



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

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The primary purpose of the Bill is to amend and update the disciplinary provisions of Part V of the Defence Acts, having due regard to prevailing human rights norms. The Bill provides for the summary disposal of charges; the establishment and jurisdiction of the summary court-martial; the appointment of the Court-Martial Administrator, the Director of Military Prosecutions and a military judge; the constitution of courts-martial and membership of a court-martial board; matters of procedure before courts-martial, the award and execution of punishments by courts-martial and the suspension of sentences; the establishment of the Courts-Martial Rules Committee and the making of court-martial rules; and for those and other purposes amends and extends the Defence Acts 1954 to 2006, makes consequential amendments to other enactments and provides for related matters.

Provisions of the Bill

PART 1

PRELIMINARY

1. *Section 1* of the Bill sets out the short title of the Bill, provides that certain sections of the Bill will be commenced when the Bill is enacted and the Minister for Defence may make orders commencing the remaining sections and provides for the collective citation of the Bill with Acts already on the statute book.
2. *Section 2* sets out the definition for “Principal Act”.
3. *Section 3* provides for Schedule 1 to the Bill, which sets out the transitional arrangements that will apply on commencement of specific provisions in this Bill.

PART 2

AMENDMENTS AND REPEALS

Chapter 1

Miscellaneous Amendments to Principal Act

4. *Section 4* provides for repeals and amendments.

Section 4 provides that the following sections in the Principal Act are being repealed:—

Section 142A This section is no longer required as it is proposed to merge the existing sections 142 and 142A into one section dealing with intoxication. See section 16 of this Bill.

Section 180 This section provides for the revision of summary awards and will no longer be required, as the Bill provides for a new appeal process for summary awards. [However the repeal will not apply to punishments awarded before the coming into operation of the new provisions relating to the “investigation and summary disposal of charges”. See Schedule 1 of this Bill].

Section 188 This section is no longer required as it deals with convening authorities, which will be obsolete. However, in a similar mode, it is proposed to provide the Director of Military Prosecutions with powers similar to those conferred by law on the DPP. See section 33 of this Bill.

Sections 215-222 Since the introduction of the Court-Martial Appeals Court, there is no requirement for the continued retention of the confirmation, review, mitigation or remission processes, contained in these sections, with regard to sentences of courts-martial.

Section 223 This section provides for the suspension of custodial sentences for enlisted personnel. This matter is now provided for in section 61 of the Bill.

Section 224 This section provides for the quashing of the finding of a court-martial by the Minister. Since the introduction of the Court-Martial Appeals Court there is an appropriate judicial process established for this purpose.

Section 4 also provides for Schedule 2 to the Bill which makes miscellaneous amendments to various provisions of the Principal Act.

5. *Section 5* provides for substitution of the term “military judge” for “judge-advocate” in the current Defence Acts and in instruments made there under.
6. *Section 6* provides for the insertion of new definitions and the deletion and amendment of certain other definitions in Section 2 of the Principal Act.
7. *Section 7* amends section 26 of the Principal Act to include a provision which is now regarded as standard in regulation enabling provisions.
8. *Section 8* amends section 61 of the Principal Act to provide for greater flexibility in the transfer, from one service corps to another service corps, of personnel enlisted into the Permanent Defence Force after the commencement date of this section. Currently personnel who have served more than 10 years in one service corps can only be transferred to another service corps in particular circumstances.
9. *Section 9* amends section 114 of the Principal Act which deals the Redress of Wrongs. It specifically excludes as grounds for complaint under the redress of wrongs scheme, any determinations made or punishments awarded where a charge has been disposed of summarily. Decisions made by a subsequent appeal body in this process are also excluded as grounds for complaint under the scheme.

Chapter 2

Miscellaneous Amendments to other Acts and Instruments

10. *Section 10* provides for substitution, in specific contexts, of the term “disgrace” for “ignominy”, as it applies to dismissal or discharge from the Defence Forces.
11. *Section 11* provides for Schedule 4 to the Bill which makes miscellaneous amendments to various provisions of the following Acts:
 - Courts-Martial Appeals Act 1983,
 - Defence (Amendment) Act 1987,
 - Criminal Evidence Act 1992,
 - Ombudsman (Defence Forces) Act 2004, and
 - Criminal Law (Insanity) Act 2006.

PART 3

AMENDMENTS TO PART V OF PRINCIPAL ACT

Chapter 1

Liability to Military Law

12. *Section 12* amends Section 120 of the Principal Act in two respects;
 - (i) Currently the time limit for the commencement of the trial of a person under military law, for certain offences allegedly committed whilst subject to military law by a person who has since ceased to be subject to military law, is three months after he ceases to be subject to military law. It is now provided that:—
 - (1) the person must be charged (*as opposed to the trial commencing*) within 6 (*as opposed to 3*) months of ceasing to be subject to military law;
 - (2) in addition to mutiny, desertion and fraudulent enlistment, the time limit does not apply to civil offences committed while a person is serving outside the State.
 - (ii) Currently persons who are sentenced by a court-martial to imprisonment or detention, continue to have the Act applied to them notwithstanding that they are discharged or dismissed from the Defence Forces or have otherwise ceased to be subject to military law. It is now intended that this provision will only apply where the person is serving their sentence in a military detention facility. A person serving a court-martial sentence in a civil prison, who is no longer a member of the Defence Forces, will not be subject to the Defence Act.
13. *Section 13* amends Section 121 of the Principal Act, which currently provides that civilians who are subject to military law may not be dealt with summarily. Since such persons may be tried by court-martial, it is now provided that they may, with their consent, be dealt with summarily, with a right of appeal to a summary court-martial. By being dealt with summarily, they are exposed to the possibility of a lesser punishment which cannot include a custodial sentence. In each case such a person if

charged would have a legal right to be tried by court-martial on their own election.

14. *Section 14* amends Section 123 of the Principal Act which deals with the time limit for the trial of offences. It amends the existing provisions in the following main respects:—
 - (1) It is currently provided that the time limit for trial and punishment by court-martial of a person subject to military law, is 3 years from the date of the commission of the offence. This has been amended so that the person must be charged (*as opposed to being tried and punished*) within 6 (*as opposed to 3*) years of the date of the commission of the offence.
 - (2) In addition to mutiny, desertion and fraudulent enlistment, it now provides that the time limit for trial by court-martial does not apply to civil offences committed while a person was serving outside the State.
 - (3) It makes new provision that proceedings for the summary disposal of scheduled (i.e. disciplinary type) offences must be commenced within 12 months either, of the date of the commission of the offence or, the date on which evidence to justify the proceedings comes to the knowledge of the person initiating the proceedings, but in any case, the overriding time limit for the initiation of summary proceedings is 3 years from the date of the commission of the offence.
 - (4) It makes new provision that in calculating the time limits for the trial of offences, the “clock will stop running” in specified instances e.g. for the period a person is on active service or is absent without leave. As a safeguard, the periods which are to be excluded must be certified by a persons commanding officer.

Chapter 2

Offences against Military Law

15. *Section 15* amends Section 135 of the Principal Act to clarify the definition of desertion by defining “important service” to specifically include circumstances related to active service and service outside the State.
16. *Section 16* merges the existing sections 142 and 142A into one section and substitutes the offence of being under the influence of an intoxicant for drunkenness, which covers being under the influence of either alcohol or drugs. The maximum punishment for intoxication for enlisted personnel while not on duty or active service is standardised at 90 days detention. The new section also provides for opinion evidence that a person is under the influence of an intoxicant and provides for a defence in respect of an intoxicant taken under medical direction.
17. *Section 17* amends Section 150 of the Principal Act to broaden the scope of the offence “unauthorised carriage on ships or aircraft” as follows;
 - (1) from an offence by a person in command of a State ship or aircraft to one which may be committed by any person subject to military law;
 - (2) to include ships or aircraft used for any purpose by the Defence Forces;

- (3) to include the carriage of unauthorised persons;
 - (4) to include the requirement that the accused acted ‘knowingly’.
18. *Section 18* amends Section 161 of the Principal Act by removing a summary investigation by an authorised or commanding officer (with one exception — see next paragraph) from within the scope of the definition of “service tribunal”. Given the changed structure, scope and procedures governing summary investigations, including the fact that a custodial sentence cannot be awarded, the new summary process will be less formal than a service tribunal.

Since 1983 legal representation has been permitted at all stages where a person is charged with an offence for which he would on conviction be required to be sentenced to imprisonment for life. Therefore, as an exception to the above, it is proposed to retain the preliminary investigation, by an authorised or commanding officer, of a charge for which on conviction by court-martial the only sentence awardable is life imprisonment, within the definition of “service tribunal”.

Section 18 also creates new offences of;

- (1) improper communication with the Director of Military Prosecutions (including any member of his staff), a member of a court-martial board, a military judge or a witness, for the purpose of attempting to influence any of them;
- (2) failing, refusing or neglecting to comply with a direction of a military judge, under section 195; or
- (3) hindering, by act or omission, a service tribunal in the performance of its functions.

This section will serve to underpin the guarantee of independence of any person concerned in the administration of the military justice system.

19. *Section 19* amends Section 162 of the Principal Act, in light of the revised definition of “service tribunal” in section 18 of the Bill. The intent of the existing provision has not changed.

Chapter 3

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

20. *Section 20* provides for a new eleventh schedule to the Principal Act, which specifies offences of a disciplinary nature (to be referred to as “scheduled offences”) that may be disposed of summarily by an authorised, commanding or subordinate officer as appropriate. Offences listed in Part II of the schedule require the consent of the Director of Military Prosecutions before they may be dismissed or disposed of summarily.
21. *Section 21* provides for a schedule of amendments to offences of a disciplinary nature, consequential on Section 20 of the Bill.

Sections 22 to 30 make extensive amendments to sections 177, 178 and 179 of the Principal Act, dealing with the investigation and summary disposal of charges against officers by authorised officers, against men by commanding officers and against privates and seamen

by subordinate officers respectively. The amended sections make statutory provision for certain procedural matters which were formerly provided for in regulations and in rules of procedure [S.I. 243 of 1954], and they provide for new structures, scope, procedures, punishments and appeal processes governing summary investigations.

22. *Section 22* replaces section 177 in the Principal Act. This new section provides for the preliminary investigation of charges against officers and the most senior non-commissioned ranks and it amends the existing law in the following main respects:—

- (1) It provides for the summary disposal, by an authorised officer, of certain charges against persons up to and including the rank of commandant or equivalent. At present charges against officers in the rank of commandant or equivalent may only be dealt with by general court-martial.
- (2) It provides for the summary disposal, by an authorised officer, of certain charges against the most senior non-commissioned ranks. At present charges against the most senior non-commissioned ranks can be dealt with by commanding officers only, usually in the rank of lieutenant-colonel or equivalent.
- (3) It provides that the summary disposal of charges is limited to offences which are disciplinary rather than criminal in nature (i.e. scheduled offences).
- (4) It provides that the Director of Military Prosecution must consent to the potentially more serious disciplinary type offences (i.e. Part II scheduled offences) either being dismissed or dealt with summarily as the case may be.
- (5) It provides that where a person is remanded for trial by court-martial, the matter must be referred to the Director of Military Prosecutions for his directions.
- (6) It provides a clear statutory right for a person, charged with an offence for which, on conviction by court-martial, the only sentence awardable is life imprisonment, to have legal representation at the preliminary investigation of the charge.

23. *Section 23* inserts new sections 177A, 177B, 177C and 177D into the Principal Act.

Section 177A makes a new provision that a person charged is entitled to receive adequate notice of the date, time and place at which the charge is to be investigated and a copy of the charge sheet with details of the witnesses and evidence against him.

Section 177B amends existing law so that, in every case, before a charge is dealt with summarily by an authorised officer, the person charged has a right to either consent to the summary disposal of the charge or to elect for trial by court-martial. At the present time the right to elect for trial by court-martial arises only when an authorised officer, having determined that a charge has been proven, proposes to award a monetary punishment. This section also makes a new provision that a person has a right to obtain legal advice when making this decision.

Section 177C provides for summary hearings before an authorised officer and it amends the existing law in the following main respects:—

- (1) It permits the person charged to dispense with the hearing of the evidence against him only if he admits the charge.
- (2) Where the authorised officer remands a person for trial by court-martial, the matter must be referred to the Director of Military Prosecutions for his directions.
- (3) Where the authorised officer makes a determination that a charge has been proved, the range of punishments awardable is expanded to include reduction on the scale of pay by one increment, deferral for up to one year of an increment, or a fine of up to 7 days (increased from 3 days) pay of the person charged.
- (4) New provision is made for an assisting person to be present at but not participating in the hearing.
- (5) The provision for compensation orders has been expanded to cover personal injury as well as any personal loss, expense, damage or destruction of property caused and the maximum amount of any such order has increased from 9 to 28 days pay. The payment of compensation by instalments (subject to a maximum deduction of 7 days pay in any one calendar month) is also provided for.

Section 177D provides for the review, by the Director of Military Prosecutions, of charges which have been remanded for trial by court-martial. It provides that, in certain instances, where a charge is referred to the Director of Military Prosecutions, he may direct that the charge (with such alterations, amendments and additional charges as he thinks fit) be referred back to the authorised officer and thereupon the authorised officer shall either dismiss or (subject to the right to elect to be tried by court-martial), deal summarily with the charge(s) as so referred back. Where a person is to be tried by court-martial, the Director of Military Prosecutions directs the class of court-martial before which the person should be tried.

24. *Section 24* replaces section 178 in the Principal Act. This new section provides for the summary disposal, by a commanding officer, of certain charges against enlisted persons up to and including the rank of company-sergeant and equivalent ranks and it amends the existing law in the following main respects:—

- (1) It excludes from its provisions the most senior non-commissioned ranks, who are now encompassed in the revised section 177.
- (2) It provides that the summary disposal of charges is limited to offences which are disciplinary rather than criminal in nature (i.e. scheduled offences).
- (3) It provides that the Director of Military Prosecution must consent to the potentially more serious disciplinary type offences (i.e. Part II scheduled offences) either being dismissed or dealt with summarily as the case may be.
- (4) It provides that where a person is remanded for trial by court-martial, the matter must be referred to the Director of Military Prosecutions for his directions.
- (5) It provides a clear statutory right for a person, charged with an offence for which, on conviction by court-martial, the only sentence awardable is life imprisonment, to have legal representation at the preliminary investigation of the charge.

25. *Section 25* inserts new sections 178A, 178B, 178C and 178D into the Principal Act.

Section 178A makes a new provision that, where a commanding officer proposes to investigate a charge, then the person charged is entitled to receive adequate notice of the date, time and place at which the charge is to be investigated and a copy of the charge sheet with details of the witnesses and evidence against him.

Section 178B amends existing law so that, in every case, before a charge is dealt with summarily by a commanding officer, the person charged has a right to either consent to the summary disposal of the charge or to elect for trial by court-martial. At the present time the right to elect for trial by court-martial arises only when a commanding officer, having determined that a charge has been proved, proposes to award a monetary or custodial punishment. This section also makes a new provision that a person has a right to obtain legal advice when making this decision.

Section 178C provides for summary hearings before a commanding officer and it amends the existing law in the following main respects:—

- (1) It permits the person charged to dispense with the hearing of the evidence against him only if he admits the charge.
- (2) Where the commanding officer remands a person for trial by court-martial, the matter must be referred to the Director of Military Prosecutions for his directions.
- (3) New provision is made for an assisting person to be present at but not participating in the hearing.
- (4) The range of punishments awardable to a non commissioned officer is expanded to be the same as that awardable to officers who are dealt with summarily, under section 177C.
- (5) The range of punishments awardable to a private or seaman is expanded in line with the punishments for non-commissioned officers with the addition of stoppage on local or shore leave and additional duties (to be prescribed in regulations made by the Minister) and with a warning as a punishment instead of the reprimand and severe reprimand awardable to higher ranks.
- (6) The specific combinations of punishments allowable for privates and seamen have been modified.
- (7) In line with current practice the power of the commanding officer to award a punishment of detention is abolished.
- (8) The provision for compensation orders has been expanded to cover personal injury as well as any personal loss, expense, damage or destruction of property caused and the maximum amount of any such order has increased from 9 to 28 days pay. The payment of compensation by instalments (subject to a maximum deduction of 7 days pay in any one calendar month) is also provided for.

Section 178D provides for the review, by the Director of Military Prosecutions, of charges which have been remanded for trial by court-martial. It provides that, in certain instances, where a charge is referred to the Director of Military Prosecutions, he may direct that the charge (with such alterations, amendments

and additional charges as he thinks fit) be referred back to the commanding officer and thereupon the commanding officer shall either dismiss or (subject to the right to elect to be tried by court-martial), deal summarily with the charge(s) as so referred back. Where a person is to be tried by court-martial, the Director of Military Prosecutions directs the class of court-martial before which the person should be tried.

26. *Section 26* inserts new sections 178E, 178F and 178G into the Principal Act.

Section 178E makes new provision for an absolute right of appeal to a new summary court-martial, against the finding and/or the punishment awarded where a charge has been disposed of summarily by an authorised or commanding officer. In order to expedite the administration of military justice in the interests of discipline any such appeal should be submitted within 7 days of the award or such longer period as may be permitted by the summary court-martial.

Section 178F provides that the hearing of an appeal by the new summary court-martial (composed of a military judge sitting alone) shall be by way of a re-hearing of the charge and/or of the punishment as appropriate and the person charged may have legal representation or be represented by an officer subject to military law.

Section 178G provides that the summary court-martial may confirm or set aside the original determination and may confirm, quash, or substitute a new punishment, but it may not, acting as an appeal court, award any punishment which the authorised or commanding officer could not have awarded. The decision of the summary court-martial shall be final in respect of summary awards, however the Judge may refer, if requested by the appellant or the respondent or on his own initiative, an important question of law to the Courts-Martial Appeal Court.

27. *Section 27* replaces section 179 in the Principal Act. This section provides for the summary disposal by subordinate officers of certain charges against privates and seamen and it amends the existing law in the following main respects:—

- (1) Under the new provisions the subordinate officer does not necessarily have to be in a position of command authority over the private or seaman charged.
- (2) It provides that the summary disposal of charges by subordinate officers is limited to offences which are disciplinary rather than criminal in nature and are listed in Part I of the list of scheduled offences.

28. *Section 28* inserts sections 179A, 179B and 179C into the Principal Act.

Section 179A makes a new provision, that where a subordinate officer proposes to investigate a charge, then the person charged is entitled to receive adequate notice of the date, time and place at which the charge is to be dealt with and a copy of the charge sheet with details of the witnesses and evidence against him.

Section 179B amends existing law so that, in every case, before a charge is dealt with summarily by a subordinate officer, the person charged has a right to either consent to the summary disposal by the subordinate officer or to elect to have the charge

referred to the commanding officer. At the present time a right to elect to have a case referred to a commanding officer only arises where the subordinate officer, having made a determination that the charge has been proved, proposes to award a monetary punishment.

Section 179C provides for summary hearings before a subordinate officer and it amends the existing law in the following main respects:—

- (1) It permits the person charged to dispense with the hearing of the evidence against him only if he admits the charge.
- (2) New provision is made for an assisting person to be present at but not participating in the hearing.
- (3) The range and combination of punishments awardable is expanded to include the imposition of additional duties (to be prescribed in regulations made by the Minister) and stoppage of local or shore leave, as well as an increase in the maximum fine from an amount equal to 1 day's pay to 3 days pay of the person charged.
- (4) The provision for compensation orders has been expanded to cover personal injury as well as any personal loss, expense, damage or destruction of property caused and the maximum amount of any such order has increased from 4 to 7 days pay. The payment of compensation by instalments is also provided for.

29. *Section 29* inserts new sections 179D and 179E into the Principal Act.

Section 179D makes new provision for an absolute right of appeal to a commanding officer, against the determination and/or the punishment awarded where a charge has been disposed of summarily by a subordinate officer. In order to expedite the administration of military justice in the interests of discipline, any such appeal should be submitted within 2 days of the award or such longer period as may be permitted by the commanding officer (subject to a maximum of 5 days).

Section 179E provides that the hearing of the appeal by a commanding officer, shall consist of a full re-hearing of the charge and/or the punishment (pursuant to the provisions of S178C and S178D as appropriate) and the person charged may have an assisting person present at, but not participating in, the hearing.

30. *Section 30* inserts new section 179F into the Principal Act. Section 179F makes new provision for the suspension of the operation of certain punishments or compensation orders, awarded summarily by an authorised, commanding or subordinate officer, pending an appeal. Punishments or compensation orders awarded under these sections, other than stoppage of local or shore leave, shall be suspended until the time for bringing an appeal has expired, or any such appeal brought has been finally determined or has been abandoned.
31. *Section 31* replaces section 184 in the Principal Act and allows the Minister to make regulations in respect of the matters provided for in Chapter IV of Part V of the Principal Act i.e. in relation to the investigation and summary disposal of charges and remands for court-martial.

32. *Section 32* inserts a new chapter IVA, comprising new sections 184A and 184B, into the Principal Act. This chapter provides for the establishment of an independent Court-Martial Administrator, who partially replaces the Convening Authority in the existing system.

Section 184A provides for the appointment, by warrant of the Judge Advocate-General, of an officer of the Permanent Defence Forces, not below the rank of colonel or equivalent, to be the Court-Martial Administrator. It further provides that the Court-Martial Administrator shall be independent in the performance of his functions.

Section 184B provides for the functions of the Court-Martial Administrator which are to manage and control generally the administration and business of courts-martial and specifically includes convening general and limited courts-martial, referring matters for trial by the summary court-martial and selecting members of court-martial boards. This section also provides that the Court-Martial Administrator will act under the general supervision of the Judge Advocate-General.

33. *Section 33* inserts a new chapter IVB, comprising new sections 184C to 184I into the Principal Act. This chapter provides for the establishment of an independent military prosecuting authority, to be called the Director of Military Prosecutions, hereinafter the Director, who will decide (as the DPP does in the ordinary criminal legal system) all issues relating to the prosecution of offences before courts-martial.

Section 184C provides for the appointment by the Government, of an officer of the Permanent Defence Forces (who is a practicing barrister or solicitor of at least 10 years standing), to be the Director. It further provides that the Director shall not be below the rank of colonel or equivalent.

Section 184D provides that the Government should make the appointment on the basis of the recommendation(s) of a specific committee set up for this purpose.

Section 184E provides that the Director shall hold office on such terms and conditions as the Minister, with the consent of the Minister for Finance, may determine. It provides that the Director shall be independent in the performance of his functions. Provision is made for the AG, the DPP and the Director to consult from time to time in relation to matters pertaining to the functions of the Director.

Section 184F provides for the appointment, by the Director, of prosecuting officers, who must be barristers or solicitors and who may also exercise the functions of the Director as authorised by him.

Section 184G provides that the Director is responsible for the conduct of all prosecutions at courts-martial and for directing the class of court-martial before which a person should be tried. It also provides that for the purpose of prosecuting offences by courts-martial, the Director shall have powers similar to those

conferred by law on the DPP in respect of offences triable on indictment before a civil court.

Sections 184H and 184I provide for the formal removal from office, of the Director, by the Government, for stated reasons. It further provides that before the Director's removal, he must be notified of the Government's intent to consider the matter and he must be given an opportunity to make representations. It is also provided that the Government may appoint a Judge of the High Court to hold an inquiry into the matter.

34. *Section 34* inserts a new chapter IVC, comprising new sections 184J to 184P into the Principal Act. This chapter provides for the establishment of an independent military judicial office, comprising one or more military judges, with a judicial role similar to that of a civilian judge.

Section 184J provides for the appointment by the President, on the recommendation of the Minister, of an officer of the Permanent Defence Forces (who is a practicing barrister or solicitor of at least 10 years standing), to be a military judge. It further provides that the military judge, or where there is more than one military judge, the chief military judge, shall not be below the rank of colonel or equivalent.

Section 184K provides that the Minister should make the recommendation to the President, on the basis of the recommendation(s) of a specific committee set up for the purpose of identifying and assessing the suitability of officers for appointment to judicial office.

Section 184L provides that a military judge shall hold office on such terms and conditions as the Minister, with the consent of the Minister for Finance, may determine. It provides that a military judge shall be independent in the performance of his judicial functions, that he is prohibited from holding any other paid office or employment and that his pay shall not be reduced during his time in office. Provision is made for the military judge to be relieved of office at his own request and if this occurs, or if he retires, or is removed from office on the grounds of ill health or misconduct, he shall cease to be an officer. The reverse of this is also provided for i.e. if he ceases to be an officer, for any reason, he shall also cease to be the military judge.

Section 184M provides for the functions of a military judge which comprise presiding at courts-martial and performing any other judicial functions that may be prescribed.

Section 184N provides for the appointment of and the functions of a chief military judge, where there is more than one military judge. It also provides that, subject to the consent of the Judge-Advocate General, the functions of the chief military judge may be delegated to another military judge.

Sections 184O and 184P provide for the formal removal from office, for stated reasons, of a military judge by the President on the recommendation of the Government. It further provides that before the military judge's removal, he must be notified of the Government's intent to consider the matter and he must be given an opportunity to make representations. It is also provided that the Government may appoint a Judge of the High Court to hold an inquiry into the matter.

35. *Section 35* amends Section 185 of the Principal Act in two main respects:—
- (1) The references to confirmation of a finding have been removed, as this concept will not apply in the new system.
 - (2) It signposts the fact that where the Courts-Martial Appeal Court quashes the finding of a court-martial it may order a re-trial. When the present provision was written there was no Courts-Martial Appeal Court, so the question of a re-trial did not arise after confirmation.
36. *Section 36* replaces section 186 in the Principal Act, to provide for the summary court-martial as a new class of court-martial.
37. *Section 37* replaces section 187 in the Principal Act dealing with the convening of courts-martial. This section vests the power in the Court-Martial Administrator, subject to the directions of the Director of Military Prosecutions, to convene general and limited courts-martial and to refer matters for trial by summary courts-martial. This section also specifically provides that courts-martial may sit outside the State.
38. *Section 38* inserts a new section 187A into the Principal Act. This section provides for the establishment of the summary court-martial, as a permanent court, comprised of a military judge sitting alone with jurisdiction to deal with:
- (1) offences which the Director of Military Prosecutions considers can be dealt with by a court-martial with lower powers of punishment than a general or limited court-martial;
 - (2) appeals from summary awards made by authorised or commanding officers; and
 - (3) applications for legal aid.
39. *Section 39* replaces section 189 of the Principal Act which deals with the constitution of general courts-martial. This reflects the radical overhaul of the structure and composition of courts-martial and it now provides that (with one exception — see section 61 of this Bill) the general court-martial will consist of a military judge (who will preside over the trial similar to a civilian judge) and a court-martial board (who are effectively like a jury) one of whom will be designated the senior member (similar to a foreman of a jury). It prescribes the minimum number of members and the minimum ranks required for general court-martial boards. It also permits, for the first time, where the accused is not an officer, a senior non-commissioned officer to be a member of a general court-martial board.
40. *Section 40* replaces section 190 of the Principal Act dealing with the constitution of limited courts-martial. This reflects the radical overhaul of the structure and composition of courts-martial and it now provides that (with one exception — see section 61 of this Bill) the limited court-martial will consist of a military judge (who will preside over the trial similar to a civilian judge) and a court-martial board (who are effectively like a jury) one of whom will be designated the senior member (similar to a foreman of a jury). It prescribes the minimum number of members and the minimum ranks required for limited court-martial boards. It also permits, for the first time, a senior non commissioned officer to be a member of a limited court-martial board.

41. *Section 41* replaces section 191 of the Principal Act which deals with membership of a court-martial board. It amends the list of persons who may not serve on a court-martial board to reflect the new organisational structures in this Bill and also adds members of the military police corps, members who are barristers or solicitors, and any member in the same military chain of command as the accused, to the list of those who may not serve on a court-martial board. This section also provides that a member of a court-martial board shall be independent in the performance of his functions as a board member.
42. *Section 42* amends Section 192 of the Principal Act in the following main respects:—
- (1) It provides for the general jurisdiction of the new summary court-martial. This includes dealing with appeals against summary awards, and the trial of certain offences, for all enlisted ranks and commissioned ranks up to and including commandant. Specified serious offences are excluded from its jurisdiction and the maximum term of imprisonment that can be awarded by the summary court-martial is 6 months. Furthermore, the summary court-martial, when acting as an appeal court, cannot award any punishment greater than that which could have been awarded by the authorised or commanding officer at the summary investigation.
 - (2) It amends the jurisdiction of the limited court-martial so that the trial of non commissioned officers in the rank of battalion quarter-master sergeant or higher non-commissioned rank is now excluded from its remit. In addition, specified serious offences are excluded from its jurisdiction, in all circumstances. The existing law for limited courts-martial permitted it to deal with the offences of manslaughter, rape and sexual assault, if the offence was committed by a person on active service or dispatched for service overseas, despite the fact that it could only award a maximum of two years imprisonment for such offences.
 - (3) It amends the jurisdiction of the general court-martial so that in the case of rape or aggravated sexual assault, even where the offence was not committed by a person on active service or dispatched for service overseas, it may deal with the offence, if the person in respect of whom the offence was committed is, or was at the time, also subject to military law and both they and the DPP consent to the trial of the offence by court-martial.
43. *Section 43* replaces section 193 of the Principal Act and makes new provisions for the dissolution of general and limited courts-martial. The provisions include dissolution by the Court-Martial Administrator before the court-martial has been sworn and dissolution by the military judge, for reasons including illness of the accused or where the number of members of the court-martial board falls below the minimum required, or where it is considered necessary or expedient in the interests of justice. Re-trial of the accused after the dissolution of a court-martial is subject to the directions of the Director of Military Prosecutions.
44. *Section 44* replaces section 194 of the Principal Act and amends the existing law in the following main respects:—
- (1) The former powers of the convening authority and of the president of a court-martial to exclude the public from the court are transferred to the military judge, who can exclude

the public or specific portions of the public or a specific person or persons from the court in the interests of justice or security.

- (2) It makes new provisions so that the military judge can prohibit the publication, or impose restrictions on the publication, of information which he considers to be sensitive. [This is to balance the intention to permit *bone fide* members of the press to be present during trials, when in the past they might well have been excluded].
 - (3) It makes new provisions, as regards who may or may not be present at the trial of offences which are of a sexual nature.
 - (4) It makes new provisions that, despite any restrictions that may be imposed during the trial itself, all findings and sentences of courts-martial shall be announced in public.
 - (5) It provides that the military judge shall not be present during the deliberations of the court-martial board.
45. *Section 45* replaces section 195 of the Principal Act, which deals with divers matters of procedure, to update and expand the provisions in relation to adjournment and viewings.
46. *Section 46* replaces section 197 of the Principal Act and effectively simplifies the existing provisions in relation to objections by the accused. It provides that the accused can object to members of the court martial board and the decision as to whether to allow the objection will be made by the military judge rather than by the members of the court-martial board.
47. *Section 47* inserts a new section 197A into the Principal Act and makes new provision that all rulings and directions on questions of law, practice or procedure relative to a charge or trial shall be given by the military judge and are legally binding. This effectively replaces existing provisions, which provide that the members of the court-martial board decide all legal issues on the advice of the judge-advocate.
48. *Section 48* replaces section 198 in the Principal Act which required a simple majority for decisions of a court-martial, to now require a two-thirds majority of the court-martial board to make a finding of guilty. If less than two thirds of the court-martial board vote for a guilty finding on any charge the accused shall be acquitted of that charge. This section also provides that the military judge shall determine the sentence.
49. *Section 49* replaces section 199 of the Principal Act which deals with the swearing of a court-martial. The existing provisions have been amended to cater for the fact that the military judge does not need to be sworn in at the commencement of each trial (instead the military judge(s) is required to swear an oath at the time of his appointment — see section 34 of this Bill). The requirement to swear in officers under instruction no longer exists as they shall not in future sit with the court-martial board but in the public area of the courtroom.
50. *Section 50* amends section 202 of the Principal Act (as amended by the Criminal Law (Insanity) Act 2006) which deals with mental disorder of the accused at the time of trial. The existing provisions have been updated to reflect the new courts-martial structure. The military judge will determine as a matter of law whether a person is fit to be tried, while the court-martial board

will decide issues of fact. Mention of confirmation of findings has been removed.

51. *Section 51* amends section 203 of the Principal Act (as amended by the Criminal Law (Insanity) Act 2006) which deals with mental disorder of the accused at the time of commission of the offence. The existing provisions have been updated to reflect the new courts-martial structure. It will be the summary court-martial or the court-martial board which will decide issues of fact, which includes making a finding of not guilty by reason of insanity. The military judge will determine whether a person is in need of in-patient care or treatment in a designated centre.
52. *Section 52* inserts new sections 203B, 203C and 203D into the Principal Act, to provide for appeals to the Courts-Martial Appeal Court from a finding or order made pursuant to section 202 and 203 of the Principal Act. This new provision is consistent with the procedures which apply in the ordinary courts.

Section 203B provides for an appeal to the Courts-Martial Appeal Court (CMAC) against a finding by a court-martial that a person, by reason of mental disorder is unfit to take his trial. This section also provides that where the CMAC orders a trial or retrial, the appellant may be tried or retried for an offence (other than the offence alleged in respect of which he was found unfit to be tried), being an offence of which he might be found guilty on a charge for the original offence alleged.

Section 203C provides for an appeal to the CMAC against a finding, by a court-martial, that a person was not guilty by reason of insanity.

Section 203D provides for an appeal, by the defence or prosecution, to the CMAC against a decision of a court-martial to make or not to make an order of committal of a person under section 202 or 203.

53. *Section 53* inserts a new section 205A into the Principal Act. This makes new provision that, for certain offences of a sexual or violent nature, at the request of the person in respect of whom the offence was committed, the military judge when determining punishment, shall hear and take into account, their evidence concerning any effect of the offence on them (Note: This is sometimes referred to as a victim impact statement).
54. *Section 54* amends section 206 of the Principal Act which deals with the effective date of sentences by courts-martial. The existing provisions have been modified to reflect that it will be the military judge, rather than the president of the court-martial, who will determine the sentence and authenticate the sentence sheet. Subject to the power to suspend sentences under section 212A, the sentence will commence on the day it is signed by the military judge or such earlier date as he may direct.
55. *Section 55* amends Section 207 of the Principal Act by deleting the following obsolete provision “references to the president or members of the court-martial shall be construed as including references to such officer”.
56. *Section 56* amends Section 208 of the Principal Act in the following main respects:—
- (1) For a person not subject to military law;

- (a) It broadens the definition on what constitutes contempt of court-martial;
 - (b) The fine which applies on summary conviction for the offence “contempt of court-martial” has been updated;
 - (c) It makes new provision that prosecution of the offence “contempt of court-martial” is subject to the consent of the DPP.
- (2) It updates, for a person subject to military law, the existing punishments and provides for new punishments that can be ordered directly by the military judge (as an alternative to the offender being tried for the offence “contempt of court-martial”).

Chapter 5

Punishments awardable by Courts-Martial for Offences Against Military Law

57. *Section 57* amends Section 209 of the Principal Act which deals with punishments which may be awarded to persons subject to military law as officers and convicted by court-martial. It amends the existing provisions in the following main respects:

- (1) The scale of sentences awardable to persons subject to military law as officers has been updated. The new provisions allow for reduction to a lower point on the scale of pay and an increase in the maximum fine from an amount equal to 10 days pay to an amount equal to 14 days pay (with the intention of standardising the maximum fine for all ranks to 14 days pay).
- (2) The existing mandatory requirement on a court-martial to sentence an officer to dismissal, when it awards him imprisonment, has been limited to situations where the term of imprisonment awarded exceeds 6 months. It is also provided that where an officer is awarded imprisonment for a term of 6 months or less, that he may, (it is not mandatory) also be sentenced to dismissal with disgrace (the new term substituted for ignominy) or to dismissal or be reduced in rank to any lower commissioned rank.
- (3) It allows a court-martial, which reduces an officer to a lower rank, to determine the point on the scale of pay for the lower rank, and also to decide the place on the seniority list for the lower rank of the reduced officer.
- (4) It allows a court-martial to decide the precise point on the scale of pay an officer should be on after forfeiture of seniority.
- (5) An officer sentenced by a court-martial to the new punishment of reduction to any lower point on the scale may also be sentenced to a fine or severe reprimand or reprimand.

58. *Section 58* amends Section 210 of the Principal Act which deals with punishments which may be awarded to persons subject to military law as men and convicted by court-martial. It amends the existing provisions in the following main respects:—

- (1) The scale of sentences awardable to persons subject to military law as men has been updated. The new provisions allow

the award of detention to include or exclude loss of all or part of pay. [Total loss of pay is mandatory at present]. The new provisions also allow for reduction to a lower point on the scale of pay and an increase in the maximum fine, from an amount equal to 9 days pay for a non-commissioned officer and 6 days for a private, to an amount equal to 14 days pay (with the intention of standardising the maximum fine for all ranks to 14 days pay).

- (2) The term of imprisonment, above which a court-martial must also sentence an enlisted person to discharge with disgrace (the new term substituted for ignominy) or discharge from the Defence Forces, has been reduced from 2 years to 6 months (in line with the new provisions relating to officers).
 - (3) A non-commissioned officer sentenced by a court-martial to forfeiture of seniority or to the new punishment of reduction to any lower point on the scale may also be sentenced to a fine or severe reprimand or reprimand.
 - (4) It allows a court-martial, which reduces a non commissioned officer to a lower rank, to determine the point on the scale of pay for the lower rank, and also to decide the place on the seniority list for the lower rank of the reduced non commissioned officer.
59. *Section 59* replaces section 211 of the Principal Act. In the case of a court-martial conviction for 2 or more offences, the existing provision, which requires the court-martial to award one sentence in respect of all offences, is replaced with a new provision requiring a separate sentence for each offence. This is in line with the awarding of sentences in the civil courts and can also simplify the review of sentences in the case of an appeal. The section also makes a new provision, that subject to section 212A, where 2 or more custodial sentences are awarded by a court martial, they shall be served concurrently.
60. *Section 60* inserts a new section 211A into the Principal Act and makes new provision that a person cannot be sentenced, by a court martial, to imprisonment or dismissal or discharge, if that person has not had legal representation at some time after the finding of guilt and prior to sentencing. This is seen as an additional safeguard, useful in circumstances where a person charged is represented during the trial by a military officer, who may not have any legal background or training. This section also stipulates circumstances where this provision will not apply, for example if a person specifically declines to be legally represented, or if the person has previously served imprisonment awarded under this Act or by a civil court.
61. *Section 61* inserts a new section 212A into the Principal Act and makes provision for the suspension by a military judge of custodial sentences (other than a mandatory term of imprisonment). This effectively replaces and expands section 223 of the current Act, which provides for the suspension of custodial sentences on “men” only, by a specified “superior authority”. The new section, which covers custodial sentences for all persons (*i.e. not just “men”*) provides as follows;
- (i) The military judge (*as opposed to a “superior authority”*) has the authority to order the suspension, of some or all, of a custodial sentence, subject to such terms and conditions as he may decide are appropriate to impose.

- (ii) The person in respect of whom the order is made, must keep the peace and be of good behavior for the period of the suspension, and in the case of a part suspension, for the period of imprisonment also.
 - (iii) A copy of the order to suspend the sentence must be given by the Court Martial Administrator to persons specified in subsection 7 of this section.
 - (iv) If, during the period of suspension, a person is convicted by court-martial of another offence, they will be remanded to appear before a court-martial of the same class (but convened without a court-martial board) as that which made the order to suspend, with a view to revoking or varying the order to suspend the sentence.
 - (v) If, during the period of suspension, a person is convicted by court-martial of another offence and awarded a custodial sentence, this custodial sentence will not commence until the expiration of any period of imprisonment that they are required to serve under the original order to suspend or a revocation of this order to suspend.
 - (vi) Where the Provost Marshal or the governor of a prison believes a person has contravened a condition of suspension, they must refer the matter to the Director of Military Prosecutions. The Director can then arrange for the person to be notified that they are required to appear before a court-martial of the same class (but convened without a court-martial board) as that which made the order to suspend, with a view to revoking or varying the order to suspend the sentence. If the person fails to appear at the court-martial, the military judge can order their arrest.
 - (vii) The revocation of an order to suspend a sentence is deemed to be a sentence of a court-martial.
62. *Section 62* inserts a new section 212B into the Principal Act and makes new provision that, in certain circumstances, the Director of Military Prosecutions can appeal the leniency of a sentence of a court-martial to the Courts-Martial Appeals Court.
63. *Section 63* replaces Section 213 of the Principal Act which deals with orders by court-martial for the payment of compensation. It amends the existing provisions in the following main respects:—
- (1) It broadens the scope of a court-martial to make orders for the payment of compensation to include personal injury, and private loss or damage to property.
 - (2) It prescribes the financial limits on compensation orders by courts-martial as follows:

| | |
|-----------------------|--------------|
| Summary court-martial | €10,000.00, |
| Limited court-martial | €20,000.00, |
| General court-martial | €100,000.00. |
 - (3) It provides that the military judge shall have regard to a person's means in determining the amount of compensation.
 - (4) It provides for the payment of compensation by installments.

- (5) It expressly provides that, for the purposes of this Act and the Courts-Martial Appeals Act 1983, a compensation order shall be deemed to be a sentence of a court-martial.
64. *Section 64* inserts a new section 213A into the Principal Act and makes new provision, in line with the civil courts, that the terms of payment of a fine, awarded by a court-martial, are at the discretion of the military judge.

Chapter 6

Action on Findings and Sentences of Courts-martial

65. *Section 65* replaces section 225 of the Principal Act, which deals with the restitution of stolen property. The existing provisions have been modified in line with the provisions of section 56 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.
66. *Section 66* replaces section 226 of the Principal Act, which deals with the proceedings of courts-martial. This section has been simplified and the provisions relating to the right of a person to obtain a copy of the proceedings have been removed (as this will now be provided for in the rules of procedure).

Chapter 7

Execution of Sentences

67. *Section 67* amends Section 229 of the Principal Act, to include reference to the new provisions for suspended sentences and to reflect that the confirmation process and the awarding of detention by a commanding officer are no longer relevant. The intent of the existing provisions has not changed.
68. *Section 68* amends Section 231 of the Principal Act in the following main respects;
- (1) it broadens the scope of subsection (2) to cover any “person subject to military law” (the existing provision only covers any “man” of the Defence Forces);
 - (2) the time provisions of subsection (2) have been amended from 7 to 8 days;
 - (3) it specifically provides that the 8 day period does not include the day on which the order is made.
69. *Section 69* amends Section 233 of the Principal Act to take out the existing reference to section 221 of the Principal Act as this section is now being repealed. This is a technical amendment and the intent of the existing provisions has not changed. It also qualifies the power to release temporarily a person serving a sentence under this Act, having regard to the provisions of the Criminal Justice Act 1990 in that regard.

Chapter 8

Rules of Procedure and Court-Martial Rules

70. *Section 70* amends Section 240 of the Principal Act, which empowers the Minister to make rules of procedure in relation to various matters. The primary focus of this section is now on making rules to cover;

- (i) the assembly and procedure of courts of inquiry and boards,
- (ii) procedures required from the time a person is remanded for trial by court-martial until the commencement of pre-trial applications (if any) or the commencement of the actual court-martial, and
- (iii) procedures required following the court-martial making its findings and awarding a sentence (if any).

Rules governing the practice, pleading and procedures generally of the actual courts-martial, will be made by a new Courts-Martial Rules Committee, and are therefore provided for in the next section of the Bill dealing with the Courts-Martial Rules committee.

71. Section 71 inserts new sections 240A and 240B into the Principal Act.

Section 240A provides for the establishment of a Courts-Martial Rules Committee, whose function is to make court-martial rules governing the practice, pleading and procedures generally of courts-martial. [In the existing Act the power to make these rules was vested in the Minister under Section 240]. It specifies the qualifications and roles of the various Committee members, the quorum for committee meetings, the minimum frequency for meetings and provides that the committee shall be self-regulating.

Section 240B provides for a new twelfth schedule to the Principal Act, which specifies matters in respect of which the Courts-Martial Rules Committee may make rules.

SCHEDULES

72. *Schedule 1* provides for savings and transitional arrangements as follows:—

- (1) As an overriding rule, where an offence was committed before the commencement of this Act, the punishment for the offence cannot be greater than that which was applicable when the offence was committed.
- (2) Where, before the commencement of this Act, a person has been remanded for trial by court-martial, but on commencement the court-martial has not yet been convened, then, on the direction of the Director of Military Prosecutions and subject to (1) above, the person may be tried and punished using the new provisions.
- (3) Where, before the commencement of the “investigation and summary disposal of charges” provisions of this Act, a person is being dealt with summarily but on commencement the person has not yet been asked whether he elects to have the charge disposed of summarily or to be tried by court-martial, then the person will be given the opportunity to make this election under the new provisions. Furthermore, any election made before the commencement of these provisions, will be treated as if it was made under the new provisions of the Act.
- (4) Appeals to the summary court-martial and appeals to the commanding officer, provided for in this Act, can only be

made against determinations made, punishments awarded and compensation orders made after the coming into operation of the new “investigation and summary disposal of charges” provisions of this Act.

- (5) The repeal of Section 180 of the existing Act (Revision of summary awards) will not apply to punishments awarded before the coming into operation of the new provisions relating to the “investigation and summary disposal of charges”.

73. *Schedule 2* provides for miscellaneous amendments to the Principal Act. These are minor amendments, generally required as a result of new or amended provisions in the main body of this Bill, and in the main do not alter the intent of the existing provisions.

- Section 50 — This section which provides generally for the dismissal of an officer by the President is amended to exclude the military judge from within its scope.
- Section 81(1)(c) — This amendment substitutes the term “disgrace” for “ignominy”.
- Section 126(2) — This change is required to bring section 126 into line with the new offence of “being under the influence of an intoxicant” (see section 16 of this Bill).
- Section 139 — This amendment substitutes the term “disgrace” for “ignominy”.
- Section 152 — The term aircraft is qualified with the word ‘service’ to clearly limit the scope of the offence in section 152 to service aircraft.
- Section 159 — This change is required to bring section 159 into line with the new offence of “being under the influence of an intoxicant” (see section 16 of this Bill).
- Section 169(3)(d) — This amendment substitutes the term “disgrace” for “ignominy”.
- Section 175(1)(b)(iii) — The reference to confirmation of a finding is deleted in section 175 as this concept will not apply in the new system.
- Section 183(2) — The maximum fine, for a person not subject to military law, for the offence of non attendance at a summary hearing, having been summoned, is increased from one hundred pounds to two thousand euro.
- Section 196 — This change reflects the fact that it is the military judge who will now have the power to certify the offence of contempt of court and to order the removal of counsel, guilty of such offence, from court.
- Section 200(1) — This change reflects the fact that there is no longer the role of “president” in a court-martial.
- Section 204 — The reference to confirmation of a finding is deleted in section 204 as this concept will not apply in the new system.
- Section 206(2)(a) and (c) — This amendment substitutes the term “disgrace” for “ignominy”.
- Section 239(2) — This change broadens the scope of the provisions of this section to include both air and sea travel.

- Section 242(1) — The maximum fine, for a reservist, guilty of an offence under section 242 of the Principal Act, is increased from two hundred and fifty pounds to two thousand euro.
 - Section 243(2)(b) — The maximum fine, for a reservist, tried summarily in the District Court and found guilty of the offence of desertion or absence without leave, is increased from two hundred and fifty pounds to two thousand euro.
 - Section 244 — This change is required because it is considered that the present provision whereby an entry in the prescribed service books is granted the status of conclusive evidence is inconsistent with the provisions of section 248(g) of the Principal Act which grants similar evidence “*prime facie*” status only.
 - Section 245 — The maximum fine, for a reservist, guilty of an offence under this section of the Principal Act, is increased from two hundred and fifty pounds to two thousand euro.
 - Section 248 — This change broadens the application of section 248, to now include summary investigations and hearings by authorised, commanding and subordinate officers. In addition it provides that electronic versions of Defence Force List and Gazette etc. can be used as evidence.
 - Section 249(2) — At present section 249 of the Principal Act, applies to men, but, for no apparent reason, not to officers, of the Reserve Defence Force while they are not subject to military law. This change means that this section will now apply to all members of the Reserve Defence Force.
 - Section 250 — This change reflects the fact that it is the military judge who will now be responsible for the record of a court-martial and it is his signature, which authenticates such record. In addition the reference to confirming authority is deleted as this concept will not apply in the new system.
74. *Schedule 3* provides for substitution of the term “disgrace” for “ignominy” in certain Acts and Instruments.
75. *Schedule 4* provides for miscellaneous amendments to Acts other than the Defence Act 1954 (as amended).

PART 1 — Amendments to Courts-Martial Appeals Act 1983

Section 13 is amended

- (i) to remove the reference to confirming of sentences (as this will not apply in the new system) and
- (ii) to provide for appeals from a finding or order of committal made by a court-martial pursuant to section 202 and 203 of the Defence Act.

Sections 17 is amended to reflect the new role of the military judge.

Section 19 is amended to clarify that this section does not apply to appeals from a finding or order of committal made by a court-martial pursuant to section 203B and 203D of the Defence Act.

A new section 19A is inserted into the Act to provide that, if an appeal is allowed against a finding that a person is unfit to be

tried, the Court Martial Appeal Court (CMAC) shall order a trial or re-trial, as the case may be.

A new section 19B is inserted into the Act and provides for an appeal to the CMAC, on a number of specific grounds, against a finding by a court-martial that a person was not guilty by reason of insanity. This section sets out the possible outcomes of the appeal, depending on the grounds of the appeal and the findings of the CMAC.

A new section 19C is inserted into the Act and provides as follows;

- (i) Where an appeal is made against a decision of the court-martial to order or not to order the committal of a person under section 202 and 203 of the Defence Act, the CMAC is empowered to make any order which would have been open to the court-martial to make and, without prejudice to the power to review an order of committal under section 13 of the Criminal Law (Insanity) Act 2006, the decision of the CMAC shall be final in this case.
- (ii) Where the CMAC allows an appeal against a conviction or against a verdict of not guilty by reason of insanity on the ground that the person ought to have been found unfit to be tried, or allows an appeal against a conviction on the ground that the person 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 Defence Act if it had come to the same conclusion.

Section 22 is amended to reflect the new role of the Director of Military Prosecutions.

A new section 22A is inserted into the Act to provide for the referral of questions of law from a Summary Court Martial (in appeal mode) to the Courts-Martial Appeal Court.

A new section 22B is inserted into the Act to provide for an appeal by the Director of Military Prosecutions against the leniency of a sentence of a court-martial. The section sets out the time frame for the making of such appeals and stipulates that the Courts-Martial Appeal Court can either refuse the appeal or impose a new sentence (limited to that which could have been awarded by the court-martial in the first instance).

Section 26 is amended to reflect the fact, that the Defence Act (in addition to instruments made under the Act), now provides that a person can, in certain limited circumstances, be legally represented at the investigation of a charge. The intent of the existing provision has not changed.

Section 27 is amended to include appeals to the summary court-martial within the scope of legal aid.

Section 28 is amended to include appeals to the CMAC from a finding or order made by a court-martial pursuant to section 202 and 203 of the Principal Act, within the scope of legal aid.

Section 34 is amended so that the maximum fine, for a person tried summarily and found guilty of making a false or misleading statement for the purpose of obtaining free legal aid, is increased from one hundred pounds to two thousand euro.

PART 2 — Amendments to Defence (Amendment) Act 1987

Section 8(1) is amended to reflect the new role of the military judge.

Section 8(3) is amended so that references to the military judge in section 8(1) of this Act will be construed as including references to, when appropriate, the “officer taking the written summary of evidence”.

Section 8(4) is amended so that the maximum fine, for a person not subject to military law, for the offence of failing to produce a document at a summary hearing, having been summoned to do so, is increased from one hundred pounds to two thousand euro.

PART 3 — Amendment to Criminal Evidence Act 1992

A minor technical amendment is made to Section 1 of this Act. The intent of the existing provisions has not changed.

PART 4 — Amendments to Ombudsman (Defence Forces) Act 2004

Section 5(1) is amended in light of the revised definition of service tribunal in the Defence Act (see section 18 of this Bill). The intent of the existing provisions has not changed.

PART 5 — Amendments to Criminal Law (Insanity) Act 2006

Section 13 is amended to reflect the new roles of the Director of Military Prosecutions and the Court-Martial Administrator. The intent of the existing provisions has not changed.

76. *Schedule 5* contains a new eleventh schedule to the Principal Act, and specifies offences of a disciplinary nature that may be disposed of summarily by an authorised, commanding or subordinate officer as appropriate. Offences listed in Part II of this schedule may not be dealt with summarily by a subordinate officer and they require the consent of the Director of Military Prosecutions before they may be disposed of summarily by an authorised or commanding officer or before they may be dismissed.
77. *Schedule 6* provides for a technical amendment required to disciplinary type offence provisions in the Principal Act, consequential on Section 20 of the Bill.
78. *Schedule 7* contains a new twelfth schedule to the Principal Act, and specifies matters in respect of which the Courts-Martial Rules Committee may make rules.

Financial Implications

There are no discernable financial implications for the Exchequer.

*An Roinn Cosanta,
Nollaig, 2006.*