Schedule.

Miscellaneous amendments to other Acts.

PART 3

AMENDMENTS TO PART V OF PRINCIPAL ACT

CHAPTER 1

Liability to Military Law

30 12.—Section 120 of the Principal Act is amended—

Amendment of section 120 of Principal Act (liability to military law in respect of status).

(a) by substituting the following for subsection (2):

“(2) Where—

35 (a) an offence (other than that of mutiny, desertion, fraudulent enlistment or a civil offence committed by a person subject to military law while he was on active service outside the State or

while he was despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006) against military law triable by court-martial under this Act has been committed by any person while subject to military law, and 5

(b) such person has since commission of the offence ceased to be subject to military law,

that person may not be tried for the offence unless he is charged with the offence in accordance with this Act within six months beginning on the date on which he ceased to be so subject, but nothing in this subsection shall be construed as affecting the jurisdiction of a civil court where the offence is triable by that court as well as by court-martial.”, 10 15

and

(b) by substituting the following for subsection (3):

“(3) Where a person subject to military law is sentenced by a court-martial to a term of imprisonment or detention and is in service custody, this Act shall apply to the person during the term of that sentence, notwithstanding that the person is discharged or dismissed from the Defence Forces or has otherwise ceased to be subject to military law, and the person may be kept, removed, imprisoned, made to undergo detention and punished accordingly as if the person continued to be subject to military law.”. 20 25

Amendment of section 121 of Principal Act (modification of Part V in its application to civilians subject to military law).

13.—The following section is substituted for section 121 of the Principal Act:

“Modification of Part V in its application to civilians subject to military law.

121.—In the application of this Part to persons who do not belong to the Defence Forces, the following modifications shall be made: 30

(a) where an offence against military law has been committed by any person subject to military law who does not belong to the Defence Forces and the person is remanded for trial by court-martial under this Act, that person may be tried by such class of court-martial as the Director directs and, on conviction, dealt with and punished accordingly; 35 40

(b) any person subject to military law who does not belong to the Defence Forces shall, for the purpose of this Part, be deemed to be under the command of the prescribed officer, and that person, subject to the right to elect to be tried by court-martial pursuant to section 177B or 178B, as appropriate, may, with the prior consent of the Director, be dealt with summarily and punished 45 50

under Chapter IV of this Part, according to whether the person is subject to military law as an officer or as a man.”.

14.—Section 123 of the Principal Act is amended—

Amendment of section 123 of Principal Act (time limit for trial of offences).

5 (a) by substituting the following for subsection (1):

10 “(1) Subject to subsection (1A), a person subject to military law shall not be charged with an offence (other than that of mutiny, desertion, fraudulent enlistment or a civil offence committed by a person subject to military law while he was on active service outside the State or while he was despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006) against military law triable by court-martial under this Act after the end of six years beginning with the date of commission of the offence.”,

and

(b) by inserting the following after subsection (1):

20 “(1A) Proceedings for the summary disposal of a scheduled offence under Chapter IV of this Part may be commenced—

(a) at any time within 12 months from the date on which the offence was committed, or

25 (b) at any time within 12 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings comes to that person’s knowledge,

30 whichever is the later, but no such proceedings shall be commenced later than 3 years from the date on which the offence concerned was committed.

(1B) In calculating a period referred to in subsection (1) or (1A) of this section there shall not be included any period during which the person is certified by his commanding officer as being—

35 (a) on active service,

(b) despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006,

40 (c) otherwise engaged in any other essential operational duties within or outside the State,

(d) absent without leave, or

(e) unavailable for investigation due to illness.”.

Offences against Military Law

Amendment of section 135 of Principal Act (desertion).

15.—Section 135(2)(a) of the Principal Act is amended in subparagraph (i) by inserting “(which, for the purpose of this section, includes, but is not limited to, active service or service with a contingent or as a member despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006)” after “important service”. 5

Amendment of section 142 of Principal Act (drunkenness).

16.—The following section is substituted for section 142 of the Principal Act: 10

“Prohibition on being under the influence of an intoxicant.

142.—(1) Every person subject to military law who, whether on duty or not on duty, due to his or her being under the influence of an intoxicant—

(a) is unfit to be entrusted with any duty that the person is or may be required to perform, or 15

(b) behaves in a disorderly manner or in any manner likely to bring discredit on the Defence Forces,

is guilty of an offence against military law and shall, where a charge under this section is disposed of summarily under section 177C, 178C or 179C, as the case may be, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable to suffer— 20 25

(i) in the case of an officer, dismissal from the Defence Forces or any less punishment awardable by a court-martial, or

(ii) in the case of a man, where the offence is committed on active service or on duty, imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial, or 30

(iii) in the case of a man, where the offence is committed otherwise than on active service or on duty, detention for a period not exceeding ninety days or any less punishment awardable by a court-martial. 35

(2) In any proceedings for an offence under this section, evidence given by a person subject to military law of his opinion that another such person was, at the material time, under the influence of an intoxicant shall, without more, be evidence, until the contrary is proved, of intoxication. 40 45

(3) In any proceedings for an offence under this section it shall be a defence for the person charged

with the offence to prove that the intoxicant concerned was administered by, or taken in accordance with the directions of, a registered medical practitioner or a registered dentist (or both so administered and taken).”.

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17.—The following section is substituted for section 150 of the Principal Act:

Amendment of section 150 of Principal Act (unauthorised carriage on ships or aircraft).

“Unauthorised carriage on ships or aircraft.

10

150.—Every person subject to military law who knowingly consigns, takes or receives on board, or allows to be carried on board, a State ship or service aircraft, or a ship or aircraft used for any purpose by the Defence Forces, persons, goods or merchandise that the person is not authorised to consign, take or receive on board is guilty of an offence against military law and shall, where a charge under this section is disposed of summarily under section 177C or 178C, as the case may be, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.”.

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18.—Section 161 of the Principal Act is amended—

Amendment of section 161 of Principal Act (offences in relation to courts-martial, etc.).

(a) in subsection (1), by substituting the following for paragraphs (b) and (c):

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“(b) an officer, pursuant to section 177, investigating a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life,

30

(c) a commanding officer, pursuant to section 178, investigating a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life,”

(b) in subsection (2)—

35

(i) by inserting the following after paragraph (e):

“(ea) who communicates with the Director, a member of his staff (including a prosecuting officer), a member of a court-martial board, a military judge or a witness in any proceedings under this Act for the purpose of influencing, directly or indirectly, any decision relating to the performance of their functions, including, as appropriate, a decision to withdraw or not to institute such proceedings or any particular charge in such proceedings or the conduct or trial of any such proceedings, or

40

45

(eb) who fails, refuses or neglects to comply with a direction of the military judge under section 195, or

50

(*ec*) who, by act or omission, obstructs or hinders a service tribunal in the performance of its functions, or”,

and

(ii) by substituting the following for paragraph (*f*): 5

“(f) who does or omits to do any other thing, which, if the service tribunal were a civil court having power to commit for contempt, would be contempt of that court,”,

and 10

(c) by inserting the following after subsection (2):

“(3) If the Director, a member of his staff (including a prosecuting officer), a member of a court-martial board, a military judge or a witness in any proceedings under this Act is of the opinion that a communication is in breach of subsection (2)(*ea*) of this section, it shall be the duty of that person not to entertain the communication further. 15

(4) (*a*) In the case of the Director or a member of his staff, subsection (2)(*ea*) of this section does not apply to— 20

(i) communications made by a person who is a complainant in proceedings for, or has been charged with, an offence under this Act or believes that he is likely to be charged with an offence under this Act, or 25

(ii) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as a social worker or a member of the family of a person involved in the matter. 30

(*b*) In this subsection ‘member of the family’ means spouse, parent, grandparent, step-parent, child (including a step-child or an adopted child), grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew of the person concerned; 35

‘spouse’ means each person of a couple in relation to the other;

‘couple’ means a married couple or a man and woman who are not married to each other but are cohabiting as husband and wife. 40

(5) Subsection (2) of this section shall apply in relation to the summary disposal of charges under section 177C, 178C or 179C, as the case may be, as it applies to a service tribunal and for the purposes of such application references in the said subsection (2) to a service tribunal shall be construed as references to the summary disposal of charges under section 177C, 178C or 179C, as the case may be.”. 45 50

19.—The following section is substituted for section 162 of the Principal Act:

Amendment of section 162 of Principal Act (false evidence).

“False evidence.

162.—Every person subject to military law who, when examined on oath or solemn declaration before—

- (a) a service tribunal within the meaning of section 161,
- (b) an authorised officer investigating a charge under section 177C,
- (c) a commanding officer investigating a charge under section 178C, or
- (d) a subordinate officer investigating a charge under section 179C,

knowingly gives false evidence is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.”.

CHAPTER 3

Investigation and Summary Disposal of Charges, Appeals to Summary Court-martial and Remands for Court-martial

20.—(1) The following section is inserted after section 176 of the Principal Act:

Insertion of new section: scheduled offences.

“Scheduled offences.

176A.—An offence of a disciplinary nature under any of the provisions of this Act specified in the Eleventh Schedule to this Act shall be a scheduled offence for the purposes of this Part of this Act.”.

(2) The Schedule set out in *Schedule 5* is inserted after the Tenth Schedule to the Principal Act.

21.—The Principal Act is amended as indicated in *Schedule 6*.

Amendments to Principal Act consequential on section 20.

22.—The following section is substituted for section 177 of the Principal Act:

Amendment of section 177 of Principal Act (charges against officers).

“Charges against officers and other specified persons.

177.—(1) A charge against a person subject to military law—

- (a) as an officer, or
- (b) as a non-commissioned officer in the rank of sergeant major or battalion quarter-master sergeant or their equivalent naval ranks,

shall, subject to the giving of a notice under section 177A, in accordance with regulations made under section 184, be investigated by the person's commanding officer or, if the Deputy Chief of Staff (Support) so directs, by such officer as the Deputy Chief of Staff (Support) may appoint for the purpose. 5

(2) (a) Where a person is charged with a scheduled offence, the officer investigating the charge under subsection (1) of this section shall— 10

(i) where the person charged holds the rank of lieutenant colonel or commander or any higher commissioned rank— 15

(I) subject to paragraph (b) of this subsection, dismiss the charge if, in his discretion, he considers that it should not be proceeded with, or 20

(II) remand the person charged for trial by court-martial if he considers that the charge should be proceeded with,

(ii) in any other case— 25

(I) subject to paragraph (b) of this subsection, dismiss the charge if, in his discretion, he considers that it should not be proceeded with, or 30

(II) remand the person charged for trial by court-martial if he considers that the charge should be proceeded with, or

(III) subject to this section and to regulations made under section 184, refer the charge for summary investigation by an authorised officer. 35

(b) In the case of a charge against a person for a scheduled offence specified in Part II of the Eleventh Schedule to this Act, dismissal of the charge under subparagraph (i)(I) or (ii)(I) of paragraph (a) of this subsection or referral of the charge for summary investigation by an authorised officer under subparagraph (ii)(III) of the said paragraph (a) shall be subject to the prior consent of the Director and where the Director refuses consent in any such case the person charged shall be remanded for trial by court-martial. 40 45 50

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(3) (a) Where a person is charged with an offence other than a scheduled offence, the officer investigating the charge under subsection (1) of this section shall—

(i) subject to the prior consent of the Director, dismiss the charge if the officer considers that it should not be proceeded with, or

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(ii) remand the person for trial by court-martial.

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(b) Where the Director refuses consent to the dismissal of the charge concerned, the person charged shall be remanded for trial by court-martial.

(4) Where a person is remanded under this section for trial by court-martial, the matter shall be referred to the Director for his directions.

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(5) Where a person is charged with an offence for which the person would be required on conviction to be sentenced to imprisonment for life and the charge is investigated under this section, the person may, if he so wishes, be represented by counsel (within the meaning of section 196) or by an officer subject to military law.”.

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23.—The following sections are inserted after section 177 of the Principal Act:

Insertion of new sections: notice, right to elect, summary disposal and remand.

“Notice.

177A.—Where a charge against a person subject to military law is—

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(a) to be investigated under section 177 by the person’s commanding officer or an officer appointed for that purpose by the Deputy Chief of Staff (Support), or

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(b) referred to an authorised officer for summary investigation under section 177(2)(a)(ii)(III),

the person charged shall be entitled to receive, in the prescribed manner, at least 24 hours before the charge is to be so investigated—

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(i) written notice in the prescribed form of the date on which and the time and place at which the charge is to be so investigated, and

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(ii) a copy of the charge sheet containing particulars of the offence concerned, a list of the witnesses who will be giving evidence against the person and, where available, an abstract of the evidence

to be given against the person and a copy of any witness statements.

Right to elect for trial by court-martial.

177B.—(1) Before disposing of a charge summarily under section 177C, the authorised officer shall, in the prescribed manner—

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(a) ask the person charged whether he elects to have the charge disposed of summarily by the authorised officer or to be tried by court-martial, and

(b) inform the person charged that he may obtain legal advice regarding the matter of the election and, where the person wishes to obtain such legal advice, that the hearing shall be adjourned for such period as the authorised officer considers reasonable (which period shall not in any case be less than 48 hours).

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(2) Where the person charged elects to be tried by court-martial, whether or not the person obtains legal advice, the authorised officer shall remand the person charged for trial by court-martial and shall refer the charge to the Director for his directions but otherwise shall proceed to dispose of the charge summarily under section 177C and may do so then and there.

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(3) Where two or more charges are brought against the person concerned, an election for trial by court-martial in respect of any of the charges shall take effect as an election in respect of all of them.

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Summary disposal by authorised officer.

177C.—(1) This section applies where the person charged elects under section 177B to have the charge disposed of summarily by the authorised officer.

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(2) The authorised officer may, subject to subsection (5) of this section, dismiss the charge at any stage of the hearing.

(3) If the authorised officer determines that the charge has not been proved he shall dismiss the charge.

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(4) The authorised officer may, after hearing the evidence or without hearing the evidence, remand the person charged for trial by court-martial and, in that case, shall refer the matter to the Director for his directions.

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(5) After hearing the evidence or, if the person charged consents to the attendance of witnesses being dispensed with and admits the offence charged, after reading a summary or abstract of the evidence, where the authorised officer makes a determination that the charge has been proved, he shall—

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- (a) record the determination, and
- (b) subject to subsection (6) of this section—

5 (i) in the case of a person subject to military law as an officer pursuant to section 118(a), (b) or (c) or as a non-commissioned officer in the rank of sergeant major or bat-
10 talion quarter-master sergeant or their equivalent naval ranks, award one of the following punishments:

15 (I) reduction on the applicable scale of pay of the person by one increment from a specified date for a specified period not exceeding one year;

20 (II) deferral for a specified period not exceeding one year of the next increment due to the person on the applicable scale of pay of that person;

25 (III) a fine not exceeding an amount equal to seven days' pay of the person at the most recent applicable rate;

(IV) severe reprimand;

(V) reprimand,

30 (ii) in the case of a person subject to military law as an officer pursuant to section 118(d) or (e), award one of the following punishments:

35 (I) a fine not exceeding an amount equal to seven days' pay of the person at the most recent applicable rate;

(II) severe reprimand;

(III) reprimand.

40 (6) Where the authorised officer records a determination that two or more charges against the person have been proved, he shall award a single punishment in accordance with subsection (5) of this section in respect of the charges taken
45 together.

(7) The person charged may have an assisting person present at but not participating in the hearing before the authorised officer.

(8) The evidence against the person charged taken before the authorised officer shall, if the person charged so demands, be taken on oath, and in that event there shall be administered to each witness the same oath or solemn declaration as that required to be taken by a witness before a court-martial, and for this purpose the authorised officer may administer oaths or solemn declarations. 5

(9) Where the authorised officer makes a determination under this section that a charge has been proved and the offence charged occasioned any personal injury, expense or loss or destruction of, or damage to, any property, the authorised officer may, instead of or in addition to any punishment which he is authorised by this section to award in respect of the offence, order that there shall be paid by the person charged, as compensation for the personal injury, expense, loss, damage or destruction so occasioned, to any person who has suffered such personal injury, expense, loss, damage or destruction, such sum as the authorised officer may direct not exceeding the lesser of— 10 15 20

(a) the amount required to make good such personal injury, expense, loss, damage or destruction, or 25

(b) subject to subsection (10) of this section, an amount equal to twenty-eight days' pay of the person charged.

(10) A compensation order under subsection (9) of this section may provide for payment of the compensation by such instalments and at such times as the authorised officer shall in all the circumstances consider reasonable subject to a maximum deduction of seven days' pay in any one calendar month. 30 35

Remand for trial by court-martial.

177D.—(1) Where the person charged is remanded for trial by court-martial under section 177(2)(a)(ii)(II) or 177C and the matter is referred to the Director for his directions, the Director may direct that the charge (with such alterations, amendments, additions, substitutions and additional charges as he thinks fit) be referred back to an authorised officer and the authorised officer shall either dismiss or, subject to the right to elect to be tried by court-martial pursuant to section 177B, dispose of the charge or charges so referred back summarily in accordance with section 177C. 40 45

(2) Where the person charged— 50

(a) is remanded for trial by court-martial under section 177(2)(a)(ii)(II) or 177C and no direction is given under subsection (1) of this section, or

(b) is remanded for trial by court-martial under section 177 (other than under section 177(2)(a)(ii)(II)) or 177B,

the Director may—

- 5 (i) subject to section 192, in respect of the charge concerned (with such alterations, amendments, additions, substitutions and additional charges as he thinks fit)—
- 10 (I) direct that the matter be referred for trial by summary court-martial, or
- 15 (II) direct that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in his direction, to try the person charged,
- or
- (ii) withdraw the charge.”.

20 **24.**—The following section is substituted for section 178 of the Principal Act:

“Charges against men.

178.—(1) This section and sections 178A to 178D apply to the summary disposal by a commanding officer of a charge against a person subject to military law as a man other than a sergeant major or battalion quarter-master sergeant or their equivalent naval ranks.

Amendment of section 178 of Principal Act (disposition of charges against men by commanding officers).

- 25 (2) (a) Where a person referred to in subsection (1) of this section is charged with a scheduled offence, the commanding officer investigating the charge (including a charge referred to the commanding officer under section 179(2)(b) or 179B) shall—
- 30 (i) subject to paragraph (b) of this subsection, dismiss the charge if, in his discretion, he considers that it should not be proceeded with, or
- 35 (ii) remand the person for trial by court-martial if he considers that the charge should be proceeded with, or
- 40 (iii) subject to this section and to regulations made under section 184, deal with the charge summarily.
- 45 (b) In the case of a charge against a person referred to in subsection (1) of this section for a scheduled offence specified in Part II of the Eleventh Schedule

to this Act, dismissal of the charge under subparagraph (i) of paragraph (a) of this subsection or the decision to dispose of the charge summarily under subparagraph (iii) of the said paragraph (a) shall be subject to the prior consent of the Director and where the Director refuses consent in any such case the person shall be remanded for trial by court-martial.

(3) (a) Where a person is charged with an offence other than a scheduled offence, the commanding officer investigating the charge shall—

(i) subject to the prior consent of the Director, dismiss the charge if he considers that it should not be proceeded with, or

(ii) remand the person for trial by court-martial.

(b) Where the Director refuses consent to the dismissal of the charge concerned, the person charged shall be remanded for trial by court-martial.

(4) Where a person is remanded under this section for trial by court-martial, the matter shall be referred to the Director for his directions.

(5) Where a person referred to in subsection (1) of this section is charged with an offence for which the person would be required on conviction to be sentenced to imprisonment for life and the charge is investigated under this section, the person may, if he so wishes, be represented by counsel (within the meaning of section 196) or by an officer subject to military law.”.

Insertion of new sections: notice, right to elect, summary disposal and remand.

25.—The following sections are inserted after section 178 of the Principal Act:

“Notice.

178A.—Where a charge against a person referred to in section 178(1) is to be investigated by a commanding officer, the person charged shall be entitled to receive, in the prescribed manner, at least 24 hours before the charge is to be so investigated—

(a) written notice in the prescribed form of the date on which and the time and place at which the charge is to be so investigated, and

(b) a copy of the charge sheet containing particulars of the offence concerned, a list of the witnesses who will be giving evidence against the person and copies of any available evidence to be given

against the person and of any witness statements.

Right to elect for trial by court-martial.

178B.—(1) Before disposing of a charge summarily under section 178C, the commanding officer shall, in the prescribed manner—

(a) ask the person charged whether he elects to have the charge disposed of summarily by the commanding officer or to be tried by court-martial, and

(b) inform the person charged that he may obtain legal advice regarding the matter of the election and, where the person wishes to obtain such legal advice, that the hearing shall be adjourned for such period as the commanding officer considers reasonable (which period shall not in any case be less than 48 hours).

(2) Where the person charged elects to be tried by court-martial, whether or not the person obtains legal advice, the commanding officer shall remand the person for trial by court-martial and shall refer the charge to the Director for his directions but otherwise shall proceed to dispose of the charge summarily under section 178C and may do so then and there.

(3) Where two or more charges are brought against the person concerned, an election for trial by court-martial in respect of any of the charges shall take effect as an election in respect of all of them.

Summary disposal by commanding officer.

178C.—(1) This section applies where the person charged elects under section 178B to have the charge disposed of summarily by the commanding officer and, in the case of a scheduled offence specified in Part II of the Eleventh Schedule to this Act, the Director has consented to the charge being disposed of summarily.

(2) The commanding officer may, subject to subsection (5) of this section, dismiss the charge at any stage of the hearing.

(3) If the commanding officer determines that the charge has not been proved he shall dismiss the charge.

(4) The commanding officer may, after hearing the evidence or without hearing the evidence, remand the person charged for trial by court-martial and, in that case, shall refer the matter to the Director for his directions.

(5) After hearing the evidence or, if the person charged consents to the attendance of witnesses being dispensed with and admits the offence charged, having considered the available evidence,

where the commanding officer makes a determination that the charge has been proved, he shall—

- (a) record the determination, and
- (b) subject to subsection (7) of this section— 5
 - (i) in the case of a non-commissioned officer, award one of the following punishments:
 - (I) reduction on the applicable scale of pay of the person by one increment from a specified date for a specified period not exceeding one year; 10
 - (II) deferral for a specified period not exceeding one year of the next increment due to the person on the applicable scale of pay of that person; 15
 - (III) a fine not exceeding an amount equal to seven days' pay of the person at the most recent applicable rate; 20
 - (IV) severe reprimand;
 - (V) reprimand, 25
 - (ii) in the case of a private or a seaman, award one or, subject to subsection (6) of this section, a combination of the following punishments: 30
 - (I) reduction on the applicable scale of pay of the person by one increment from a specified date for a specified period not exceeding one year; 35
 - (II) deferral for a specified period not exceeding one year of the next increment due to the person on the applicable scale of pay of the person; 40
 - (III) a fine not exceeding an amount equal to seven days' pay of the person at the most recent applicable rate; 45
 - (IV) stoppage of local leave or shore leave, as the case may be, for a period or periods not exceeding a total of fourteen

days, as may be prescribed under section 184;

(V) additional duties as may be prescribed under section 184;

5 (VI) a warning,

(iii) in the case of a person subject to military law as a man pursuant to section 119(c) or (d), award one of the following punishments:

10 (I) a fine not exceeding an amount equal to seven days' pay of the person at the most recent applicable rate;

(II) a warning.

15 (6) Where the person charged is a private or seaman, save as provided for by subsection (10) of this section, only the following combinations of punishments may be awarded by a commanding officer:

20 (a) in the case where the commanding officer awards a fine under subparagraph (ii)(III) of paragraph (b) of subsection (5) of this section, he may also award—

25 (i) stoppage of local leave or shore leave under subparagraph (ii)(IV) of the said paragraph (b), or

30 (ii) additional duties under subparagraph (ii)(V) of the said paragraph (b);

or

35 (b) in the case where the commanding officer awards stoppage of local leave or shore leave under subparagraph (ii)(IV) of paragraph (b) of subsection (5) of this section, he may also award additional duties under subparagraph (ii)(V) of the said paragraph (b).

40 (7) Where the commanding officer records a determination that two or more charges against the person have been proved, he shall award a single punishment or combination of punishments in accordance with subsections (5) and (6) of this section in respect of the charges taken together.

45 (8) The person charged may have an assisting person present at but not participating in the hearing before the commanding officer.

(9) The evidence against the person charged taken before the commanding officer shall, if the

person so demands, be taken on oath, and in that event there shall be administered to each witness the same oath or solemn declaration as that required to be taken by a witness before a court-martial, and for this purpose the commanding officer may administer oaths or solemn declarations. 5

(10) Where the commanding officer makes a determination under this section that a charge has been proved and the offence charged occasioned any personal injury, expense, or loss or destruction of, or damage to, any property, the commanding officer may, instead of or in addition to any punishment which he is authorised by this section to award in respect of the offence, order that there shall be paid by the person charged, as compensation for the personal injury, expense, loss, damage or destruction so occasioned, to any person who has suffered such personal injury, expense, loss, damage or destruction, such sum as the commanding officer may direct not exceeding the lesser of— 10 15 20

(a) the amount required to make good such personal injury, expense, loss, damage or destruction, or 25

(b) subject to subsection (11) of this section, an amount equal to twenty-eight days' pay of the person charged.

(11) A compensation order under subsection (10) of this section may provide for payment of the compensation by such instalments and at such times as the commanding officer shall in all the circumstances consider reasonable subject to a maximum deduction of seven days' pay in any one calendar month. 30 35

Remand for trial by court-martial.

178D.—(1) Where the person charged is remanded for trial by court-martial under section 178(2)(a)(ii) or 178C and the matter is referred to the Director for his directions, the Director may direct that the charge (with such alterations, amendments, additions, substitutions and additional charges as he thinks fit) be referred back to the commanding officer and the commanding officer shall either dismiss or, subject to the right to elect to be tried by court-martial pursuant to section 178B, dispose of the charge or charges so referred back summarily in accordance with section 178C. 40 45

(2) Where the person charged—

(a) is remanded for trial by court-martial under section 178(2)(a)(ii) or 178C and no direction is given under subsection (1) of this section, or 50

(b) is remanded for trial by court-martial under section 178 (other than under section 178(2)(a)(ii)) or 178B,

the Director may—

- 5 (i) subject to section 192, in respect of the charge concerned (with such alterations, amendments, additions, substitutions and additional charges as he thinks fit)—
- 10 (I) direct that the matter be referred for trial by summary court-martial, or
- 15 (II) direct that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in his direction, to try the person charged,
- or
- (ii) withdraw the charge.”.

20 **26.**—The following sections are inserted after section 178D (inserted by *section 25*) of the Principal Act:

“Appeal to summary court-martial.

178E.—(1) This section and sections 178F and 178G shall apply in relation to a compensation order made under section 177C or 178C as they apply to a punishment awarded under the said section 177C or 178C, as the case may be, and for the purpose of such application references in this section and sections 178F and 178G to a punishment shall be construed as references to a compensation order.

Insertion of new sections: appeal to summary court-martial, etc.

(2) A person in respect of whom, under section 177C or 178C—

- (a) a charge has been disposed of summarily, and
- 35 (b) a determination made and punishment awarded by an authorised officer or commanding officer, as the case may be,

40 may appeal in the manner prescribed by court-martial rules to the summary court-martial against the determination or the punishment or both the determination and the punishment.

(3) An appeal under this section shall be brought—

- 45 (a) within seven days beginning with the date on which the punishment was awarded (‘the initial period’), or

(b) within such longer period as the summary court-martial may allow by leave given before the end of the initial period.

(4) The respondent to an appeal under this section shall be the Director. 5

Hearing of appeal by summary court-martial.

178F.—(1) An appeal under section 178E against a determination shall be by way of—

(a) a rehearing of the charge, and

(b) except where section 178G(2) applies, a rehearing as regards punishment. 10

(2) An appeal under section 178E against punishment shall be by way of a rehearing as regards punishment.

(3) The appellant may, if he so wishes, be represented at the hearing of the appeal by counsel (within the meaning of section 196) or by an officer subject to military law. 15

Powers of summary court-martial.

178G.—(1) At a rehearing of the charge concerned under section 178F, the summary court-martial may confirm or quash the determination concerned. 20

(2) Where the summary court-martial quashes a determination, or where there is more than one determination, every determination, made in respect of the appellant, the summary court-martial shall quash the punishment which relates to that determination or, as the case may be, those determinations. 25

(3) At a rehearing as regards punishment under section 178F, the summary court-martial may— 30

(a) confirm the punishment awarded,

(b) quash that punishment, or

(c) substitute any other punishment which it would have been within the powers of the authorised officer or commanding officer, as the case may be, who heard the charge against the appellant summarily, to award. 35

(4) Where the summary court-martial substitutes a punishment under subsection (3)(c) of this section, the substituted punishment shall take effect on and from the date on which the original punishment was awarded or such other date as the military judge may order. 40 45

(5) Where an appeal is made to the summary court-martial under section 178E, the military judge—

(a) shall, if requested by the appellant or the respondent, unless the military judge considers the request frivolous, and

5 (b) may, without request,

refer any question of law arising in that appeal to the Courts-Martial Appeal Court for determination in accordance with the Courts-Martial Appeals Act 1983.”.

10 **27.**—The following section is substituted for section 179 of the Principal Act:

“Charges against privates and seamen.

15 179.—(1) A commanding officer may, in accordance with regulations made under section 184, delegate to any officer under his command the power of disposing of charges against privates or seamen under the command of the commanding officer in respect of any of the scheduled offences specified in Part I of the Eleventh Schedule to this Act and every officer to whom such power is delegated shall, for the purposes of this section, be a subordinate officer.

Amendment of section 179 of Principal Act (disposition of charges against privates and seamen by subordinate officers).

20 (2) A subordinate officer investigating a charge against a private or seaman, who is subject to military law, of having committed any of the offences referred to in subsection (1) of this section shall—

25 (a) dismiss the charge if, in his discretion, he considers that it should not be proceeded with, or

30 (b) where the subordinate officer considers that the charge should be proceeded with, refer the charge to the commanding officer who shall deal with the charge in accordance with sections 178 to 178D, or

35 (c) subject to this section and in accordance with regulations made under section 184, deal with the charge summarily.”.

40 **28.**—The following sections are inserted after section 179 of the Principal Act:

“Notice.

45 179A.—Where a subordinate officer proposes to investigate a charge against a private or seaman in respect of any of the offences referred to in section 179(1), the private or seaman shall be entitled to receive, in the prescribed manner, at least 24 hours before the charge is to be so investigated—

Insertion of new sections: notice, right to elect and summary disposal.

(a) written notice in the prescribed form of the date on which and the time and

place at which the charge is to be so investigated, and

- (b) a copy of the charge sheet containing particulars of the offence concerned, a list of the witnesses who will be giving evidence against the person and copies of any available evidence to be given against the person and of any witness statements. 5

Right to elect to have charge disposed of summarily by commanding officer.

179B.—(1) Before disposing of a charge summarily under section 179C, the subordinate officer shall, in the prescribed manner, ask the private or seaman whether he elects to have the charge disposed of summarily by the subordinate officer or to have the charge referred to the commanding officer and, if the private or seaman elects to have the charge so referred, the subordinate officer shall refer the charge to the commanding officer who shall deal with the charge in accordance with sections 178 to 178D but otherwise the subordinate officer shall proceed to dispose of the charge summarily under section 179C and may do so then and there. 10 15 20

(2) Where two or more charges are brought against a private or seaman, an election to have any of the charges dealt with summarily by the commanding officer shall take effect as an election in respect of all of them. 25

Summary disposal by subordinate officer.

179C.—(1) This section applies where a private or seaman elects under section 179B to have the charge disposed of summarily by the subordinate officer. 30

(2) The subordinate officer may, subject to subsection (5) of this section, dismiss the charge at any stage of the hearing. 35

(3) If the subordinate officer determines that the charge has not been proved he shall dismiss the charge.

(4) The subordinate officer may, after hearing the evidence or without hearing the evidence, refer the charge to the commanding officer who shall deal with the charge in accordance with sections 178 to 178D. 40

(5) After hearing the evidence or, if the private or seaman consents to the attendance of witnesses being dispensed with and admits the offence charged, having considered the available evidence, where the subordinate officer makes a determination that the charge has been proved, he shall— 45

(a) record the determination, and 50

(b) subject to subsections (6) and (7) of this section, award one or a combination of the following punishments:

(i) a fine not exceeding an amount equal to three days' pay of the private or seaman at the most recent applicable rate;

5 (ii) stoppage of local leave or shore leave, as the case may be, for a period or periods not exceeding a total of seven days, as may be prescribed under section 184;

10 (iii) additional duties as may be prescribed under section 184;

(iv) a warning.

15 (6) Save as provided for by subsection (10) of this section, only the following combinations of punishments may be awarded by a subordinate officer:

20 (a) in the case where the subordinate officer awards a fine under subparagraph (i) of paragraph (b) of subsection (5) of this section, he may also award—

(i) stoppage of local leave or shore leave under subparagraph (ii) of the said paragraph (b), or

25 (ii) additional duties under subparagraph (iii) of the said paragraph (b);

or

30 (b) in the case where the subordinate officer awards stoppage of local leave or shore leave under subparagraph (ii) of paragraph (b) of subsection (5) of this section, he may also award additional duties under subparagraph (iii) of the said paragraph (b).

35 (7) Where the subordinate officer records a determination that two or more charges against the private or seaman have been proved, he shall award a single punishment or combination of punishments in accordance with subsections (5) and (6) of this section in respect of the charges taken together.

40 (8) The private or seaman may have an assisting person present at but not participating in the hearing before the subordinate officer.

45 (9) The evidence against the private or seaman taken before the subordinate officer shall, if the private or seaman so demands, be taken on oath, and in that event there shall be administered to each witness the same oath or solemn declaration as that required to be taken by a witness before a

court-martial, and for this purpose the subordinate officer may administer oaths and solemn declarations.

(10) Where the subordinate officer makes a determination under this section that a charge has been proved and the offence charged occasioned any personal injury, expense or loss or destruction of, or damage to, any property, the subordinate officer may, instead of or in addition to any punishment which he is authorised by this section to award in respect of the offence, order that there shall be paid by the private or seaman, as compensation for the personal injury, expense, loss, damage or destruction so occasioned, to any person who has suffered such personal injury, expense, loss, damage or destruction, such sum as the subordinate officer may direct not exceeding the lesser of—

(a) the amount required to make good such personal injury, expense, loss, damage or destruction, or

(b) an amount equal to seven days' pay of the private or seaman.

(11) A compensation order under subsection (10) of this section may provide for payment of the compensation by such instalments and at such times as the subordinate officer shall in all the circumstances consider reasonable.”.

Insertion of new sections: appeal to commanding officer, etc.

29.—The following sections are inserted after section 179C (inserted by *section 28*) of the Principal Act:

“Appeal to commanding officer.

179D.—(1) This section and section 179E shall apply in relation to a compensation order made under section 179C as they apply to a punishment awarded under the said section 179C, and for the purpose of such application references in this section and section 179E to a punishment shall be construed as references to a compensation order.

(2) A private or seaman in respect of whom, under section 179C—

(a) a charge has been disposed of summarily, and

(b) a determination made and punishment awarded by a subordinate officer,

may appeal in the prescribed manner to a commanding officer against the determination or the punishment awarded (or both).

(3) An appeal under this section shall be brought—

- (a) within two days beginning on the date on which the punishment was awarded ('the initial period'), or
- (b) within such longer period as the commanding officer of the private or seaman concerned may allow, by leave given before the end of the initial period, which longer period shall not exceed five days beginning on the date on which the punishment was awarded.

Hearing of appeals by commanding officer.

179E.—(1) An appeal under section 179D against a determination shall be by way of a rehearing of the charge and a rehearing as regards punishment.

(2) An appeal under section 179D against punishment shall be by way of a rehearing as regards punishment.

(3) The appellant is entitled to have an assisting person present at but not participating in the hearing of the appeal.

(4) Subsections (2) to (11) of section 178C and section 178D shall apply, with any necessary modifications, to the hearing of an appeal under this section as they apply for the purpose of the summary disposal of a charge under the said section 178C.”.

30.—The following section is inserted after section 179E (inserted by section 29) of the Principal Act:

Insertion of new section: suspension of operation of certain punishments pending appeal.

“Suspension of operation of certain punishments pending appeal.

179F.—The operation of a punishment awarded (other than stoppage of local leave or shore leave) or a compensation order made under this Chapter shall be suspended—

- (a) in any case until the time for bringing an appeal (whether against the determination, punishment or compensation order, as the case may be) under section 178E or 179D has expired, and
- (b) in a case where the appeal is brought within that time, until the appeal or, in the case of an appeal under section 179D, any further appeal is finally determined (and the determination, punishment or compensation order, as the case may be, has been confirmed) or abandoned or the time for bringing any further appeal has expired.”.

Amendment of section 184 of Principal Act (regulations in relation to investigation and summary disposition of charges).

31.—The following section is substituted for section 184 of the Principal Act:

“Regulations

Regulations in relation to investigation and summary disposal of charges.

184.—(1) For the purposes of this Chapter, the Minister may make regulations, not inconsistent with this Act, in relation to all or any of the following matters: 5

- (a) the investigation and summary disposal under this Chapter of charges against persons subject to military law, including the exercise of the right to elect for trial by court-martial, which regulations may include: 10
 - (i) the practice and procedure to be followed; 15
 - (ii) the form of notices and the giving of such notices under this Chapter;
 - (iii) the summoning of witnesses and the production of relevant documents and other things; 20
 - (iv) evidence;
 - (v) the administration of oaths or solemn declarations to witnesses in a case where the person charged is subject to military law and demands that the witnesses be sworn; 25
- (b) where a person is remanded for trial by court-martial pursuant to this Chapter, the appointment of an officer to take a written summary of evidence in the case; 30
- (c) the officers in whom are to be vested the powers and duties of authorised officers and commanding officers and the officers in whom may be vested by delegation the powers and duties of subordinate officers; 35
- (d) the delegation to a subordinate officer of power to deal summarily with a case; 40
- (e) the making of an application to the Director to deal summarily with a charge against a person for an offence specified in Part II of the Eleventh Schedule to this Act; 45
- (f) the referral of charges for summary investigation to an authorised officer under section 177(2); 50

- (g) the reference back by the Director of charges for summary disposal;
- (h) the making and retention of records of proceedings and determinations made in respect of the investigation and summary disposal of charges;
- (i) the effective dates of, and the carrying into effect of, punishments awarded and compensation orders made under section 177C, 178C or 179C, as the case may be;
- (j) the stoppage of local leave or shore leave under section 178C or 179C, including the times at which any such stoppage may be imposed;
- (k) the additional duties which may be awarded by a commanding officer under section 178C or by a subordinate officer under section 179C, including the nature of those duties and the period for which and the times at which those duties may be performed which period shall not in any case exceed three hours per day for seven days;
- (l) the making of an appeal by a private or seaman to a commanding officer under section 179D;
- (m) any person, matter or thing referred to as prescribed or to be prescribed;
- (n) any other matter or thing necessary for carrying this Chapter into effect.

(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.”.

CHAPTER 4

Courts-martial

32.—The following Chapter is inserted after Chapter IV of Part V of the Principal Act:

Insertion of new Chapter: Court-Martial Administrator.

Court-Martial Administrator

Appointment of Court-Martial Administrator. 184A.—(1) An officer of the Permanent Defence Force not below the army rank of colonel or the equivalent naval rank may by warrant of the Judge Advocate-General be appointed as the Court-Martial Administrator. 5

(2) A warrant under this section may be made subject to such restrictions, reservations, exceptions and conditions as the Judge Advocate-General thinks fit including terms and conditions relating to the delegation by the Court-Martial Administrator of his functions under this Act. 10

(3) A warrant under this section—

(a) may be addressed to an officer by name or by designation of his office or partly in one way and partly in another, and 15

(b) may or may not, according to the terms of the warrant and the mode in which it is addressed— 20

(i) be limited to an officer named, or

(ii) be extended to a person for the time being performing the duties of the office named, or

(iii) be extended to the successors in office of an officer. 25

(4) The Court-Martial Administrator shall be independent in the performance of his functions.

(5) The Court-Martial Administrator shall neither report on, nor be the subject of any report in respect of, the performance of his functions under this Act. 30

Functions of Court-Martial Administrator. 184B.—(1) The Court-Martial Administrator shall manage and control generally the administration and business of courts-martial and shall perform such other functions as may be specified or prescribed by or under this Act. 35

(2) The Court-Martial Administrator shall act under the general supervision of the Judge Advocate-General. 40

(3) The Court-Martial Administrator shall provide to the Judge Advocate-General such information in relation to the performance of his functions as the Judge Advocate-General may from time to time require. 45

(4) The Court-Martial Administrator shall—

5 (a) as directed by the Director under this Part, convene general courts-martial and limited courts-martial and refer any charge or other matter to the summary court-martial, and

(b) in the case of a general court-martial or limited court-martial, specify the members of the court-martial board.

10 (5) Subject to the terms of the warrant under section 184A, the functions of the Court-Martial Administrator may be delegated by him from time to time to any other person or persons or class or classes of persons for such purposes as may be specified in the warrant.”.

15 **33.**—The following Chapter is inserted after Chapter IVA (inserted by *section 32*) of Part V of the Principal Act:

Insertion of new Chapter: Director of Military Prosecutions.

“CHAPTER IVB

Director of Military Prosecutions

20 Appointment of Director of Military Prosecutions. 184C.—(1) Subject to this Chapter, the Government shall appoint an officer of the Permanent Defence Force to be the Director of Military Prosecutions (in this Act referred to as the ‘Director’).

25 (2) Subject to this Chapter, an officer who is a practising barrister or practising solicitor of not less than 10 years standing shall be qualified for appointment as the Director.

30 (3) For the purposes of this section service for any period in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for which qualification as a barrister or solicitor was a requirement shall be deemed to be practice as a barrister or a solicitor, as the case may be, for that period and an officer, while holding that position, shall be deemed to be a practising barrister or a practising solicitor, as the case may be.

40 (4) The Director shall not be below the army rank of colonel or the equivalent naval rank.

Committee. 184D.—(1) For the purpose of identifying officers and informing the Minister of their suitability for appointment as Director, there shall be established a committee consisting of—

- 45 (a) the Chief of Staff,
- (b) a Judge of the High Court, nominated by the President of the High Court, and
- (c) the Director of Public Prosecutions.

(2) In the case of either of the persons specified in paragraphs (b) and (c) of subsection (1) of this section signifying at any time unwillingness or inability to act for any period as a member of the committee, the Minister may, after consultation with the Attorney General, appoint another person to be a member of the committee in place of that person for that period. 5

(3) The committee may adopt such procedures as it considers appropriate to carry out its functions under this section. 10

(4) The committee shall, whenever so requested by the Minister, select an officer or officers for appointment under section 184C and shall inform the Minister of the selection made and of his or their suitability for the appointment. 15

(5) The Government shall not appoint an officer to be the Director unless the officer was selected or amongst those selected by the committee pursuant to a request under subsection (4) of this section in relation to that appointment, but— 20

(a) if the committee is unable to select a suitable officer pursuant to a particular request under that subsection, or

(b) if the Government decide not to appoint to be the Director the officer or any of the officers selected by the committee pursuant to a particular request under that subsection, 25

then either— 30

(i) the Government shall appoint an officer to be the Director who was selected or amongst those selected by the committee pursuant to a previous request (if any) under that subsection in relation to that appointment, or 35

(ii) the Minister shall make a further request to the committee under that subsection and the Government shall appoint an officer to be the Director who was selected or amongst those selected by the committee pursuant to that request or pursuant to another request under that subsection in relation to that appointment. 40 45

(6) All proceedings of the committee and all communications to the committee shall be confidential and shall not be disclosed except for the purposes of this Chapter.

Terms and conditions of appointment.

184E.—(1) Subject to this Chapter, the Director shall hold and vacate office on the terms and conditions determined by the Minister with the consent of the Minister for Finance. 50

(2) The Director shall be independent in the performance of his functions.

(3) The Director shall neither report on, nor be the subject of any report in respect of, the performance of his functions under this Act.

(4) The Attorney General, the Director of Public Prosecutions and the Director may consult together from time to time in relation to matters pertaining to the functions of the Director.

Prosecuting officers.

184F.—(1) The Director may appoint officers to be prosecuting officers.

(2) An officer shall not be appointed as a prosecuting officer unless, at the date of appointment under subsection (1) of this section, the officer is a barrister or solicitor.

(3) A prosecuting officer shall hold and vacate office in accordance with the terms of his appointment.

(4) A prosecuting officer may, unless the Director otherwise directs, exercise any function of the Director.

Prosecution of offences.

184G.—(1) This section applies where a charge has been referred to the Director under any of the provisions of this Act.

(2) When a charge for an offence under this Act is referred to the Director he may exercise any of the powers conferred on him by any of the provisions of this Act.

(3) Where the Director directs that a specified offence or offences be tried by court-martial, he shall also decide the class of court-martial that is to try the offence or offences concerned and shall direct the Court-Martial Administrator accordingly.

(4) Where a direction has been given by the Director for the trial by court-martial of a person accused of an offence against military law, the offence shall be taken to be prosecuted at the suit of the Director who shall be responsible for the conduct of all prosecutions at court-martial, and accordingly the Director shall have, in respect of that offence, in addition to any other powers conferred on him by or under this Act, powers similar to those conferred by law on the Director of Public Prosecutions in respect of offences triable on indictment before a civil court.

Removal of Director from office.

184H.—(1) Subject to section 184I, the Director may be removed from office by the Government but only for stated reasons, including because—

- (a) he has become incapable, through ill-health, either physical or mental, of effectively performing the functions of the office,
- (b) he has failed to perform the functions of the office with due diligence and effectiveness, 5
- (c) he has engaged in conduct that brings discredit on the office or that may prejudice the proper performance of the functions of the office, or 10
- (d) his removal from office would, in the Government's opinion, be in the best interests of the Defence Forces.

(2) On notifying the Director under section 184I(1) that the Government intends to consider removing him from office, the Government may immediately suspend the Director from duty. 15

(3) The suspension from duty continues until the Government makes a decision in relation to the matter under consideration, but only if there is no undue delay in taking steps under section 184I or in making that decision. 20

Steps to be taken before removal of Director.

184I.—(1) Before considering the Director's removal from office under section 184H the Government shall— 25

- (a) notify the Director that the Government intends to consider the matter and include in the notice a statement of their reasons for doing so, and 30
- (b) give the Director an opportunity to make representations as to why he ought not to be removed from office.

(2) The Government may, if they consider it necessary or appropriate to do so, appoint a Judge of the High Court nominated by the President of the High Court to— 35

- (a) hold an inquiry into any matter giving rise to a notification under subsection (1) of this section, and 40
- (b) report to the Government on the findings of the inquiry.

(3) A Judge of the High Court appointed under this section to hold an inquiry may do one or more of the following: 45

- (a) direct a person, by notice delivered to the person, to provide any information that is specified in the notice and is required for the purposes of the inquiry; 50

- 5
- (b) direct any person, by notice delivered to the person, to produce at the time and place specified in the notice a document specified in the notice that is relevant to the inquiry and is in the person's power or control;
 - (c) summon witnesses to attend the inquiry;
 - (d) direct a witness to answer a question put to the witness at the inquiry;
 - 10 (e) give any other direction that appears to the Judge appointed under this section to be necessary, just and reasonable for the purposes of the inquiry;
 - 15 (f) administer oaths and affirmations to witnesses and examine witnesses attending the inquiry.

20 (4) A person whose evidence has been, is being, or is to be given before an inquiry under this section, or who produces or sends a document to the inquiry pursuant to a summons or direction, as the case may be, under subsection (3) of this section or who is required by such a summons or direction to give evidence or produce a document to the inquiry or to attend before the inquiry and there to give evidence or produce a document, shall be entitled to the same privileges and immunities as if the person were a witness before the High Court.

30 (5) If a person fails or refuses to comply with or disobeys a summons or direction under subsection (3) of this section, the High Court may, on application by the Judge appointed under this section—

- 35 (a) order the person in relation to whom the application was made to comply with the direction or, in the case of a summons, to attend the inquiry, and
- 40 (b) make such other (if any) order as it considers necessary and just to enable the direction to have full effect or, in the case of a summons, to ensure the attendance at the inquiry.

- (6) A person who—
- 45 (a) is notified under subsection (3) of this section and who, without lawful excuse, refuses or fails to comply with a direction under paragraph (a) or (b) of that subsection,
- 50 (b) fails, without lawful excuse, to attend an inquiry in response to a summons under subsection (3)(c) of this section,

(c) refuses to answer a question that the Judge of the High Court conducting the inquiry may legally direct the person to answer, or

(d) does or omits to do in relation to the inquiry any other thing the doing or omission of which would, if the inquiry had been a proceeding in the High Court, have been contempt of that Court,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or both.

(7) If an inquiry is held, the Government shall—

(a) consider the report on the findings of the inquiry,

(b) make a copy of the report available to the Director whose removal from office is the subject of the report, and

(c) give the Director an opportunity to make representations relating to the report.

(8) As soon as practicable after the Director is removed from office under section 184H, the Minister shall cause a statement of the reasons for the removal to be laid before each House of the Oireachtas.”.

Insertion of new Chapter: Military Judge.

34.—The following Chapter is inserted after Chapter IVB (inserted by *section 33*) of Part V of the Principal Act:

“CHAPTER IVC

Military Judge

Military judge. 184J.—(1) The President may appoint, on the recommendation of the Minister, one, or more than one, qualified officer of the Permanent Defence Force to be a military judge.

(2) An officer who is a practising barrister or a practising solicitor of not less than 10 years standing shall be qualified for appointment as a military judge.

(3) For the purposes of this section service for any period in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for which qualification as a barrister or solicitor was a requirement shall be deemed to be practise as a barrister or a solicitor, as the case may be,

for that period and an officer, while holding that position, shall be deemed to be a practising barrister or a practising solicitor, as the case may be.

5 (4) The military judge, or where there is more than one military judge, the Chief Military Judge, shall not be below the army rank of colonel or the equivalent naval rank.

Committee. 10 184K.—(1) For the purpose of identifying officers and informing the Minister of their suitability for appointment to judicial office, there shall be established a committee consisting of—

- 15 (a) the Chief of Staff,
- (b) the Judge Advocate-General, and
- (c) a Judge of the High Court, nominated by the President of the High Court.

(2) The committee may adopt such procedures as it considers appropriate to carry out its functions under this section.

20 (3) The committee shall, whenever so requested by the Minister, select an officer or officers for appointment under this section and shall inform the Minister of the selection made and of his or their suitability for the appointment.

25 (4) The committee shall not submit or recommend the name of an officer to the Minister under this section unless the officer concerned satisfies the requirements of section 184J(2) as regards the proposed appointment, and the committee shall not recommend the name of the officer to the Minister unless, in the opinion of the committee, the officer—

- 35 (a) has displayed in his or her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment as a military judge,
- (b) is suitable on grounds of character and temperament,
- 40 (c) is otherwise suitable, and
- (d) complies with the requirements of subsection (5) of this section.

45 (5) An officer who wishes to be considered for appointment under section 184J shall undertake in writing to the committee, if appointed as a military judge, to take such courses of training or education, or both, as may be required by the Judge Advocate-General.

(6) All proceedings of the committee and all communications to the committee shall be confidential and shall not be disclosed except for the purposes of this Chapter.

Terms and conditions of appointment.

184L.—(1) Subject to this Chapter, a military judge shall hold and vacate office on and subject to the terms and conditions (including terms and conditions relating to remuneration and superannuation) determined by the Minister with the consent of the Minister for Finance. 5
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(2) A military judge shall be independent in the performance of his judicial functions under this Act.

(3) A military judge shall not hold any other office or employment in respect of which remuneration is payable. 15

(4) The remuneration of a military judge shall not be reduced during his continuance in office.

(5) A military judge may at his own request be relieved of office by the President. 20

(6) It shall be a condition of his appointment that a military judge—

(a) who is relieved of office by the President under subsection (5) of this section shall cease to be an officer, 25

(b) who ceases to be an officer under any of the provisions of this Act shall cease to be a military judge,

(c) who retires in accordance with the terms and conditions of his appointment under this Chapter shall cease to be an officer, 30

(d) who is removed from office under section 184O, shall cease to be an officer. 35

(7) Every officer appointed as a military judge under this Chapter shall, before entering upon his duties under this Act and in any case not later than 10 days after the date of his appointment, swear an oath or make a solemn declaration in the prescribed form which shall be administered by the Judge Advocate-General and a military judge who declines or neglects to swear an oath or make such a declaration shall be deemed to have vacated his office. 40
45

(8) A military judge shall neither report on, nor be the subject of any report in respect of, the performance of his functions under this Act.

5 Functions of military judge. 184M.—A military judge shall preside at courts-martial and shall perform any other judicial functions that may be prescribed.

Chief Military Judge. 184N.—(1) The Judge Advocate-General may designate a military judge to be the Chief Military Judge.

10 (2) The Chief Military Judge shall have such functions as are prescribed including assignment of military judges to preside at courts-martial and to perform other judicial duties under this Act.

15 (3) The Chief Military Judge, subject to the consent of the Judge Advocate-General, may delegate any of the Chief Military Judge's functions to a military judge.

20 Removal of military judge from office. 184O.—(1) Subject to section 184P, a military judge may be removed from office by the President on the recommendation of the Government but only for stated reasons including because—

25 (a) he has become incapable, through ill-health, either physical or mental, of effectively performing the functions of the office,

(b) he has failed to perform the functions of the office with due diligence and effectiveness,

30 (c) he has engaged in conduct that brings discredit on the office or that may prejudice the proper performance of the functions of the office, or

35 (d) his removal from office would, in the Government's opinion, be in the best interests of the Defence Forces.

(2) On notifying a military judge under section 184P(1) that the Government intends to consider his removal from office, the Government may immediately suspend the military judge from duty.

40 (3) The suspension from duty continues until the Government makes a decision in relation to the matter under consideration, but only if there is no undue delay in taking steps under section 184P or in making that decision.

45 Steps to be taken before removal of military judge. 184P.—(1) Before considering removal of a military judge from office under section 184O the Government shall—

(a) notify the military judge that the Government intends to consider the

matter and include in the notice a statement of their reasons for doing so, and

- (b) give the military judge an opportunity to make representations as to why he ought not to be removed from office. 5

(2) The Government may, if they consider it necessary or appropriate to do so, appoint a Judge of the High Court nominated by the President of the High Court to— 10

- (a) hold an inquiry into any matter giving rise to a notification under subsection (1) of this section, and

- (b) report to the Government on the findings of the inquiry. 15

(3) A Judge of the High Court appointed under this section to hold an inquiry may do one or more of the following:

- (a) direct a person, by notice delivered to the person, to provide any information that is specified in the notice and is required for the purposes of the inquiry; 20

- (b) direct any person, by notice delivered to the person, to produce at the time and place specified in the notice a document specified in the notice that is relevant to the inquiry and is in the person's power or control; 25

- (c) summon witnesses to attend the inquiry; 30

- (d) direct a witness to answer a question put to the witness at the inquiry;

- (e) give any other direction that appears to the Judge appointed under this section to be necessary, just and reasonable for the purposes of the inquiry; 35

- (f) administer oaths and affirmations to witnesses and examine witnesses attending the inquiry.

(4) A person whose evidence has been, is being, or is to be given before an inquiry under this section, or who produces or sends a document to the inquiry pursuant to a summons or direction, as the case may be, under subsection (3) of this section or who is required by such a summons or direction to give evidence or produce a document to the inquiry or to attend before the inquiry and there to give evidence or produce a document, shall be entitled to the same privileges and immunities as if the person were a witness before the High Court. 40 45 50

5 (5) If a person fails or refuses to comply with or disobeys a direction or summons under subsection (3) of this section, the High Court may, on application by the Judge appointed under this section—

(a) order the person in relation to whom the application was made to comply with the direction or, in the case of a summons, to attend the inquiry, and

10 (b) make such other (if any) order as it considers necessary and just to enable the direction to have full effect or, in the case of a summons, to ensure the attendance at the inquiry.

15 (6) A person who—

(a) is notified under subsection (3) of this section and who, without lawful excuse, refuses or fails to comply with a direction under paragraph (a) or (b) of that subsection,

(b) fails, without lawful excuse, to attend an inquiry in response to a summons under subsection (3)(c) of this section,

25 (c) refuses to answer a question that the Judge of the High Court conducting the inquiry may legally direct the person to answer, or

30 (d) does or omits to do in relation to the inquiry any other thing the doing or omission of which would, if the inquiry had been a proceeding in the High Court, have been contempt of that Court,

35 is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or both.

(7) If an inquiry is held, the Government shall—

40 (a) consider the report on the findings of the inquiry,

(b) make a copy of the report available to the military judge whose removal from office is the subject of the report, and

45 (c) give the military judge an opportunity to make representations relating to the report.

50 (8) As soon as practicable after the military judge is removed from office under section 184O, the Minister shall cause a statement of the reasons

for the removal to be laid before each House of the Oireachtas.”.

Amendment of section 185 of Principal Act (acquittal or conviction to bar subsequent trial by court-martial).

35.—Section 185 of the Principal Act is amended—

(a) by substituting the following for subsection (1):

“(1) Where a person subject to military law has been acquitted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.”,

and

(b) by inserting the following after subsection (1):

“(1A) Where a person subject to military law has been convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence unless the conviction has been quashed and a retrial ordered by the Courts-Martial Appeal Court pursuant to the Criminal Procedure Act 1993.”.

Amendment of section 186 of Principal Act (classes of courts-martial).

36.—The following section is substituted for section 186 of the Principal Act:

“Classes of courts-martial. 186.—There shall be three classes of courts-martial, namely, general courts-martial, limited courts-martial and the summary court-martial.”.

Amendment of section 187 of Principal Act (convening of courts-martial).

37.—The following section is substituted for section 187 of the Principal Act:

“Convening of courts-martial. 187.—(1) Where the Director directs that a specified offence or offences be tried by court-martial, the Court-Martial Administrator shall, subject to the directions of the Director, convene a general court-martial or limited court-martial, or refer the matter for trial by summary court-martial.

(2) A court-martial may sit in any place whether within or outside the State.”.

Insertion of new section: summary court-martial.

38.—The following section is inserted after section 187 of the Principal Act:

“Summary court-martial. 187A.—(1) There shall be a court-martial to be known as the summary court-martial.

(2) Every military judge is authorised to preside at a summary court-martial and a military judge who does so constitutes the summary court-martial.

(3) The summary court-martial shall, subject to section 192, have jurisdiction to hear—

- (a) charges or other matters referred to it by the Court-Martial Administrator as directed by the Director,
- (b) appeals under section 178E from determinations made, punishments awarded or compensation orders made under section 177C or 178C, and
- (c) applications for legal aid.”.

5

10 **39.**—The following section is substituted for section 189 of the Principal Act:

Amendment of section 189 of Principal Act (constitution of general courts-martial).

“General court-martial.

189.—(1) A general court-martial shall consist of—

- (a) a military judge, and
- (b) save in the case of a general court-martial convened pursuant to subsection (8) or (11) of section 212A, a court-martial board of not less than five members specified by or on behalf of the Court-Martial Administrator, one of whom shall be designated by the Court-Martial Administrator as the senior member.

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(2) The senior member of the court-martial board shall be an officer of the Permanent Defence Force not below the army rank of colonel or the equivalent naval rank and in any case not of a lower rank than the accused.

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(3) Where the accused is an officer, the court-martial board shall, in addition to the senior member, include not less than four officers, none of whom shall be below the army rank of captain or the equivalent naval rank.

30

(4) Where the accused is not an officer, the court-martial board—

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- (a) shall, in addition to the senior member, include not less than three officers, none of whom shall be below the army rank of captain or the equivalent naval rank, and

40

- (b) may include not more than one non-commissioned officer who shall not be below the army rank of battalion quarter-master sergeant or the equivalent naval rank and in any case not of a lower rank than the accused.”.

45

Amendment of section 190 of Principal Act (constitution of limited courts-martial).

40.—The following section is substituted for section 190 of the Principal Act:

“Limited court-martial.

190.—(1) A limited court-martial shall consist of—

(a) a military judge, and 5

(b) save in the case of a limited court-martial convened pursuant to subsection (8) or (11) of section 212A, a court-martial board of not less than three members specified by or on behalf of the Court-Martial Administrator, one of whom shall be designated by the Court-Martial Administrator as the senior member. 10

(2) The senior member of the court-martial board shall be an officer of the Permanent Defence Force not below the army rank of commandant or the equivalent naval rank. 15

(3) The court-martial board—

(a) shall, in addition to the senior member, include at least one officer who shall not be below the army rank of lieutenant or the equivalent naval rank, and 20

(b) may include not more than one non-commissioned officer who shall not be below the army rank of battalion quartermaster sergeant or the equivalent naval rank and in any case not of a lower rank than the accused.”. 25

Amendment of section 191 of Principal Act (disqualifications for membership of courts-martial).

41.—The following section is substituted for section 191 of the Principal Act: 30

“Membership of court-martial board.

191.—(1) None of the following persons may serve as a member of a court-martial board:

(a) the Court-Martial Administrator or a member of his staff; 35

(b) the Director or a member of his staff;

(c) a member of the Defence Forces who has examined into or advised on the matters on which any charge against the accused is based; 40

(d) a person who has been or may be summoned as a witness for the prosecution or the accused before the court-martial concerned;

(e) a member of the Defence Forces who investigated the charge against the accused or took down any summary or abstract of evidence against the 45

accused or who was a member of a court of inquiry inquiring into the matters on which the charge against the accused is based;

- 5
- (f) a member of the military police corps;
 - (g) any member of the Defence Forces who is a barrister or solicitor;
 - (h) any member of the Defence Forces who has a personal interest in the case;
 - 10 (i) any member of the Defence Forces who is not for the time being subject to military law;
 - (j) an officer or non-commissioned officer who is serving in the same military chain of command as the accused.
- 15

(2) A member of a court-martial board shall neither report on, nor be the subject of any report in respect of, the performance of his functions as such member under this Act.”.

20 **42.—Section 192 of the Principal Act is amended—**

Amendment of section 192 of Principal Act (jurisdiction of courts-martial).

(a) by substituting the following for subsection (1):

25 “(1) Subject to and in accordance with the provisions of this Act, a general court-martial, limited court-martial or summary court-martial shall, in addition to any other powers conferred on it by this Act, have jurisdiction to try and punish any person for an offence against military law committed by the person while subject to military law as an officer or as a man.”,

(b) by inserting the following after subsection (1):

30 “(1A) In this section ‘relevant offence’ means—

- (a) the offence of treason or murder, or
- (b) an offence under section 3, as amended, of the Geneva Conventions Act 1962 or an offence under section 7 (genocide, crimes against humanity and war crimes) or 8 (ancillary offences) of the International Criminal Court Act 2006, or
- 35 (c) manslaughter, rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), or
- 40 (d) an offence under the Criminal Justice (United Nations Convention against Torture) Act
- 45 2000, or

(e) an offence under the Criminal Justice (Safety of United Nations Workers) Act 2000, or

(f) an offence under the Criminal Justice (Terrorist Offences) Act 2005.

(1B) A summary court-martial shall not have jurisdiction— 5

(a) to try any person who is for the time being an officer holding the army rank of lieutenant colonel or the equivalent naval rank or higher commissioned rank, 10

(b) to try any person for a relevant offence,

(c) to award to any person any sentence greater than imprisonment for a term of six months, or

(d) in the case of an appeal under section 178E, to award any punishment greater than that awardable on summary disposal of the matter under section 177C or 178C, as appropriate.”, 15

(c) by substituting the following for subsection (2):

“(2) A limited court-martial shall not have jurisdiction— 20

(a) to try any person for any offence against military law committed by the person while subject to military law as an officer,

(b) to try any person who is for the time being an officer or a man of the army rank of battalion quarter-master sergeant or the equivalent naval rank or of any higher non-commissioned rank, 25

(c) to try any person for a relevant offence, or

(d) to award to any person any sentence greater than imprisonment for a term of two years.”, 30

(d) by substituting the following for subsection (3):

“(3) Subject to subsection (3A) of this section, a general court-martial shall not have jurisdiction to try any person subject to military law for a relevant offence unless the offence was committed while the person was on active service or while the person was despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006.”, 35

(e) by inserting the following after subsection (3): 40

“(3A) In the case of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), where the offence was committed by a person subject to military law who was neither on active service nor despatched for service outside the State for any purpose 45

specified in section 3 of the Defence (Amendment) Act 2006 when the offence was committed, a general court-martial may try any person subject to military law on a charge of having committed that offence where—

5 (a) the person in respect of whom the offence was committed is, or was when the offence was committed, subject to military law, and has consented in writing to the trial of the offence by court-martial, and

10 (b) the Director of Public Prosecutions has given his prior consent.”,

and

15 (f) in subsection (4)(b), by substituting “the Director certifying that as respects the trial of a civil offence” for “the officer convening a court-martial for the trial of a civil offence certifying that as respects such trial”.

43.—The following section is substituted for section 193 of the Principal Act:

Amendment of section 193 of Principal Act (dissolution of courts-martial).

20 “Dissolution of courts-martial. 193.—(1) This section applies to the dissolution of a general court-martial or limited court-martial.

25 (2) The Court-Martial Administrator may dissolve a court-martial at any time before it has been sworn, where he considers that by reason of the exigencies of the service or for any other reason it is desirable to do so.

30 (3) The military judge for a trial by court-martial may dissolve the court-martial at any time after it has been sworn where he considers it to be necessary or expedient in the interests of the administration of justice.

35 (4) Where a court-martial has been sworn and the military judge dies or for any other reason is unavailable, the court-martial may be dissolved by another military judge or by the Court-Martial Administrator, as appropriate.

(5) The military judge shall dissolve the court-martial—

40 (a) where, on account of the illness of the accused at any time before the finding, it is impossible, in the opinion of the military judge, to continue the trial within a reasonable time, or

45 (b) where at any time after the court-martial is sworn, and before the finding, the number of members of the court-martial board is reduced below the minimum number of members required for the trial—

(i) by reason of the death of a member or the discharge of a member by the military judge owing to his being incapable through illness or any other cause of continuing to act as a member, or 5

(ii) because the military judge directs that a member shall not serve or shall not continue to serve as a member where he considers that for any stated reason it is desirable in the interests of justice. 10

(6) Where a court-martial is dissolved under this section, the accused may, on the directions of the Director, be re-tried by another court-martial in accordance with this Part. 15

(7) For the purposes of subsection (5) of this section the minimum number of members of a court-martial board shall be—

(a) in the case of a general court-martial, 5 members (including the senior member), and 20

(b) in the case of a limited court-martial, 3 members (including the senior member).” 25

Amendment of section 194 of Principal Act (admission to courts-martial).

44.—The following section is substituted for section 194 of the Principal Act:

“Admission to courts-martial. 194.—(1) Subject to this section and to any other enactment, proceedings before a court-martial shall be held in public. 30

(2) Where the military judge presiding at a court-martial is satisfied that because of the nature or circumstances of the case or otherwise in the interests of justice or the security of the State or of the Defence Forces that it is desirable to do so, he may do any one or more of the following: 35

(a) exclude the public or any portion of the public or any particular person or persons from the court during the whole or any part of a trial; 40

(b) prohibit the publication of information in relation to the proceedings or any particular part of them;

(c) impose restrictions or limitations on publication. 45

(3) In any proceedings for an offence which is, in the opinion of the military judge, of an indecent or obscene nature (including proceedings for rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or 50

5 sexual assault or aggravated sexual assault (both
within the meaning of the Criminal Law (Rape)
(Amendment) Act 1990), attempted aggravated
sexual assault or sexual assault or aiding, abetting,
10 counselling or procuring the offence of aggravated
sexual assault or sexual assault or attempted
aggravated sexual assault or sexual assault or of
incitement to the offence of aggravated sexual
assault or sexual assault or conspiracy to commit
15 any of the foregoing offences), the military judge
shall, subject to subsections (4) and (5) of this
section, exclude from the court-martial during the
trial all persons except officers of the court, per-
sons directly concerned in the proceedings, bona
fide representatives of the press and such other
persons (if any) as the military judge may in his
discretion permit to remain.

(4) In any proceedings for an offence referred
to in subsection (3) of this section—

20 (a) in the case of the accused person, an
assisting person or, where the accused
person so requests, a parent, relative
or friend of the accused person shall be
entitled to remain in court during the
25 whole of the trial, and

(b) in the case of a person in respect of
whom the offence is alleged to have
been committed, where the person so
requests, a parent, relative or friend of
30 the person shall be entitled to remain
in court while that person is giving evi-
dence as a witness before the court-
martial.

35 (5) In any proceedings to which subsection (2)
or (3) of this section applies the findings and the
sentence (if any) shall be announced in public.

40 (6) Witnesses, other than the accused person,
shall not be admitted to a trial, except when under
examination or by specific leave of the military
judge presiding at the trial concerned.

(7) No persons other than the members of the
court-martial board shall be present during any
deliberations by the court-martial board as to its
findings.”.

45 **45.**—The following section is substituted for section 195 of the
Principal Act:

“Divers
matters of
procedure.

195.—(1) A court-martial may adjourn from
time to time and from place to place whenever the
military judge considers adjournment desirable.

50 (2) The military judge and, in the case of a
general court-martial or a limited court-martial,
the court-martial board, after it is sworn and
before making its findings, if the military judge

Amendment of
section 195 of
Principal Act
(divers matters of
procedure).

considers it appropriate, may view any place, person or thing which in the opinion of the military judge it is expedient for the purposes of the proceedings that he and, as the case may be, the court-martial board should see. 5

(3) For the purposes of viewing any place, person or thing under subsection (2) of this section, the military judge shall give such directions as appear to him to be expedient for the purpose of preventing undue communication with the court-martial board during the viewing.”. 10

Amendment of section 197 of Principal Act (challenges by accused).

46.—The following section is substituted for section 197 of the Principal Act:

“Challenges by accused. 197.—(1) When a court-martial is assembled and before the members of the court-martial board are sworn, their names shall be read to the accused who shall then be asked if he objects to any of them and in the event of an objection the decision as to whether to allow the objection shall be made by the military judge in accordance with the procedure prescribed by court-martial rules. 15 20

(2) The procedure for the replacement of a member of the court-martial board in respect of whom an objection has been allowed shall be as prescribed, subject to the same right of the accused to object to the member selected to fill the subsequent vacancy in accordance with subsection (1) of this section.”. 25

Insertion of new section: rulings and directions.

47.—The following section is inserted after section 197 of the Principal Act: 30

“Rulings and directions. 197A.—(1) Rulings and directions on questions of law, practice or procedure relative to the charge or trial shall be given by the military judge presiding at a court-martial.

(2) Any rulings or directions given under subsection (1) of this section shall be binding on the court-martial concerned.”. 35

Amendment of section 198 of Principal Act (voting at court-martial).

48.—The following section is substituted for section 198 of the Principal Act:

“Courts-martial: findings and sentence. 198.—(1) Subject to the provisions of this section, in the case of a general court-martial or limited court-martial, a finding of guilty on any charge shall be decided by a majority of at least two-thirds of the members of the court-martial board, after the military judge has summed up the law and the evidence. 40 45

(2) Where two-thirds of the members of the court-martial board is not a whole number, the next highest whole number shall be taken to be

two-thirds for the purposes of subsection (1) of this section.

5 (3) If the number of members of the court-martial board who vote for a guilty finding on any charge is less than that referred to in subsection (1) of this section the accused shall be acquitted of that charge.

10 (4) The military judge presiding at a general court-martial or limited court-martial is not entitled to vote on the finding.

(5) The military judge presiding at a court-martial shall determine the sentence.”.

49.—The following section is substituted for section 199 of the Principal Act:

Amendment of section 199 of Principal Act (swearing of court).

15 “Swearing of court-martial.

199.—(1) When a court-martial board is constituted with the required number of persons who are not objected to or the objections to whom have not been allowed, an oath in the form prescribed by court-martial rules shall be administered by the person or persons so prescribed to—

(a) each member of the court-martial board, and

(b) every interpreter and shorthand writer or other note-taker in attendance.

25 (2) If a person required by this section to take an oath objects to taking an oath or is objected to as incompetent to take an oath, the military judge shall, if satisfied of the sincerity of the objection or, where the competence of a person to take an oath is objected to, of the oath having no binding effect on the conscience of that person, permit the person, instead of being sworn, to make a solemn declaration in the prescribed form, and for the purposes of this Act that declaration is deemed to be an oath.

30 (3) For the purposes of this section, different forms of oath may be prescribed for members of a court-martial board, interpreters and shorthand writers or other note-takers, and different persons may be prescribed to administer oaths and to take declarations.”.

50.—Section 202 of the Principal Act is amended—

Amendment of section 202 of Principal Act (mental disorder at time of trial).

(a) in subsection (1)—

45 (i) in paragraph (a), by substituting “the military judge presiding at the court-martial” for “the court-martial”, and

(ii) in paragraph (b)—

(I) by substituting “the military judge, if he is” for “the court-martial, if it is”, and

(II) by substituting “the Mental Health Act 2001” for “the Act of 2001”,

(b) by inserting the following after subsection (1): 5

“(1A) In the case of a general court-martial or limited court-martial, the question of whether a person charged with an offence is fit to be tried shall be determined, and the finding shall be made, by the military judge sitting alone.”, 10

(c) by deleting subsection (2),

(d) in subsection (3), by inserting the following after paragraph (b):

“(bb) in the case of a general court-martial or limited court-martial, object to a member of the court-martial board to whom he might wish to object,”, 15

(e) by substituting the following for subsection (4):

“(4) After the military judge presiding at a court-martial has found that a person charged with an offence is unfit to take his trial, the military judge may on application to him and without prejudice to any further proceedings allow evidence to be adduced before the court-martial as to whether or not that person did the act or made the omission alleged against him and if the summary court-martial or, in the case of a general court-martial or limited court-martial, the court-martial board, is satisfied that there is a reasonable doubt that the person committed that act or made the omission, the summary court-martial or the court-martial board, as the case may be, shall acquit him.”, 20 25 30

and

(f) by inserting the following subsection:

“(5) In this section and in section 203 ‘consultant psychiatrist’ has the same meaning as in the Mental Health Act 2001.”. 35

Amendment of section 203 of Principal Act (mental disorder at time of commission of offence).

51.—Section 203 of the Principal Act is amended—

(a) in subsection (1)—

(i) by substituting “the summary-court martial, or in the case of a general court-martial or limited court-martial, the court-martial board, finds” for “the court-martial finds”, and 40

(ii) by substituting “the summary court-martial, or in the case of a general court-martial or limited court-martial, the court-martial board, shall specially find” for “the court-martial shall specially find”, 45

(b) by substituting the following for subsection (2):

5 “(2) If the military judge presiding at the court-martial having considered any evidence adduced before the court-martial is satisfied that the person found not guilty by reason of insanity is suffering from a mental disorder (within the meaning of the Mental Health Act 2001) and is in need of in-patient care or treatment in a designated centre the military judge shall, after consultation with the clinical director of the designated centre concerned, commit him to a specified designated centre until an order is made under section 13 of the Criminal Law (Insanity) Act 2006.”,

(c) by inserting the following after subsection (2):

15 “(2A) In this section ‘clinical director’ shall have the same meaning as in section 1 of the Criminal Law (Insanity) Act 2006.”,

and

(d) by deleting subsection (3).

20 **52.**—The following sections are inserted after section 203A (inserted by the Criminal Law (Insanity) Act 2006) of the Principal Act:

Insertion of new sections: appeals to Courts-Martial Appeal Court.

25 “Appeals (mental disorder at time of trial).

203B.—(1) An appeal shall lie to the Courts-Martial Appeal Court (in this section and in sections 203C and 203D referred to as ‘the Court’) from a finding by a court-martial pursuant to section 202 that a person charged with an offence is unfit to take his trial.

30 (2) Where the Court makes an order pursuant to section 19A (inserted by the *Defence (Amendment) (No. 2) Act 2006*) of the Courts-Martial Appeals Act 1983 that the appellant be tried or retried, as the case may be, by court-martial for the offence alleged, the appellant may, subject to the directions of the Director, be tried or retried for an offence other than the offence alleged in respect of which he was found unfit to take his trial being an offence of which he might be found guilty on a charge for the offence alleged.

40 Appeals (not guilty by reason of insanity).

203C.—A person tried for an offence by court-martial and found not guilty by reason of insanity may appeal against the finding to the Court pursuant to section 19B (inserted by the *Defence (Amendment) (No. 2) Act 2006*) of the Courts-Martial Appeals Act 1983.

45 Appeals (order of committal under section 202 or 203).

203D.—An appeal against a decision by a court-martial to make or not to make an order of committal under section 202(1)(b) or 203(2) shall lie at the instance of the person charged with the offence concerned or the Director to the Court pursuant to section 19C (inserted by the *Defence (Amendment) (No. 2) Act 2006*) of the Courts-Martial Appeals Act 1983.”.

Insertion of new section: effect of certain offences on persons in respect of whom committed.

53.—The following section is inserted after section 205 of the Principal Act:

“Effect of certain offences on persons in respect of whom committed.

205A.—(1) In determining the punishment to be awarded to a person for an offence to which this section applies, the military judge presiding at the court-martial concerned shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.

(2) This section applies to—

(a) a sexual offence within the meaning of the Criminal Evidence Act 1992 (as amended by the Criminal Law (Sexual Offences) Act 2006),

(b) an offence involving violence or the threat of violence to a person, and

(c) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a) or (b) of this subsection.

(3) Where a military judge is determining the punishment to be awarded to a person for an offence to which this section applies, the military judge shall, upon application by the person in respect of whom the offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on that person.”.

Amendment of section 206 of Principal Act (effective dates of sentences by courts-martial).

54.—The following subsection is substituted for subsection (1) of section 206 of the Principal Act:

“(1) Subject to section 212A, every term of imprisonment or detention to which a person is sentenced by a court-martial, whether the person is already undergoing sentence or not, shall, save as otherwise expressly provided in this Act, be reckoned to commence on the day on which the sentence is signed by the military judge presiding at the court-martial or on such earlier date as the military judge may direct.”.

Amendment of section 207 of Principal Act (summoning and privilege of witnesses at courts-martial).

55.—The following subsection is substituted for subsection (3) of section 207 of the Principal Act:

“(3) For the purposes of this section and section 208 (except subsection (2) of section 208), references to a court-martial shall be deemed to include an officer taking a written summary of evidence in accordance with rules of procedure.”.

56.—Section 208 of the Principal Act is amended—

Amendment of
section 208 of
Principal Act
(contempt of court-
martial).

(a) in subsection (1)—

(i) by inserting the following after paragraph (b)—

5 “(ba) fails, neglects or refuses to comply with a
direction of the military judge under
section 195, or

10 (bb) wilfully gives evidence to a court-martial
which is material to the court-martial and
which he knows to be false or does not
believe to be true, or

(bc) by act or omission, obstructs or hinders the
court-martial in the performance of its
functions, or”,

(ii) by substituting the following for paragraph (c):

15 “(c) does or omits to do any other thing, which,
if the court-martial were a civil court hav-
ing power to commit for contempt, would
be contempt of that court,”,

and

20 (iii) by substituting “€3,000” for “£1,000”,

(b) by inserting the following after subsection (1):

“*(1A)* A prosecution for an offence under this section
may be brought only by or with the consent of the Director
of Public Prosecutions.”,

25 and

(c) in subsection (2), by substituting the following for para-
graph (a):

30 “(a) If any person subject to military law is guilty of
contempt of a court-martial by using insulting
or threatening language or by causing any
interruption or disturbance in the proceedings
of the court-martial, the military judge presid-
ing at the court-martial, if he considers it
expedient, instead of the offender being tried
by court-martial, may by order under his
35 hand—

(i) order the offender to be imprisoned, or, in
the case of a man, to undergo detention,
for a period not exceeding ninety days, or

40 (ii) where the offender is a person subject to
military law as an officer under section
118(1)(a), (b) or (c), award a fine not
exceeding fourteen days’ pay at the most
recent rate payable, or

- (iii) where the offender is a person subject to military law as an officer under section 118(1)(d) or (e), award a fine not exceeding the maximum fine awardable for the time being by a court-martial to an officer holding the rank of second lieutenant who is in receipt of the maximum pay applicable to that rank, or 5
- (iv) where the offender is a person subject to military law as a man under section 119(a) or (b), award a fine of an amount not exceeding fourteen days' pay at the most recent rate payable, or 10
- (v) where the offender is a person subject to military law as a man under section 119(c) or (d), award a fine not exceeding the maximum fine awardable for the time being by a court-martial to a man holding the rank of private of the highest grade who is in receipt of the maximum pay applicable to that rank.”. 15 20

CHAPTER 5

Punishments awardable by Courts-martial for Offences against Military Law

Amendment of section 209 of Principal Act (punishments which may be awarded to officers by courts-martial).

57.—Section 209 of the Principal Act is amended— 25

(a) by substituting the following for subsection (1):

“(1) Subject to section 192, punishments may be awarded in respect of offences against military law committed by persons subject to military law as officers and convicted by court-martial according to the following scale: 30

SCALE.

- A. Imprisonment for life or any specified period.
- B. Dismissal with disgrace from the Defence Forces.
- C. Dismissal from the Defence Forces. 35
- D. Where the person convicted is an officer, reduction to any lower commissioned rank.
- E. Forfeiture of all seniority of rank or of a specified term of seniority.
- F. Reduction to any lower point on the scale of pay for the rank held. 40
- G. (a) In the case of a person subject to military law as an officer under section 118(1)(a), (b) or (c), a fine not exceeding fourteen days' pay of the person at the most recent rate payable. 45

5 (b) In the case of a person subject to military law as an officer under section 118(1)(d) or (e), a fine not exceeding the maximum fine awardable for the time being by a court-martial to an officer holding the rank of second lieutenant who is in receipt of the maximum pay applicable to that rank.

10 (c) In the case of a person who is not a member of the Defence Forces but who was an officer when the offence was committed, a fine not exceeding an amount equal to fourteen days' pay at the most recent rate applicable to his former rank.

H. Severe reprimand.

I. Reprimand.”,

15 (b) by substituting the following for subsection (5):

20 “(5) (a) Where an officer is sentenced to a term of imprisonment of more than six months, the military judge shall, in addition, sentence him to dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces.

25 (b) Where an officer is sentenced to a term of imprisonment of six months or less (other than under section 208(2)), the military judge may, in addition, sentence him to dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces or reduction to any lower commissioned rank.”,

(c) by substituting the following for subsection (6A) (inserted by the Defence (Amendment) Act 1987):

30 “(6A) An officer sentenced by a court-martial to reduction in rank may, in addition, be sentenced to—

35 (a) reduction to any lower point on the scale of pay for that rank and forfeiture of a specified term of seniority or all seniority in respect of the rank to which the officer is sentenced to be reduced, or

(b) to a fine or severe reprimand or reprimand,
or both.”,

(d) by substituting the following for subsection (7):

40 “(7) An officer sentenced by a court-martial to forfeiture of seniority of rank may, in addition, be sentenced to reduction to any lower point on the scale of pay for the rank held, or to a fine or severe reprimand or reprimand.”,

(e) by inserting the following after subsection (7):

45 “(7A) An officer sentenced by a court-martial to reduction to a lower point on the scale of pay for the rank held may, in addition, be sentenced to a fine or severe reprimand or reprimand.”,

and

(f) in subsection (8), by substituting “disgrace” for “ignominy”.

Amendment of section 210 of Principal Act (punishments which may be awarded to men by courts-martial).

58.—Section 210 of the Principal Act is amended—

(a) by substituting the following for subsection (1): 5

“(1) Subject to section 192, punishments may be awarded in respect of offences against military law committed by persons subject to military law as men and convicted by court-martial according to the following scale:

SCALE. 10

- A. Imprisonment for life or any specified period.
- B. Discharge with disgrace from the Defence Forces.
- C. Discharge from the Defence Forces.
- D. Detention for any term not exceeding two years, with or without forfeiture of all pay or part thereof. 15
- E. Where the person convicted is a non-commissioned officer, reduction to any lower non-commissioned rank.
- F. Forfeiture of all seniority of rank or of a specified term of seniority. 20
- G. Reduction to any lower point on the scale of pay for the rank held.
- H. (a) In the case of a person subject to military law as a man under section 119(a) or (b), a fine of an amount not exceeding fourteen days’ pay of the person at the most recent rate payable. 25
(b) In the case of a person subject to military law as a man under section 119(c) or (d), a fine not exceeding the maximum fine awardable for the time being by a court-martial to a man holding the rank of private of the highest grade who is in receipt of the maximum pay applicable to that rank. 30
(c) In the case of a person who is not a member of the Defence Forces but who was a non-commissioned officer, private or seaman when the offence was committed, a fine not exceeding an amount equal to fourteen days’ pay at the most recent rate applicable to his former rank. 35
- I. Severe reprimand. 40
- J. Reprimand.”,

(b) by deleting subsection (5),

(c) by substituting the following for subsection (6):

“(6) Where a man is sentenced to a term of imprisonment exceeding six months, the military judge shall, in addition, sentence him to discharge with disgrace from the Defence Forces or discharge from the Defence Forces.”,

5 (d) by substituting the following for subsection (7):

“(7) Where a man is sentenced to a term of imprisonment of six months or less (other than under section 208(2)), the military judge may, in addition, sentence him to discharge with disgrace from the Defence Forces or discharge from the Defence Forces.”,

10

(e) by substituting the following for subsection (8):

“(8) A non-commissioned officer sentenced by a court-martial to a punishment mentioned at F or G in the Scale to subsection (1) of this section may, in addition, be sentenced to a fine or severe reprimand or reprimand.”,

15

(f) by inserting the following after subsection (8):

“(8A) A non-commissioned officer sentenced by a court-martial to reduction in rank may, in addition, be sentenced to—

20

(a) reduction to any lower point on the scale of pay for that rank and forfeiture of a specified term of seniority or all seniority in respect of the rank to which he is sentenced to be reduced, or

(b) to a fine or severe reprimand or reprimand,

25

or both.”,

and

(g) in subsection (11), by substituting “disgrace” for “ignominy”.

30 **59.**—The following section is substituted for section 211 of the Principal Act:

“Separate sentence for each offence.

211.—(1) Where a person is convicted by a court-martial of two or more offences, a separate sentence shall be awarded in respect of each offence.

Amendment of section 211 of Principal Act (one sentence to be awarded in respect of all offences).

35

(2) Subject to section 212A, where a person is convicted by a court-martial in respect of two or more offences, any custodial sentences awarded in respect of each such offence shall be served concurrently.”.

40 **60.**—The following section is inserted after section 211 of the Principal Act:

“Restriction on sentence of imprisonment or detention on person who is not represented.

211A.—(1) Subject to subsection (2) of this section, a person convicted by a court-martial of an offence against military law shall not be sentenced to imprisonment or dismissal or discharge

Insertion of new section: restriction on sentence of imprisonment or detention on person who is not represented.

45

with disgrace from the Defence Forces or dismissal or discharge from the Defence Forces where the person has not been represented by counsel (within the meaning of section 196) at some time after he is found guilty and before he is sentenced. 5

(2) Subsection (1) of this section shall not apply where the person—

(a) pursuant to rules of procedure, having been informed of his right to be represented by counsel and having had the opportunity to arrange such representation, refused or failed to do so, or 10

(b) has previously been sentenced to imprisonment for an offence under this Act or by a civil court in the State. 15

(3) For the purposes of subsection (2)(b) of this section—

(a) a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded, 20

(b) ‘sentenced to imprisonment’ does not include a committal for contempt of court under section 208.”.

Insertion of new section: suspension of custodial sentences.

61.—The following section is inserted after section 212 of the Principal Act: 25

“Power to suspend sentence.

212A.—(1) In this section—

‘governor’ includes, in relation to a military prisoner or a person undergoing detention, a person for the time being performing the functions of governor; 30

‘imprisonment’ includes—

(a) detention in a military prison or detention barrack or in other service custody or in a public prison, as referred to in section 229 of this Act, 35

(b) detention in Saint Patrick’s Institution,

(c) detention in a place provided under section 2 of the Prisons Act 1970, and

(d) detention in a place specified under section 3 of the Prisons Act 1972, 40

and ‘sentence of imprisonment’ shall be construed accordingly;

‘mandatory term of imprisonment’ includes, in relation to an offence, a term of imprisonment awarded by a court-martial under this Act or any 45

5 other enactment where provision is made that a person who is guilty of the offence concerned shall be liable to a term of imprisonment of not less than such term as is specified in this Act or that enactment.

10 (2) Where a person is sentenced by a court-martial in respect of an offence to a term of imprisonment (other than a mandatory term of imprisonment) or to detention, the military judge presiding at the court-martial may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.

15 (3) It shall be a condition of an order under subsection (2) of this section that the person in respect of whom the order is made keep the peace and be of good behaviour during—

20 (a) the period of suspension of the sentence concerned, or

25 (b) in the case of an order that suspends a sentence in part only, the period of imprisonment or detention and the period of suspension of the sentence concerned,

and that condition shall be specified in the order concerned.

30 (4) The military judge may, when making an order under subsection (2) of this section, impose such conditions in relation to the order as he considers—

(a) appropriate having regard to the nature of the offence, and

35 (b) will reduce the likelihood of the person in respect of whom the order is made committing any other offence,

and any condition imposed in accordance with this subsection shall be specified in that order.

40 (5) In addition to any condition imposed under subsection (4) of this section, the military judge may, when making an order under subsection (2) of this section consisting of the suspension in part of a sentence of imprisonment or detention, impose any one or more of the following conditions in relation to that order:

45 (a) that the person cooperate with such support services, and to such extent, as may be specified by the military judge;

(b) that the person undergo such—

50 (i) treatment for addiction,

(ii) course of education, training or therapy,

(iii) psychological counselling or other treatment,

as may be approved by the military judge. 5

(6) A condition imposed under subsection (5) of this section shall be specified in the order concerned.

(7) Where an order is made under subsection (2) of this section, a copy of the order shall be given by the Court-Martial Administrator— 10

(a) to the commanding officer of the person to whom the order applies and the Provost Marshal, or 15

(b) in the case of an order consisting of the suspension of a sentence of imprisonment or detention in part only, to the persons referred to in paragraph (a) of this subsection, to the governor of the prison or detention barrack to which the person is committed and to such other person, authority or support services as the military judge may direct having regard to the conditions (if any) imposed under subsection (5) of this section. 20 25

(8) (a) Where a person to whom an order under subsection (2) of this section applies is, during the period of suspension of the sentence concerned, convicted by a court-martial of an offence, the military judge presiding at the court-martial before which proceedings for the offence were brought shall, after imposing sentence for that offence, remand the person in custody or otherwise to appear before a court-martial of the same class as that which made the order. 30 35 40

(b) Where a person is remanded pursuant to paragraph (a) of this subsection, the Court-Martial Administrator shall, subject to the directions of the Director— 45

(i) refer the matter to the summary court-martial, or

(ii) convene a general court-martial or limited court-martial, as specified in the direction, but without a court-martial board, 50

to deal with the matter.

5 (9) A summary court-martial or the military judge presiding at a general court-martial or limited court-martial, as the case may be, to which a person is remanded under subsection (8) of this section shall revoke the order unless the military judge considers that revocation of that order would be unjust in all the circumstances of the case, and where the military judge revokes that order, the person shall be required to serve the entire of the sentence of imprisonment or detention originally awarded, or such part of the sentence as the military judge considers just having regard to all the circumstances of the case, less any period of that sentence already served and any period spent in custody (other than a period during which the person was serving a sentence of imprisonment or detention in respect of an offence referred to in subsection (8) of this section) pending revocation of the said order.

20 (10) Notwithstanding the provisions of section 211 or of any other section of this Act, a sentence (other than a sentence consisting of imprisonment for life) awarded—

25 (a) in respect of an offence committed by a person to whom an order under subsection (2) of this section applies, and

(b) during the period of suspension of sentence to which that order applies,

30 shall not commence until the expiration of any period of imprisonment or detention that the person is required to serve of the sentence referred to in paragraph (b) of this subsection either by virtue of the order under subsection (2) or a revocation under subsection (9) of this section.

35 (11) Where the Provost Marshal or, as the case may be, the governor of the prison or detention barrack to which a person was committed has reasonable grounds for believing that a person to whom an order under this section applies has contravened a condition referred to in the order he shall refer the matter to the Director who may—

40 (a) subject to the court-martial being of the same class as that which made the order, direct the Court-Martial Administrator to—

45 (i) refer the matter to the summary court-martial, or

50 (ii) convene a general court-martial or limited court-martial, as specified in his direction, but without a court-martial board,

and

(b) apply in the prescribed manner to that court-martial to fix a date for the hearing of an application for an order revoking the order under subsection (2) of this section. 5

(12) Where a date for the hearing of an application referred to in subsection (11) of this section is fixed, the person in respect of whom the application will be made, or where that person is in prison or a detention barrack, the governor of the prison or detention barrack, shall be notified in writing in the prescribed manner, and the notice shall require the person to attend at the hearing, or require the said governor to produce the person before the court-martial, on the date and at the time specified in the notice. 10 15

(13) A notice under subsection (12) of this section shall be addressed to the person concerned by name, and may be given to the person in the prescribed manner. 20

(14) If a person who is not in prison or a detention barrack fails to appear before the court-martial in accordance with a requirement contained in a notice under subsection (12) of this section, the military judge presiding at the court-martial concerned may make an order for the arrest of the person. 25

(15) The military judge presiding at the court-martial shall, where he is satisfied that a person to whom an order under subsection (1) of this section applies has contravened a condition of the order, revoke the order unless he considers that revocation of that order would be unjust in all of the circumstances of the case, and where the military judge revokes that order, the person shall be required to serve the entire of the sentence originally awarded, or such part of the sentence as the military judge considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison or in a detention barrack and any period spent in custody pending the revocation of the order. 30 35 40

(16) The revocation of an order under subsection (9) or (15) of this section shall for the purposes of this Act and the Courts-Martial Appeals Act 1983 be deemed to be a sentence of a court-martial.”. 45

Insertion of new section: review of certain sentences.

62.—The following section is inserted after section 212A (inserted by *section 61*) of the Principal Act:

“Review of certain sentences.

212B.—(1) If it appears to the Director that a sentence awarded by a court-martial, on conviction of a person for an offence in respect of which punishment for a term of imprisonment of two years or for any longer period is awardable by the court-martial, is unduly lenient, the Director may 50 55

5 apply to the Courts-Martial Appeal Court to review the sentence in accordance with section 22B (inserted by the *Defence (Amendment) (No. 2) Act 2006*) of the Courts-Martial Appeals Act 1983 and rules of court made under that Act.

10 (2) Section 161(2)(*ea*) (which prohibits certain communications in relation to proceedings before a service tribunal) shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this section as it applies to those communications made for the purposes specified in that provision.”.

15 **63.**—The following section is substituted for section 213 of the Principal Act:

Amendment of section 213 of Principal Act (order by court-martial for payment of compensation).

“Order for payment of compensation.

20 213.—(1) Where—

- (a) a person subject to military law is convicted by a court-martial of an offence against military law, and
- (b) the offence occasioned any personal injury, expense or loss or destruction of, or damage to, any property,

25 the military judge presiding at the court-martial may, instead of or in addition to any other punishment which he is authorised by this Act to award in respect of the offence, order that there shall be paid by the person convicted compensation for the personal injury, expense, loss, damage or destruction so occasioned to any person (in this Act referred to as the ‘injured party’) who has suffered such personal injury, expense, loss, damage or destruction.

35 (2) The compensation payable under this section shall be of such amount as the military judge considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the Director and, subject to the relevant maximum amounts specified in subsection (3) of this section, shall not exceed the amount of the damages that, in the opinion of the military judge, the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury, expense, loss, damage or destruction concerned.

45 (3) In this section ‘relevant maximum amount’ means—

- (a) in the case of a compensation order made by a summary court-martial, €10,000,

(b) in the case of a compensation order made by the military judge presiding at a limited court-martial, €20,000,

(c) in the case of a compensation order made by the military judge presiding at a general court-martial, €100,000. 5

(4) Where the commission of the offence by the convicted person involved the taking of property out of the possession of the injured party and the property has been recovered, any loss occurring to the injured party by reason of the property being damaged while out of his possession shall be treated for the purposes of subsection (1) of this section as having resulted from the offence, irrespective of how the damage was caused or who caused it. 10 15

(5) In determining whether to make an order under this section against a person, and in determining the amount of the compensation, the military judge shall have regard to the person's means so far as they appear or are known to the military judge and for that purpose the military judge may require the convicted person to give evidence as to his means and financial commitments. 20 25

(6) An order under this section may provide for payment of the compensation by such instalments and at such times as the military judge considers reasonable in all the circumstances.

(7) Where the military judge considers— 30

(a) that it would be appropriate both to award a fine under section 209 or 210, as the case may be, and to make an order under this section, but

(b) that the convicted person has insufficient means to pay both an appropriate fine and appropriate compensation, 35

the military judge may, if he is satisfied that the means are sufficient to justify doing so, make an order under this section and if he is satisfied that it is appropriate to do so having regard to the means that would remain after compliance with the order, award a fine. 40

(8) This section is without prejudice to any other enactment which provides for the payment of compensation by a person convicted of an offence or otherwise proved to have committed an offence. 45

(9) For the purposes of this section— 50

(a) in a case where death has resulted from an offence specified in subsection (1) of this section—

‘loss’ means any matter (including mental distress resulting from the death and funeral expenses) for which damages could be awarded in respect of the death by virtue of Part V of the Civil Liability Act 1961;

‘injured party’ includes a dependant (within the meaning of the said Part V) of the deceased person concerned,

(b) in a case where service property is the subject of an order under this section, ‘injured party’ includes the Minister.

(10) An order under this section shall, for the purposes of this Act and the Court-Martial Appeals Act 1983, be deemed to be a sentence of a court-martial.”.

64.—The following section is inserted after section 213 of the Principal Act:

Insertion of new section: payment of fine.

“Payment of fine.

213A.—(1) Where a person subject to military law is convicted by a court-martial and is sentenced to a fine, the fine shall be a stated amount.

(2) The terms of payment of a fine referred to in subsection (1) of this section are, subject to the provisions of this Act, at the discretion of the military judge who awards the fine.”.

CHAPTER 6

Action on Findings and Sentences of Courts-martial

65.—The following section is substituted for section 225 of the Principal Act:

Amendment of section 225 of Principal Act (restitution of stolen property).

“Orders for restitution.

225.—(1) Where a person is convicted by a court-martial of an offence under section 155 or 156, the military judge may on the conviction (whether or not the passing of sentence is in other respects deferred)—

(a) order anyone having possession or control of the property which is the subject of the offence to restore it to any person entitled to recover it from the convicted person,

(b) on the application of a person entitled to recover from the convicted person any other property directly or indirectly representing the property referred to in paragraph (a) of this subsection (as being the proceeds of any

disposal or realisation of the whole or part of it or of property so representing it), order that other property to be delivered or transferred to the applicant, or 5

- (c) order that a sum not exceeding the value of the property referred to in paragraph (a) of this subsection shall be paid, out of any money of the convicted person which was taken out of his possession when arrested, to any person who, if the property were in the possession of the convicted person, would be entitled to recover that property from him. 10 15

(2) Where the military judge has power on a person's conviction to make an order against the person under both paragraphs (b) and (c) of subsection (1) of this section, the military judge may make orders under both paragraphs, if the person in whose favour the orders are made does not thereby recover more than the value of the property which is the subject of the offence concerned. 20

(3) Where—

(a) an order is made under subsection (1)(a) of this section for the restoration of any property, and 25

(b) it appears to the military judge that the convicted person has sold the property to a person acting in good faith or has borrowed money on the security of it from a person so acting, 30

then, on the application of the purchaser or lender, the military judge may order that there shall be paid to the applicant, out of any money of the convicted person which was taken out of his possession when arrested, a sum not exceeding the amount paid for the purchase by the applicant or, as the case may be, the amount owed to the applicant in respect of the loan. 35 40

(4) (a) The military judge shall not exercise the powers conferred by this section unless in his opinion the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers. 45

(b) In paragraph (a) of this subsection 'available documents' means— 50

(i) any written statements or admissions which were made for use,

and would have been admissible
in evidence, at the trial, and

- (ii) any written statements or admissions used as evidence at the trial or in any such proceedings.

(5) This section shall have effect only in relation to offences wholly or partly committed on or after the commencement of this section.

(6) This section is without prejudice to the Police (Property) Act 1897 (disposal of property in the possession of the Garda Síochána).".

66.—The following section is substituted for section 226 of the Principal Act:

Amendment of section 226 of Principal Act (right to copy of proceedings of court-martial).

"Proceedings of court-martial.

226.—(1) The proceedings of a court-martial shall be preserved in the prescribed manner.

(2) For the purposes of this section, the proceedings of a court-martial include exhibits.".

CHAPTER 7

Execution of Sentences

67.—Section 229 of the Principal Act is amended—

Amendment of section 229 of Principal Act (execution of sentence of imprisonment or detention).

(a) in subsection (1), by substituting "Subject to section 212A, where a sentence of imprisonment is passed by a court-martial," for "Where a sentence of imprisonment is passed by a court-martial and confirmed,",

(b) in subsection (2), by substituting "Subject to section 212A, where a sentence of detention is passed by a court-martial," for "Where a sentence of detention is passed by a court-martial and confirmed, or is passed by a commanding officer," and

(c) in subsection (3), by substituting "Subject to section 212A, a military prisoner" for "A military prisoner".

68.—Section 231 of the Principal Act is amended—

Amendment of section 231 of Principal Act (duty of governor of prison to receive prisoners).

(a) in subsection (1), by substituting "military prisoners" for "prisoners", and

(b) by substituting the following for subsection (2):

"(2) The governor of every prison shall also receive into his custody any person subject to military law in service custody upon delivery to the governor of a written order, purporting to be signed by the commanding officer of that person, for any period not exceeding 8 days (which shall not include the day on which the order is made), or any further such order or orders so made for any further such period or periods.".

Amendment of section 233 of Principal Act (regulation of military prisons and detention barracks).

69.—Section 233 of the Principal Act is amended by substituting the following for subsection (2A) (inserted by the Criminal Justice Act 1990):

“(2A) Any power conferred by rules under this section to release a person temporarily shall not, in the case of a person serving a sentence passed on him on conviction of treason or of murder, or attempted murder, to which section 3 of the Criminal Justice Act 1990 applies, be exercisable before the expiration of the minimum period specified by the court-martial under section 4 of that Act, as applied by section 169A of this Act, less any reduction of that period by the amount of remission earned by the person according to the rules of practice whereby prisoners generally earn remission of sentence by industry and good conduct, unless for grave reasons of a humanitarian nature, and any such release shall only be of such limited duration as is justified by those reasons.”.

CHAPTER 8

Rules of Procedure and Court-martial Rules

Amendment of section 240 of Principal Act (rules of procedure).

70.—Section 240 of the Principal Act is amended by substituting the following for subsection (1):

“(1) The Minister may make rules (in this Act referred to as ‘rules of procedure’) in relation to all or any of the following matters:

- (a) the assembly and procedure of courts of inquiry and boards;
- (b) the form of oath to be taken by the military judge before entering upon his duties under this Act;
- (c) in the case of a person remanded for trial by court-martial, the procedures (other than procedures of a court-martial which are the subject of court-martial rules) to be followed in bringing the person to trial, including the taking of a written summary of evidence in the case;
- (d) the functions of the Court-Martial Administrator relating to the management and control generally of the administration and business of courts-martial;
- (e) the procedure for convening courts-martial;
- (f) the procedure for the dissolution by the Court-Martial Administrator of a general court-martial or limited court-martial;
- (g) the procedure for referring matters to the summary court-martial;
- (h) the procedure for selecting members of a court-martial board;
- (i) the procedure in relation to representation for the purposes of section 211A;

- (j) the promulgation of the findings and sentence of a court-martial;
- (k) the carrying into effect of sentences of courts-martial;
- (l) the carrying into effect of decisions made and punishments awarded by the summary court-martial under section 178G;
- (m) the form of notice and the giving of such notice under section 212A(12);
- (n) the retention and preservation of records of proceedings of a court-martial;
- (o) the supply of copies of such records, including provision in respect of any fee payable for the supply of copies;
- (p) the officers who are to be prescribed officers for the purposes of section 121;
- (q) the functions of the Chief Military Judge (if any) with respect to courts-martial;
- (r) the judicial functions, other than those with respect to courts-martial, which may be performed by a military judge;
- (s) any other matter or thing referred to in this Part (other than Chapters IV and X and any matter or thing referred to in this Part as prescribed by court-martial rules) as prescribed;
- (t) any other matter which the Minister considers necessary or expedient for the proper administration of this Part (other than Chapters IV and X and any matter referred to in this Part as the subject of court-martial rules).”.

30 **71.—(1)** The following sections are inserted after section 240 but in Chapter IX of the Principal Act:

Insertion of new sections: Courts-Martial Rules Committee, etc.

“Courts-Martial Rules Committee.

240A.—(1) There is hereby established a committee to be known as the Courts-Martial Rules Committee (in this Chapter referred to as the ‘Committee’).

(2) The functions of the Committee shall be, with the concurrence of the Minister, to make rules of court (in this Act referred to as ‘court-martial rules’) in accordance with section 240B.

(3) The Committee shall consist of two ex-officio members and six nominated members.

(4) The ex-officio members of the Committee shall be—

- (a) the Judge Advocate-General, and

(b) the military judge or, where there is more than one, the Chief Military Judge, who shall be the deputy chairperson of the Committee.

(5) The nominated members of the Committee shall be— 5

(a) a judge of the Circuit Court nominated by the President of the Circuit Court, who shall be the chairperson of the Committee, 10

(b) a practising barrister nominated by the General Council of the Bar of Ireland,

(c) a practising solicitor nominated by the Law Society of Ireland,

(d) an officer of the Attorney General, nominated by the Director General of the Office of the Attorney General, 15

(e) an officer of the Department of Defence, not below the rank of principal officer, nominated by the Minister, and 20

(f) an officer of the Permanent Defence Forces, not below the rank of commandant, nominated by the Chief of Staff, who shall act as secretary to the Committee. 25

(6) Every nominated member of the Committee shall, unless that member sooner dies, resigns or ceases to be, as the case may be, a judge of the Circuit Court, a practising barrister, a practising solicitor or an officer referred to in subsection (5)(d) to (f) of this section, hold office as such member for five years from the date of nomination. 30

(7) A nominated member of the Committee whose membership expires with the passage of time shall be eligible for renomination. 35

(8) Subject to subsection (9) of this section, the Committee may act notwithstanding one or more vacancies in its membership. 40

(9) The quorum for a meeting of the Committee shall be four.

(10) The chairperson of the Committee shall preside at all meetings of the Committee at which he is present and in the absence of the chairperson the deputy chairperson shall preside at the meeting. 45

(11) Subject to subsection (12) of this section, the Committee shall hold such and so many meetings as may be necessary for the performance of 50

its functions but in any case shall meet not less frequently than once in each year.

(12) The first meeting of the Committee shall be held within one month after the commencement of this section.

(13) Subject to this Act, the Committee shall regulate the practice and procedure of the Committee.

Court-martial
rules.

240B.—(1) The Committee may, with the concurrence of the Minister, make court-martial rules for the purpose of regulating the pleading, practice and procedure generally in all proceedings before courts-martial under this Part of this Act, including rules in relation to all or any of the matters set out in the Twelfth Schedule to this Act.

(2) Court-martial rules shall be deemed to be a statutory instrument to which the Statutory Instruments Act 1947 primarily applies.”.

(2) The Schedule set out in *Schedule 7* is inserted after the Eleventh Schedule (inserted by *section 20*) to the Principal Act.

SCHEDULE 1

Section 3.

SAVING AND TRANSITIONAL PROVISIONS

Offences committed before commencement of this Act.

1. In the case of an offence committed before the commencement of this Act, the amendments made to the Principal Act by this Act shall not be exercised so as to allow the imposition in respect of the offence of a punishment more severe than that which was applicable when that offence was committed.

Person remanded for trial by court-martial.

2. Without prejudice to section 26(2)(c) of the Interpretation Act 2005, where, before the commencement of this Act, a person has been remanded for trial by court-martial or re-trial (in a case where a re-trial has been ordered by the Courts-Martial Appeal Court) and a court-martial has not yet been convened in accordance with the Principal Act, then, subject to the directions of the Director of Military Prosecutions, the person may, subject to *paragraph 1*, be tried and punished in like manner as if the person had been remanded for trial or re-trial after the commencement of this Act.

Election for trial by court-martial.

3. (1) Where before the commencement of *Chapter 3 of Part 3*—

(a) a charge is being dealt with summarily under section 177 or 178, as the case may be, and

(b) the person charged has not yet been asked in accordance with that section, as appropriate, whether the person elects to have the charge disposed of summarily or to be tried by court-martial,

then, section 177B or 178B, as the case may be, of the Principal Act shall have effect as if that section required the authorised officer or commanding officer, as appropriate, to afford the person charged the opportunity of electing for trial by court-martial in relation to the charge before continuing to dispose of it summarily. 5

(2) Any election for trial by court-martial made before the commencement of *Chapter 3* of *Part 3* shall be treated on or after that date as if made under section 177B or 178B of the Principal Act, as appropriate.

Appeals to summary court-martial. 10

4. (1) Sections 178E, 178F and 178G of the Principal Act shall only apply to determinations made, punishments awarded and compensation orders made after the coming into operation of *Chapter 3* of *Part 3*.

(2) Sections 179D and 179E of the Principal Act shall only apply to determinations made, punishments awarded and compensation orders made after the coming into operation of *Chapter 3* of *Part 3*. 15

Application of section 180 of Principal Act.

5. The repeal of section 180 of the Principal Act by *section 4* shall not affect the application of that section to punishments awarded under Chapter IV of Part V of that Act before the commencement of *Chapter 3* of *Part 3*. 20

Section 4.

SCHEDULE 2

AMENDMENTS TO PRINCIPAL ACT

Provision affected (1)	Amendment (2)	
Section 50	Insert the following subsection after subsection (3): “(4) This section shall not apply to a military judge.”.	25
Section 81(1)(c)	Substitute “disgrace” for “ignominy”.	
Section 126(2)	(a) In paragraph (a), substitute “under the influence of an intoxicant” for “drunk”. (b) In subparagraph (ii), substitute “disgrace” for “ignominy”.	30
Section 139	Substitute “disgrace” for “ignominy”.	
Section 152	Substitute “service aircraft or service aircraft material” for “an aircraft or aircraft material”.	35
Section 159	(a) In subsection (1)(c), substitute “under the influence of an intoxicant” for “drunk”. (b) Substitute the following for subsection (2): “(2) For the purposes of paragraph (c) of subsection (1) of this section a person shall be deemed to have been under the influence of an intoxicant while driving or attempting to drive a service vehicle if— (a) the officer investigating the charge under Chapter IV of this Part, or (b) the summary court-martial or, in the case of a general court-martial or limited court-martial, the court-martial board,	40 45

Provision affected (1)	Amendment (2)
5	is satisfied that such person was, by reason of the taking by him of an intoxicant, in such a condition that he was incapable of exercising effective control of such vehicle while in motion.”.
Section 169(3)(d)	Substitute “disgrace” for “ignominy”.
Section 175(1)(b)(iii)	Delete “and the finding has been confirmed”.
Section 183(2)	Substitute “€2,000” for “£100”.
10 Section 196	(a) In subsection (4), substitute “military judge” for “president of the court-martial”. (b) In subsection (5), substitute “military judge” for “president” in each place where it occurs.
Section 200(1)	Delete “president or other”.
15 Section 204	Delete “shall not require confirmation or be subject to revision and”.
Section 206(2)(a) and (c)	Substitute “disgrace” for “ignominy”.
20 Section 239(2)	(a) Insert “or air” after “sea” in each place where it occurs. (b) Insert “or aircraft” after “ship” in each place where it occurs.
Section 242(1)	Substitute “€2,000” for “£250”.
Section 243(2)(b)	Substitute “€2,000” for “£250”.
25 Section 244	Substitute “shall be evidence, until the contrary is shown,” for “shall be conclusive evidence”.
Section 245	Substitute “€2,000” for “£250”.
Section 248	(a) Insert “or, where relevant, in proceedings under Chapter IV of this Part” after “civil court”. (b) In paragraphs (e) and (f), substitute “(whether printed or made available by electronic means or otherwise in non-legible form which is capable of being reproduced in permanent legible form)” for “(whether printed or cyclostyled)” in each place where it occurs.
30	
35	
Section 249(2)	Substitute “a member of the Reserve Defence Force” for “a man of the Reserve Defence Force”.
Section 250	(a) In subsection (1), substitute “military judge” for “president thereof”. (b) In subsection (2), delete “and the action of the confirming authority thereon”.
40	

SCHEDULE 3

REFERENCES TO IGNOMINY IN CERTAIN ACT AND INSTRUMENTS

PART 1

Act (1)	Provision affected (2)	Amendment (3)	
Superannuation Act 1887	Section 3 (as amended by the Civil Service Superannuation Regulations 1980 (S.I. No. 188 of 1980))	In subsection (2)(b)(i)(I), substitute “disgrace” for “ignominy”.	5
			10

PART 2

Instrument (1)	Provision affected (2)	Amendment (3)	
Local Government (Superannuation) (Consolidation) Scheme 1998 (S.I. No. 455 of 1998)	Articles 9(1)(j)(I)(A), 33(1)(h)(I)(A), 63(1)(j)(I)(A) and 88(1)(h)(I)(A)	Substitute “disgrace” for “ignominy” in each place where it occurs.	15
Rules of Procedure (Defence Forces) 1954 (S.I. No. 243 of 1954)	Rule 63(1) (as amended by the Rules of Procedure (Defence Forces) 1987 (S.I. No. 245 of 1987))	In paragraphs (a) and (d) substitute “disgrace” for “ignominy” in each place where it occurs.	20
Secondary Teachers’ Superannuation (Amendment) Scheme 1954 (S.I. No. 234 of 1954)	Paragraph 11(2)(a)(i) and (b)(i)	Substitute “disgrace” for “ignominy” in each place where it occurs.	25
National School Teachers’ Superannuation (Amendment) Scheme 1947 (S.I. No. 330 of 1947)	Paragraph 5(6)(a)(i) and (b)(i)	Substitute “disgrace” for “ignominy” in each place where it occurs.	30

MISCELLANEOUS AMENDMENTS TO OTHER ACTS

PART 1

AMENDMENTS TO COURTS-MARTIAL APPEALS ACT 1983

5	Provision affected	Amendment
	(1)	(2)
10	Section 13	<p>(a) Delete “(when confirmed)”.</p> <p>(b) Renumber the existing provision as subsection (1) of that section.</p> <p>(c) Insert the following subsection:</p> <p style="padding-left: 40px;">“(2) A person in respect of whom a finding or order of committal is made under section 202 or 203 of the Act of 1954 may appeal that finding or order of committal to the Court.”.</p>
15	Section 17	<p>(a) In subsection (1), substitute “military judge presiding at the court-martial” for “president or the judge-advocate of the court-martial”.</p> <p>(b) Delete subsection (2).</p>
20	Section 19	Insert “(other than an appeal under sections 203B to 203D (inserted by the <i>Defence (Amendment) (No. 2) Act 2006</i>) of the Act of 1954)” after “If on any appeal”.
25	New sections	<p>Insert the following sections after section 19:</p> <p>“Appeals (mental disorder at time of trial).</p> <p>19A.—Where an appeal is made to the Court under section 203B (inserted by the <i>Defence (Amendment) (No. 2) Act 2006</i>) of the Act of 1954 from a finding by a court-martial pursuant to section 202 of that Act, the Court shall, if it allows the appeal, order that the appellant be tried or retried, as the case may be, by court-martial for the offence alleged.</p> <p>Appeals (mental disorder at time of commission of offence).</p> <p>19B.—(1) A person tried for an offence by court-martial and found not guilty by reason of insanity may appeal to the Court against the finding on all or any of the following grounds:</p>
30		<p>(a) that it was not proved that the person did the act or made the omission in question;</p>
35		<p>(b) that the person was not, at the time when he did the act or made the omission, suffering from a mental disorder of the nature referred to in section 203(1) of the Act of 1954;</p>
40		<p>(c) that the military judge ought to have made a finding in respect of the person that he was unfit to take his trial.</p>
45		<p>(2) If on an appeal to the Court on the ground referred to in subsection (1)(a) of this section, the Court is satisfied that it was not established that the appellant did the act or made the omission in question it shall order that the appellant be acquitted.</p>
50		<p>(3) If, on an appeal to the Court on the ground referred to in subsection (1)(b) of this section, the Court is satisfied that the appellant did the act or made the omission alleged but having considered the evidence or any new evidence relating to the mental condition of the appellant given by a consultant psychiatrist is satisfied that he was not suffering from a mental disorder of the</p>

Provision affected (1)	Amendment (2)	
	nature referred to in section 203(1) of the Act of 1954, the Court shall substitute a verdict of guilty of the offence charged or of any other offence of which it is satisfied that the person could (by virtue of the charge) and ought to have been convicted, and shall have the like powers of punishing or otherwise dealing with the person as the court-martial concerned would have had if the person had been convicted of the offence in respect of which the verdict of guilty has been so substituted.	5 10
	(4) If, on appeal to the Court on the ground set out at subsection (1)(c) of this section, the Court is satisfied that the appellant ought to have been found unfit to take his trial it shall make a finding to that effect and, in that case the provisions of section 202(1)(b) of the Act of 1954 shall apply.	15
	(5) If on appeal to the Court, the Court is satisfied, having considered the evidence or any new evidence relating to the mental condition of the appellant, that he was at the time that the offence alleged was committed suffering from a mental disorder of the nature referred to in section 203(1) of the Act of 1954 and that but for that disorder the appellant would have been found guilty of the offence charged or of another offence of which the person could have been found guilty by virtue of the charge, the Court shall dismiss the appeal.	20
	(6) In this section and in section 19C of this Act ‘consultant psychiatrist’ has the same meaning as in the Mental Health Act 2001.	25
	Appeals (supplementary provisions).	
	19C.—(1) Where an appeal is made to the Court against a decision by a court-martial to make or not to make an order of committal under section 202(1)(b) or 203(2) of the Act of 1954, the Court may, having considered the evidence or any new evidence relating to the mental condition of the person charged given by a consultant psychiatrist, make such order, being an order that it was open to the court-martial to make, as it considers appropriate and, without prejudice to the provisions of section 13 of the Criminal Law (Insanity) Act 2006 relating to the review of orders of committal, no further appeal shall lie from an order made on an appeal under this section.	30 35
	(2) Where the Court allows an appeal against a conviction or against a verdict of not guilty by reason of insanity on the ground that the appellant ought to have been found unfit to take his trial, or allows an appeal against a conviction on the ground that the appellant ought to have been found not guilty by reason of insanity, it shall have the same powers to deal with the appellant as the court-martial concerned would have had under section 202 or 203 of the Act of 1954 if it had come to the same conclusion.	40 45
	(3) All ancillary and procedural provisions contained in a statute or an instrument made under statute relating to appeals against convictions, including provisions relating to leave to appeal, shall apply with the necessary modifications to appeals under sections 19A and 19B of this Act and subsection (1) of this section.	50
	(4) The powers of the Court in an appeal under section 19A or 19B of this Act or subsection (1) of this section shall include the power to make any such order as may be necessary for the purpose of doing justice in accordance with the provisions of this Act and the Criminal Law (Insanity) Act 2006.”	55
Section 22	Substitute “the Director of Military Prosecutions” for “the person who convened the court-martial by which the appellant was tried or by his successor in office duly empowered to convene courts-martial”.	60

Provision affected (1)	Amendment (2)
<p>New sections</p> <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>	<p>Insert the following sections after section 22:</p> <p>“Case stated for the Court on question of law.</p> <p>22A.—Where an appeal is made to the summary court-martial under section 178E (inserted by the <i>Defence (Amendment) (No.2) Act 2006</i>) of the Act of 1954, the military judge—</p> <p>(a) shall, if requested by the appellant or the respondent, unless the military judge considers the request frivolous, and</p> <p>(b) may, without request,</p> <p>refer any question of law arising in that appeal to the Court for determination in accordance with this Act.</p> <p>Review of certain sentences.</p> <p>22B.—(1) An application by the Director of Military Prosecutions under section 212B (inserted by the <i>Defence (Amendment) (No. 2) Act 2006</i>) of the Defence Act 1954 to review a sentence awarded by a court-martial shall be made, on notice given to the convicted person, within 28 days or such longer period not exceeding 56 days as the Court may, on application to it in that behalf, determine, from the day on which the sentence was awarded.</p> <p>(2) On such an application, the Court may either—</p> <p>(a) quash the sentence and in its place award to the convicted person the sentence it considers appropriate, being a sentence which could have been awarded to him by the court-martial concerned, or</p> <p>(b) refuse the application.”.</p>
<p>Section 26</p> <p>30</p> <p>35</p>	<p>Substitute the following for paragraph (b):</p> <p>“(b) any of the provisions of the Act of 1954 or any instrument made under that Act permit the accused to be represented by counsel or by a solicitor at the investigation of the charge or the taking down of the evidence pursuant to any such provisions or instrument (or at both such investigation and such taking down of evidence).”.</p>
<p>Section 27</p> <p>40</p> <p>45</p> <p>50</p>	<p>(a) In subsection (1)—</p> <p>(i) substitute the following for paragraph (a):</p> <p>“(a) a person (in this section referred to as ‘the accused’)—</p> <p>(i) is, at the direction of the Director of Military Prosecutions, to be tried by court-martial, or</p> <p>(ii) appeals to the summary court-martial pursuant to section 178E (inserted by the <i>Defence (Amendment) (No. 2) Act 2006</i>) of the Act of 1954,</p> <p>and”,</p> <p>and</p> <p>(ii) insert “or of his appeal, as the case may be,” after “the trial”.</p> <p>(b) In subsection (2)(c)(ii)—</p> <p>(i) insert “or appeal, as the case may be” after “set up”, and</p>

Provision affected (1)	Amendment (2)	
	(ii) insert “or of his appeal, as the case may be” after “trial”.	
Section 28(1)	<p>(a) Substitute the following for paragraph (a):</p> <p>“(a) a person (in this section referred to as ‘the accused’)—</p> <p>(i) is convicted by a court-martial, or</p> <p>(ii) is found to be unfit to take his trial pursuant to section 202 of the Act of 1954, or</p> <p>(iii) is found not guilty by reason of insanity pursuant to section 203 of the Act of 1954,</p> <p>and”.</p> <p>(b) Insert “or against a decision by a court-martial to make or not to make an order of committal under section 202(1)(b) or section 203(2) of the Act of 1954” after “and such sentence”.</p>	<p>5</p> <p>10</p> <p>15</p>
Section 34	In subsection (1), substitute “€2,000” for “£100”.	

PART 2

AMENDMENTS TO DEFENCE (AMENDMENT) ACT 1987 20

Provision affected (1)	Amendment (2)	
Section 8	<p>(a) In subsection (1), substitute “military judge presiding at” for “president of”.</p> <p>(b) Substitute the following for subsection (3):</p> <p>“(3) For the purposes of subsection (1) of this section—</p> <p>(a) subsection (3) of section 207 of the Principal Act shall apply as it applies for the purposes of the said section 207, and</p> <p>(b) references to the military judge shall be construed as including references to such officer.”.</p> <p>(c) In subsection (4), substitute “€2,000” for “£100”.</p>	<p>25</p> <p>30</p>

PART 3

AMENDMENT TO CRIMINAL EVIDENCE ACT 1992 35

Provision affected (1)	Amendment (2)	
Section 1	In subsection (4)(b)(iii) substitute “Chapter IV of Part V” for “section 177 or 178 (as amended by section 3 of the Defence (Amendment) Act 1987)”.	40

PART 4

AMENDMENTS TO OMBUDSMAN (DEFENCE FORCES) ACT 2004

Provision affected (1)	Amendment (2)
5 10	<p>Section 5(1)</p> <p>(a) In paragraph (b), substitute “Chapter IV of Part V of the Act of 1954” for “section 179”.</p> <p>(b) In paragraph (e), substitute the following for subparagraph (i):</p> <p style="padding-left: 40px;">“(i) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or punishment awarded under Chapter IV of Part V of the Act of 1954, by a court-martial or by the Courts-Martial Appeal Court, or”.</p>

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PART 5

AMENDMENTS TO CRIMINAL LAW (INSANITY) ACT 2006

Provision affected (1)	Amendment (2)
20 25 30 35 40 45 50 55	<p>Section 13</p> <p>(a) Substitute the following for subsection (3)(b):</p> <p style="padding-left: 40px;">“(b) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 202 of the Defence Act 1954, that the patient is no longer unfit to take his or her trial he or she shall forthwith notify the Director of Military Prosecutions (within the meaning of that Act) of this opinion and the Director of Military Prosecutions may direct—</p> <p style="padding-left: 80px;">(i) that the matter be referred to the summary court-martial or that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in the direction, and</p> <p style="padding-left: 80px;">(ii) that the person be brought before such court-martial as soon as may be to be dealt with as the court-martial considers proper.”.</p> <p>(b) Substitute the following for subsection (8)(a):</p> <p style="padding-left: 40px;">“(a) if, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, the Review Board determines that he or she is no longer unfit to be tried by reason of mental disorder or to participate in proceedings referred to in section 4 it shall order that the patient be brought before the court which committed him or her to the designated centre to be dealt with as that court thinks proper or in the case of a patient detained pursuant to section 202 of the Defence Act 1954, it shall notify the Director of Military Prosecutions (within the meaning of that Act) and the Director of Military Prosecutions may direct—</p> <p style="padding-left: 80px;">(i) that the matter be referred to the summary court-martial or that the Court-Martial Administrator convene a general court-martial or limited court-martial, as specified in the direction, and</p>

Provision affected (1)	Amendment (2)	
	(ii) that the person be brought before such court-martial as soon as may be to be dealt with as the court-martial considers proper.”.	5

Section 20.

SCHEDULE 5

SCHEDULED OFFENCES

“ELEVENTH SCHEDULE

SCHEDULED OFFENCES FOR THE PURPOSES OF PART V OF THIS ACT 10

PART I

OFFENCES OF A DISCIPLINARY NATURE WHICH MAY BE DISPOSED OF SUMMARILY UNDER SECTION 177C, 178C OR 179C

Provision of Principal Act (1)	Offence (2)	
Section 133	Insubordinate behaviour	15
Section 134	Disorders	
Section 137	Absence without leave	
Section 138	False statement in respect of leave	20
Section 142	Prohibition on being under the influence of an intoxicant	
Section 160	Unauthorised use of service vehicles	
Section 168	Conduct to the prejudice of good order and discipline	25

PART II

OFFENCES OF A DISCIPLINARY NATURE WHICH MAY BE DISPOSED OF SUMMARILY UNDER SECTION 177C OR 178C SUBJECT TO PRIOR CONSENT OF DIRECTOR

Provision of Principal Act (1)	Offence (2)	
Section 131	Disobedience to superior officer	30
Section 136	Connivance at desertion	
Section 141	False accusation against officer or man	
Section 144	Dilatory conduct in regard to trials	35
Section 145	Negligent or wilful interference with lawful custody	
Section 147	Obstruction of officer or man carrying out police duties	

Provision of Principal Act	Offence
Section 150	Unauthorised carriage on ships or aircraft
Section 157	Destruction, loss or improper disposal of property
Section 159	Negligent or furious driving of service vehicles
Section 164	Fraudulent enlistment
Section 165	General offences in relation to enlistment
Section 166	Negligent performance of duties
Section 167	Offences in relation to documents

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SCHEDULE 6

Section 21.

AMENDMENTS CONSEQUENTIAL ON *Section 20*

Provision of Principal Act affected	Amendment
(1)	(2)
Sections 131, 133, 134, 136, 137(1), 138, 141, 144, 145, 147, 157, 159(1), 160, 164(1), 165, 166, 167 and 168(1).	Insert “where a charge under this section is disposed of summarily under section 177C, 178C or 179C, as the case may be, be liable to suffer any punishment awardable thereunder or,” after “shall.”.

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SCHEDULE 7

Section 71.

COURT-MARTIAL RULES

“TWELFTH SCHEDULE

COURT-MARTIAL RULES

25 *Matters in respect of which the Courts-Martial Rules Committee may make court-martial rules.*

1. The pleading, practice and procedure generally in all proceedings before courts-martial.

2. Assignment of cases by the Chief Military Judge (if any).

30 3. Sittings of courts-martial, including the days, times and place of sitting and any changes thereto.

4. Oaths and affirmations for members of the court-martial board, witnesses and other persons and the person or persons who may administer such oaths and affirmations.

35 5. Procedures for the making of objections to, and the replacement of, members of a court-martial board.

6. Procuring the attendance of witnesses and other persons and the production of documents and other things, including provision in relation to—

(a) the payment of expenses to persons summoned to attend a court-martial, 5

(b) the making of orders for the arrest of persons.

7. The making of records of the proceedings of courts-martial.

8. The order of and manner in which submissions may be made by the Director or by or on behalf of the accused in all proceedings before a court-martial. 10

9. The alteration, amendment, addition and substitution of charges.

10. Adjournment of proceedings before a court-martial.

11. The procedure for the dissolution by a military judge of a general court-martial or limited court-martial. 15

12. Forms of orders to be made by a military judge including in relation to sentences of imprisonment or detention or any other punishment which may be awarded.

13. Procedures for making application for legal aid. 20

14. The entry into, taking of and form of recognisance for the purposes of suspending sentences under section 212A.

15. Procedures for making application to a court-martial under section 212A(11) to fix a date for hearing for the purposes of that provision. 25

16. Procedures for the making of applications for restitution of stolen property under section 225.

17. The practice and procedure for the bringing and hearing of appeals by, and other related proceedings before, the summary court-martial. 30

18. The procedure for referral under section 178G(5) of questions of law arising on an appeal under section 178E to the Courts-Martial Appeal Court for determination.

19. Any other matter or thing expedient or necessary for the purposes of carrying into effect the provisions of this Act relating to the pleading, practice and procedure generally in all proceedings before courts-martial under this Act.”. 35