



**Armed Forces Act
Chapter A20
Laws of the Federation of Nigeria 2004**

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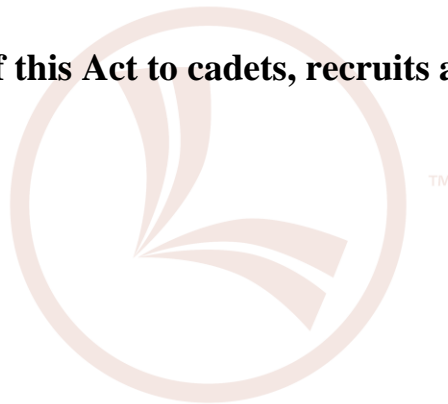
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Armed Forces Act
Chapter A20
Laws of the Federation of Nigeria 2004

An Act to provide for the command, maintenance and administration of the Armed Forces of the Federation.

6th July 1994

Part I

Establishment and Composition of the Armed Forces

1. (1) There is hereby established for the Federation an Armed Forces which shall be maintained and administered as set out in this Act and comprise the Nigerian Army, the Nigerian Navy and the Nigerian Air Force (in this Act referred to as the “Army”, “Navy” and “Air Force”) respectively.
- (2) The Armed Forces shall consist of such—
 - (a) establishments and number of equipment;
 - (b) officers and non-commissioned officers; and
 - (c) soldiers, ratings and aircraftmen, as the case may be, as the President may, in consultation with the National Assembly, determine.
- (3) The Armed Forces shall be charged with the defence of the Federal Republic of Nigeria by land, sea and air and with such other duties as the National Assembly may, from time to time, prescribe or direct by an Act.
- (4) Notwithstanding the generality of the provisions of subsection (3) of this section—
 - (a) the Navy shall, in particular, be further charged with—
 - (i) enforcing and assisting in co-ordinating the enforcement of all customs, laws, including anti-bunkering, fishery and immigration laws of Nigeria at sea;
 - (ii) enforcing and assisting in co-ordinating the enforcement of national and international maritime laws ascribed or acceded to by Nigeria;

- (iii) making of charts and co-ordinating of all national hydrographic surveys; and
 - (iv) promoting, co-ordinating and enforcing safety regulations in the territorial waters and the Exclusive Economic Zone of Nigeria;
 - (b) the Air Force shall, in particular, be further charged with—
 - (i) enforcing and assisting in co-ordinating the enforcement of international law, conventions, practices and customs ascribed or acceded to by Nigeria relating to aerial or space activities in the Nigerian air space;
 - (ii) co-ordinating and enforcing of national and international air laws acceded or ascribed to by Nigeria; and
 - (iii) delineating, demarcating and co-ordinating of all aerial surveys and security zones of the Nigerian air space.
 - (5) The authority conferred by this Act to maintain the Armed Forces shall include authority to raise and maintain units of or including women, and accordingly the provisions of this Act shall apply to women, subject to section 271 of this Act and to such modifications and adaptations as the President may by order specify from time to time.
- 2. There shall be established and maintained by the Armed Forces an Armed Forces Reserve (in this Act referred to as “the Reserve”) which shall consist of such number of officers, warrant officers, non-commissioned officers, soldiers, ratings and aircraftmen who are transferred to it on completion of their period of service in the Armed Forces and in such other services as the President may prescribe.
- 3. Pay regulations, duties, recall, etc., of the Armed Forces Reserve The President may make regulations governing the pay, duties and methods of recall of members of the Reserve and any other matters pertaining to the Reserve as seems to him necessary.

Part II

Establishment of Armed Forces Council

4. (1) There shall be established for the Armed Forces a Council to be known as the Armed Forces Council (in this Act referred to as “the Forces Council”).
- (2) The Forces Council shall consist of—
 - (a) the President who shall be the Chairman;
 - (b) the Minister of Defence;
 - (c) the Chief of Defence Staff;
 - (d) the Chief of Army Staff;
 - (e) the Chief of Naval Staff; and
 - (f) the Chief of Air Staff.
- (3) The Permanent Secretary of the Ministry of Defence shall be the Secretary to the Forces Council.
- (4) The Chairman may appoint a member of the Forces Council to perform the duties of the Chairman at any meeting of the Forces Council at which the Chairman is absent and the appointment may be either general or in respect of a particular meeting.
- (5) If a member of the Forces Council is unable for any reason whatsoever to perform his duties as a member, he may, with the approval of the Chairman, nominate an officer in the Armed Forces to perform those duties during the period he is unable to do so.
- (6) The Forces Council may whenever it deems it necessary co-opt any officer, public officer or any other person as a member of the Forces Council for the purpose of any particular meeting but that officer, public officer or other person shall not be entitled to vote at

the meeting or count towards a quorum and his membership of the Forces Council shall cease at the end of that particular meeting unless the Forces Council otherwise decides.

5. (1) Subject to the provisions of subsection (2) of this section, the Forces Council shall be responsible, under the general authority of the President, for the command, discipline and administration of, and for all other matters relating to the Armed Forces.

(2) The responsibility of the Forces Council shall not extend to the operational use of the Armed Forces.

6. The Forces Council shall have power—

(a) to organise the work of the Forces Council and the manner in which it shall perform its functions and determine the duties and responsibilities of the members of the Forces Council;

(b) to delegate to any member of the Forces Council, by notification, any function and power of the Forces Council;

(c) to consult with persons who are not members of the Forces Council;

(d) to determine the procedure to be followed by the Forces Council in conducting its business, including its quorum; and

(e) to do such other things which the Forces Council may consider necessary or desirable to secure the better performance of its functions under this Act.

Part III

Command and operational Use

7. (1) The Chief of Defence Staff shall, subject to the general direction of the President and of the National Assembly, be vested with the day-to-day command and general superintendence of the Armed Forces.

- (2) Notwithstanding the provisions of subsection (1) of this section, the President may make regulations—
- (a) as to the Service Chief in whom command over the respective service is vested; and
 - (b) as to the circumstance in which the command is to be exercised.
- (3) Without prejudice to the generality of the provisions of subsection (2) of this section, regulations made under this section may provide for the duties, functions and powers of the Chief of Defence Staff and the respective Service Chiefs.
8. (1) The President shall determine the operational use of the Armed Forces, but may, under general or special directives, delegate his responsibility for the day-to-day operational use—
- (a) of the Armed Forces, to the Chief of Defence Staff;
 - (b) of the Army, to the Chief of Army Staff;
 - (c) of the Navy, to the Chief of Naval Staff; and
 - (d) of the Air Force, to the Chief of Air Staff.
- (2) It shall be the duty of the Chief of Defence Staff, the Chief of Army Staff, the Chief of Naval Staff and the Chief of Air Staff, as the case may be, to comply with any directive given to them by the President under subsection (1) of this section.
- (3) In this section, “operational use of the Armed Forces” includes the operational use of the Armed Forces in Nigeria for the purpose of maintaining and securing public safety and public order.

Part IV
Nigerian Army Council

9. (1) There shall be established for the Army a council to be known as the Nigerian Army Council (in this Act referred to as “the Army Council”).
- (2) The Army Council shall consist of—
- (a) the Minister of Defence who shall be the Chairman;
 - (b) the Chief of Defence Staff who shall be the Vice-Chairman; and
 - (c) the Chief of Army Staff.
- (3) The Permanent Secretary of the Ministry of Defence shall be the Secretary to the Council.
- (4) The Chairman may, from time to time, appoint any member of the Army Council to perform the duties of the Chairman at any meeting of the Army Council at which the Chairman is absent and the appointment may be either general or in respect of a particular meeting.
- (5) If a member of the Army Council is unable for any reason whatsoever to perform his duties as a member, he may, with the approval of the Chairman, nominate any other officer to perform those duties during the period he is unable to do so.
- (6) The Army Council may, whenever it deems it necessary, co-opt any officer, public officer or any other person as a member of the Army Council for the purpose of any particular meeting of the Army Council but that officer, public officer or other person shall not be entitled to vote at the meeting or count towards a quorum, and his membership of the Army Council shall cease at the end of that particular meeting unless the Army Council otherwise decides.
10. (1) Subject to the provisions of subsection (2) of this section, the Army Council shall be responsible, under the general authority of the Chief of Defence Staff, for the command, discipline and administration of and for all other matters relating to the Army.

(2) The responsibility of the Army Council shall not extend to the operational use of the Army.

11. The Army Council shall have power—

- (a) to organise the work of the Army Council and the manner in which it shall perform its functions and determine the duties and responsibilities of the members of the Army Council;
- (b) to delegate to any member of the Army Council by notification in the Gazette any of the functions and powers of the Army Council;
- (c) to authorise the Service Chief to delegate his powers in accordance with section 258 of this Act;
- (d) to consult with persons who are not members of the Army Council;
- (e) to determine the procedure to be followed by the Army Council in conducting its business, including its quorum; and
- (f) to do such other things which the Army Council may consider necessary or desirable to secure the better performance of its functions under this Act.

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Part V

Nigerian Navy Board

12. (1) Subject to the provisions of subsection (2) of this section, there shall be established for the Navy a board to be known as the Nigerian Navy Board (in this Act referred to as “the Board”) which shall be responsible, under the general authority of the Chief of Defence Staff, for matters relating to the command, discipline and administration of, and all other matters relating to the Navy.

(2) Notwithstanding the provisions of subsection (1) of this section, the Board shall not have responsibility for the operational use of the Navy.

- 13.** (1) The Board shall consist of—
- (a) the Minister of Defence who shall be the Chairman;
 - (b) the Chief of Defence Staff who shall be the Vice-Chairman;
and
 - (c) the Chief of Naval Staff.
- (2) The Permanent Secretary of the Ministry of Defence shall be the Secretary of the Board.
- (3) The Board may, whenever it deems it necessary, co-opt any officer, public officer or any other person as a member of the Board for the purpose of any particular meeting of the Board, but that officer, public officer or other person shall not be entitled to vote at the meeting or count towards a quorum and his membership of the Board shall cease at the end of that particular meeting unless the Board otherwise decides.
- (4) The Chairman may, from time to time, appoint any member of the Board to perform the duties of the Chairman at any meeting of the Board at which the Chairman is absent and the appointment may be either general or in respect of a particular occasion.
- (5) If any member is for any reason whatsoever unable to perform his duties as a member, he may, with the approval of the Chairman, nominate any other person to perform those duties during the period he is unable to do so.
- 14.** The Board shall have power—
- (a) to organise the work of the Board and manner in which it shall perform its functions and the duties and responsibilities of the members;
 - (b) to delegate to any member of the Board by notification in the Gazette any of the powers or duties of the Board;
 - (c) to authorise the Service Chief to delegate his powers in accordance with section 258 of this Act;

- (d) to consult with persons who are not members of the Board;
- (e) to determine the procedure to be followed by the Board in conducting its business, including its quorum; and
- (f) to do such other things which the Board may consider necessary or desirable to secure the better performance of its functions under this Act.

Part VI

Nigerian Air Council

5. (1) Subject to the provisions of subsection (1) of this section, there shall be established for the Air Force a council to be known as the Nigerian Air Council (in this Act referred to as “the Air Council”) which shall be responsible under the general authority of the Chief of Defence Staff for matters relating to the command, discipline and administration of, and of other matters relating to, the Air Force.

(2) Notwithstanding the provisions of subsection (1) of this section, the Air Council shall not have responsibility for the operational use of the Air Force.

16. (1) The Air Council shall consist of—

- (a) the Minister of Defence who shall be the Chairman;
- (b) the Chief of Defence Staff who shall be the Vice-Chairman;
and
- (c) the Chief of Air Staff.

(2) The Permanent Secretary of the Ministry of Defence shall be the Secretary of the Air Council.

(3) The Air Council may, whenever it deems it necessary, co-opt any officer, public officer or any other person as a member of the Council for the purpose of any particular meeting of the Council, but that officer, public officer or other person shall not be entitled

to vote at the meeting or count towards a quorum and his membership of the Air Council shall cease at the end of that particular meeting unless the Air Council otherwise decides.

(4) The Chairman may nominate any member of the Air Council to perform the duties of the Chairman at any meeting of the Air Council at which the Chairman is absent and any such nomination may be either general or in respect of a particular occasion.

(5) If a member of the Air Council is, for any reason whatsoever, unable to perform his duties as a member, he may, with the approval of the Chairman, nominate any other person to perform those duties during the period he is unable to do so.

17. The Air Council shall have power—

(a) to organise the work of the Air Council and the manner in which it shall perform its functions and the duties and responsibilities of the members;

(b) to delegate to any member of the Air Council by notification in the Gazette any of the powers or duties of the Air Council;

(c) to authorise the Service Chief to delegate his powers in accordance with section 258 of this Act;

(d) to consult with persons who are not members of the Air Council;

(e) to determine the procedure to be followed by the Air Council in conducting its business; and

(f) to do such other things which the Air Council may consider necessary or desirable to secure the better performance of its functions under this Act.

Part VII

Administration, Government and Command

Command

- 18.** (1) The President, may, after consultation with the Chief of Defence Staff and subject to confirmation by the National Assembly, appoint such officers (in this Act referred to as “the Service Chiefs”) as he thinks fit, in whom the command of the Army, Navy and Air Force, as the case may be, and their Reserves shall be vested.
- (2) The Service Chief shall be known—
- (a) in the case of the Nigerian Army, as the Chief of Army Staff;
 - (b) in the case of the Nigerian Navy, as the Chief of Navy Staff;
and
 - (c) in the case of the Air Force, as the Chief of Air Staff.
- (3) Subject to the terms of appointment of the Service Chiefs and to such directions as to the operational use of the Army, Navy and Air Force as may be given under section 8 of this Act, the Service Chiefs shall have the command, direction and general superintendence of the Army, Navy and the Air Force respectively, and their Reserves.
- (4) The President may, before consulting with the Chief of Defence Staff, consult with the Forces Council, but the question as to whether any consultation was held or what happened in the course of a consultation shall not be enquired into.
- 19.** In so far as the power of command depends on ranking, a member of the Army, Navy, Air Force or of a military unit, who is acting together with any of the services, jointly or severally (either with or without his unit or any part thereof) shall have the like powers as a member of the corresponding rank of the respective service and for purposes of an act or omission relating to insubordination and the like offence that member shall be treated as if he were a member of the corresponding rank of the respective service.
- 20.** (1) A member of the Armed Forces may be attached temporarily to any of the services by order of the Forces Council.

(2) The Forces Council shall make regulations to prescribe circumstances in which officers, soldiers, ratings and aircraftmen shall be deemed to be attached to any of the services, as the case may be.

21. (1) The President may, by order, direct that this section shall apply to a member of the force of a foreign country and where the President so directs, the Forces Council—

(a) may attach temporarily to any of the services any member of the foreign force to which the other force belongs; or

(b) subject to anything to the contrary in the conditions applicable to the Armed Forces, the Forces Council may place any member of the Armed Forces at the disposal of the service authorities of a foreign country for the purpose of being attached temporarily by those authorities to the forces of that country.

(2) Where a member of a foreign force is by virtue of this section attached temporarily to the Armed Forces as an officer, a soldier, rating or an aircraftman, as the case may be, he shall for the period of attachment be subject to this Act to the extent to which its application to him is not modified by an order which the President may make under this subsection, in like manner as if he were a member of the Armed Forces of relative rank, and accordingly he shall be so treated and have like powers of command and punishment over members of the Armed Forces.

(3) When the Armed Forces and the force to which this section applies are serving together whether alone or not—

(a) a member of the foreign force shall be treated and shall have over members of the Armed Forces the like powers of command as if he were a member of the Armed Forces of relative rank; and

(b) if the Armed Forces and the foreign force are acting in combination, an officer of the foreign force appointed by the Forces Council, or in accordance with regulations made by the Forces Council to command the combined force or any part thereof, shall have, over members of the combined force, like

powers of command and punishment and may be invested with the like authority to convene and confirm the findings and sentences of courts-martial as if he were an officer of the Armed Forces of relative rank and holding the same command.

(4) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if, and only if, they are by order of the Forces Council declared to be so serving or so acting, and the relative rank of members of the combined forces shall be such as may be prescribed by regulations made by the Forces Council.

(5) Without prejudice to any agreement which may be reached, a person shall not cease to be subject to this Act by reason only of attachment in pursuance of this section.

(6) In this section, “force of a foreign country” or “foreign force” means the armed forces of a foreign country.

22. The President may make regulations as to the person in whom command over the establishments and units or any member thereof is vested and as to the circumstance in which command as aforesaid is to be exercised, and without prejudice to the generality of the foregoing, may in such regulations provide for the duties, functions and powers of command and staff of the Armed Forces.

Part VIII

Officers

23. (1) No person shall be appointed to a commission in any of the services of the Armed Forces unless he is a citizen of Nigeria and has been recommended by a board of officers set up by the appropriate Service Chief.

(2) A person recommended for appointment to a commission in the Armed Forces shall be appointed to a commission either for an indefinite period or for a specified time.

(3) An officer on appointment shall be issued with a commission in the form prescribed by regulations made under section 26 of this Act and signed by the President, Commander-in-Chief of the Armed Forces.

(4) The appointment of a person to a commission in the Armed Forces shall be published in the Gazette.

24. All promotions, retirements, resignations and dismissals of an officer from any of the services of the Armed Forces shall be published in the Gazette.

25. An officer who has retired or was permitted to resign may be recalled at any time during the currency of any term of reserve service in accordance with regulations made under this Act, and on the recall, shall be liable to serve until he is released or discharged.

26. The President may make regulations governing the commissioning of officers, their terms of service, promotion, retirement, resignation, dismissal and such other matters concerning officers of the Armed Forces as may seem to him necessary.

Part IX

Enlistment and Terms and Conditions of Service

27. A person (in this Act referred to as a “recruiting officer”) authorised in that behalf by regulations made under this Part of this Act may enlist recruits in the Armed Forces.

28. (1) A person seeking to enlist in the Armed Forces shall be given a notice in the prescribed form setting out questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him and a recruiting officer shall not enlist a person in the Armed Forces, unless he is satisfied by that person that he was given that notice, understands it and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the apparent age of eighteen years, unless consent to the enlistment has been given in writing by that person’s parents or guardian or, where the parents or guardian are or

is dead or unknown, by some person approved by the Chairman of the Local Government in which the person applying for enlistment resides or, in the case of a person who resides in the Federal Capital Territory, Abuja, by the Mayor.

29. (1) The term for which a person enlisting in the Armed Forces may be enlisted shall be such a term beginning with the date of his attestation, as is mentioned in subsections (2) and (3) of this section.

(2) Where the person enlisting has apparently attained the age of eighteen years, the term of enlistment shall, as may be prescribed, not exceed twelve years, and be classed—

(a) as a term of regular service; or

(b) as to a prescribed part, a term of regular service and as to the remaining part, a term in the Armed Forces Reserve.

(3) Where the person enlisting has not apparently attained the age of eighteen years, the term shall be a term ending with the expiration of such period not exceeding twelve years as may be prescribed beginning with the date on which he attained that age, and be classed—

(a) as a term of regular service; or

(b) as to a prescribed part, a term of regular service, and as to the remaining part, a term of service in the Armed Forces Reserve.

30. (1) An enlisted person, before or after completing the term of his regular service, may, with the approval of the respective competent service authority, re-engage for such further period or periods of regular service and service in the Reserve as may be prescribed, so however that—

(a) at the expiration of twelve years of continuous regular service from the date of his original attestation or the date when he apparently attained the age of eighteen years, whichever is the later, all reserve service due by him shall be deemed to have been completed; and

(b) such further period or periods of regular service, together with the original period of regular service, shall not, except as provided by subsections (2) and (3) of this section, exceed a total continuous period of eighteen years of regular service from the date of the enlisted person's original attestation or the date upon which he apparently attained the age of eighteen years, whichever is the later.

(2) An enlisted person who has completed a period of eighteen years of regular service may, if he so desires and with the approval of the respective competent service authority, continue to serve to complete 22 years of regular service in all respects as if his term of regular service was still unexpired, provided that—

(a) he claims his discharge at the expiration of three months after he has given notice to his commanding officer of his wish to be discharged; and

(b) his commanding officer may give him three months' notice of intention to discharge him.

(3) An enlisted person who has completed a period of 22 years of regular service may, if he so desires and with the approval of the respective competent service authority, continue to serve in all respects as if his term of regular service was still unexpired.

31. An enlisted person whose term of regular service expires during a state of war, insurrection, hostilities or public emergency may be retained in the Armed Forces and his service prolonged for such further period as the respective competent service authority, with the approval of the Chief of Defence Staff and the Minister, may direct.

Part X

Discharge and Transfer to the Reserve

32. (1) Unless otherwise prescribed by this Act, if an enlisted person becomes entitled to be discharged, he shall be discharged with all convenient speed; but until discharged, he shall remain subject to service law under this Act.

- (2) If an enlisted person to be discharged is serving out of Nigeria and his term of service is prolonged under this Act, he shall be returned to Nigeria free of cost with all convenient speed and be discharged on his arrival in Nigeria or, if he consents to his discharge being delayed, within six months from his arrival.
- (3) Except in pursuance of a sentence of a court-martial under this Act, an enlisted person shall not be discharged unless his discharge has been authorised by order of the respective Service Chief in accordance with regulations made under this Part of this Act.
- (4) An enlisted person shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed, provided that, an enlisted person who is discharged within six months of the date of attestation shall not be entitled to receive a certificate of discharge.
- (5) An enlisted person who is discharged in Nigeria shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.
- 33.** (1) Subject to the provisions of this Act, an enlisted person whose term of service requires his transfer to the Reserve shall, when so due, be transferred to the Reserve; but until he is so transferred, he shall remain subject to this Act.
- (2) When an enlisted person due for transfer to the Reserve is serving outside Nigeria, he shall be returned to Nigeria free of cost with all convenient speed and be transferred to the Reserve on his arrival in Nigeria; or, if he consents to his transfer being delayed, he shall be so transferred not later than six months from the date of his arrival in Nigeria.
- (3) An enlisted person who is transferred to the Reserve in Nigeria shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the

place where he was attested or to any place at which he intends to reside and to which he can be conveyed at no greater cost.

- (4) An enlisted person due for transfer to the Reserve may, instead of being so transferred, be discharged forthwith by the respective competent service authority without assigning any reason.
- (5) If an enlisted person is so discharged, the provisions of section 32 of this Act shall have effect instead of the provisions of this section.

34. Unless there exists a state of war or public emergency or there is an insurrection or hostilities have commenced, if a Warrant Officer or Chief Petty Officer is reduced to the ranks or ordinary rating, as the case may be, he may thereupon claim to be discharged.

35. An enlisted person may be discharged at any time by a competent service authority during his term of engagement.

36. (1) Subject to the provisions of section 43 of this Act, an enlisted person may claim his discharge within six months after the date of his first attestation, and if a competent service authority approves, he shall, on payment of a sum of not more than three hundred naira as may be determined by the competent service authority, be discharged accordingly.

- (2) Nothing in section 32 of this Act shall apply to a discharge under subsection (1) of this section, and until his discharge, the enlisted person shall remain subject to service law under this Act.

Part XI

Miscellaneous and Supplementary Provisions relating to Discharge, etc.

37. (1) In reckoning the service of an enlisted person for discharge or re-engagement or transfer to the Reserve, there shall be excluded therefrom—

- (a) all periods during which he has been absent from duty for any of the following causes—

- (i) imprisonment;
 - (ii) desertion;
 - (iii) absence without leave exceeding twenty-eight days;
- and

(b) any period ordered by a court-martial to be forfeited.

(2) Regulations under this Part of this Act may make provision for restoring service excluded by the provisions of subsection (1) of this section, in consideration of good service or on other grounds justifying the restoration of service so excluded.

38. (1) Where a person has on attestation made the prescribed declaration and thereafter receives pay as a member of the Armed Forces—

(a) the validity of his enlistment shall not be called in question on the grounds of an error or omission in his attestation paper;

(b) after the expiration of a period of three months from the date on which he made the declaration, he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any other ground whatsoever (not being an error or omission in his attestation paper),

and, accordingly, he shall be subject to service law under this Act until his discharge under this Act.

(2) Where a person has received pay consequent on enlistment without having previously made the prescribed declaration for enlisting, he may claim his discharge at any time, and if he makes such claim, the claim shall be submitted as soon as may be to the competent service authority who shall cause him to be discharged with all convenient speed, and until he is discharged, he shall be deemed to be an enlisted person.

(3) Nothing in this section shall be construed as prejudicing the determination of any question as to the term for which a person was entitled or as preventing the discharge of a person who has not claimed his discharge.

39. Notwithstanding the foregoing provisions of this Act, liability for prosecution shall lie in the case of an enlisted person whose enlistment into any service of the Armed Forces is founded on fraudulent misrepresentation of actual facts or any other irregularity which otherwise shall have disentitled or disqualified the person from being enlisted nor shall such false representation regularise his intention to commit an offence, vacate or evade military duty of any kind.

40. The Armed Forces Pensions Act shall apply. (Cap A23)

41. (1) Notwithstanding the definition of service as provided for under section 16 of the Armed Forces Pensions Act, every officer, soldier, rating or aircraftman to whom that Act applies who, in the actual discharge of his duty and without his own default, has received wounds or injuries or suffered illness, shall be entitled to disability pension.

(2) The family of any officer, soldier, rating or aircraftman who has been killed or has died of wounds received in the course of his duty or who has died through illness directly attributable to fatigue or exposure incidental to his service in the Armed Forces, shall be entitled to such benefits under the Armed Forces Pensions Act as may be prescribed.

(3) For the purpose of this section—

“active service” includes military service in peace-time; and

“duty” includes active service.

42. The President may, by order, direct that any officer, soldier, rating or aircraftman of the Armed Forces shall proceed to any place outside Nigeria for the purpose of undergoing instruction or training or for duty or employment.

43. Notwithstanding anything to the contrary in this Act—

(a) a person subject to service law under this Act shall not be discharged or transferred to the Reserve at a time when he has become liable as a person subject to service law under this Act to be proceeded against for an offence against any of the provisions of service law;

(b) any person subject to service law under this Act who is serving a sentence of imprisonment or detention awarded by a court-martial under service law or by his commanding officer, shall not be entitled to be discharged or transferred to the Reserve during the currency of the sentence.

44. (1) In this Part of this Act, “competent service authority” means an officer designated as such by the Army Council, Navy Board or Air Council, as the case may be, for the purposes of this Part of this Act.

(2) The Forces Council may, with the approval of the President, make such regulations as appear to the Forces Council to be necessary or expedient for the purpose of, or in connection with the enlistment of recruits for the Army, Navy, Air Force and generally for carrying this Part of this Act into effect, and without prejudice to the generality of the foregoing provisions of this subsection, such regulations may make provisions for—

(a) prescribing the form of attestation paper to be used; and

(b) an oath or affirmation to be administered on enlistment.

Part XII

Offences

Misconduct in action

45. (1) A person subject to service law under this Act who, with intent to assist the enemy—

(a) abandons or delivers up any place, post or thing which it is his duty to defend, or induces any other person to abandon or deliver up any place, post or thing which it is that person’s duty to defend; or

- (b) does or fails to do any act calculated to imperil the success of operation of any service of the Armed Forces or of any forces co-operating with the Armed Forces or of any part of any of those forces; or
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description; or
- (e) harbours or protects an enemy not being a prisoner of war,

is guilty of an offence under this section and liable, on conviction by a court-martial, to suffer death or any other punishment provided by this Act.

(2) A person subject to service law under this Act who, knowingly and without lawful excuse—

- (a) abandons or delivers up any place, post or thing which it is his duty to defend or induces any other person to deliver up any place, post or thing which it is that person's duty to defend; or
- (b) does or fails to do any act calculated to imperil the success of operations of any service of the Armed Forces or of any force co-operating with the Armed Forces or of any part thereof or of any of those forces; or
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of the measures calculated to influence morale, or in any manner whatsoever not authorised by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description; or

- (e) harbours or protects an enemy not being a prisoner of war,

is guilty of an offence under this section and liable, on conviction by a court-martial, to suffer death or any less punishment provided by this Act.

- (3) For the purpose of this section, “thing” means and includes a vehicle, ship, gun, tank, vessel, craft, boat, an aircraft, a radar and an ammunition.

46. (1) A person subject to service law under this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy, is guilty of an offence under this section and liable, on conviction by a court-martial, to suffer death or any other punishment provided by this Act.

(2) A person subject to service law under this Act who, without lawful authority, communicates with or gives intelligence to the enemy is guilty of an offence under this section and liable, on conviction by a court-martial, to suffer death or any other punishment provided by this Act.

(3) In this section, “intelligence” means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) as to a matter falling within any of the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is—

- (a) the number, description, armament, equipment, disposition, movement or condition of any service of the Armed Forces or of any force co-operating with the Armed Forces or of a ship or an aircraft of the co-operating force;
- (b) any operation or projected operation of the Armed Forces or any force co-operating with the Armed Forces or a ship or aircraft of the co-operating force;
- (c) any code, cipher, call sign, password or countersign;

- (d) any measure for the defence or fortification of any place on behalf of the Federal Government;
- (e) the number, description or location of any prisoner of war;
- (f) munitions of war.

47. (1) A person subject to service law under this Act who, when before the enemy—

- (a) leaves the post, position, watch or other place where it is his duty to be; or
- (b) throws away his arms, ammunition or tools, in such a manner as to show cowardice or otherwise behaves in such a manner as to show cowardice,

shall be guilty of an offence against this section.

(2) A person subject to service law under this Act who when before the enemy, induces any other person subject to this Act and before the enemy to commit an offence under subsection (1) of this section shall be guilty of an offence against this section.

(3) A person guilty of an offence against this section shall, on conviction by a court-martial, be liable to suffer death or any less punishment provided by this Act.

(4) It shall be a valid defence under this section if the surrender or abandonment of a place, post or thing by a person charged with its defence is justified by reason of superior order, the utmost necessity such as want of provisions, water, logistic support, the absence of hope or relief, inability to offer further resistance or the certainty or extreme probability that no further efforts could prevent the place, post or thing falling into enemy hands.

48. A person subject to service law under this Act who—

- (a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of any of the services of the Armed Forces or any forces co-operating therewith, or of any part of any of these forces being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy, uses words calculated to create despondency or unnecessary alarm,
is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for life or any less punishment provided by this Act.

49. (1) A person subject to service law under this Act who, through disobedience to order or wilful neglect of his duty, is captured by the enemy, is guilty of an offence under this section.

(2) A person subject to service law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law under this Act who has been captured by the enemy from taking any reasonable steps which are available to him or, as the case may be, to that other person, to rejoin the Armed Forces, is guilty of an offence under this section.

(3) A person guilty of an offence under this section is liable, on conviction by a court-martial, to imprisonment for life or any less punishment provided by this Act.

50. Offences by or in relation to sentries, watch, etc.

(1) A person subject to service law under this Act who, while on guard duty or watch—

- (a) sleeps at his post or watch; or
- (b) when not on duty at a post or watch is asleep at a time when he is not allowed to be asleep; or
- (c) is drunk; or

(d) leaves his post or watch without having been regularly relieved; or

(e) otherwise absents himself from any place, post or watch where it is his duty to be,

is guilty of an offence under this section.

(2) For the purposes of this section, a person shall be treated as being drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) A person subject to service law under this Act who strikes or otherwise uses force against any person on guard duty or watch being a member of the Armed Forces, or of any force co-operating with the Armed Forces, or by threat or force compels that person to let him or any other person pass, is guilty of an offence against this section.

(4) A person guilty of an offence under this section is liable on conviction by a court-martial, to imprisonment for—

(a) five years, if the offence was committed on active service; and

(b) a term not exceeding two years if the offence was not committed on active service.

(5) Reference in this section to a person on guard duty or watch is reference to a person who—

(a) is posted or ordered to patrol, keep watch or has adopted the position of sentry at a post or has undertaken the patrol; or

(b) is a member of a guard or other party mounted or ordered to patrol for the purpose of protecting any person, premises or place.

(6) The foregoing provisions of this section shall apply in relation—

- (a) to a person posted or ordered to patrol or keep watch or who has adopted the position of sentry at a post or has undertaken the patrol; and
- (b) to a member of a party mounted or ordered to patrol or keep watch for purposes or preventing or controlling access to or egress from any premises or place or of regulating traffic by road, by rail, by air or any inland navigation,

as they apply to a person on guard duty or watch.

51. A person subject to service law under this Act who—

- (a) steals from, or with intent to steal, searches the body of a person killed, wounded or captured in the course of war-like operations, or killed, injured or detained in the course of operation undertaken by any service of the Armed Forces for the preservation of law and order or otherwise in aid of the civil authorities; or
- (b) steals any property which has been left exposed or unprotected in consequence of the operations as are mentioned in paragraph (a) of this section; or
- (c) takes, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy,

is guilty of looting and liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

Mutiny

52. (1) A person subject to service law under this Act who—

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence or having as its object or one of its objects the refusal or avoidance of any duty or service against,

or in connection with operations against the enemy, or the impeding of the performance of that duty or service; or

- (b) incites any other person subject to service law under this Act to take part in a mutiny, whether actual or intended,

is guilty of an offence under this subsection and liable, on conviction by a court-martial, to suffer death.

- (2) A person subject to service law under this Act who, in a case not falling within subsection (1) of this section, takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, is guilty of an offence under this subsection and liable, on conviction by a court-martial, to life imprisonment.

- (3) In this section and other sections of this Act, “mutiny” means a combination between two or more persons subject to service law under this Act or between persons, two at least of whom are subject to service law under this Act—

- (a) to overthrow or resist lawful authority in the Federation or in any arm or service of the Armed Forces or in any force co-operating with the Armed Forces or in any part of those forces; or

- (b) to disobey the authority as is mentioned in paragraph (a) of this subsection in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against the enemy; or

- (c) to impede the performance of any duty or service in the Federation or in any arm or service of the Armed Forces or in any force co-operating with the Armed Forces or in any part of those forces.

- 53. (1) A person subject to service law under this Act who, knowing that a mutiny is taking place or is intended—

- (a) fails to use his utmost endeavour to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended,

is guilty of an offence under this section.

- (2) A person guilty of an offence under subsection (1) of this section is liable, on conviction by a court-martial—
 - (a) if the offence was committed with intent to assist the enemy, to life imprisonment;
 - (b) in any other case, to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

Insubordination

- 54.** (1) A person subject to service law under this Act who—
- (a) strikes or otherwise uses violence to, or offers violence to, his superior officer; or
 - (b) uses threatening or insubordinate language to his superior officer,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) A person convicted under subsection (1) of this section shall only be liable to be imprisoned for not more than two years if the offence was committed on active service or involved the striking or other use of violence, to the superior officer exercising authority as such.
- (3) In subsections (1) and (2) of this section, “superior officer” in relation to a person, means an officer, a warrant officer or its equivalent rank, non-commissioned officer subject to service law

under this Act of superior rank, and includes an officer, a warrant officer or its equivalent rank, or non-commissioned officer so subject of equal rank but greater seniority while exercising authority as that person's superior.

55. A person subject to service law under this Act who—

(a) fights, quarrels or behaves in a disorderly manner with any other person, whether subject to service law under this Act or not; or

(b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

56. (1) A person subject to service law under this Act who, in such manner as to show wilful defiance of authority, disobeys a lawful command given or sent to him by whatever means is guilty of an offence under this subsection and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) A person subject to service law under this Act who, whether wilfully or through neglect, disobeys a lawful command is guilty of an offence under this subsection and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

57. (1) A person subject to service law under this Act who contravenes or fails to comply with a provision of an order to which this section applies, being a provision known to him, or which he might reasonably be expected to know, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation, unit or body of troops or for any area, garrison or place, or for any ship, train or aircraft.

58. A person subject to service law under this Act who—

- (a) obstructs; or
- (b) when called on, refuses to assist,

a person known to him to be a provost officer, or to be a person (whether subject to service law under this Act or not) lawfully exercising authority under or on behalf of a provost officer, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Absence from Duty, etc.

59. A person subject to service law under this Act who—

- (a) absents himself without leave; or
- (b) persuades or procures any other person subject to service law under this Act to absent himself without leave,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

60. (1) A person subject to service law under this Act who—

- (a) deserts; or
- (b) persuades or procures any other person subject to service law under this Act to desert,

is guilty of desertion and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) A person convicted of an offence under subsection (1) of this section shall only be liable to be imprisoned for not more than two years if—
- (a) where the offence is against paragraph (a) of that subsection, he was on active service or under orders for active service at the time when it was committed; or
 - (b) where the offence is against paragraph (b) of that subsection, the person in relation to whom it was committed was on active service or under orders for active service at that time.
- (3) In addition to or in lieu of any punishment authorised by subsection (1) or (2) of this section, the court-martial by whom a person subject to service law under this Act is convicted for desertion may direct that the whole or part of his service, previous to the period in respect of which he is convicted of having been a deserter, shall be forfeited, but this subsection shall not apply to a member of the Reserve called out on permanent service.
- (4) For the purposes of this section and other sections of this Act, a person deserts who—
- (a) leaves any service of the Armed Forces or when it is his duty to do so, fails to join or rejoin the Armed Forces, with (in either case) the intention, subsisting at the time of the leaving or failure to join or formed thereafter, of remaining permanently absent from his duty; or
 - (b) being an officer, enlists in or enters any of the other services of the Armed Forces, without having resigned his commission, or being a soldier, rating or aircraftman, enlists in or enters any of the services of the Armed Forces without having been discharged from his previous enlistment; or
 - (c) absents himself without leave with intent to avoid serving at any place outside Nigeria or to avoid service or any particular service when before the enemy,

and reference in this section and other sections of this Act to desertion shall be construed accordingly.

- 61.** A person subject to service law under this Act who—
- (a) knowingly assists any other person subject to service law under this Act to desert or absent himself without leave; or
 - (b) knowing that a person subject to service law under this Act has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any step in his power to cause that person to be apprehended,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- 62.** A person subject to service law under this Act who—
- (a) without reasonable excuse, fails to attend for a parade or other duty of any description or leaves parade or duty before he is permitted to do so; or
 - (b) neglects to perform, or negligently performs, a duty of any description,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Malingering and Drunkenness

- 63.** (1) A person subject to service law under this Act who—
- (a) falsely pretends to be suffering from sickness or disability; or

- (b) injures himself with intent thereby to render himself unfit for duty, or causes himself to be injured by any other person with that intent; or
- (c) injures any other person subject to service law under this Act at the instance of that person with intent thereby to render that person unfit for duty; or
- (d) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, prolongs or aggravates, any sickness or disability,

is guilty of malingering.

(2) A person guilty of malingering under subsection (1) of this section is liable, on conviction by a court-martial—

- (a) where the offender is on active service, to suffer death or any less punishment provided by this Act;
- (b) in any other case, to imprisonment for a term not exceeding two years.

(3) In this section, “unfit” includes temporarily unfit.

64. (1) A person subject to service law under this Act who is drunk, whether on duty or not, is guilty of drunkenness and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act, so however, that where the offence is committed by a soldier, rating or aircraftman who is not on active service or on duty, the sentence imposed on him shall not exceed imprisonment for a term of six months.

(2) For purposes of subsection (1) of this section, a person is drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit to the Armed Forces.

65. (1) A person subject to service law under this Act who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of Nigeria, exports from Nigeria, or introduces into a cantonment or barrack, any vessel, craft, vehicle or aircraft used by or under the control of the Armed Forces, a substance described in subsection (2) of this section, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding 21 years.

(2) The substances referred to in subsection (1) of this section are as follows—

- (a) opium, heroin, cocaine, amphetamine, lysergic acid, phencyclidine, diethylamide, methamphetamine, barbituric acid, marijuana and any compound or derivative of any such substance;
- (b) a substance not specified in paragraph (a) of this subsection that is listed on a schedule of controlled substances prescribed by the President for the purposes of this section; and
- (c) any other substance not specified in paragraph (a) of this subsection or contained on a list prescribed by the President under paragraph (b) of this subsection that is listed in a controlled substances law existing in Nigeria.

Offences relating to Property

66. A person subject to service law under this Act who—

- (a) steals or fraudulently misapplies a public or service property, or is concerned in or, connives at the stealing or fraudulent misapplication of a public or service property; or
- (b) receives or retains a public or service property knowing or having reason to believe that the property has been stolen or has been fraudulently misapplied; or

(c) wilfully damages or is concerned in the wilful damage of a public or service property; or

(d) by wilful neglect, causes damage to a public or service property,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

67. A person subject to service law under this Act who—

(a) steals or fraudulently misapplies a property belonging to a person subject to service law under this Act or is concerned in or connives at the stealing or fraudulent misapplication of a property belonging to a person subject to service law under this Act; or

(b) receives or retains a property belonging to a person subject to service law under this Act knowing or having reason to believe that the property has been stolen or has been fraudulently misapplied; or

(c) wilfully damages or is concerned in the wilful damage of a property belonging to a person subject to service law under this Act,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

68. (1) A person subject to service law under this Act who—

(a) loses a public or service property of which he has the charge or which forms part of the property of which he has the charge or which has been entrusted to his care; or

(b) by negligence, damages a public or service property of which he has the charge or which has been entrusted to his care or which forms part of the property of which he has the charge or which has been entrusted to his care; or

(c) by negligence, causes damage to a public or service property;
or

(d) fails to take proper care of an animal or a bird used in the public service which is in his charge; or

(e) makes away (by pawning or in any other way) with any military, naval or air force decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) It shall be a defence for a person charged under paragraph (a) of subsection (1) of this section with losing a property that he took reasonable steps for the care and preservation of the property.

Navigation and Flying offences

69. A person subject to service law under this Act who, whether wilfully or by negligence, causes or allows to be lost or hazarded any vehicle, ship, or aircraft in the service of the Armed Forces, is guilty of an offence under this section and liable, on conviction by a court-martial—

(a) if he acts wilfully or with wilful neglect, to life imprisonment or to any less punishment provided by this Act; and

(b) in any other case, to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

70. A person subject to service law under this Act who is guilty of an act or neglect in flying or in the use of an aircraft, or in relation to an aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any other person, is liable, on conviction by a court-martial, to life imprisonment or any less punishment provided by this Act, so however that, if the offender has not acted wilfully or with wilful neglect the sentence imposed on him shall not exceed imprisonment for a term of two years.

71. A person subject to service law under this Act who, being the pilot of a service aircraft, flies it at a height less than the height from time to time prescribed by regulations made by the Forces Council under this Act, except while taking off or alighting or in such other situation as may be so prescribed, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
72. A person subject to service law under this Act who, being the commanding officer of a naval ship or the pilot of a service aircraft, navigates or flies it, as the case may be, so as to cause or to be likely to cause, unnecessary annoyance to any other persons is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Other Offences in respect of Ships and Aircraft, etc.

73. A person subject to service law under this Act who signs a certificate relating to a matter affecting the seagoing or fighting efficiency of any service ship, vessel, aircraft, parachute or a certificate relating to any service aircraft or aircraft material without ensuring the accuracy of the certificate is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
74. A person subject to service law under this Act who, being in command of a service vessel, ship, vehicle or an aircraft without lawful authority—
- (a) receives or permits to be received on board the ship, vehicle or aircraft any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or

- (b) agrees to carry any goods or merchandise on board the ship, vehicle or aircraft in consideration of the payment of freight, or demands or receives payment in respect of the carriage; or
- (c) carries or agrees to carry on board the vehicle, ship, vessel or aircraft a person not being his immediate dependant or member of the Armed Forces,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Prize Offences

75. A person subject to service law under this Act who, being in command of a service ship, vessel or an aircraft—

- (a) having taken a ship, vessel or an aircraft as prize, fails to send to the most convenient High Court in his opinion, in Nigeria, all the ship or aircraft papers, as the case may be, found on board; or
- (b) unlawfully makes an agreement for the ransoming of a ship, vessel, an aircraft or goods taken as prize; or
- (c) in pursuance of an agreement as aforesaid or, otherwise by collusion, restores or abandons the ship, vessel, aircraft or goods taken as prize,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years, or any less punishment provided by this Act.

76. A person subject to service law under this Act, who—

- (a) strikes or otherwise ill-treats any person who is on board a ship, vessel or an aircraft when taken as prize, or unlawfully takes from that person anything in his possession; or

- (b) removes out of a ship, vessel or an aircraft or for the necessary use and service of any of the services of the Armed Forces, any goods not previously adjudged by a High Court in Nigeria to be lawful prize; or
- (c) breaks bulk on board a ship, vessel or an aircraft taken as prize or detained in exercise of any belligerent right or under any enactment, with intent to embezzle or fraudulently misapply anything therein,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Sexual Offences

77. A person subject to service law under this Act who has unlawful carnal knowledge of a woman or girl without her consent or with her consent if obtained—

- (a) by force or by means of threat or intimidation of any kind; or
- (b) by fear of harm; or
- (c) by means of fake and fraudulent representation as to the nature of the act; or
- (d) in the case of a married woman, by personating her husband,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding fourteen years or any less punishment provided by this Act.

78. A person subject to service law under this Act who has carnal knowledge of a girl, being under the age of sixteen years is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding fourteen years or any less punishment provided by this Act.

79. A person subject to service law under this Act who has carnal knowledge of the spouse of any other person subject to service law under this Act is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years, so however that no person shall be convicted under this section upon the uncorroborated evidence of the witness.

80. An officer subject to service law under this Act, who fraternises with a soldier, rating or an aircraftman, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

81. (1) A person subject to service law under this Act who—

- (a) has carnal knowledge of a person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a person to have carnal knowledge of him against the order of nature,

is guilty of an offence under this section.

(2) A person subject to service law under this Act who, whether in public or private, commits an act of gross indecency with any other person or procures another person to commit an act of gross indecency with him or attempts to procure the commission of an act of gross indecency by any person with himself or with another person whether in public or private, is guilty of an offence under this section.

(3) A person guilty of an offence under this section is liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

Offences relating to Billeting and Requisitioning of Vehicles

82. A person who—

- (a) knowing that no billeting requisition is in force under this Act authorising him to demand a billet or that he is otherwise not authorised to demand a billet, obtains a billet or orders or procures another person to obtain a billet; or
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or a vehicle is or is to be billeted in pursuance of a billeting requisition under this Act, any money or thing, as consideration for not requiring or for ceasing to require, accommodation for himself or that other person or parking space for the vehicle; or
- (c) wilfully or by wilful neglect damages, or causes or allows to be damaged, any premises in which he is billeted in pursuance of a billeting requisition, or any property in the premises,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

83. (1) A person subject to service law under this Act who—

- (a) knowing that no requisitioning order is in force under this Act authorising him to give directions, or for the provision of any vehicle, or that he is otherwise not authorised to give those directions, gives directions for the provision of the vehicle or orders or procures another person to give those directions; or
- (b) in purported exercise of a power conferred by a requisitioning order under this Act, takes or orders or procures any other person to take possession of a vehicle, knowing that no requisitioning order is in force under this Act under which the taking possession of the vehicle could be authorised, or the taking possession thereof is otherwise not authorised under the requisitioning order; or
- (c) takes or agrees to take, or demands from a person any money or thing as consideration for directions, or any particular

direction, for the provision of a vehicle not being given or for possession of a vehicle not being taken, or not being retained under a requisitioning order under this Act,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) The provisions of subsection (1) of this section shall apply in relation to an aircraft, a ship, vehicle, vessel and stores (within the meaning of this Part of this Act) as they apply in relation to a vehicle under that subsection.
- (3) It shall not be an offence under this section or section 82 of this Act, if a billeting requisition is authorised in an emergency by an appropriate superior authority as contained in Part XIX of this Act.

Offences relating to and by Persons in Custody

84. (1) A person subject to service law under this Act who, when any other person subject to this Act is under arrest—

(a) unreasonably delays the taking of such steps as it is his duty to take—

(i) for investigating the allegations against that other person; or

(ii) for having the allegation against that other person investigated by his commanding officer or an appropriate superior authority or, as the case may be, tried by a court-martial; or

(b) fails to release or effect the release of that other person when it is his duty to do so,

is guilty of an offence under this section.

(2) A person subject to service law under this Act who, having committed a person (in this section referred to as “the prisoner”) to the custody of any other person to whom he is authorised to commit the person, fails, without reasonable cause to deliver—

(a) at the time of committal; or

(b) if it is not practicable so to do, at the time of the committal, or within twenty-four hours thereafter,

to a person, to whose custody the prisoner was committed, a report in writing signed by himself of the offence which the prisoner is alleged to have committed, is guilty of an offence under this section.

(3) Where a person is committed to the charge of a person subject to service law under this Act who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report—

(a) a written statement containing so far as is known to him, the prisoner’s name and alleged offence, the name and rank or other description of the officer or other person who alleged that the prisoner had committed the offence; and

(b) the report required by subsection (2) of this section if he has already received it,

he is guilty of an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

85. (1) A person subject to service law under this Act who wilfully allows to escape a person who is committed to his charge or whom it is his duty to guard, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) A person subject to service law under this Act who—
- (a) without proper authority, releases a person who is committed to his charge; or
 - (b) without reasonable excuse, allows to escape a person who is committed to his charge or whom it is his duty to guard,

is guilty of an offence and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

86. (1) A person subject to service law under this Act who, being concerned in any quarrel or disorder, refuses to obey an officer who orders him into arrest, or strikes or otherwise uses violence or offers violence to the officer, is guilty of an offence under this section whether or not the officer is his superior.

(2) A person subject to service law under this Act who strikes or otherwise uses violence or offers violence to a person whose duty it is to apprehend him or in whose custody he is, is guilty of an offence under this section.

(3) A person guilty of an offence under this section is liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(4) For the avoidance of doubt, “officer” for the purpose of this section, includes a warrant or non-commissioned officer.

87. A person subject to service law under this Act who escapes from arrest, prison or other lawful custody (whether military or not) is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Miscellaneous Offences

88. (1) A person subject to service law under this Act who, without authority, discloses orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section, “information useful to an enemy” means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs of this subsection, being a matter such that information as to it would or might be useful to an enemy, that is—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the services of the Armed Forces or of any forces co-operating with the Armed Forces, or any ship, aircraft or thing belonging to the Armed Forces or to any of those forces; or
- (b) any operation or projected operation of the Armed Forces or of any forces co-operating with the Armed Forces or of any ship, aircraft or thing belonging to the Armed Forces or to any of those forces; or
- (c) any code, cipher, call sign, password or countersign; or
- (d) any measure for the defence or fortification of any place on behalf of Nigeria; or
- (e) the number, description or location of a prisoner of war; or
- (f) munitions of war.

89. A person who, when before a recruiting officer for the purpose of being attested in pursuance of Part IX of this Act, has knowingly given a false answer to a question contained in the attestation paper and put to him by or by the direction of the recruiting officer is, if he has since become and remains subject to service law under this Act, guilty of an offence under

this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

90. A person subject to service law under this Act who—

- (a) makes, signs or makes an entry in a service report, return, pay list or certificate, or any other service or official document, being a document or an entry which is to his knowledge false in a material particular; or
- (b) alters a service report, return, pay list or certificate or any other service or official document, or alters an entry in any of those documents, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with the document or entry which it is his duty to preserve or produce; or
- (c) with intent to defraud, fails to make an entry in a document referred to in paragraph (b) of this section; or
- (d) aids, abets, commands, counsels, procures or connives at the commission by any other person subject to service law under this Act of the offence under this section (whether or not he knows the nature of the document or entry in relation to which the offence will be committed),

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

91. An officer subject to service law under this Act who behaves in a scandalous manner, unbecoming of the character of an officer and a gentleman, is guilty of an offence under this section and liable, on conviction by a court-martial, to be cashiered.

92. If—

- (a) an officer subject to service law under this Act strikes or otherwise ill-treats an officer subject to service law under this Act of inferior

rank or less authority or a soldier, rating or an aircraftman subject to service law under this Act; or

- (b) a warrant or petty officer or a non-commissioned officer subject to service law under this Act, strikes or otherwise ill-treats any other warrant or petty officer or a non-commissioned officer of inferior rank or less authority or a soldier, rating or an aircraftman subject to this Act,

he is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

93. A person subject to service law under this Act who is guilty of a disgraceful conduct of a cruel, indecent or unnatural kind is liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

94. A person subject to service law under this Act who—

- (a) makes an accusation against an officer, a soldier, rating or an aircraftman subject to service law under this Act, which he knows to be false or does not believe to be true; or
- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer, a soldier, rating or an aircraftman which he knows to be false or does not believe to be true, or wilfully suppresses any material fact,

is guilty of an offence and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

95. A person subject to service law under this Act who attempts to commit an offence under any section of this Part of this Act is liable, on conviction by a court-martial, to the like punishment as for that offence, so however that if the offence is one punishable by death he shall not be liable to any greater punishment than imprisonment for life.

96. (1) A person subject to this Act who, before, at, during or in anticipation of an examination—

(a) by a fraudulent trick or device or in abuse of his office or with intent to unjustly benefit himself or any other person, procures, gives, allows to be given to a person or is in any way concerned in the unjust benefit, procurement or giving of, a question paper or an answer script produced or intended to be used in an examination or graded exercise; or

(b) by any false pretence with intent to cheat or unjustly benefit himself or any other person or for any other purpose whatsoever, buys, sells, procures or otherwise deals with a question paper or answer script intended for use or represented as genuine in respect of a particular examination or graded exercise of persons,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

(2) In a charge for an offence under paragraph (a) of subsection (1) of this section, it is immaterial that the question paper or answer script concerned is proved not to be the one in question or to be false, not genuine or not related to the examination.

97. A person subject to service law under this Act who, with intent to defraud any other person, falsely represents himself to be some other person, living or dead, is guilty of impersonation and liable, on conviction by a court-martial—

(a) if the person represents himself to be a person entitled by will or operation of law to any specific property and he commits the offence to obtain that property, to imprisonment for a term not exceeding fourteen years;

(b) in any other case, to imprisonment for a term not exceeding two years.

98. A person subject to service law under this Act who aids, abets, counsels or procures the commission by another person of an offence under any of the provisions of this Act is guilty of the like offence and liable to be charged, tried and punished as a principal offender.

99. A person subject to service law under this Act who at any place either within or outside Nigeria prevents or obstructs—

(a) the execution by a police officer of a warrant for the arrest of a person subject to service law under this Act who has committed or is suspected of having committed an offence punishable on conviction by a civil court; or

(b) the arrest of a person subject to service law under this Act by a police officer acting in the exercise of his powers of arrest without warrant,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences in relation to Courts-Martial

100. (1) A person subject to service law under this Act who—

(a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or

(b) refuses to swear an oath or make an affirmation when duly required by a court-martial to do so; or

(c) refuses to produce a document in his custody or under his control which a court-martial has lawfully required him to produce; or

(d) when a witness, subject to the provisions of section 176 of the Evidence Act, refuses to answer a question which a court-martial has lawfully required him to answer; or

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- (e) wilfully insults a person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court-martial, while that person is acting as a member of the court-martial or is so attending, or wilfully insults that other person while that person is going to or returning from the proceedings of the court; or
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court-martial,

is guilty of an offence under this section and liable, on conviction by a court-martial, other than the court in relation to which the offence was committed to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything contained in subsection (1) of this section, where an offence under paragraph (e) or (f) of that subsection is committed in relation to a court-martial held in pursuance of this Act, the court-martial, if of opinion that it is expedient that the offender should be dealt with summarily by that court-martial instead of being brought to trial before another court-martial, may by order under the hand of the President order the offender to be imprisoned for a period not exceeding 21 days or any less punishment provided for under this Act.

(3) References in paragraphs (a) to (f) of subsection (1) of this section to a court-martial includes references to a court-martial held in pursuance of service law.

101. (1) A person subject to service law under this Act who, having been duly sworn as a witness or as an interpreter in proceedings before a court-martial or before a board or person having power to administer oaths under service law, makes a statement material in those proceedings, which he knows to be false or does not believe to be true, is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) A person shall not be liable to be convicted of an offence under this section solely on the evidence of one witness as to the falsity of a statement alleged to be false.

102. A person subject to service law under this Act who—

- (a) destroys, falsifies, removes, defaces, conceals, mutilates, obliterates or takes with the intent to destroy, falsify, remove, deface, conceal, mutilate, obliterate, any document relating to a court-martial; or
- (b) is concerned in or causes, procures, aids or abets another person whether or not that person is subject to service law under this Act to commit an offence against this section,

is guilty of an offence and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

Conduct to prejudice of Service Discipline

103. (1) A person subject to service law under this Act who is guilty of a conduct or neglect to the prejudice of good order and service discipline is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) It shall be a defence to a charge under subsection (1) of this section that the conduct or neglect of the accused had already been charged under sections 45 to 102 and sections 104 to sections 114 of this Act.

Civil Offences

104. (1) A person subject to service law under this Act who, with unlawful force or violence, does or attempts to do any bodily harm to another person is guilty of assault and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) A person subject to service law under this Act who—
- (a) unlawfully assaults another person with a dangerous weapon or other means of force likely to cause death; or
 - (b) unlawfully assaults another person and thereby does him grievous harm,

is guilty of aggravated assault and liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

105. A person subject to service law under this Act who—

- (a) unlawfully kills another person in such circumstances as not to constitute murder; or
- (b) with intent to kill or do some grievous harm to another person, unlawfully kills that person in the heat of passion caused by sudden provocation, and before there is time for his passion to cool,

is guilty of manslaughter and liable, on conviction by a court-martial, to imprisonment for life.

106. A person subject to service law under this Act who, without justification or excuse, unlawfully kills another person whether or not subject to service law under this Act when—

- (a) he intends to cause the death of the person killed or that of any other person; or
- (b) he intends to do the person killed or to any other person some grievous harm; or
- (c) death is caused by means of an act done in the prosecution of an unlawful purpose, where the act is of a nature that is likely to endanger human life,

is guilty of murder and liable, on conviction by a court-martial, to suffer death.

107. (1) A person subject to service law under this Act who steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order—

(a) to obtain or retain the thing stolen; or

(b) to prevent or overcome resistance to the thing being stolen or retained,

is guilty of robbery and liable, on conviction by a court-martial, to a term of imprisonment not exceeding fourteen years.

(2) If the robbery is committed by a person subject to service law under this Act, armed with a dangerous or an offensive weapon or instrument, he is liable, on conviction by a court-martial, to suffer death and to a fine.

108. A person subject to service law under this Act who communicates threats to another person with the intention thereby to obtain a thing of value or gain is guilty of extortion and liable, on conviction by a court-martial, to imprisonment for a term not exceeding fourteen years.

109. (1) A person subject to service law under this Act who—

(a) with intent to commit an offence punishable by imprisonment for five years or more under this Act, breaks and enters the dwelling-house of another person; or

(b) having entered the dwelling-house of another person with the intent to commit an offence punishable by imprisonment for five years or more under this Act, breaks out of the dwelling-house,

is guilty of burglary.

(2) A person found guilty of an offence under subsection (1) of this section is liable, on conviction by a court-martial—

(a) if the offence is committed in the night, to imprisonment for life;

(b) if the offence is committed at any other time, to imprisonment for a term not exceeding fourteen years.

110. A person subject to service law under this Act who, with intent to commit an offence under this Act, enters or is in the dwelling house, building or structure of another person, is guilty of house-breaking and liable, on conviction by a court-martial—

(a) if the offence is committed in the night, to imprisonment for a term not exceeding fourteen years;

(b) if the offence is committed at any other time, to imprisonment for a term not exceeding seven years.

111. A person subject to service law under this Act who wilfully or maliciously sets fire—

(a) to a public building, dwelling house, an office or any structure whatsoever, movable or immovable, whether completed or not, occupied or not; or

(b) to any vessel, ship, aircraft, railway track or wagon, or vehicle or thing; or

(c) to a mine or working, fitting or an appliance of a mine,

is guilty of arson and liable, on conviction by a court-martial, to imprisonment for life.

112. A person subject to service law under this Act who—

(a) fraudulently or knowingly utters, forges, procures, alters, accepts or presents to another person any cheque, promissory note or other

negotiable instrument knowing it to be false, forged, stolen or unlawfully procured; or

- (b) knowingly and by means of a false representation or with intent to defraud the Federal Government, the Government of any State or any Local Government, causes the delivery or payment to himself or any other person of any property or money by virtue of any forged or false cheque, promissory note or other negotiable instrument whether in Nigeria or elsewhere; or
- (c) makes or utters any forged document, cheque, promissory note or other negotiable instrument, knowing it to be false or with intent that it may in any way be used or acted upon as genuine, whether in Nigeria or elsewhere, to the prejudice of any person or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act or thing, whether in Nigeria or elsewhere,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding 21 years.

113. A person subject to service law under this Act who by means of a fraudulent trick or device—

- (a) obtains from another person anything capable of being stolen; or
- (b) induces another person—
 - (i) to deliver to any person a thing capable of being stolen; or
 - (ii) to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for the trick or device,

is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years.

114. (1) A person subject to service law under this Act who commits any other civil offence, whether or not listed under this Act or committed in Nigeria or elsewhere, is guilty of an offence under this section.

(2) For the purposes of subsection (1) of this section, “civil offence” means an act or omission punishable as an offence under the penal provisions of any law enacted in or applicable to Nigeria, and in this Act “corresponding civil offence” means the civil offence the commission of which constitutes the offence under this section.

(3) A person convicted by a court-martial for an offence under this section is liable—

(a) if the corresponding civil offence is treason or murder, to suffer death; and

(b) in any other case, to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in Nigeria being a punishment or punishments, less than the maximum punishment, which a civil court could so award, as is so provided,

so however that where a civil court may not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer or discharge with ignominy in the case of a soldier, rating or aircraftman, as is provided.

(4) Without prejudice to the provisions of this Act, a person shall not be charged with an offence under this section committed in Nigeria if the corresponding civil offence is treason, murder, manslaughter, or treasonable felony.

(5) Where the corresponding civil offence is murder or manslaughter, an offence under this section shall be deemed, for the purposes of subsection (4) of this section, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.

Part XIII

Punishment

Summary Trial

115. (1) Subject to the provisions of this section, an officer who is charged with an offence which may be summarily tried under Part XIV of this Act may be summarily tried and punished to the extent permitted in accordance with the following provisions of this section by the officer in command of the unit, ship or establishment to which that officer belongs either at the time of the commission of the offence or at the time of the trial of the offence, that is—

(a) where the accused is of or below the rank of an Army Captain or corresponding rank, the commanding officer of the company or establishment or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) confinement not exceeding seven days;
- (ii) award of extra duties not exceeding seven days;
- (iii) admonition;

(b) where the accused is of or below the rank of Major or corresponding rank, the battalion commander or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) fine not exceeding ₦500;
- (ii) where the offence has occasioned any expenses, loss or damage, make good the loss by stoppages not exceeding ₦2,500;

(c) where the accused is of or below the rank of Lieutenant Colonel or corresponding rank, the brigade commander or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) fine not exceeding ₦1,000;

- (ii) forfeiture of pay not exceeding thirty days;
- (iii) where the offence has occasioned any expenses, loss or damages, make good the loss by stoppages not exceeding ₦3,000;

(d) where the accused is of the rank of or above Colonel or corresponding rank, the general officer commanding or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) fine not exceeding ₦2,000;
- (ii) forfeiture of pay not exceeding sixty days;
- (iii) where the offence has occasioned any expenses, loss or damages, make good the loss by stoppages not exceeding ₦5,000;
- (iv) reprimand or severe reprimand;
- (v) admonition.

(2) For the purpose of this subsection (1) of this section, a punishment specified in a sub-paragraph of the scale shall be treated as less than the punishment specified in the preceding sub-paragraphs and greater than those specified in the succeeding sub-paragraph of the scale.

(3) Except as expressly provided in this Act, not more than one punishment shall be awarded in a summary trial for one offence, provided that—

- (a) stoppages may be awarded either in addition to or without any other punishment; and

(b) a reprimand or severe reprimand may be awarded in addition to a fine.

116. (1) Subject to the provisions of this section, a warrant officer, petty officer, non-commissioned officer, soldier, rating or aircraftman who is charged with an offence which may be summarily tried under Part XIV of this Act, may be summarily tried and punished to the extent permitted and in accordance with the following provisions of this section by the officer in command of the unit, ship or establishment to which that person belongs either at the time of the commission of the offence or at the time of the trial of the offence, that is—

(a) where the accused is below the rank of a sergeant or corresponding rank, the commanding officer of the company or establishment or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

(i) imprisonment with hard labour not exceeding seven days in the unit guardroom;

(ii) extra duties not exceeding seven days;

(iii) confinement not exceeding seven days;

(iv) where the offence has occasioned any expenses, loss or damage, make good the loss by stoppages not exceeding ₦200;

(v) reprimand;

(vi) admonition;

(b) where the accused is below the rank of warrant officer class one or chief petty officer, the battalion commander or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) dismissed regiment to the rank of corporal, able rate or below;
- (ii) imprisonment with hard labour up to twenty-eight working days in the unit guardroom, provided that the person so charged is of the rank of corporal, able rate or below;
- (iii) reduction in rank not below one step for sergeants, leading hands and below;
- (iv) forfeiture of pay not exceeding seven days;
- (v) where the offence has occasioned any expenses, loss or damage, make good the loss by stoppages not exceeding ₦500;
- (vi) confinement to barracks not exceeding 28 days;
- (vii) extra duties not exceeding seven days;
- (viii) reprimand or severe reprimand;
- (ix) admonition;

(c) where the accused is below the rank of warrant officer class one or chief petty officer, the brigade commander, or his equivalent, may summarily deal with the charge by either dismissing the case or awarding any of the following punishments, that is—

- (i) dismissed regiment to rank of staff sergeant or below;
- (ii) imprisonment with hard labour up to 28 days in the unit guardroom;
- (iii) reduction in rank of staff sergeant or leading rate and below not more than two steps;

- (iv) fine not exceeding ₦200;
 - (v) where the offence has occasioned any expenses, loss or damages, make good the loss by stoppages not exceeding ₦2,500;
 - (vi) forfeiture of pay not exceeding thirty days;
 - (vii) reprimand or severe reprimand;
 - (viii) admonition;
- (d) where the accused is of the rank of warrant officer class one or chief petty officer and above, the general officer commanding or his equivalent may summarily deal with the charge by either dismissing the case or by awarding any of the following punishments, that is—
- (i) dismissed regiment to the rank of warrant officer class two, petty officer or below;
 - (ii) imprisonment with hard labour up to 28 days in the unit guardroom;
 - (iii) reduction in rank or disrating of warrant officer class two or petty officer and below, not more than two steps;
 - (iv) fine not exceeding ₦250;
 - (v) where the offence has occasioned any expenses, loss or damages, make good the loss by stoppages not exceeding ₦3,500;
 - (vi) forfeiture of pay not exceeding 28 days;
 - (vii) reprimand or severe reprimand;
 - (viii) admonition.

- (2) For the purposes of subsection (1) of this section, a punishment specified in any sub-paragraph of the scale shall be treated as less than the punishment specified in the preceding sub-paragraph and greater than those specified in the succeeding sub-paragraph of the scale.
- (3) Except as expressly provided in this Act, not more than one punishment shall be awarded in a summary trial for one offence, provided that—
- (a) stoppages may be awarded either in addition to or without any other punishment; and
 - (b) a reprimand or severe reprimand may be awarded in addition to a fine.
- (4) Where a warrant or petty officer or a soldier, rating or an aircraftman is sentenced to a term of imprisonment of 35 days or more, he shall also be sentenced to dismissal from the service.

117. Notwithstanding anything in the foregoing sections of this Act, a commanding officer shall not proceed summarily with the trial of an officer, a warrant or petty officer until he has afforded the officer, warrant or petty officer an opportunity of electing to be tried by a court-martial and if the person so elects in writing, the commanding officer shall take the prescribed steps with a view to the charge being tried by a court-martial.

Courts-Martial

- 118.** (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are those set out in the following scale, that is—
- (a) death;
 - (b) imprisonment;
 - (c) dismissal with disgrace and dishonour;

- (d) dismissal from the Armed Forces;
 - (e) reduction in rank;
 - (f) forfeiture of seniority in the rank;
 - (g) a fine of a sum not exceeding the equivalent of 3 months' pay;
 - (h) severe reprimand or reprimand;
 - (i) admonition;
 - (j) forfeiture, where the offence is fraud, fraudulent misapplication, theft or any other form of undue enrichment of the accused, provided that evidence exists which satisfies the court that the accused or his estate has benefited from the property or thing subject of the offence;
 - (k) stoppages, where the offence has occasioned any expense, loss or damage not exceeding one third of the total sum.
- (2) Where a court-martial decrees an officer to be reduced in rank under subsection (1) (e) of this section, the court-martial shall also decree the officer's seniority in the lower rank, for example, if an officer is sentenced to reduction in rank from lieutenant colonel to major, the court-martial shall specify that his seniority in the new rank will be three months, six months, nine months, one year or any other period, provided that if the court-martial fails to decree as aforesaid, the sentence of reduction in rank shall not be invalid, but the seniority in the new rank shall only be specified on review of sentence as is deemed appropriate.
- (3) For the purposes of subsection (1) of this section, a punishment specified in any paragraph of scale shall be treated as less than the punishment specified in the preceding paragraph of the scale.
- (4) Except as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

- (5) Forfeiture or stoppages may be awarded by a court-martial either in addition to or without any other punishment.
- (6) A severe reprimand or reprimand may be awarded by a court-martial in addition to a fine.
- (7) Where an officer is sentenced by a court-martial to imprisonment, he shall also be sentenced to be dismissed with disgrace and dishonour, provided that if the court-martial fails to sentence him to be dismissed, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of dishonour and disgrace.

119. (1) The punishment which may be awarded to a soldier, rating or an aircraftman by sentence of a court-martial under this Act are those set out in the following scale, that is—

- (a) death;
- (b) imprisonment;
- (c) dismissal with ignominy from the Armed Forces;
- (d) in the case of a warrant or petty officer, dismissal from the Armed Forces;
- (e) in the case of warrant officer, petty officer or non-commissioned officer, reduction to ranks or disrating to ordinary rating or any less reduction in rank;
- (f) a fine of a sum not exceeding the equivalent of three months' pay;
- (g) in the case of a warrant or petty officer or non-commissioned officer, severe reprimand or reprimand;
- (h) where the offence is absence without leave or desertion, forfeiture of service;
- (i) forfeiture where the offence is fraud, fraudulent misapplication, theft or any other form of undue enrichment of the

accused, provided that evidence exists which satisfies the court that the accused or his estate has benefited from the property subject of the offence;

(j) stoppages, where the offence has occasioned any expense, loss or damage not exceeding one third of the total sum.

(2) For the purposes of subsection (1) of this section, a punishment specified in any paragraph of a scale shall be treated as less than the punishment specified in the preceding paragraph, and greater than that specified in the succeeding paragraph of the scale.

(3) Except as expressly provided in the Act, not more than one punishment shall be awarded by a court-martial for one offence.

(4) A soldier, rating or aircraftman sentenced by a court-martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from the service.

(5) Where a warrant or petty officer or a non-commissioned officer is sentenced by a court-martial to imprisonment, he shall also be sentenced to be reduced to the ranks or disgraced to ordinary rating, provided that, if the court-martial fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence or reduction to the ranks or disgracing to ordinary rating and shall also include dismissal from the service.

(6) In the case of a warrant or petty officer or a non-commissioned officer, a severe reprimand or reprimand may be awarded by a court-martial in addition to a fine.

(7) Forfeiture or stoppage may be awarded by a court-martial either in addition to or without any other punishment.

120. (1) In relation to an offence committed by a soldier, rating or aircraftman on active service, the scale of punishments set out in subsection (1) of section 119 of this Act shall have effect as if after paragraph (d) thereof there were inserted the following paragraph—

“(dd) field punishment for a period not exceeding ninety days”,

and subsection (5) of section 119 shall apply to field punishment as it applies to imprisonment.

- (2) Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under rules made under this Part of this Act and may include confinement in such place and manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

Part XIV

Trial Procedure

Arrest

121. (1) A person subject to service law under this Act found committing an offence under any provision of this Act, or alleged to have committed or reasonably suspected of having committed the offence, may be arrested in accordance with the following provisions of this section.
 - (2) A person authorised to effect arrest under this Part of this Act may use such force as is reasonably necessary for that purpose.
 - (3) An officer may be arrested by an officer subject to service law under this Act of superior rank, or, if engaged in a quarrel or disorder, by an officer of any rank.
 - (4) A soldier, rating or an aircraftman may be arrested by an officer, warrant or petty officer or a non-commissioned officer subject to service law under this Act, provided that, a person shall not be arrested by virtue of this subsection except by a person of superior rank.
 - (5) A provost or any officer, warrant or petty officer, non-commissioned officer, or soldier, rating or aircraftman subject to service law under this Act who is lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or

soldier, rating or aircraftman, provided that, an officer shall not be arrested by virtue of this subsection except on the order of another officer.

- (6) The power of arrest vested in a person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

122. (1) Subject to the provisions of subsection (2) of this section, the allegations against a person subject to service law under this Act who is under arrest shall be duly investigated within reasonable time and as soon as may be, either proceedings shall be taken for punishing his offence or he shall be released from arrest within 24 hours.

- (2) The commanding officer shall have power to determine whether further detention shall continue beyond a period of 24 hours.

- (3) Where a person subject to service law under this Act, having been taken into service custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled—

- (a) a special report on the necessity for further delay shall be made by the commanding officer to the prescribed authority in the prescribed manner; and

- (b) a similar report shall be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or the person is released from arrest, the total period of such further detention not exceeding ninety days,

so however that in the case of a person on active service or in the Navy at sea, compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of service operations.

- (4) For the purposes of subsection (1) of section 84 of this Act, the question whether there has been unreasonable delay in the taking of any steps for the investigation against a person under arrest shall be

determined without regard to the provisions of subsection (3) of this section.

(5) The prescribed authority referred to in subsection (3) of this section shall have power to review the adequacy of probable cause and the propriety or otherwise of further detention.

(6) A person arrested under this Act by virtue of this section shall, as soon as is practicable, be released from custody by the person making the arrest unless he believes on reasonable grounds that it is necessary in the interest of public order or the Armed Forces and the need to prevent deliberate undermining of service discipline that the person be retained in custody having regard to all the circumstances, including—

(a) the seriousness of the allegation or accusation, for example, murder or treason;

(b) the need to establish the identity of the person under arrest;

(c) the need to secure or preserve evidence of or relating to the allegation or accusation;

(d) the need to prevent the continuation or repetition of the offence or any other offence;

(e) the necessity to ensure the safety of the person, other persons or property;

(f) the need to forestall the actual or likelihood of interference with investigation, for example, threatening, intimidating, eliminating or subornation of witnesses;

(g) the need to prevent escape of the accused; and

(h) the fact that the accused has not surrendered but has been apprehended as an illegal absentee or has habitually absented himself.

(7) In this section—

(a) “Navy at sea” relates to a person on board a ship at sea in which case—

(i) confinement on board the ship at sea may continue only until the person can be transferred to a confinement facility ashore;

(ii) the transfer shall be accomplished at the earliest opportunity permitted by the operational requirements and mission of the ship; and

(iii) on the transfer, the special report required shall be transmitted to the prescribed authority under subsection (3) of this section;

(b) “prescribed authority” means the appropriate superior authority under this Act.

Investigation of and Summary dealing with Charges

123. Before an allegation against a person subject to service law under this Act (in this section referred to as the “accused”) that he has committed an offence under a provision of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the commanding officer of the accused and the commanding officer shall investigate the charge in the prescribed manner.

124. (1) After investigation, a charge against an officer below the rank of lieutenant colonel or its equivalent or against a warrant or petty officer may, if an authority has power under the provisions of this Part and Part XIII of this Act to deal with it summarily, be so dealt with by that authority (in this Act referred to as “the appropriate superior authority”) in accordance with those provisions.

(2) After investigation, a charge against a non-commissioned officer, soldier, rating or an aircraftman may be dealt with summarily by his commanding officer subject to and in

accordance with the following provisions of this Part and Part XIII of this Act.

- (3) A charge not dealt with summarily shall, after investigation, be remanded for trial by a court-martial.
- (4) Notwithstanding anything in the foregoing provisions of this section, where the commanding officer has investigated a charge against an officer or a warrant or petty officer, he may dismiss the charge if he is of opinion that it ought not to be further proceeded with.
- (5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, this is—
 - (a) dismissing the charge; or
 - (b) determining whether the accused is guilty; or
 - (c) where the accused is guilty, recording a finding of guilty and awarding punishment; or
 - (d) condoning the offence in accordance with the provisions of this Act.
- (6) A commanding officer shall not deal summarily with a charge under any of the following sections of this Act, that is—
 - (a) sections 45, 46, 47, 48, 51, 52, 53, 65, 66, 67, 69, 70, 71, 72, 73, 75, 76, 83, 88, 91 and 93;
 - (b) sections 95 and 98 so far as they are applicable to an offence under any of the provisions mentioned in paragraph (a) of this subsection.
- (7) Where an officer holding a post specified in Part VIII of this Act has been absent from his post on duty or approved leave for more than 96 hours, continuously, or has otherwise ceased to carry out

his duties through sickness or any cause, any other officer temporarily authorised to carry out the duties of the post may while so authorised by the commanding officer carry out the duties of the substantive holder of the post and Part XIII of this Act shall be construed accordingly.

(8) The power conferred by subsection (1) of this section may, in the case of an officer in command of a ship or Naval establishment and subject to any rules made under this Act, be exercised—

(a) in respect of a person on board a single tender or boat who is absent from the ship or establishment on detached service, by the officer in command of that tender or boat;

(b) in respect of persons on board one or two or more tenders or boats who are absent as aforesaid on detached service in company or acting together, by the officer in immediate command of those persons.

125. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or soldier, rating or an aircraftman.

(2) Where the charge is one which can be dealt with summarily, the commanding officer may—

(a) if of opinion that it should not be so dealt with, take the prescribed steps with a view to the charge being tried by a court-martial; or

(b) otherwise deal with the charge summarily, and if he records a finding of guilty he may award punishment as provided under Part XIII of this Act.

126. (1) Without prejudice to the provisions of Part XIII of this Act, a commanding officer, shall, if he can not adequately deal with a charge, and unless he has dismissed the charge, submit it in the prescribed manner to a higher authority who shall thereupon determine how the charge is to be proceeded with in accordance with subsection (2) of this section.

- (2) The higher authority may refer the charge to the appropriate superior authority or take the prescribed steps with a view to the charge being tried by a court-martial.
- (3) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty.
- (4) If in the course of investigating the charge, the appropriate superior authority determines that it is desirable that the charge should be tried by a court-martial, the prescribed steps shall be taken with a view to its being so tried.
- (5) If the appropriate superior authority records a finding of guilty, it may award punishment as provided under Part XIII of this Act.

127. (1) Notwithstanding anything in sections 123 and 124 of this Act, where a charge—

- (a) has been referred to higher authority with a view to its being tried by a court-martial; or
- (b) has been submitted to higher authority for determination on how it is to be proceeded with,

that authority may, subject to the provisions of this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in that case the commanding officer shall dismiss the charge.

- (2) Where a case is referred back under subsection (1) (b) of this section, it shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

128. (1) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is—

- (a) the commanding officer; and
 - (b) any officer of the rank of brigadier or above or officer of corresponding rank or those directed to so act under whose command the person is for the time being.
- (2) The President may make rules for the purpose of this section and those rules may confer on the appropriate superior authority power to delegate his functions in such cases and to such extent as may be specified in the rules, to officers of a class so specified.

Courts-Martial

General Provisions

129. There shall be, for the purposes of carrying out the provisions of this Act, two types of courts-martial, that is—

- (a) a general court-martial, consisting of a President and not less than four members, a waiting member, a liaison officer and a judge advocate;
- (b) a special court-martial, consisting of a President and not less than two members, a waiting member, a liaison officer and a judge advocate.

130. (1) A general court-martial shall, subject to the provisions of this Act, try a person subject to service law under this Act for an offence which, under this Act, is triable by a court-martial and award for the offence a punishment authorised by this Act for that offence, except that, where the court-martial consists of less than seven members it shall not impose a sentence of death.

(2) A general court-martial shall also have power to try a person subject to service law under this Act who by law of war is subject to trial by a military tribunal and may adjudge a punishment authorised by law of war or armed conflict.

(3) A special court-martial shall have the powers of a general court-martial, except that, where the court-martial consists of only two

members it shall not impose a sentence that exceeds imprisonment for a term of one year or of death.

131. (1) Subject to the following provisions of this section, a court-martial may be convened by—

- (a) the President; or
- (b) the Chief of Defence Staff; or
- (c) Service Chiefs; or
- (d) a general officer commanding, a brigadier, colonel or lieutenant colonel or their corresponding ranks having command of a body of troops or establishments; or
- (e) an officer for the time being acting in place of those officers.

(2) A general court-martial may be convened by—

- (a) the President; or
- (b) the Chief of Defence Staff; or
- (c) the Service Chiefs; or
- (d) a general officer commanding or corresponding command;
or
- (e) a brigade commander or corresponding command.

(3) A special court-martial may be convened by—

- (a) a person who may convene a general court-martial; or
- (b) the commanding officer of a battalion or of a corresponding unit in the Armed Forces.

- (4) The senior officer of a detached unit, establishment or squadron may be authorised by the appropriate superior authority to order a court-martial in special circumstances.

132. (1) Subject to the provisions of section 128 of this Act, where two or more persons subject to service law under this Act under different commands or service jointly commit an offence, the following provisions shall apply as if they were under the same command for the purpose of their trial, that is—

- (a) the accused persons shall be tried by one court-martial;
- (b) the convening officer for the court-martial shall, subject to subsection (2) of this section, be the officer in whose area of responsibility the offence was committed where one of the accused persons is under his command.

- (2) Where two or more accused persons who jointly commit an offence, are in the same area but under different commands, the convening officer for the court-martial shall be the most senior in rank among the two.

133. (1) Subject to the provisions of sections 128 and 129 of this Act, a court-martial shall be duly constituted if it consists of the President of the court-martial, not less than two other officers and a waiting member.

- (2) An officer shall not be appointed to be a member of a court-martial unless he is subject to service law under this Act and has been an officer in any of the services of the Armed Forces for a period amounting in the aggregate to not less than five years.

- (3) The President of a court-martial shall be appointed by order of the convening officer and shall not be under the rank of major or corresponding rank, unless, in the opinion of the convening officer, a major or an officer of corresponding rank having suitable qualifications is not, with due regard to the public service, available, so however that—

- (a) the president of a court-martial shall not be under the rank of a captain or a corresponding rank; and

- (b) where an officer is to be tried, the President shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused.
- (4) The members of a court-martial, other than the President, shall be appointed by order of the convening officer or in such other manner as may be prescribed.
- (5) A convening officer shall appoint a judge advocate for every court-martial.
- (6) A judge advocate shall be a commissioned officer who is qualified as a legal practitioner in Nigeria with at least three years post-call experience or failing that he shall on request by the convening officer be nominated by the Directorate of Legal Services of the respective services of the Armed Forces.
- (7) If a court-martial is to be convened at a place where, in the opinion of the convening officer, the necessary number of officers having suitable qualifications is not available to form the court-martial and cannot be made available with due regard to the circumstances, the convening officer may, with the consent of the proper superior authority appoint any service officer as President of the court-martial in lieu of, or as any other member of the court in lieu of, or in addition to any service officer or officers.
- 134.** (1) The officer who convenes a court-martial shall not be the President or a member of that court-martial.
- (2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused and any other officer who has investigated the charge against the accused, or who under service law has held or has acted as one of the persons holding an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a court-martial or act as judge advocate at the court-martial.

- (3) When the convening officer of a court-martial appoints a captain or an officer of corresponding rank to be president being of opinion that a major or an officer of corresponding rank having suitable qualifications is not with regard to the public service's exigency available, the order convening the court-martial shall contain a statement of that opinion, and that statement shall be conclusive.

135. (1) Subject to the provisions of this section, a court-martial shall sit at such place as may be specified in the order convening the court-martial, and the convening officer may convene it to sit at a place outside the limits of his command.

- (2) A court-martial sitting at a place shall, if the convening officer directs it to sit at some other place, and may, without any such direction if it appears to the court-martial requisite in the interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

- (3) Without prejudice to the provisions of subsection (2) of this section, a court-martial may if it appears to the court-martial that an adjournment is desirable for any reason, be adjourned for such period as the court-martial thinks fit, provided that, except with the consent of the accused and prosecution, the period for which the court-martial may be adjourned under this subsection shall not on any occasion exceed six days.

- (4) Subject to the provisions of this section, a court-martial shall, unless prevented by weather or other unavoidable cause, sit from day to day until the court-martial has arrived at a finding and, in the case of a conviction, until sentence is pronounced but the court shall not sit on a Sunday, or any day that is a public holiday unless, in the opinion of the court-martial or of the convening officer, exigencies of service make it necessary to do so.

136. (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interest of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

- (2) Without prejudice to the generality of subsection (1) of this section, if after the commencement of a trial by a court-martial, the membership of the court-martial is reduced, by reason of the death of one or more of the members or for any other reason, below the legal minimum, it shall be dissolved.
- (3) The proceedings of a court-martial shall be valid notwithstanding the absence of one or more of the members other than the President, provided that the number of members present throughout the proceedings is not reduced below the legal minimum, but a member of the court-martial who has been absent for any time during a sitting shall take no further part in the proceedings.
- (4) Where after the commencement of the trial, the President of the court-martial dies or is otherwise unable to attend and the court-martial is not reduced below the legal minimum, then—
- (a) if the senior member of the court-martial is of the rank of major or corresponding rank or is of higher rank and seniority than the accused, the convening officer may appoint him President and the trial shall proceed accordingly; and
- (b) if he is not, the court-martial shall be dissolved.
- (5) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial, it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable, having regard to all the circumstances, to continue the trial within a reasonable time, the convening officer may dissolve the court-martial.
- (6) Where a court-martial is dissolved under the provisions of this section, the accused may be tried by another court-martial.

Courts-Martial: Provisions relating to Trial

- 137.** (1) An accused about to be tried by a court-martial shall be entitled to object, on any reasonable grounds, to any member of the court-martial or the waiting member whether appointed originally or in lieu of another officer.

- (2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section, the names of the members of the court-martial and the waiting member shall be read over in the presence of the accused before they are sworn, and the accused shall be asked whether he objects to any of those officers.
 - (3) An objection made by an accused to an officer shall be considered by the other officers appointed members of the court-martial.
 - (4) If objection is made to the President of the court-martial and not less than one-third of the other members of the court-martial allow it, the court-martial shall adjourn and the convening officer shall appoint another President.
 - (5) If objection is made to a member of the court-martial, other than the President of the court-martial and not less than one half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if the number of members would be reduced below the legal minimum, shall, be filled in the prescribed manner by another suitable officer and in such a way always as to ensure that the membership is not reduced below the legal minimum.
- 138.** (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, waiting member, shorthand writers and interpreters.
- (2) Subject to subsections (3) and (6) of this section, a witness before a court-martial shall be examined on oath.
 - (3) Where a child of tender age called as a witness does not, in the opinion of the court-martial, understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court-martial he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.
 - (4) Where the evidence given by a child under subsection (3) of this section is given on behalf of the prosecution, the accused shall not

be liable to be convicted upon that evidence alone, unless it is corroborated by some other material evidence in support thereof implicating the accused.

- (5) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.
- (6) Where—
 - (a) a person, required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial, objects to being sworn and states, as the ground of his objection, either that he has no religious belief or that the taking of oath is contrary to his religious belief; or
 - (b) it is not reasonably practicable to administer an oath to the person as aforesaid in the manner appropriate to his religious belief,

he shall be required to make a solemn affirmation in the prescribed form instead of taking an oath.

139. (1) Subject to the provisions of subsections (2) and (3) of this section, a court-martial shall sit in open court and in the presence of the accused.

- (2) Nothing in subsection (1) of this section shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of defence and security to do so.
- (3) Without prejudice to the power under subsection (2) of this section, a court-martial may order that, subject to such exceptions as it may specify, the public shall be excluded from all or any part of the proceedings of the court-martial if it appears to the court-martial that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to any enemy or inimical to national or security interest.

(4) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(5) A court-martial may sit in closed court on any other deliberation amongst the members.

(6) Where a court-martial sits in closed court, no person shall be present except the members of the court-martial and such other person as may be prescribed.

(7) A judge advocate shall be present at all sittings of a court-martial, except during deliberation on finding and sentence.

140. (1) Subject to the other provisions of this section, every question to be determined by a court-martial shall be by a majority of the votes of the members of the court-martial.

(2) In the case of an equality of votes on the finding, the court-martial shall acquit the accused.

(3) A finding of guilty where the only punishment which the court-martial can award is death shall not have effect unless it is reached with the concurrence of all members of the court-martial and where in any other case there is no concurrence in the finding by a majority of members, the court-martial may award any less punishment provided by this Act.

(4) Where the accused is found guilty and the court-martial has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court-martial.

(5) In the case of equality of votes on the sentence or on any question arising after the commencement of a trial, other than the finding, the President of the court-martial shall have a second or casting vote.

141. (1) Without prejudice to the provisions of section 139 of this Act, the finding of a court-martial on each charge shall be announced in open

court and, if the finding is guilty, shall be, and be announced as being subject to confirmation.

(2) The sentence of a court-martial, together with any recommendation to mercy, shall be announced as being subject to confirmation.

142. (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a lesser degree of punishment.

(2) An accused charged before a court-martial with an offence may be found guilty of attempting to commit the offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

(4) Where an accused is charged before a court-martial under section 95 of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence under section 114 of this Act and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Nigeria, he might have been found guilty of another civil offence, then if the court-martial finds that he has committed that other civil offence he may be convicted of an offence against the said section in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the First Schedule to this Act may, be found guilty of an offence specified in relation thereto in the second column of that Schedule. [First Schedule.]

143. (1) Except as otherwise provided in this Act, the rules as to evidence to be observed in proceedings before a court-martial shall be the same as those observed in criminal courts in Nigeria and no person shall be required in a proceeding before a court-martial to answer a question or to produce a document which he could not be required to answer or produce in a similar proceeding before a civil court in Nigeria.

(2) Notwithstanding anything in subsection (1) of this section, a statutory declaration shall, in a trial by a court-martial, be admissible as evidence of the fact stated in the declaration in a case where, and to the extent which, oral evidence to the like effect would be admissible in that trial, but a statutory declaration shall not be admitted in evidence in the trial on behalf of either of the prosecution or of the defence—

(a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of trial, been served on the accused; or

(b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days or such less period as the convening officer may allow, before the commencement of the trial, been served on the convening officer by the accused; or

(c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused, serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration; or

(d) in any case, if the court-martial is of the opinion that it is desirable in the interest of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

- (3) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court-martial, and of all other matters of which judicial notice would be taken in a civil court in Nigeria.
- 144.** A witness before a court-martial or any other person whose duty it is to attend on or before the court-martial shall be entitled to the same immunities and privileges as a witness before a High Court.
- 145.** (1) A person, whether subject to this Act or not, who is required to give evidence before a court-martial may, be summoned by notice in writing given by order of the convening officer or the court.
- (2) A person not subject to this Act who attends a court-martial in pursuance of a notice under subsection (1) of this section shall be entitled to receive such expenses of his attendance as may be prescribed.
- 146.** (1) Where in Nigeria a person other than a person subject to service law under this Act—
- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or
 - (b) refuses to swear on oath when duly required by a court-martial to do so; or
 - (c) refuses to produce a document in his custody or under his control which a court-martial has lawfully required him to produce; or
 - (d) when a witness, refuses to answer a question which a court-martial has lawfully required him to answer; or
 - (e) wilfully insults a person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before a court-martial, while that person is acting as a member of the court-martial or is so attending, or wilfully insults that person while that person is going to or returning from the proceedings of a court-martial; or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court-martial; or

(g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the President of the court-martial may certify the offence of that person under his hand to the High Court having jurisdiction in that part of Nigeria a where the offence is alleged to have been committed or in the place where the offender is to be found.

(2) The High Court to which an offence is certified under subsection (1) of this section may inquire into the alleged offence and after hearing witnesses (if any) and taking any statement that may be offered in defence, punish or take any steps for the punishment of that person in like manner as if he had been guilty of contempt of that High Court.

(3) A person shall not be dealt with under this section in respect of failure to comply with a summons requiring him to attend as a witness before a court-martial unless any expenses in respect of his attendance have been paid or tendered.

(4) For the purposes of subsection (3) of this section—

(a) the tender of a warrant or voucher entitling a person to travel shall be deemed to constitute tender of his expenses in respect of the travelling authorised by the warrant or voucher; or

(b) the tender of a written undertaking on behalf of the convening officer to defray at the trial any other expenses to which the person may be entitled shall be deemed to constitute tender of those expenses.

(5) In this section, “court-martial” means a court-martial held under service law.

Post-Trial Procedure

Review of Summary Findings and Awards

- 147.** (1) Where a charge has been dealt with summarily and the charge is not dismissed, the authority specified in subsection (4) of this section may review the finding or award either upon a petition submitted under subsection (2) of this section or at any time if facts material to the case arise which were not available during the trial.
- (2) A person convicted and sentenced summarily may petition against the finding or award or both to the authority not later than one month after the finding or award was made.
- (3) Where on a review under this section, it appears to the authority—
- (a) expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which, in the opinion of the authority, involved substantial injustice to the accused, the authority may quash the finding, and if the finding is quashed, the authority shall also quash the award;
- (b) that a punishment awarded was invalid or too severe or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment which could have been included in the original award.
- (4) In this section, “the authority” means appropriate superior authority.

Confirmation, Revision and Review of Proceedings of Courts-Martial

- 148.** (1) Where a court-martial finds the accused guilty of a charge, the record of the proceedings of the court-martial shall be transmitted within

sixty days from the date of the finding to the confirming authority for confirmation of the finding and sentence of the court-martial on that charge.

(2) Where the record of proceedings of a court-martial, other than proceedings resulting in sentence of death or life imprisonment, are not transmitted within sixty days as aforesaid, and the accused remains in custody, he shall be released unconditionally pending such confirmation or review.

(3) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court-martial until it is confirmed:

Provided that

(a) this subsection shall not affect the keeping of the accused in military custody pending confirmation, where the sentence is a term of imprisonment or a higher sentence, or the operation of sections 149 and 150 of this Act, or the provisions of this Act as to confirmation or approval; and

(b) the power of detention under this section or the provisions of this Act shall not prejudice the right of an accused to an order of stay of execution of sentence pending appeal or review.

(4) Where an accused person has been refused an order of stay of execution of sentence pending appeal or confirmation of sentence and has been taken in custody, the sentence shall include the period of detention commencing with the date he was so admitted.

(5) In this section, “custody” means detention in an officers’ mess, official residence of the accused or a public guest house, in the case of officers, or in any separate premises designated by the President as a detention facility for persons serving sentence of imprisonment and it excludes civil prison.

149. (1) An accused may, within three months after being sentenced by a court-martial and before the sentence is confirmed, submit to the

confirming authority any written matter which may reasonably tend to affect the confirming authority's decision whether to disapprove a finding of guilty or to approve the sentence.

(2) The matters which may be submitted under this subsection (1) of this section include—

- (a) allegations of errors affecting the legality of the trial;
- (b) portions or summaries of the record or copies of documentary evidence offered or introduced at the trial; and
- (c) matters in mitigation which were not available for consideration at the trial.

(3) Before the confirming authority takes action under section 150 of this Act on a record of trial by a court-martial, the confirming authority shall obtain from the Directorate of Legal Services of the Armed Forces, a legal review of the case, so however that no person who has acted as a member, judge advocate, trial counsel, defence counsel or investigating officer in the case may later review the same case.

[1997 No. 15.]

150. (1) A confirming authority may direct that a court-martial shall revise its finding of guilty in any case where it appears to him that—

- (a) the finding was against the weight of evidence; or
- (b) some question of law determined at the trial and relevant to the finding was wrongly determined.

(2) A direction shall be accompanied by the necessary directions for the re-assembly of the court-martial, and shall contain a statement of the reasons for the direction.

(3) On the revision of a finding, the court-martial shall—

- (a) consider the finding and unless the court-martial adheres thereto, may substitute therefor either a finding of not guilty or

any other finding to which the court-martial could originally have reached at the trial in lieu of the finding under revision;

(b) not have power to receive further evidence.

(4) Where on a revision, the court either adheres to the original findings or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court-martial may substitute a different sentence for the original sentence.

(5) The court-martial shall not have power to substitute a sentence of a punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court-martial is more severe than the original sentence.

(6) The confirming authority shall not have power to direct the revision of a substituted finding reached by the court-martial on a previous direction of a confirming authority, or the revision of the original finding if adhered to by the court-martial on the previous direction.

(7) Except as provided in subsection (6) of this section, this Act shall apply to the proceedings of the court-martial on any such revision as it applies to its deliberation on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court-martial.

(8) The decision of a court-martial on a revision shall not be required to be announced in open court.

151. (1) Subject to the provisions of section 150 of this Act and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court-martial—

(a) by withholding confirmation, if of the opinion that the finding of the court-martial is unreasonable or cannot be supported, having regard to the evidence or to the fact that it involves a wrong decision on a question of law or that on any other grounds there was a miscarriage of justice; or

- (b) by confirming the finding or sentence; or
 - (c) by referring the finding or sentence or both for confirmation to a higher confirming authority.
- (2) Where a confirming authority is of opinion that the facts of the case as considered by the court-martial would have justified a finding of guilty by that court-martial on other grounds, the confirming authority may, instead of withholding confirmation of the finding, substitute a finding of guilty on those other grounds and direct whether the punishment should be remitted in whole or in part or be commuted under the provisions of subsection (4) of this section.
- (3) Where it appears to a confirming authority that a sentence of a court-martial is invalid, the confirming authority may, instead of withholding confirmation of the sentence, substitute therefor a proper sentence of any punishment which might have been awarded by the court, not exceeding or, in the opinion of the confirming authority, more severe than that awarded by the court-martial.
- (4) If the confirming authority confirms the sentence of a court-martial, the confirming authority may—
 - (a) remit in whole or in part a punishment awarded by the court-martial; or
 - (b) commute a punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act.
- (5) A finding or sentence substituted by the confirming authority or a sentence having effect after the confirming authority has remitted or commuted the punishment, shall be treated for all purposes as a finding or sentence of the court-martial duly confirmed.
- (6) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated, and in the event of a substitution, remission or commutation as

aforsaid, the finding or sentence shall be promulgated as if it has effect after the substitution, remission or commutation.

(7) Where the confirming authority withholds confirmation under this section, notice therefor shall be promulgated, and it shall have effect as from the date of the promulgation.

152. (1) Subject to the provisions of this section, the following persons shall have power to confirm the finding or sentence of a court-martial, that is—

(a) the Service Chief concerned where the accused person is a warrant officer, chief-petty officer, soldier, rating or airman;

(b) the appropriate Service Council or Board, as the case may be, where the accused person is a commissioned officer; or

(c) in the absence of any of the persons specified in paragraphs (a) and (b) of this subsection, an officer appointed by the appropriate superior to act as the confirming authority whether for the particular case or for a specified number of cases.

(2) The following shall not confirm the finding or sentence of a court-martial, that is—

(a) an officer who was a member of the court-martial; or

(b) a person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or

(c) a person who, as appropriate superior authority, investigated allegations against the accused.

153. A sentence of death passed by a court-martial shall not be carried into effect unless it is approved by the President.

154. (1) Notwithstanding the provisions of section 151 of this Act, an accused person may, after confirmation of a finding or sentence of a

general court-martial or of a special court-martial, submit a petition for review of the finding or sentence to a reviewing authority.

- (2) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under subsection (1) of this section against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.
- (3) The reviewing authorities for the purposes of this Act shall be the appropriate Service Council or Board or, (so far as the delegation extends), an officer to whom the powers of the relevant Service Council or Board as reviewing authority, or any of those powers, may be delegated.
- (4) On a review under this section, the reviewing authority may—
 - (a) in as far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, quash the sentence; or
 - (b) in any other case, exercise the powers of substituting a finding of valid for invalid sentence and of remitting or commuting punishment as are conferred on a confirming authority by subsections (2), (3) and (4) of section 151 of this Act.
- (5) A sentence of imprisonment passed by a court-martial and affirmed by a confirming authority may be reconsidered by the Armed Forces reviewing authority and if on a reconsideration it appears that the conduct of the offender or accused since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it may be so remitted.
- (6) If an appeal or application for leave to appeal is lodged with the Registrar of the Court of Appeal under the provisions of Part XVI of this Act so much of subsection (2) of this section as requires the review of a finding or sentence against which a petition has been

presented shall thereupon cease to apply to the finding to which the appeal or application for leave to appeal relates and to the sentence passed in consequence of that finding.

- (7) The determination of a reviewing authority under this section shall be promulgated and have effect from the date of promulgation.

155. (1) A sentence of imprisonment passed by a court-martial may be reconsidered by the appropriate superior authority or by such officers (not below the rank of colonel or corresponding rank) as may, from time to time, be appointed by the President.

- (2) If on a reconsideration, it appears that the conduct of the offender or accused since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it may be so remitted.

- (3) The power to reconsider a sentence may be exercised at any time after confirmation, and where, after review, a sentence remains effective, it shall be reconsidered at intervals of six months, provided that, delay in complying with this section shall not invalidate the sentence.

Finding of Insanity, etc.

156. (1) Where, on the trial of a person by a court-martial, it appears to the Court that the accused is by reason of insanity unfit to stand his trial, the Court shall so find, and if the finding is confirmed in accordance with the following provisions of this section, the accused shall be kept in custody in such manner as may be provided by or under rules made under this Part of this Act, until the pleasure of the President is known or until any earlier time at which the accused is fit to stand his trial.

- (2) Where, on the trial of a person by a court-martial, it appears to the Court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of an offence, but that at the time of the act or omission constituting that offence the accused was by reason of mental disease or natural mental infirmity not criminally responsible for the act or omission

alleged as constituting that offence, the court-martial shall find that the accused committed the act or omission but was insane at the said time.

- (3) On a finding under subsection (2) of this section—
 - (a) the accused shall be kept in custody in such manner as may be provided by or under rules made under this Part of this Act until the directions of the President are known;
 - (b) the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as he thinks fit.
- (4) A finding under subsection (1) of this section shall not have effect unless and until the finding has been confirmed by an authority who would have had power to confirm a finding of guilty by the court-martial in question and has been promulgated.
- (5) Where the court-martial or the confirming authority comes to or substitutes a finding under subsection (2) of this section, the confirming authority or, as the case may be, the reviewing authority shall not have power to substitute for that finding, a finding of guilty.
- (6) Except as provided in subsection (5) of this section, the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for a finding any other finding which could have been come to by the court-martial in question) shall apply in relation to a finding under subsection (2) of this section as those provisions apply in relation to a finding of guilty.
- (7) Except as otherwise provided in this Act or unless the context otherwise requires, a reference in this Act to a conviction or a finding of guilty in respect of an offence includes a reference to a finding under subsection (2) of this section in respect of the offence.
- (8) For the purposes of this section, “unfit to stand trial” means under any disability such as apart from the Criminal Procedure Law or the

Criminal Procedure Code, as the case may be, would constitute a bar to trial on indictment in Nigeria.

Commencement, Suspension and Duration of Sentence

157. Except as otherwise provided in this Act, a sentence of imprisonment or field punishment shall begin to run from the beginning of the day on which the sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

158. (1) Where a person serving a sentence of imprisonment becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into Army, Naval or Air Force custody or the custody of a civil authority or (not having been taken into custody) he returns to the place in which he was imprisoned before he became unlawfully at large.

(2) If a person to whom subsection (1) of this section refers, satisfies such authority as may be specified in that behalf by or under Imprisonment Rules that during the period beginning with the day on which he became at large and ending with the day he is taken into custody under that subsection, he was

(a) in the custody of a civil authority; or

(b) if and in so far as Imprisonment Rules so provide, in the custody of any Army, Naval or Air Force authority of any country or territory outside Nigeria as respects which arrangements have been made under section 166 of this Act,

otherwise than on account of an offence committed by him while unlawfully at large, that period shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence imposed under this Act.

(3) In subsections (1) and (2) of this section, “civil authority” means a civil authority (whether of the Federation or of any country or territory outside Nigeria) authorised by law to detain persons and includes a police officer.

(4) Without prejudice to the provisions of subsection (1) of this section, where a person serving a sentence of imprisonment has in accordance with Imprisonment Rules been temporarily released on compassionate grounds, then in calculating the period for which he is liable to be imprisoned in pursuance of the sentence, no account shall be taken of the time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(5) A person who for any period is released as mentioned in subsection (4) of this section or who is otherwise allowed, in pursuance of Imprisonment Rules, out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the conditions, be treated for the purposes of subsection (1) of this section as being unlawfully at large.

(6) A person serving a sentence of imprisonment in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of the sentence, shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7) A reference in subsection (6) of this section to release or recall under civil law is a reference to release or recall in pursuance of the law of the country or territory in which the person is serving his sentence.

159. (1) The following provisions of this section shall have effect with respect to the suspension of a sentence of imprisonment passed under or pursuant of this Act.

- (2) Without prejudice to subsection (5) of section 151 of this Act, a confirming authority may, in confirming a sentence, order that the sentence shall be suspended.
- (3) A sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.
- (4) The suspension of a sentence may (without prejudice to the sentence again being suspended) be determined on the review or reconsideration of the sentence by an order of the authority committing the person sentenced to imprisonment, as the case may be.
- (5) Where, while a sentence is suspended, the person sentenced is again sentenced by a court-martial to imprisonment for a fresh offence then
- (a) the court-martial may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment, as the case may be, and if so, the court-martial shall direct whether the two sentences are to run concurrently or consecutively;
 - (b) if the court does not exercise the power conferred by paragraph (a) of this subsection, the confirming authority may exercise the power on the confirmation of the latter sentence;
 - (c) if neither the court nor the confirming authority exercises that power, a reviewing authority may exercise the power on the review of the latter sentence;
 - (d) where the power is exercised (whether by the court, the confirming authority or a reviewing authority), a power of suspension or remission exercisable in relation to the latter sentence shall be exercisable also in relation to the earlier sentence.
- (6) Without prejudice to the further suspension of the earlier sentence, an order under subsection (5) of this section directing that the

suspension of that sentence shall be determined shall not be affected by the latter sentence not being confirmed by its being quashed.

- (7) Where the sentence of a person in custody is suspended, he shall be released and a sentence which has been suspended shall, unless the suspension has been sooner determined, be remitted by virtue of this subsection at the expiry of one year from the date on which the suspension took effect.

160. (1) Notwithstanding the provisions of section 159 of this Act, a person sentenced to a period of detention or imprisonment by a court-martial shall have, within thirty days after being sentenced, the right to apply to the confirming authority or appropriate superior authority for a direction that he be released from custody or imprisonment until the expiration of the period that may be prescribed for appeal under this Act or if there is an appeal, until the determination of the appeal.

- (2) On entertaining application for release from custody or imprisonment, the confirming authority or appropriate superior authority, as the case may be, may direct the release of the person so applying and suspension of the sentence if the person so applying establishes—

(a) that he intends to appeal;

(b) that the appeal is not frivolous but founded on sound arguable points of law;

(c) that it would cause unnecessary hardship if he were placed or retained in custody or imprisonment;

(d) that he shall surrender himself into custody when directed to do so; and

(e) that his detention under custody or imprisonment is not necessary in the interest of the public or the Armed Forces.

161. On the grant of an application for release under this Act, the authority for the release may be given on the undertaking by the accused to—

- (a) remain under military authority unless other grounds exist to the contrary;
- (b) surrender himself into custody when directed to do so; and
- (c) comply with such other reasonable conditions as are stipulated by the confirm-ing authority or appropriate superior authority.

162. (1) Where a person is directed to be released from custody or imprisonment pursuant to this Part of this Act, the person in whose custody he is shall forthwith without delay release him on his giving the undertaking referred to in section 161 of this Act.

(2) Notwithstanding the provisions of subsection (1) of this section, the conditions of the undertaking may, on application by the person who gave the undertaking or by counsel acting on behalf of the Chief of Defence Staff, be reviewed for the following purposes—

- (a) to confirm the conditions;
- (b) to vary the conditions; or
- (c) to substitute such other conditions as it sees fit.

(3) Where the conditions of an undertaking are varied or substituted pursuant to the provisions of subsection (2) of this section, the accused shall forthwith without further delay be placed in custody unless he gives an undertaking to comply with the varied or substituted conditions.

(4) A person subject to service law under this Act who is released from custody or imprisonment pursuant to this Part of this Act shall be returned to duty unless the Service Chief concerned or an officer designated by him otherwise so directs.

163 In a case where, without reasonable cause, an undertaking is or is likely to be breached, the release may be cancelled, reviewed or a new undertaking given in accordance with this Part of this Act.

- 164.** A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of rules made under this Part of this Act or is otherwise confined shall be dealt with in the same manner as a person confined therein under a like sentence of a civil court.
- 165.** The President may, from time to time, make arrangements with the authorities of any country or territory outside Nigeria whereby sentence of death passed by a court-martial may, in accordance with rules made under this Part of this Act, be carried out in establishments under the control of those authorities, and sentences of imprisonment may in accordance with imprisonment rules be served wholly or partly in those establishments.
- 166.** (1) A person who is serving a sentence of imprisonment in Nigeria may, in accordance with imprisonment rules, be removed out of Nigeria to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve but not to any other place.
- (2) Subject to the following provisions of this section, a person sentenced under this Act by a court-martial held outside Nigeria to imprisonment for more than twelve months shall as soon as is practicable after the confirmation of the sentence is completed be removed to Nigeria.
- (3) Where a person has been sentenced under this Act by a court-martial held outside Nigeria, to imprisonment for more than twelve months, the confirming or reviewing authority may, notwithstanding anything in subsection (2) of this section, direct that he shall not be required to be removed to Nigeria until he has served such part of his sentence, not exceeding two years, as may be specified in the direction.
- (4) In determining whether or not to exercise the power conferred by subsection (3) of this section, a confirming or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.
- (5) A direction of a confirming authority under this section may at any time be revoked by the confirming or reviewing authority, or

may be superseded by a direction of the confirming or reviewing authority which the authority could have given under subsection (3) of this section and a direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.

(6) A direction given under this section and a revocation of the direction, shall be promulgated.

(7) In ascertaining at any time for the purposes of this section the nature or length of a sentence, regard shall be had to any commutation or remission of the sentence previously directed.

167. (1) It shall be the duty, in so far as rules made under this Part of this Act or imprisonment rules so provide, of the Superintendent or other person in charge of a prison (not being a military prison) to receive a person duly sent to that prison in pursuance of those rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in military custody in pursuance of a sentence of imprisonment, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of the Superintendent or other person in charge of a prison or the police officer in charge of a police station or of a person in charge of any other place in which prisoners may lawfully be confined to keep that person in custody for a period not exceeding seven days unless the person is earlier discharged or delivered over in due course of law.

(3) The powers conferred on the commanding officer under this section shall only be exercisable where no military detention facility exists.

Trial of Persons ceasing to be subject to service law and time limited for Trials

168. (1) Subject to the provisions of section 169 of this Act, where an offence under this Act triable by a court-martial has been committed, or

is reasonably suspected of having been committed, by a person while subject to service law under this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charge, trial and punishment by a court-martial (including confirmation, review and reconsideration) and execution of sentences, as continuing to be subject to service law under this Act notwithstanding his ceasing at any time to be so subject.

(2) Where, while a person is in service custody by virtue of this section, whether before, during or after trial, and he commits or is reasonably suspected of having committed, an offence which if he were subject to service law under this Act would be an offence under this Act triable by a court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in subsection (1) of this section and the provisions of this Act relating to the summary dealing with charges, as having been subject to this Act when the offence was committed or is suspected of having been committed and as continuing to be so subject thereafter.

(3) Where by virtue of either subsection (1) or (2) of this section a person is treated as being at any time subject to service law under this Act for the purpose of any provision of this Act, that provision shall apply to him—

(a) if he holds any rank, as to a person having that rank;

(b) otherwise as to a person having the rank which he had when he was last actually subject to service law under this Act,

but as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed, that provision shall apply to him (in any case) as to a soldier, rating or an aircraftman.

(4) Where, apart from this section, a provision of this Act would under subsection (3) of this section apply to a person in relation to different offences, as to a person having two or more different ranks in the Armed Forces, it shall apply to him as to a person having the lower or lowest of those ranks, as the case may be.

- 169. (1)** No person shall be tried by a court-martial for an offence (other than mutiny, failure to suppress mutiny or desertion) unless the trial is begun within three years after the commission of the offence, regard not being had to any period of time during which that person was a prisoner of war or was illegally absent, so however that—
- (a) in the case of an offence under section 114 of this Act where proceedings for the corresponding civil offences are, by virtue of any written law, to be brought within a limited time, that limit of time shall apply to the trial of the offence under that section in substitution for the foregoing provisions of this subsection;
 - (b) a person may, subject to a time limit prescribed by any written law mentioned in paragraph (a) of this subsection and to the consent of the Attorney-General of the Federation, be tried by a court-martial for a civil offence committed outside Nigeria notwithstanding that it was committed more than three years before the beginning of the trial.
- (2) A person shall not be triable by virtue of subsection (1) of section 168 of this Act unless his trial is begun within three months after he ceases to be subject to service law under this Act or the trial is for a civil offence committed outside Nigeria and the Attorney-General of the Federation consents to the trial, but this subsection shall not apply to the offences of mutiny, failure to suppress mutiny and desertion under this Act.
- (3) A person shall not be arrested or kept in custody by virtue of subsection (1) of section 168 of this Act for an offence at any time after he has ceased to be triable for the offence.

Relations between Armed Forces and Civil Courts and finality of Trials

- 170. (1)** Subject to the provisions of this Act prohibiting retrial where conviction is quashed, nothing in this Act shall restrict the offences for which a person may be tried by a civil court, or the jurisdiction of a civil court to try a person subject to service law under this Act for an offence.

- (2) Where a person is tried by a civil court for an offence and he has in pursuance of this Act been punished for an act or omission constituting (whether wholly or in part) that offence by his commanding officer or appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

171. (1) Where a person subject to service law under this Act—

- (a) has been tried for an offence by a competent civil court or a court-martial under service law; or
- (b) has been charged with an offence under service law and has had the charge dismissed, or has been found guilty on the charge on summary trial under this Act; or
- (c) has had an offence condoned by his commanding officer,

he shall not be liable in respect of that offence to be tried by a court-martial or to have the case dealt with summarily under this Act.

(2) For the purposes of this section—

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence or of a finding by a court-martial that he is not guilty of the offence by reason of insanity;
- (b) a case shall be deemed to have been dealt with summarily notwithstanding that the finding of the officer who summarily tried the charge has been quashed or varied on review thereof;
- (c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has, with knowledge of all circumstances, informed him that he will not be charged with the offence;

- (d) a person ordered under section 100 of this Act to be imprisoned for an offence under that section shall be deemed to have been tried by a court-martial for the offence.
- (3) Where confirmation of a finding of guilty of an offence is withheld, the accused shall not be tried again by a court-martial for that offence unless the order convening the latter court-martial is issued not later than 28 days after the promulgation of the decision to withhold confirmation.
- (4) Except as provided in the foregoing provisions of this section, proceedings for an offence under this Act (whether summarily or before a court-martial) shall not be barred on the grounds of condonation if the condonation is done in excess of jurisdiction.

Inquiries and Related Subjects TM

- 172.** (1) Subject to and in accordance with the provisions of rules made under this Part of this Act (in this Act referred to as “Board of Inquiry Rules”), the Forces Council or an officer of a service of the Armed Forces commanding a body of service personnel may convene a board of inquiry of the Forces Council or of that officer.
- (2) A board of inquiry shall, if directed so to do, express its opinion on any question arising from any matter referred to it.
- (3) A board of inquiry shall consist of a president and such number of other persons as may be provided for by the Board of Inquiry Rules, who shall be persons subject to service law under this Act, and the President of the board of inquiry shall be an officer not below the rank of lieutenant or corresponding rank.
- (4) Evidence given before a board of inquiry shall not be admissible against a person in a proceeding before a court-martial or at a summary trial by the commanding officer or appropriate superior authority other than a proceeding for an offence under section 101 of this Act or for an offence under section 114 of this Act when the corresponding offence is perjury.

- 173.** (1) Where a board of inquiry, inquiring into the absence of a person subject to service law under this Act, reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one clear days, a record of the report shall, in accordance with the Board of Inquiry Rules, be entered in the service books.
- (2) A record entered in pursuance of subsection (1) of this section shall, unless the person subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the appropriate service Council or Board or a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

Miscellaneous Provisions

- 174.** (1) The following provisions of this section shall have effect where a person has been convicted by a court-martial of unlawfully obtaining a property, whether by stealing, receiving or retaining it knowing or having reason to believe it to have been stolen, fraudulently misapplied or otherwise.
- (2) If a property unlawfully obtained is found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner of the property.
- (3) If a property (other than money) is found in the possession of the offender which appears to have been obtained by him by the conversion or by exchange of a property unlawfully obtained, the property may be ordered to be delivered to the person who appears to be the owner of the property unlawfully obtained.
- (4) Where money is found in the possession of the offender, then whether or not it appears to have been unlawfully obtained, an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the person by the offender, in so far as not otherwise made good under this Act or by recovery of the property unlawfully obtained.

- (5) Where a property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner of the property sold or given in pawn, there shall be paid to that other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.
- (6) Where a property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner of the property given in exchange, there shall be restored to that person the property taken in exchange for the property unlawfully obtained.
- (7) An order under this section may be made by the court-martial by which the offender is convicted or by the confirming authority or any reviewing authority, but an order under this section made by a court-martial shall not have effect until it is confirmed by the confirming authority and the provisions of this Part of this Act as to the confirmation and review of the proceedings of a court-martial shall apply to an order under this section as they apply to a sentence.
- (8) The operation of an order under this section shall be suspended
- (a) on any case, until the expiration of the period prescribed under Part XVI of this Act as the period within which an application for leave to appeal to the Court of Appeal against the conviction must be lodged; and
 - (b) if an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned.
- (9) Where the operation of an order is suspended under this section
- (a) it shall not take effect if the conviction is quashed on appeal;

(b) the Court of Appeal may by order annul or vary the order although the conviction is not quashed;

(c) such steps shall be taken for the safe custody, during the period in which operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of the Court of Appeal made under Part XVI of this Act.

(10) Notwithstanding the provisions of subsection (9) of this section, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner of the property, be suspended if the court or authority making the order directs to the contrary in any case in which, in the opinion of the court-martial or confirming authority, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of a person, other than the offender or a person claiming through him, to recover a property delivered or paid in pursuance of the order from the person to whom it is delivered or paid.

(12) In this section, “appearing” in relation to an order, means appearing to the court-martial, or reasonably believing to appear to the court-martial or to the confirming authority, or to the reviewing authority making the order, as the case may require.

175. A finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such manner as the confirming or reviewing authority, as the case may be, may direct.

176. (1) The record of the proceedings of a court-martial shall be kept in the custody of the convening officer for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) of this section shall be capable of being exercised.

(2) Subject to the provisions of this section, a person tried by a court-martial shall be entitled to obtain from the convening officer on

demand at any time within the relevant period and on payment therefor, at such rate as may be prescribed, a copy of the record of the proceedings of the court-martial.

- (3) Where a person tried by a court-martial dies within the relevant period, his personal representative or a person who, in the opinion of the convening officer ought to be treated for the purposes of this subsection as his personal representative, shall, subject to the provisions of this section, be entitled to obtain from the convening officer on demand at any time within the period of twelve months from the death and payment therefor at the prescribed rate, a copy of the record of the proceedings of the court-martial.
- (4) If, on an application in pursuance of either subsection (2) or (3) of this section for a copy of the record of proceedings, the Minister certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or the part to which the certification relates.
- (5) In this section, “the relevant period” in relation to a person tried by a court-martial, means the period of five years beginning with the date
 - (a) of his acquittal; or
 - (b) where he was convicted, of the promulgation of the finding and sentence; or
 - (c) where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation; or
 - (d) where the proceedings relate to two or more charges and the person tried was acquitted on one or more of those charges, of the promulgation of the findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.
- (6) A reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings

with respect to the confirmation or revision of the finding and sentence of the court-martial.

- 177.** No action shall lie in respect of a thing done by a person in pursuance of a sentence of imprisonment under this Act if the doing of that thing would have been lawful but for a defect in a warrant or other instrument made for the purposes of that sentence.

Redress of Complaints

- 178.** (1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Forces Council.
- (2) On receiving a complaint under subsection (1) of this section, the Forces Council shall investigate the matter and grant any redress which appears to the Forces Council to be necessary or if the complainant so requires, the Forces Council shall make its report on the complaint in order to seek the directions of the President on the matter.
- (3) Subject to subsection (1) of this section, an officer who feels he has been wronged in any matter shall first exhaust the administrative remedies available to him under this section of this Act before embarking on any other action.
- (4) An initial complaint by an officer to his commanding officer under subsection (1) of this section, shall be made not later than three months of the wrong in respect of which it is brought, and where the officer has not obtained the redress to which he thinks himself entitled, he may make a further complaint in the prescribed manner to the authority prescribed under subsection (1) of this section not later than three months of the complaint or of receiving the unfavourable redress, as the case may be.
- (5) No officer shall be penalised for having made a complaint in accordance with this section if the complaint does not contravene a provision of this Act.

- 179.** (1) If a soldier, rating or aircraftman thinks himself wronged in any matter by an officer or by a soldier, rating or an aircraftman, he may make a complaint with respect to that matter to his commanding officer.
- (2) If a soldier, rating or an aircraftman thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or of any other reason, he may make a complaint with respect thereto to any Army, Naval or Air Force officer under whom the complainant is for the time being serving, being an officer not below the rank of brigadier or corresponding rank.
- (3) On receiving a complaint under this section, a commanding officer shall investigate the matter and grant any redress which appears to him to be necessary.
- (4) Subject to subsection (1) of this section, a soldier, rating or an aircraftman who feels he has been wronged in any matter shall first exhaust the administrative remedies available to him under this section before embarking on any other action.
- (5) An initial complaint by a soldier, rating or an aircraftman to his commanding officer under subsection (1) of this section shall be made not later than three months of the wrong in respect of which it is brought, and where the soldier, rating or aircraftman has not obtained the redress to which he thinks himself entitled he may make a further complaint in the prescribed manner to the authority prescribed under subsection (2) of this section not later than three months of the complaint or of receiving the unfavourable redress, as the case may be.
- (6) No soldier, rating or aircraftman shall be penalised for having made a complaint in accordance with this section so far as the complaint does not contravene any provisions of this Act.

Rules of Procedure, etc.

180. The President may make rules of procedure generally for the purposes of this Act and without prejudice to the generality of the foregoing, rules may be made

- (a) for the convening, constitution and conduct of courts-martial;
- (b) with respect to the execution of sentences of death under this Act, including the manner and place where the executions are to be carried out and the custody, treatment and removal of persons under sentences of death;
- (c) for the execution of sentences of imprisonment, including—
 - (i) the prisons, civil or otherwise, in which those sentences are to be served;
 - (ii) the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving those sentences; and
 - (iii) the appointment, powers and duties of inspectors, visitors, governors and other members of the staff and officers in charge of persons serving those sentences;
- (d) for the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by those boards, including the administration of oaths and affirmations to witnesses and the making of reports by the boards;
- (e) with respect to field punishment;
- (f) in respect of matters for which rules may be made under the foregoing provisions of this Part of this Act;
- (g) for such incidental and supplementary matters as appear requisite for the purposes of the foregoing provisions of this subsection.

181. (1) Subject to the provisions of section 182 of this Act, the rules of procedure relating to trial by courts-martial and summary proceedings for the time being in force in the various services of the Armed Forces,

that is, the Rules of Procedure (Army) 1972, the Court-martial Procedure for Royal Navy BR 11 and the Rules of Procedure (Air Force) 1972, shall apply mutatis mutandis unless otherwise provided.

(2) Notwithstanding the provisions of subsection (1) of this section, the Rules of Procedure referred to in that subsection shall cease to apply when the President makes the rules of procedure and other rules as provided under section 180 of this Act.

182. (1) Reference in this Part of this Act to a sentence of imprisonment is a reference to a sentence of imprisonment passed by a court-martial or awarded summarily under section 115 or 116 of this Act.

(2) Reference in this Part of this Act to detention or to sentence of detention includes reference to detention ordered by a court-martial or to a sentence passed by the commanding officer of the offender or accused.

(3) Where a person subject to service law under this Act is appointed or drafted to a service unit, ship or establishment for duty, that person shall be treated for the purposes of this Act as belonging to that unit, ship or establishment to which he is appointed or drafted.

(4) Reference in this Part of this Act to warrant or chief petty officer does not include reference to acting warrant or chief petty officers.

(5) Reference in this Part of this Act to non-commissioned or petty officer includes reference to acting warrant or petty officer and to acting chief petty officer.

Part XVI

Appeals from Courts-Martial

183. Subject to the following provisions of this Part, an appeal shall lie from decisions of a court-martial to the Court of Appeal with the leave of the Court of Appeal:

Provided that, an appeal as aforesaid shall lie as of right without the leave of the Court of Appeal from any decision of a court-martial involving a sentence of death.

- 184.** (1) Leave to appeal to the Court of Appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant and lodged, subject to subsection (2) of this section, within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought with the Registrar of the Court of Appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.
- (2) An appeal against a decision involving a sentence of death shall not be entertained by the Court of Appeal unless the appeal is lodged by or on behalf of the appellant, within ten days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought with the Registrar of the Court of Appeal in the prescribed manner.
- (3) Rules of court may provide that, in such circumstances as may be specified in the said rules, any such application or appeal which is lodged with such person (other than the Registrar) as is specified in the said rules shall be treated, for the purpose of subsection (1) of this section, as having been lodged with the Registrar.
- (4) The Court of Appeal may extend the period within which an application for leave to appeal is required by subsection (1) of this section to be lodged, whether that period has expired or not.
- (5) In considering whether or not to give leave to appeal, the Court of Appeal shall have regard to any expression of opinion made by a judge advocate, if any, who acted at the court-martial that the case is a fit one for appeal, and, if any such expression is made, may give leave to appeal.
- (6) Where the Court of Appeal dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in

the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismisses the application.

- 185.** (1) Subject to the provisions of section 186 of this Act, on an appeal under this Part against a conviction, the Court of Appeal shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that, the Court of Appeal may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

- (2) If the Court of Appeal allows an appeal against a conviction under this Part, it shall quash the conviction.
- (3) On an appeal under this Part against a sentence the Court of Appeal shall, if it is of opinion that a different sentence should have been passed, quash the sentence passed by the court-martial and pass such other sentence (whether more or less severe) in substitution thereof as it thinks ought to have been passed, being a sentence which, under section 118 or 119 of this Act, could lawfully have been passed for the offence of which the appellant was convicted, or, if it is not of that opinion, dismiss the appeal.
- (4) The term of any sentence passed by the Court of Appeal under subsection (3) of this section, shall, unless the Court of Appeal otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought and any such sentence shall be deemed for the purposes of this Act to be a sentence passed by the court-martial being a sentence that has been confirmed.

- 186.** (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him before the

court-martial by which he was tried, was properly convicted on some other charge so preferred,

then, if the sentence passed by the court-martial on the appellant was not one which could lawfully be passed by the court-martial for the offence of which he was convicted on the other charge, the Court of Appeal shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 118 or 119 of this Act might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court of Appeal that the court-martial shall have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the Appeal, substituting for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 118 or 119 of this Act, could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

(a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court of Appeal that the court-martial by which he was tried ought to have found him guilty of the offences as being committed under circumstances involving the lower degree of punishment; or

(b) an appellant has been convicted of an offence and it appears to the Court of Appeal that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations,

the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, is guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 118 or 119 of this Act, could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court of Appeal that, although the appellant committed the act or omission charged against him, he was insane at the time the act was done, or the omission made, so as not to be responsible according to law for his actions, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section 156 of this Act, in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

(5) The term of any sentence passed by the Court of Appeal under any of the foregoing provisions of this section shall, unless the Court of Appeal otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought and such sentence shall be deemed for the purposes of this Act to be a sentence passed by the court-martial being a sentence that has been confirmed.

187. The determination by the Court of Appeal of any appeal or other matter which it has power to determine under the provisions of this Part of this Act shall not be final.

188. For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interest of justice, appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court of Appeal that such special knowledge is required for the proper determination of the case.

189. An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal under this Part or at any proceeding

preliminary or incidental to such an appeal, except where rules of court provide that he shall have the right to be present or the Court of Appeal gives him leave to be present, and accordingly any power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

- 190.** It shall be the duty of the Attorney-General of the Federation on an appeal against a decision of a court-martial to undertake the defence of the appeal.
- 191.** An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.
- 192.** Where a conviction by court-martial involves sentence of death—
 - (a)** the sentence shall not in any case be executed until the expiration of the period within which an appeal to the Court of Appeal against the conviction shall be lodged;
 - (b)** if such an appeal is duly lodged, the sentence shall not be executed until the appeal is determined or abandoned.
- 193.** Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried for that offence by a court-martial or by any other court.
- 194.** Imprisonment rules may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of this Part or any place to which the Court of Appeal or a judge thereof may order him to be taken for the purpose of any proceedings of the Court of Appeal.
- 195.** In the case of every appeal or application for leave to appeal, under this Part to the Court of Appeal against a decision of a court-martial, it shall be the duty of the Commander to furnish to the Registrar of the Court of Appeal, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial), in pursuance of

subsection (1) of section 150 of this Act with respect to the confirmation of the finding and sentence of the court-martial.

196. (1) The Registrar of the Court of Appeal shall take all necessary steps for obtaining the determination of an appeal or application under this Part and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceeding in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) The Registrar of the Court of Appeal shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal under this Part.

197. (1) The President of the Court of Appeal may make rules of court for regulating the procedure and practice to be followed in the Court of Appeal for the purposes of this Part.

(2) Rules of court made for the purposes of any provision of this Part may make different provisions in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to the Court of Appeal to be necessary or expedient for the purposes of that provision to provide.

(3) Reference in this Part to “prescribed” means prescribed by such rules of court.

198. Nothing in this Part shall affect the exercise by reviewing authorities of the powers conferred by section 149 of this Act in respect of a decision of a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the Court of Appeal of an appeal or an application for leave to appeal to the Court of Appeal against the decision

and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

199. Upon the hearing of any appeal from a court-martial, the Court of Appeal shall consist of at least three Justices.

200. Notwithstanding the provisions of section 199 of this Act, any Justice of the Court of Appeal may—

- (a) give leave to appeal; or
- (b) extend the period within which an application for leave to appeal is required by subsection (1) of section 184 of this Act to be lodged; or
- (c) allow an appellant to be present at any proceedings under this Part,

but if the Justice of the Court of Appeal refuses an application on the part of an appellant to exercise in his favour any of the powers hereinbefore mentioned, the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined in accordance with the provisions of section 198 of this Act.

201. Subject to the provisions of this Part and to any rules of court, the provisions of the Court of Appeal Act relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of an appeal under this Part.

202. Subject to the provisions of this Act, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court of Nigeria.

Part XVII

Forfeitures and Deductions

203. The President shall make regulations governing the pay, allowances and other emoluments of the officers, soldiers, ratings and aircraftmen of the Armed Forces (in this Act referred to as “Pay Regulations”) and other

matters pertaining thereto and in particular governing the provisions of this Part of this Act.

- 204.** (1) No forfeiture of the pay of a person subject to service law under this Act shall be imposed unless authorised by this Act or any other written law and no deduction from that pay shall be made unless so authorised or authorised by Pay Regulations, so however, that the President may authorise deductions from pay to form a welfare scheme for service personnel.
- (2) Pay Regulations shall not authorise the making of a penal deduction, that is, a deduction to be made by reason of the commission of an offence or other wrongful act or in consequence of an offence or in consequence of any negligence.
- (3) Nothing in subsection (1) or (2) of this section shall prevent the making of Pay Regulations providing for—
- (a) the imposition of a forfeiture authorised by this Act or the making of a deduction so authorised, or for the time at which and the manner in which the amounts may be deducted from pay to give effect to the authorised deduction or the manner in which amounts may be so deducted in order to recover a fine imposed in pursuance of this Act, or as to the appropriation of the sum or amount when deducted; or
 - (b) the determination of questions relating to forfeitures or deductions.
- (4) Notwithstanding a deduction from the pay of a person subject to service law under this Act, he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed in Pay Regulations.
- (5) Notwithstanding that forfeiture of pay of a person subject to service law under this Act for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such a minimum rate as may be prescribed in Pay Regulations, but the amount received for that period may be recovered from him by deduction from pay.

- (6) An amount authorised to be deducted from the pay of a person subject to service law under this Act may be deducted from any balance (whether or not representing pay) which may be due to him as an officer, soldier, rating or aircraftman and reference in this Act to the making of deductions from pay shall be construed accordingly, and the whole or any part of a sum forfeited from the pay of an offender may be recovered by deduction from that balance.

205. (1) The pay of a person subject to service law under this Act may be forfeited—

- (a) for a period of absence in such circumstances as to constitute an offence under section 59 or 60 of this Act if the commander so directs, or of any other absence without leave; or
- (b) for a period of imprisonment or field punishment awarded under service law by a court-martial or commanding officer or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court; or
- (c) if he is found guilty (whether by a court-martial, an appropriate superior authority or his commanding officer) of an offence under service law, for any period (whether before or after he is found guilty) in which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of a person subject to service law under this Act may be forfeited for any day of absence by reason of his having been made a prisoner of war if the commanding officer is satisfied that—

- (a) he was made a prisoner of war through disobedience of orders or wilful neglect of his duty; or
- (b) having been made a prisoner of war—

- (i) he failed to take any reasonable steps available to him to rejoin the service of the Armed Forces; and
 - (ii) served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usages.
 - (3) Except as provided in subsection (2) of this section, nothing in paragraph (a) of subsection (1) of this section shall apply to absence by reason of having been made a prisoner of war.
 - (4) Pay Regulations may make provisions as to the computation of time for the purpose of this section and in particular as to the counting or disregarding of part of a day.
- 206.** Where a person subject to service law under this Act charged with an offence before a civil court (whether within or outside Nigeria) is sentenced or ordered by the Court to pay any fine, penalty, damages, compensation or costs and the whole or part thereof is met by a payment made by or on behalf of a service authority, the amount of the payment may be deducted from his pay.
- 207.** (1) Without prejudice to the provisions of this Act as to the imposition of stoppage as a punishment, the provisions of subsections (2) and (3) of this section shall have effect where, after such investigation as may be prescribed by Pay Regulations, it appears to the Forces Council, the commander or an officer authorised in Pay Regulations that any loss of or damage to public or service property has been occasioned by a wrongful act or negligence of a person subject to service law under this Act.
- (2) The Forces Council, the commander or an authorised officer, as the case may be, may order the person responsible for the wrongful act or negligence to pay as or towards compensation for the loss or damage, such sum as may be specified in the order, and that sum, in so far as it is not otherwise paid by that person, may be deducted from his pay.
 - (3) No order shall be made under the provisions of subsection (2) of this section if in proceedings before a court-martial or on a summary

trial by an appropriate superior authority or a commanding officer, the person responsible for the wrongful act or negligence—

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

but except as aforesaid, the fact that those proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2) of this section.

208. (1) When—

- (a) damage occurs to any premises in which one or more units or part of a unit are quartered or billeted, or any fixture, furniture or effect in or belonging to the premises are damaged or lost; and
- (b) it appears, on investigation in accordance with the provisions of Pay Regulations, that the damage or loss was occasioned by the wrongful act or negligence of a person belonging to any of the units or parts of units in occupation thereof, but that the person cannot be identified,

a person belonging to any of those units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may, in accordance with Pay Regulations, be determined to be just and the amount may be deducted from his pay.

- (2) The provisions of subsection (1) of this section shall extend to ships, trains, motor vehicles and aircraft in which units or parts of units are being transported and references to premises, quartering and occupation shall be construed accordingly.

209. A forfeiture or deduction imposed under the provisions of section 205, 206, 207 or 208 of this Act or under Pay Regulations may be remitted by

the Forces Council in such a manner and by such authority as may be provided by those Regulations.

Part XVIII

Enforcement of Maintenance and Affiliation Orders by Deduction from Pay

210. (1) Where a court in Nigeria has made an order against a person subject to service law under this Act (in this section referred to as “the defendant”) for the payment for any period or of any other sum specified in the order for or in respect of—

- (a) the maintenance of his wife or child; or
- (b) any cost incurred in obtaining the order; or
- (c) any cost incurred in proceedings on appeal against, or for the variation, revocation or revival of the order,

then (whether or not he was a member of the Armed Forces when the order was made) the Forces Council or Service Chief may order the sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court.

(2) Where to the knowledge of the Court making an order under subsection (1) of this section, the defendant is a person subject to service law under this Act, the Court shall send a copy of the order to the Forces Council or to an officer authorised by it.

(3) Where an order under subsection (1) of this section has been made by a court in Nigeria and the Forces Council or an officer authorised by it is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the Court by which the order was made, the Forces Council or officer shall have the like power under subsection (1) of this section as if the order has been made by a court as is mentioned in that subsection.

(4) The Forces Council or an officer authorised by it may by order vary or revoke an order previously made under this section, and may

treat an order under this section as being suspended at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section 205 of this Act.

- (5) In this section, reference to a wife or child includes, in relation to an order made in a proceeding in connection with the dissolution or annulment of a marriage, is a reference to a person who would have been the wife or child of the defendant if the marriage had subsisted, and reference to a child of a person includes reference to a child of his wife and to a child born out of wedlock or an adopted child of that person or of his wife.

211. (1) Where the Forces Council or an officer authorised by it is satisfied that a person subject to service law under this Act is neglecting, without reasonable cause, to maintain his wife or his child under the age of eighteen years, the Forces Council or officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Forces Council or officer thinks fit

- (2) On an application made to the Forces Council or an officer authorised by it, the Forces Council or officer may, if satisfied that a prima facie case has been made out for the making of an order under subsection (1) of this section, make an interim order for the deduction and appropriation as is mentioned in that subsection pending the further examination of the case.

- (3) Where an order is in force under subsection (1) or (3) of section 210 of this Act for the making of deductions in favour of a person from the pay of a person subject to service law, no deductions from his pay in favour of the same person shall be ordered under subsection (1) or (2) of this section unless the person subject to service law is in the place where the variation of the order of the Court in consequence of which the order under section 210 was made.

- (4) The Forces Council or an officer authorised by it may by order vary or revoke any order previously made under this section, and may treat an order made under this section as being suspended at any time while the person against whom the order was made is

absent as mentioned in paragraph (a) of subsection (1) of section 205 of this Act.

(5) The power to make an order under this section for the deduction of any sum and its appropriation towards the maintenance of a child shall include power—

(a) subject to the provisions of subsection (3) of this section, to make an order after the child has attained the age of eighteen years, if an order in favour of the child is in force under subsection (1) or (3) of section 210 of this Act; or

(b) to make an order after the child has attained the age of eighteen years if—

(i) an order of the Court as is mentioned in subsection (1) of section 210 was in force in favour of the child at the time when the child attained that age;

(ii) the person from whose pay the deductions are ordered is in the place mentioned in subsection (3) of this section; and

(iii) the child is for the time being engaged in a course of education or training; or

(c) to continue an order, from time to time, after the child has attained the age of eighteen years, if the child is for the time being engaged in a course of education or training,

but no order so made or continued shall remain in force after the child attains the age of twenty-one years or shall, unless continued under paragraph (c) of this subsection, remain in force for more than two years.

212. (1) Where by a judgment or an order enforceable by a court in Nigeria, a sum is required to be paid by a person subject to service law under this Act, the Forces Council or an officer authorised by it may, whether or not that person was a member of the Armed Forces at the time when the judgment or order was given or made, order such amount as

the Forces Council or officer thinks fit to be deducted from the pay of that person, and appropriated in or towards satisfaction of the sum.

(2) The provisions of subsection (1) of this section shall not apply to a sum as is mentioned in section 210 of this Act, or to a sum in respect of which deduction may be ordered under that section.

213. The sum deducted under sections 210, 211 and 212 of this Act from a person's pay and whether before or after the deductions have been ordered, he incurs a forfeiture of pay in consequence of the finding or award of the appropriate superior authority or his commanding officer, shall apply only to so much of his pay as remains after the deductions have been made.

214. (1) A process to be served on a person subject to service law under this Act, (in this section referred to as "the defendant") in connection with proceedings for an order of a court in Nigeria as is mentioned in subsection (1) of section 210 of this Act, or for the variation, revocation or revival of that order, shall be deemed to be duly served on him if served either on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) Where a process as is mentioned in subsection (1) of this section is served in Nigeria and the defendant is required to appear in person at the hearing, then, if his commanding officer certifies to the court by which the process was issued that the defendant is under orders for active service out of Nigeria and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

(3) Nothing in this section shall be construed as enabling process to be served in connection with proceedings in a court of law unless the defendant is within Nigeria and, in the opinion of the commanding officer, he will be available for the hearing.

Part XIX

Billeting and Requisitioning of Vehicles

Billeting

215. At any time when this section is in operation, a general or field officer commanding an arm or part of the Armed Forces may issue a billeting requisition requiring the police officer in charge of an area in Nigeria specified in the requisition to provide—

(a) billets at such places in that area, for such members of the Armed Forces; and

(b) if the requisition so provides, for such number of vehicles in use for the purpose of the Armed Forces, being vehicles of any class specified in the requisition,

as may be so specified.

216. (1) Billets, other than for vehicles, may be provided in pursuance of a billeting requisition—

(a) in any inn, hotel or dwelling whether licensed or not, or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;

(b) in any building not falling within paragraph (a) of this subsection, being a building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates;

(c) in any dwelling, authorised warehouse, barn or stable, but not in any other premises.

(2) Billets for vehicles may be provided in any building or on any land.

217. (1) Where a billeting requisition has been produced to the police officer in charge of the area specified in the requisition, he shall, on the demand of the officer commanding any arm or part of the Armed Forces,

or on the demand of an officer, authorise billet on the occupiers of premises falling within section 216 of this Act being premises in such place in that area as may be specified by the person by whom the demand is made, for such number of persons or vehicles as may be required but not exceeding the number specified in the requisition.

(2) Without prejudice to the provisions of subsection (3) of this section, a police officer in charge of the area specified in the billeting requisition shall exercise his functions under this section in such manner as in his opinion will cause least hardship to a person on whom billeting is authorised.

(3) A police officer in charge of the area specified in the billeting requisition may, to such extent and subject to such restriction as he thinks proper, authorise a constable or constables of any class, to exercise his functions on his behalf, and the foregoing provisions of this section shall apply accordingly.

218. (1) A local government may make a scheme for the provision of billets in its area in pursuance of a billeting requisition, and where such a scheme is in force the police officer in charge of the area shall, so far as the scheme extends, exercise his functions under this section in accordance with the scheme.

(2) A scheme under this section may be revoked by the local government by which it was made, or may be varied by that local government by a subsequent scheme made under this section.

(3) Where a local government makes a scheme under this section, it shall furnish the police officer in charge of the area to which the scheme relates with a copy of the scheme.

219. (1) Where a person is billeted in pursuance of a billeting requisition, the occupier of the premises on which he is billeted shall provide such accommodation as the officer demanding the billet may require, not exceeding such accommodation as may be prescribed by regulations of the Forces Council made with the consent of the President.

- (2) Where a vehicle is billeted in pursuance of a billeting requisition, the occupier of the premises shall furnish standing room for the vehicle.
- (3) Where a person or vehicle has been billeted in pursuance of a billeting requisition, that person or vehicle may continue to be billeted, for such period as may be required, provided that section 216 of this Act continues in operation and the allotment of billets among the persons or vehicles billeted may be varied from time to time.
- (4) The occupier on whose premises a person or vehicle is billeted in pursuance of a billeting requisition shall be entitled to receive for the billeting, such payment as may be prescribed by regulations of the Forces Council made with the consent of the President and no payment shall be required in respect of a vehicle billeted otherwise than in a building, unless the land on which it is billeted—
- (a) has its surface made up for the passage or parking of vehicles; and
 - (b) is not land where vehicles are normally to stand free of charge irrespective of the person by whom they are owned or driven.
- (5) Subject to the provisions of subsection (6) of this section, payment for billeting shall be made—
- (a) before the persons billeting finally leave, or the vehicles are finally removed from the premises where they are billeted; and
 - (b) where the billeting continues for more than seven days, at least once in every seven days.
- (6) If for any reason payment for billeting cannot be made, or fully made, as required by paragraph (a) of subsection (5) of this section, there shall be made up, with the occupier, an account, in such form as may be prescribed by the Forces Council, of the amount due to him.

(7) On presentation of the account under subsection (6) of this section, the local government for the area in which the premises are situated shall—

(a) pay to the occupier the amount stated in the account to be due; and

(b) be entitled to recover any sum paid under paragraph (a) of this section from the Forces Council.

(8) In relation to premises of which there is no occupier, the foregoing provisions of this section shall apply as if the person entitled to possession were the occupier of the premises.

220. (1) A person who—

(a) is aggrieved by having an undue number of persons billeted on him in pursuance of a billeting requisition; or

(b) claims that by reason of special circumstances he should be exempted from having persons billeted on him, either generally or on a particular occasion,

may apply to a person or persons appointed for that purpose by the local government.

(2) On an application on the grounds mentioned in paragraph (a) of subsection (1) of this section, the person to whom the application is made may direct the billeting to another place of such number of the persons billeted as may seem just or may dismiss the application.

(3) On an application on the grounds mentioned in paragraph (b) of subsection (1) of this section, the person to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect a billeting pending the determination of the application.

221. (1) Where a damage is caused to any premises by a person or vehicle billeted in pursuance of a billeting requisition, the occupier of the premises or, if there is no occupier, the person entitled to possession of the premises, may recover from the Forces Council compensation of an amount equal to the depreciation caused by the damage in the value of the premises.

(2) Where a person, other than the recipient of compensation under subsection (1) of this section has interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be appropriate.

(3) A magistrate court shall have jurisdiction to deal with a claim arising under subsection (1) or (2) of this section irrespective of the amount of the claim.

222. A person who—

(a) refuses to receive a person billeted on him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with accommodation properly required for him; or

(b) gives or agrees to give to any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicles or of furnishing accommodation properly required for him; or

(c) obstructs the billeting in his building or on his land of any vehicles,

is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

223. In relation to persons employed in any arm or service of the Armed Forces and not entitled under the foregoing provisions of this Part of this Act to be billeted, being persons of such description as may be prescribed by regulations of the Forces Council, those provisions shall apply as they apply in relation to members of the Armed Forces.

224. While section 215 of this Act is in operation, the provisions of any law that prohibits, restricts or regulates quartering or billeting on a person in Nigeria shall not apply to a billeting ordered in pursuance of a billeting requisition.

Requisitioning of Vehicles

225. (1) A general or field officer commanding an arm or a part of the Armed Forces may, for the purposes specified in subsection (2) of this section, issue a requisitioning order authorising the requisitioning, from among vehicles in any area of Nigeria specified in the order, of such vehicles or such number of vehicles of such description, as may be specified in the order.

(2) The purposes for which an order under subsection (1) of this section may authorise vehicles to be requisitioned shall be such purposes for meeting the needs of any of the services of the Armed Forces specified in the order.

226. (1) A requisitioning order may be issued to the officer commanding an arm or a part of the Armed Forces, and that officer or an officer authorised by him in writing may give directions for the provision—

(a) in so far as the requisitioning order authorises the requisitioning of particular vehicles, of any or all of those vehicles;

(b) in so far as the order authorises the requisitioning of vehicles of a specified description, of the number or any lesser number of those vehicles.

(2) A direction under subsection (1) of this section given as respects a vehicle shall be either—

(a) a direction given to the person having possession of the vehicle to furnish it immediately at the place where it is; or

(b) a direction given to that person to furnish it at such place within 150 kilometres from the premises of that person and at

such time as may be specified by the officer by whom the direction is given,

but no direction shall be given under paragraph (b) of this subsection as respects a vehicle which is neither mechanically propelled or a trailer normally drawn by a mechanically propelled vehicle.

(3) If the officer to whom the requisitioning order was issued or any officer authorised by him in writing—

- (a) is satisfied that the officer to whom the requisition order was issued has refused or neglected to furnish a vehicle in accordance with a direction under any of the provisions of subsection (2) of this section; or
- (b) has reasonable grounds for believing that it is not practicable without undue delay to give a direction to a person under subsection (2) of this section,

he may take, or authorise an officer to take, possession of the vehicle.

(4) Where possession is taken of a vehicle in pursuance of subsection (3) of this section, this Part of this Act shall, with the necessary modifications, apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with the direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it has been so furnished.

(5) The police officer in charge of an area specified in a requisitioning order shall, on a request to that effect being made by or on behalf of the officer to whom the order is issued, give instructions for securing the vehicle so far as practicable, police constables being available, if required, for accompanying officers requisitioning the vehicles in pursuance of the order.

227. (1) Subject to the provisions of subsection (2) of this section, where a vehicle has been furnished in pursuance of a requisitioning order it may be retained, for any period for which it is required for the purpose specified in the order or for any other purpose connected with the needs of an arm or a part of the Armed Forces, provided that, section 225 of this Act remains in operation.

(2) While members of the Reserve are called out on permanent service, then in so far as a requisitioning order so provides, the person by whom a vehicle is to be furnished may be required to furnish it for the purpose of its being purchased on behalf of the Federal Government.

228. (1) The person who furnishes a vehicle in pursuance of a requisitioning order otherwise than for the purpose of its being purchased, shall be entitled to be paid—

(a) a sum for the use of the vehicle calculated by reference to the period for which possession of the vehicle is retained at the rate of payment commonly recognised or generally prevailing in the district at the time at which the vehicle is furnished, or, in default of that rate, at such rate as may be appropriate;

(b) a sum equal to the cost of making good any damages to the vehicle, not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by a person acting on behalf of the Federal Government; and

(c) if, during that period, a total loss of the vehicle occurs, a sum amounting to the value of the vehicle immediately before the occurrence of the damage which caused the loss,

but in paragraph (b) of this subsection and in the Second Schedule to this Act, reference to fair wear and tear shall be construed as reference to such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

- (2) A person who furnishes a vehicle in pursuance of a requisitioning order for the purpose of its being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.
- (3) Where a vehicle is furnished in pursuance of a direction under paragraph (b) of subsection (2) of section 226 of this Act then—
- (a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if those paragraphs apply), the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (2) of this section (if that subsection applies), the vehicle shall be deemed to have been furnished at that time;
 - (b) in addition to the payments provided for by subsection (1) or (2) of this section, the person who furnishes the vehicle shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.
- (4) Where a direction to furnish a vehicle is given under paragraph (b) of subsection (2) of section 226 of this Act, and after the giving of the direction a damage occurs to the vehicle (whether or not resulting in a total loss of the vehicle), then if the damage prevents the furnishing of the vehicle in pursuance of the requisitioning order, the provisions of this section shall apply as if the vehicle had been furnished notwithstanding that it may have been required to be furnished for the purpose of being purchased, subject however to the following modifications, that is—
- (a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage;
 - (b) paragraph (b) of subsection (3) of this section shall have effect as if for the words “in complying with” there were substituted the words “by reason of anything done for the purpose of complying with”.

- (5) Where a person (in this section referred to as “a person interested”) other than the person who is required to furnish a vehicle has an interest in the vehicle—
- (a) the person who is required to furnish the vehicle shall notify the person known to him to be a person interested that the vehicle has been requisitioned;
 - (b) a person interested shall be entitled to recover from the person who is required to furnish a vehicle such part (if any) of the payment received by him for the vehicle as may be appropriate.
- (6) The Second Schedule to this Act shall have effect as to the time for the making of payments and as to the determination of disputes under this section.
- (7) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—
- (a) for the purpose of paragraphs (a) and (b) of subsection (1) of this section and of the Second Schedule to this Act, the period shall be deemed to have come to an end immediately after the occurrence of the loss; and
 - (b) no claim shall be made for the return of the vehicle (if it still exists) or for payment in respect thereof other than such claim as is provided for by subsection (1) of this section.

229. In deciding which of the alternative vehicles is to be specified in an order under section 226 of this Act, or is to be the subject of a direction under paragraph (b) of subsection (1) of that section, the officer who issues the order or direction shall act in such manner as in his opinion shall cause least hardship.

230. The President may by regulations require a person having in his possession in Nigeria a mechanically propelled vehicle or trailer normally drawn by a mechanically propelled vehicle, if required so to do by such authority or person as may be specified in the regulations to—

- (a) furnish to such authority or person, as may be so specified, a return containing such particulars as to the vehicle or the trailer as may be required by or under the regulations; and
- (b) afford all reasonable facilities for enabling the vehicle or trailer in his possession to be inspected and examined, at such times as may be specified by or under the regulations, by such authority or person as may be so specified.

231. (1) If a person—

- (a) fails to furnish a vehicle which he is directed to furnish in pursuance of a requisitioning order, at the time and place at which he is directed to furnish the vehicle; or
- (b) fails to comply with any regulations made by the President under section 230 of this Act; or
- (c) obstructs an officer or other person in the exercise of his functions under this Part of this Act in relation to the inspection of requisitioning vehicles,

he is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

- (2) Without prejudice to a penalty imposed under subsection (1) of this section, if a person is obstructed in the exercise of powers of inspection conferred on him by regulations made under section 230 of this Act, a justice of the peace may, if satisfied by information on oath that the person has been so obstructed, accompanied by the person, enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening and inspect any vehicle which may be found in the premises.

232. (1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act and the provisions of the Second Schedule to this Act, shall apply to ships, aircraft and aircraft materials as they apply to vehicles except such of those provisions as relate only to mechanically

propelled vehicles and trailers normally drawn by mechanically propelled vehicles and shall also apply to horses and mules, food, forage and stores as they apply to vehicles, ships, aircraft and aircraft materials.

- (2) Where stores or aircraft materials are required for and can be conveyed with a vehicle, ship or aircraft with respect to which a direction is given under paragraph (b) of subsection (2) of section 226 of this Act, the direction may be given also in relation to the vehicle, ship or aircraft and the foregoing provisions of this Part of this Act (except subsection (2) of section 228) and the Second Schedule to this Act shall apply accordingly.
- (3) If after the giving of the direction, the furnishing of the stores or aircraft materials is prevented by damage to them or to the vehicle, ship or aircraft, such payment (if any) shall be made in respect of the stores or aircraft materials as may be appropriate in all the circumstances.
- (4) Notwithstanding the provisions of section 227 of this Act, food, forage, stores or aircraft materials to be furnished in pursuance of a requisitioning order or at any time, may be required to be furnished for purchase on behalf of the Federal Government.
- (5) The provisions of section 230 of this Act shall apply in relation to the horses, mules, ships and aircraft as they apply in relation to mechanically propelled vehicles.
- (6) In this section, “stores” means a chattel, other than a horse or mule, a vehicle, ship or an aircraft, food or forage, being a chattel required for, or for use in connection with—
 - (a) persons, vehicles, ships or aircraft billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated; or
 - (b) vehicles, ships, aircrafts, horses or mules furnished or to be furnished in pursuance of a requisitioning order.

233. A person using a vehicle for the purpose of its being furnished in pursuance of a direction under paragraph (b) of subsection (2) of section

226 of this Act shall be deemed, as respects a claim in respect of injury or damage to any other person or property, to be so using the vehicle as a servant of the Federal Government.

General

234. (1) Whenever it appears to the Minister of Defence that the public interest so requires, he may by order direct that section 215 or 225 of this Act or both those sections shall come into operation either generally or as respects such area of Nigeria as may be specified in the order, and that section or those sections, as case may be, shall thereupon come into operation and remain in operation during the validity of the order.

(2) As soon as may be after either section 215 or 225 or both those sections of this Act has or have been brought into operation on any occasion, the Minister of Defence shall report that fact to the National Assembly and if before the expiration of the period for which the order has effect (whether by virtue of the foregoing provisions of this subsection), it is resolved by the National Assembly that the public interest requires that the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

Part XX

LAWYARD®

General Provisions

Privileges and Exemptions for Members of the Forces

235. (1) Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place in Nigeria, or for passing over any road, ferry or bridge in Nigeria, shall not be payable in respect of—

- (a) members of the Armed Forces on duty; or
- (b) vehicles in the service of the Armed Forces, being vehicles belonging to the Federal Government or other vehicles driven by persons (whether a member of the Forces or not) in the public service of the Federation; or

(c) goods carried in those vehicles or in aircraft belonging to the Federal Government; or

(d) horses or other animals in the service of Armed Forces.

(2) Harbour dues or other charges for entering, leaving and anchoring, or mooring in a harbour or port in Nigeria, shall not be payable in respect of an aircraft, a naval ship or vessel belonging to the Federal Government.

236. No judgment, decree or order given or made against a member of the Forces by a court in Nigeria shall be enforced by the levying of execution on the property of the person against whom it is given or made, being public property, used by him for service purposes.

237. A member of the Armed Forces shall for the purposes of the Armed Forces be exempt from a provision of any enactment relating to the storage, possession or transmission of firearms, explosives, gun-powder or ammunition of war.

238. No order or judgment given or made against a member of the Armed Forces by a court in Nigeria shall be enforced while the member is not represented at the proceedings either by reason of active service or official absence, and for the purpose of this section it shall be sufficient evidence of lawful absence from proceedings where a member of the Armed Forces presents before the court a certificate of absence duly executed by his commanding officer or appropriate superior authority.

239. No action, prosecution or other proceeding shall lie against a person subject to service law under this Act for an act done in pursuance or execution or intended execution of this Act or any regulation, service duty or authority or in respect of an alleged neglect or default in the execution of this Act, regulation, duty or authority, if it is done in aid to civil authority or in execution of military rules.

240. A person belonging to the Reserve shall, when called out for or engaged in or returning from training or service, be entitled to all the privileges accorded by this Part of this Act to a person subject to service law under this Act.

Provisions relating to Deserters and Absentees without Leave

- 241.** (1) A police officer or, where a police officer is not available, any other person, may arrest without warrant a person whom he has reasonable cause to suspect of being a person subject to service law under this Act who has deserted or is absent without leave.
- (2) A person who has authority to issue a warrant for the arrest of a person charged with a crime, if satisfied by evidence on oath that there is or is reasonably suspected of being within his jurisdiction a person subject to service law under this Act who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.
- (3) A person in custody in pursuance of this section shall as soon as practicable be brought before a magistrate's court.
- (4) Notwithstanding the provisions of any other law to the contrary, a person arrested and brought before a magistrate's court under the provisions of this section or of section 246 or 247 of this Act, shall not be admitted to bail.
- 242.** (1) Where a person who is brought before a magistrate's court is alleged to be a person subject to service law under this Act who has deserted or is absent without leave, the following provisions of this section shall have effect.
- (2) If the person admits that he is illegally absent from the Armed Forces and the court is satisfied of the truth of the admission, then—
- (a) unless he is in custody for some other cause, the Court shall; and
- (b) notwithstanding that he is in custody for some other cause, the Court may,
- forthwith either cause him to be delivered into service custody in such manner as the Court may think fit or commit him to a prison, police station or any other place provided for the confinement of

persons in custody, to be kept there for such reasonable time as the Court may specify (not exceeding such time as appears to the Court reasonably necessary for the purpose of enabling him to be delivered into service custody) or until sooner delivered into such custody.

(3) The Court may, from time to time, extend any time specified by it under subsection (2) of this section, if it appears to the Court reasonably necessary so to do for the purpose specified in that subsection.

(4) If the accused does not admit that he is illegally absent or the Court is not satisfied of the truth of the admission, the Court shall consider the evidence and any statement of the accused and if—

(a) satisfied that he is subject to service law under this Act; and

(b) of the opinion that his being so tried for an offence of desertion or absence without leave is justified by the evidence which is available,

the Court shall, unless he is in custody for some other cause, cause him to be delivered into service custody or commit him as specified in subsection (2) of this section, but otherwise shall discharge him, provided that if he is in custody for some other cause the Court shall have power, but shall not be required to act, in accordance with this subsection.

(5) When proceedings are taken in a magistrate's court under this section, the law applicable in that Court—

(a) in relation to the constitution and procedure of magistrates' courts holding preliminary inquiries and conferring powers of adjournment and remand on the Courts so acting; and

(b) as to evidence and issue and enforcement of summonses or warrants to secure the attendance of witnesses,

shall apply to those proceedings.

243. (1) Where a person surrenders himself to a police officer as being illegally absent from the Armed Forces, the police officer shall, unless he surrenders himself at a police station, bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the person is illegally absent from the Armed Forces he may cause him to be delivered into service custody without bringing him before a magistrate's court, or may bring him before such court.

(3) Notwithstanding the provisions of any other enactment or rule of law, the person appearing before a magistrate's court under this section shall not be admitted to bail.

244. (1) Where a magistrate's court in pursuance of section 243 of this Act deals with a person as illegally absent,

then when that person is delivered into service custody, there shall be handed over a certificate in the prescribed form signed by a magistrate, containing the Prescribed particulars relating to his arrest or surrender and the proceedings before the court.

(2) Where a person is delivered into service custody without being brought before a court, whether under the provisions of section 243 of this Act or under any other lawful power, there shall be handed over a certificate in the prescribed form signed by the police officer who causes him to be delivered into service custody, containing the prescribed particulars relating to his surrender.

(3) In a proceeding for an offence under section 59 or 60 of this Act—

(a) a document purporting to be a certificate handed over under subsection (1) or (2) of this section and to be signed as thereby required, shall be evidence of the matters stated in the certificate;

- (b) where the proceeding is against a person who has been taken into service custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of any other country or by any other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender, shall be evidence of the matters stated in the certificate.

245. (1) It shall be the duty of the Superintendent or other person in charge of a civil prison to receive a person duly committed to that prison by a magistrate's court as illegally absent from the Armed Forces and to detain him until in accordance with the directions of the court he is delivered into service custody.

- (2) The provisions of subsection (1) of this section shall apply to the person who has charge of a police station or other place (not being a prison provided for the confinement of persons in custody) as it applies to the Superintendent of a prison.

Offences relating to Service Matters punishable by Civil Courts

246. A person who falsely represents himself to a service of the Armed Forces or a civil authority to be a deserter from the Armed Forces is guilty of an offence and liable on conviction to a fine not exceeding two hundred naira or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

247. A person who—

- (a) procures or persuades an officer, a soldier, rating or an aircraftman of the Armed Forces to desert or to absent himself without leave; or
- (b) knowing that an officer, a soldier, rating or an aircraftman is about to desert or absent himself without leave, assists him in so doing; or
- (c) knowing a person to be a deserter or an absentee without leave from the Armed Forces, conceals him or assists in his rescue from custody,

is guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding one year or to both such fine and imprisonment.

248. A person who wilfully obstructs or otherwise interferes with a member of whatever rank of the Armed Forces, acting in the execution of his duty, is guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

249. A person who—

(a) produces in a member of the Armed Forces a sickness or disability; or

(b) supplies to or for him a drug or preparation calculated or likely to render him, or lead to the belief that he is permanently or temporarily unfit for service, with a view to enabling him to avoid service in the Armed Forces permanently or temporarily,

is guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding one year or to both such fine and imprisonment.

250. (1) A person who acquires any service stores or solicits or procures a person to dispose of any service stores, or acts for a person in the disposing of any service stores is guilty of an offence and liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless he proves that—

(a) he did not know, and could not reasonably be expected to know, that the chattel in question was service stores; or

(b) the chattel (whether the subject of the transaction with which he is charged or some other earlier transaction) had been disposed of by order or with the consent of the Forces Council or of a person or an authority who had, or whom he had

reasonable cause to believe to have, power to give the order or consent; or

(c) the chattel had become the property of an officer who had retired or ceased to be an officer or of an Armed Forces personnel who had been discharged, or of the personal representative of a person who had died.

(2) A police officer may arrest without warrant a person whom he has reasonable grounds for suspecting of having committed an offence under this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) A person who has authority to issue a warrant for the arrest of a person charged with a crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence under this section, grant a warrant to search for the property as in the case of stolen goods.

(4) Any property suspected of having been the subject of an offence which is found on a search under subsection (3) of this section shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(5) For the purposes of this section—

(a) property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of any other person or not;

(b) “acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the handing over is lawful or not);

- (c) “dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);
- (d) “service stores” means chattels of any description belonging to the Federal Government, which has been issued for the use or for the purposes of a service of the Armed Forces or is held in store for the purpose of being issued when required, and includes a chattel which had previously so belonged and had been so issued or held.

251. (1) A person who—

- (a) as a pledge or a security for a debt; or
- (b) with a view to obtaining payment from the person entitled therein of a debt due either to himself or to any other person,

receives, detains or has in his possession, an official document issued in connection with the payment to a person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person’s military service, is guilty of an offence under this section.

(2) A person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any payment specified in subsection (1) of this section, or an official document issued in connection with the mobilisation or demobilisation of a service of the Armed Forces or of a member thereof, is guilty of an offence under this section.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(4) For the purposes of this section, a document shall be deemed to be in the possession of a person if he has it under his control and whether or not he has it for his own use or benefit or for the use or benefit of another.

252. (1) A person who—

- (a) without authority, uses or wears a service decoration, badge, wound stripe or an emblem supplied or authorised by the President or the Forces Council; or
- (b) uses or wears a decoration, badge, wound stripe or an emblem so nearly resembling a service decoration, badge, stripe or emblem as is specified in paragraph (a) of this subsection, as to be calculated to deceive; or
- (c) falsely represents himself to be a person who is or has been entitled to use or wear a decoration, badge, stripe or an emblem as is specified in paragraph (a) of this subsection,

is guilty of an offence under this section, but nothing in this subsection shall prohibit the use or wearing of ordinary regimental badges, emblems, brooches or ornaments representing them.

(2) A person who purchases or takes in pawn a service decoration awarded to a member of the Armed Forces or solicits or procures a person to sell or pledge the decoration, or acts for any other person in the sale or pledging of the decoration, is guilty of an offence under this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of the Armed Forces.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

253. (1) A person who, without the previous consent of the commanding officer—

- (a) brings on board or conveys in, a service vehicle, naval ship, an aircraft or a thing any spirituous or fermented liquor of any description; or

- (b) approaches or hovers about a service vehicle, naval ship, an aircraft or a thing, for the purpose of bringing on board, giving or selling any spirituous or fermented liquor,

is guilty of an offence under this section and liable on conviction to a fine not exceeding five hundred naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

- (2) A member of the Armed Forces may, with or without soldiers, ratings, aircraftmen or other persons under his command, search any service vehicle, naval ship, aircraft or thing in circumstances giving rise to a reasonable suspicion that an offence under subsection (1) of this section is intended.
- (3) If on the search under subsection (2) of this section any spirituous or fermented liquor is found in or upon the service vehicle, naval ship, vessel, aircraft or thing, the member of the Armed Forces may seize it and the spirituous or fermented liquor shall be forfeited.
- (4) For the avoidance of doubt, “thing” has the meaning assigned to it under subsection (3) of section 45 of this Act.

Provisions as to Evidence

254. (1) The following provisions of this section shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

- (2) A document purporting to be a copy of the attestation paper signed by a person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.
- (3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.
- (4) A letter, return or other document stating that a person—

- (a) was or was not serving at a specified period in a service of the Armed Forces or was discharged from a part of the service at or before a specified time; or
- (b) held or did not hold at a specified time a specified rank or appointment in a service of the Armed Forces, or had at or before any specified time been attached, posted or transferred to a part of the service, or at a specified period was or was not serving or held or did not hold a rank or an appointment in a particular country or place; or
- (c) was or was not at a specified time authorised to use or wear a decoration, badge, wound stripe or emblem,

shall, if purported to be issued by or on behalf of the President, be evidence of the matters stated in the letter, return or document.

- (5) A record made in a service book or other document prescribed by regulations of the President for the purposes of this subsection being a record made in pursuance of this Act or regulations made under this Act, or otherwise in pursuance of service duty and purporting to be signed by the commanding officer or by a person whose duty it was to make the record, shall be evidence of the facts stated therein.
- (6) A copy of a record (including the signature thereto) in a service book and a copy of the document, purporting to be certified to be a true copy by a person stated in the certificate to have custody of the book or original document, as the case may be, shall be evidence of the record.
- (7) A document purporting to be issued by order of the Forces Council or the appropriate Service Chief and to contain instructions, regulations or orders given or made by the Forces Council or the competent Service Chief shall be evidence of the giving of the instructions or making of the regulations or orders and of their contents.
- (8) A certificate purporting to be issued by or on behalf of the Forces Council or a Service Chief and stating that—

- (a) a decoration of a description specified in or annexed to the certificate is a military, naval or aircraft decoration; or
- (b) a badge, wound stripe or an emblem of any description specified in or annexed to the certificate of the Forces Council,

shall be evidence of the matters stated in the certificate.

(9) A certificate purporting to be signed by a person's commanding officer or an officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for—

- (a) a formation, unit or body of troops; or
- (b) a command area, garrison or place; or
- (c) a ship, train or an aircraft,

shall, in proceedings against that person, be evidence of the matters stated in the certificate.

255. (1) Where a person subject to service law under this Act has been tried before a civil court (whether at the time of the trial he was so subject or not), a certificate signed by a judge, Registrar of court or magistrate and stating all or any of the following matters, that is—

- (a) that the person has been tried before the Court for an offence specified in the certificate; or
- (b) the result of the trial; or
- (c) what judgment or order was given or made by the Court; or
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall, for the purposes of this Act, be evidence of the matters stated in the certificate.

(2) The judge, Registrar of Court or Magistrate shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this section and shall be paid such fee as may be prescribed by regulations made by the Court.

(3) A document purporting to be a certificate under this section and to be signed by a judge, Registrar of court or magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

256. (1) The original proceedings of a court-martial purporting to be signed by the President of the court-martial and being in the custody of the convening officer or of a person having the lawful custody thereof, shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original proceedings of a court-martial or any part thereof and to be certified by the convening officer or a person authorised by him, or by any other person having lawful custody of the proceedings, to be a true copy, shall be evidence of the contents of the proceedings or the part to which it relates, as the case may be.

(3) This section applies to evidence given in a court, whether civil or criminal.

Reduction in Rank

257. (1) A warrant or petty officer shall not be reduced in rank or disrated except by a sentence of a court-martial or by the order of the appropriate superior authority in accordance with the rules and practices of the respective services as provided for under this Act.

(2) A non-commissioned officer shall not be reduced in rank or disrated except—

(a) by sentence of a court-martial; or

(b) in the case of a petty or non-commissioned officer, other than a lance-corporal or able rate, by an award or order of the commanding officer or of an officer by whom the commanding

officer's powers of reduction or disrating are exercisable by virtue of this Act; or

(c) in the case of a lance-corporal or able rate by an award or order of his commanding officer.

(3) Where it appears to the commanding officer that a warrant or petty officer or a non-commissioned officer or leading rating is unable to perform satisfactorily the functions of his rank, the commanding officer shall take steps through trial procedures in accordance with the provisions of this Act to reduce or disrate the warrant or petty officer or the non-commissioned officer to such rank as may be specified by the outcome of the trial or to ranks or ordinary rating.

(4) Where it appears to a commanding officer that a non-commissioned officer or leading rating being below the rank of warrant or petty officer serving under his command is unable to perform satisfactorily the functions of his rank, the commanding officer may take appropriate steps to refer him to the appropriate superior authority if he is of the opinion that the non-commissioned officer or rating should be reduced to ranks or ordinary rating.

258. (1) Notwithstanding anything to the contrary in this Act, a Service Chief may by order direct that, during a period of emergency, the powers conferred on him by this Act to reduce or disrate a warrant or petty officer, a non-commissioned officer or leading rating, may be exercised by any person who otherwise is not entitled to exercise those powers under whose command the warrant or petty officer, non-commissioned officer or leading rating is serving, and reference in this subsection to the Service Chief shall be construed accordingly.

(2) For the purpose of subsection (1) of this section and the foregoing sections, reduction in rank and disrating does not include reversion from acting rank or rate.

Miscellaneous Provisions

259. (1) Where a person is in service custody when charged with or with a view of his being charged with an offence under Part XII of this

Act, it shall be the duty of the Superintendent or other person in charge of a civil prison, or of the person having charge of a police station or other place in which prisoners may be lawfully detained, on delivery to him of a written order purporting to be signed by the commanding officer of the person charged, to receive him into his custody for a period not exceeding seven days.

(2) In this section, “civil prison” has the meaning assigned to it in section 291 of this Act.

260. Avoidance of assignment of, or charge on service pay, pension, etc.

(1) An assignment of or charge on, and every agreement to assign or charge any pay, service award, grant, pension or allowance payable to a person in respect of his or any other person’s service in the Armed Forces, shall be void.

(2) Except as expressly provided by this Act, no order shall be made by a court the effect of which would be to restrain a person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice an enactment providing for the payment of any sum to a bankrupt’s trustee in bankruptcy for distribution among creditors.

261. (1) An officer of a rank not below that of major or corresponding rank (in this section referred to as an “authorised officer”) may, outside Nigeria, take statutory declarations from persons subject to service law under this Act.

(2) A document purporting to have subscribed to it the signature of an authorised officer in testimony of a statutory declaration, being taken before him in pursuance of subsection (1) of this section and containing in the jurat or attestation a statement of the date on which the declaration was taken and of the full name and rank of the authorised officer, shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

Part XXI
Reservists and Pensioners

262. Notwithstanding the provisions of section 270 of this Act, this Part of this Act shall apply—

- (a) to every officer, soldier, rating or aircraftman who, by virtue of this Act, is a member of the Reserve (in this Act referred to as “a reservist”); and
- (b) to every person who having served as an officer, soldier, rating or aircraftman in the Armed Forces (in this Act referred to as “a pensioner”) is in receipt of a pension or an annual allowance in respect of the service.

263. (1) A reservist or pensioner shall be liable to be called out for training at such a place and for such periods not exceeding 28 days in any one year as may be specified in regulations made under this Part of this Act.

- (2) A reservist or pensioner called out for service under this section shall not be liable to serve at any one time for a period exceeding 28 days.

264. (1) The President may, at any time when occasion appears to require it, call out reservists and pensioners or as many of them as he thinks necessary, to aid the civil power in the preservation of the public peace.

- (2) Reservists and pensioners called out for service under subsection (1) of this section shall not be liable to serve at any one time for a period exceeding 28 days.

265. (1) Where a state of war is declared or there is insurrection, hostility or public emergency, the President may, by proclamation, call out reservists and pensioners on permanent service, and in the proclamation, give or authorise the Minister of Defence to give such directions as may seem necessary or proper for calling out the reservists and pensioners.

(2) A proclamation under subsection (1) of this section and directions given in pursuance of the proclamation shall be obeyed and every reservist and pensioner called out by the directions shall attend at the place and time fixed by those directions, and at and after that time the reservists or pensioners shall be deemed to be called out on permanent service.

(3) A reservist or pensioner called out on permanent service shall serve as an officer, soldier, rating or aircraftman of the service, as the case may be, until he is released or discharged, but he shall not be required to serve for a period exceeding in the whole the remaining period of the term of service in the Reserve and any further period not exceeding twelve months as an officer, soldier, rating or aircraftman, as the case may be, under prescribed regulations and may be retained in the Armed Forces after the time which he would otherwise be entitled to be discharged.

266. (1) A reservist or pensioner who, without leave lawfully granted or other reasonable excuse, fails to appear at the time and place appointed for annual training or when called out to aid civil power or on permanent service, is—

(a) if called out on a permanent service, guilty, according to the circumstances, of desertion within the meaning of section 60 of this Act or of absenting himself without leave within the meaning of section 59 of this Act; or

(b) if called out to aid the civil power or for annual training, guilty of absenting himself without leave within the meaning of section 59 of this Act.

(2) A reservist or pensioner who commits an offence under subsection (1) of this section is liable, on conviction if tried by—

(a) a court-martial, to imprisonment for a term not exceeding two years or such less punishment as is provided by this Act; or

(b) a magistrate's court, to a fine not exceeding five hundred naira or to imprisonment for a term not exceeding two years.

(3) The provisions of section 121 and sections 241 to 247 of this Act shall apply to a reservist or pensioner who commits, or is alleged to have committed, or is reasonably suspected to have committed, an offence under this section as they apply to a person otherwise subject to service law under this Act.

267. Where a reservist or pensioner fails to appear at the time and place appointed for annual training or where a reservist or pensioner fails to appear when called out to aid the civil power or on permanent service and his absence continues for a period of more than twenty days, an entry of the absence shall be made by an officer in the service books prescribed under this Part of this Act and the entry shall be prima facie evidence of the fact of the absence.

268. A reservist or pensioner may be discharged by the competent Service Chief at any time during the currency of a term of service as a reservist or pensioner, as the case may be, in accordance with regulations made under this Part of this Act.

269. The President may make regulations with respect to the government and discipline of reservists and pensioners and without prejudice to the generality of the foregoing, regulations may provide for—

- (a) the calling out for training of reservists and pensioners;
- (b) the calling out of reservists and pensioners to aid the civil power and on permanent service;
- (c) the pay of reservists when on the reserve and for the pay of reservists and pensioners when called out under this Part of this Act;
- (d) requiring reservists and pensioners to report themselves, from time to time, and to obtain the permission of the competent Service Chief, or of such other officer authorised by regulations, before leaving Nigeria; and
- (e) any matter which is required by this Part of this Act to be prescribed.

Part XXII

Supplementary and Miscellaneous Provisions

Application of this Act

- 270.** (1) The following persons shall be subject to this Act—
- (a) officers, soldiers, ratings and aircraftmen of the Armed Forces;
 - (b) reservists and pensioners when called out on service;
 - (c) reservists called out for training, to aid the civil power or on permanent service; and
 - (d) pensioners called out for training, to aid the civil power or on permanent service.
- (2) This Act shall apply to the persons subject thereto under the provisions of this section and in relation to the units raised under this Act, whether outside or within Nigeria.
- 271.** (1) The provisions of this Act shall, in so far as they contain or refer to the word “man or rating” or other word importing reference to a person of the male sex only as, or as having been a member of the Armed Forces and therefore subject to this Act, have effect as if for that word there had been substituted therein a word having a like meaning in other respects but importing a reference to a person of either sex.
- (2) In relation to women members of the Armed Forces, this Act shall have effect subject to the following modifications—
- (a) those provisions of Parts, I, II, III and XX of this Act that relate to service in and transfer to the Reserve shall not apply;
 - (b) the punishment of extra work or drill specified in Part XIII of this Act shall not apply;

- (c) references in sections 277, 279 and in the other provisions of this Act to a widow shall be construed as references to a widower.

272. (1) Subject to the modifications specified in subsection (2) of this section, where a unit is on active service and a person is employed in the service of that unit or any part thereof or accompanies the unit or part thereof and is not otherwise subject to service law, Part XII of this Act shall apply to the person so employed or accompanying the unit as it applies to members of the Armed Forces.

(2) The modifications referred to in subsection (1) of this section are as follows—

- (a) the punishments which may be awarded by a court-martial shall include a fine but shall not include any other punishment less than imprisonment;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of an offence, be a fine not exceeding five hundred naira, but no other punishment;
- (c) for subsections (2) to (5) inclusive of section 121 of this Act, there shall be substituted the following provisions, that is—

“(2) The person may be arrested by a provost officer or by a warrant or petty officer legally exercising authority under a provost officer or on his behalf, or by order of an officer.”;
- (d) the provisions of this Act relating to the investigation of and summary dealing with offences shall, except as otherwise expressly provided, apply as they apply to soldiers, ratings and aircraftmen;
- (e) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer shall be such officer as may be appointed by an officer authorised to convene a court-martial;

- (f) for references in sections 168 and 169 of this Act to being, continuing or ceasing to be subject to this Act, there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part XII applies, and subsection (3) of section 168 of this Act shall not apply.
 - (3) A fine awarded by virtue of this section, whether by a court-martial or the commanding officer, shall be recoverable as a debt due to the Federal Government.
- 273.** The provisions of Part XII of this Act shall, to such extent and subject to such modifications as may be prescribed by regulations made by the President, apply to persons embarked as passengers on board ships or aircraft of the Armed Forces as they apply to persons subject to service law under this Act.
- 274.** (1) Subject to subsections (2) and (3) of this section, cadets, recruits and boys shall be subject to this Act.
- (2) For the purposes of punishment under section 119 of this Act, cadets, recruits and boys shall be treated as soldiers, ratings and aircraftmen, provided that if the accused is a boy, any one or more of the following punishments may be awarded, that is—
 - (a) a fine of a sum not exceeding the equivalent of 28 days' pay;
 - (b) confinement to barracks for a period beginning with the day of the sentence and not exceeding seven days;
 - (c) extra guards or piquets not exceeding seven in number;
 - (d) admonition;
 - (e) stoppages, where the offence has occasioned any expense, loss or damage.
 - (3) Nothing in this Act shall be construed to invalidate any rule or regulations made by the President for the purposes of administration of cadets, recruits and boys.

Wills and Distribution of Property

275. (1) A person subject to service law under this Act shall on enlistment—

- (a) declare the name of the person or persons to whom, in the event of his dying without having made a valid will, any money or personal property belonging to him should be paid or delivered;
- (b) direct that his estate is to be administered by the Customary Court (by whatever name called) of some named place according to the customs of his tribe.

(2) The name of a person declared under subsection (1) of this section and the record shall be verified periodically and the person who made the declaration shall promptly report any alteration he wishes to make to the record.

(3) An officer of the Armed Forces or of the Accountant-General or any public department, having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or any personal property or money belonging to a person subject to service law under this Act dying intestate who has complied with the provisions of subsection (1) of this section, may pay or deliver the same to the person whose name has been recorded, or to the Customary Court which has jurisdiction in the place named by that person in the prescribed manner.

276. (1) A will made by a person subject to service law under this Act shall be valid for disposing of any money or personal property which is due or belongs to him at his demise if it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by one witness, being an officer of the Forces or any government medical officer.

(2) A will made under subsection (1) of this section shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under that will shall

exclusively be deemed the testator's representative with respect to the money or personal property thereby bequeathed.

(3) An officer of the Armed Forces or of the Accountant-General or a public department, having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or any personal property or money belonging to the testator—

(a) not exceeding in the aggregate the value of five thousand naira, may pay or deliver the same to any person entitled to produce probate of or administration under the will, although probate or administration may not have been taken out;

(b) exceeding five thousand naira, shall require probate or administration to be taken out before paying or delivering the said money and effects to the legal representative of the deceased.

277. (1) If a person subject to service law under this Act—

(a) dies without having complied with the requirements of this Part of this Act as to the disclosure of next of kin; or

(b) has not made a will valid under this or any other enactment relating to wills and for the time being in force,

an officer of the Armed Forces or the Accountant-General or any public department having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or personal property or money of the deceased may, with the concurrence of the commanding officer or an officer acting on behalf of the commanding officer, pay or deliver same to a claimant who proves to the satisfaction of the commanding officer or such officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belonged.

(2) If there are more than one claimant under subsection (1) of this section, payment or delivery may be made in such shares and proportions as each claimant would be entitled to receive under the

rules of succession prevailing among the tribe, or as nearly as may be.

- (3) Where the deceased was a Moslem, the distribution of the estate may be carried out by the Area Court which has jurisdiction in the district from which the deceased came, and the Area Court shall be responsible to the State Administrator-General or the Federal Administrator-General, as the case may require, for the carrying out of the distribution in accordance with Islamic law and if there is no such Area Court in the district, the distribution may be made as nearly as may be in accordance with Islamic law.

278. (1) Where probate of the will or administration with or without the will annexed of the estate of a deceased person, subject to service law under this Act, is not taken out, and an officer of the Armed Forces, the Accountant-General or any public department, before disposing of the money and personal property of the deceased, has notice of a debt due by the deceased, he or it shall, notwithstanding anything to the contrary in this Part of this Act, apply the money and property as may remain in his or its authority or control, or so much thereof as may be required in or towards the payment of the debt, if he or it is satisfied that—

- (a) the claimant has proved the debt to the satisfaction of the commanding officer or of the officer acting on behalf of the commanding officer;
- (b) a demand for the payment of the debt was made within one year after the death of the person; and
- (c) the debt was incurred within three years before the death of the person.

- (2) A person claiming to be a creditor of a deceased person subject to service law under this Act shall not be entitled to obtain payment of his debt out of any money in the hands of an officer of the Armed Forces or of the Accountant-General or any public department except by means of a claim on an officer responsible for the deceased person's pay, and proceeding thereupon under and in accordance with this Act.

(3) If the estate is being administered by a customary court, any Government debt payable from the estate shall be paid by the officer concerned before the balance of the estate is passed to the Customary Court, and that court shall thereafter be responsible to see that all other debts are settled before final distribution of the estate of the deceased service person.

279. Where money or personal property or any part thereof of a deceased person subject to service law under this Act is paid or delivered to a person recorded as next of kin under this Part of this Act or as beneficiary under the will of the deceased person or as his widow or child, or otherwise in accordance with this Act as a near relative, a creditor of the deceased person shall have the same rights and remedies against the person to whom the money or personal property is paid or delivered as if that person had received the money or personal property as legal personal representative of the deceased person.

280. (1) Subject to the provisions of this section, if any money or personal property or any part thereof belonging to a deceased person subject to service law under this Act, is not disposed of or appropriated within one year and no valid claim thereto has been made, it shall, after conversion into cash where necessary, be paid over to the Accountant-General who shall apply it towards establishing a fund for the benefit of service personnel and ex-service personnel of the Armed Forces who are in distress, or for the benefit of the Armed Forces generally, or for charitable purposes.

(2) The application under subsection (1) of this section of any money or property or part thereof towards establishing a fund shall not be a bar to any subsequent claim, by any person, established within twelve months after the application.

(3) The Minister of Defence, after consultation with the Forces Council, may make regulations for the formation of the fund and any disbursements from the fund, and those regulations may provide for the fund to be identical with the Armed Forces Benefit Fund established under this Act or for the fund to be a separate fund administered for the purposes of this section.

- 281.** Money or other property of a deserter under this Act which is under the charge or control of an officer of the Armed Forces, the Accountant-General or any public department shall be disposed of as nearly as may be in accordance with the provisions of section 278 of this Act or as may otherwise be prescribed under this Act, and if that section is invoked, it shall have effect accordingly.
- 282.** Notwithstanding any other provision of this Act, a uniform, medal or decoration belonging to a deceased person shall not comprise part of his personal estate for the purpose of satisfying the claim of creditors or of any of the purposes of administration under this Act or otherwise but shall be delivered to and held by the competent Service Chief or an officer authorised by him and be disposed of in such manner as may be prescribed.

Miscellaneous

- 283.** The President may, in any case not otherwise provided for under this Act, make regulations generally for prescribing or providing for any act, matter or thing for the purpose of giving effect to the provisions of this Act.
- 284.** (1) A power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and for the purposes of those regulations, rules, orders or other instruments, classes of cases may be defined by reference to any circumstances specified in the regulations, rules, orders or other instruments.
- (2) Regulations, rules, orders or other instruments made under subsection (1) of this section may—
- (a) impose conditions, require acts or things to be performed or done to the satisfaction of a person named therein whether or not that person is a member of the Armed Forces;
 - (b) empower that person to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done;

- (c) prescribe periods or dates on, within or before which those acts or things shall be performed or done or what conditions shall be fulfilled; and
- (d) provide for appeal against an order or direction made or given under this subsection.

285. (1) Without prejudice to section 41 of this Act, in this Act “on active service” in relation to a unit means that the unit is engaged in operations against an enemy and, in relation to a person, means that the person is serving in or with a unit which is on active service.

(2) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for a service of the Armed Force or for the public that a unit should be deemed to be or continue to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein, that unit shall be deemed to be on active service.

(3) Where it appears to the President that it is necessary for a service of the Armed Forces or for the public that the period specified in a declaration under subsection (2) of this section should be prolonged, or, if previously prolonged under this subsection, should be further prolonged, he may declare that the period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while a unit is deemed to be on active service by virtue of the foregoing provisions of this section, it appears to the President that there is no necessity for the unit to continue to be treated as being on active service, he may declare that, as from the coming into operation of the declaration, the unit shall cease to be, or to be deemed to be, on active service.

286. An order or a determination by an officer of the Armed Forces or service authority may, unless otherwise prescribed by rules or regulations made under this Act, be signified under the hand of an officer authorised in that behalf, and an instrument signifying the order or determination and purporting to be signed by an officer stated therein to

be so authorised shall, unless the contrary is proved, be accepted by all courts and persons as sufficient evidence accordingly.

287. (1) All fines awarded under Part XII and section 272 of this Act shall be paid over to the Accountant-General and be applied towards establishing a fund to be known as the Armed Forces Benefit Fund (in this Act referred to as “the Benefit Fund”) for the purpose of making money available for the benefit of service personnel and ex-service personnel of the Armed Forces who are in distress, or for the benefit of the Armed Forces generally, and for charitable purposes.

(2) The Minister of Defence, after consultation with the Forces Council, may make regulations for the formation of the Benefit Fund, and disbursements shall be made out of the Benefit Fund in accordance with those regulations.

288. Officers of the Army, Navy and Air Force shall have and enjoy the like powers, rights, immunities and privileges as are by any means conferred upon and enjoyed by commissioned officers of any of the services of the Armed Forces.

289. The corresponding structure of ranks of officers, soldiers, ratings and aircraftmen in the Armed Forces shall be as set out in the Third and Fourth Schedules, respectively, to this Act.

290. (1) The Nigerian Army Act, the Navy Act, the Air Force Act and the Military Court (Special Powers) Act (in this section referred to as “the repealed enactments”) and all other enactments relating thereto are hereby repealed.

(2) Notwithstanding the repeal of the enactments referred to in subsection (1) of this section—

(a) all the bodies of troops raised under any of the repealed enactments shall be deemed to have been raised under this Act;

(b) an officer, a soldier, rating or an aircraftman serving in the Armed Forces under any of the repealed enactments immediately before the commencement of this Act shall be deemed to have been commissioned or enlisted, as the case

may be, under this Act and the officer, soldier, rating or aircraftman shall not be required to serve in the Armed Forces for a period longer than that for which he was first commissioned, enlisted or re-engaged;

(c) a document referring to a provision of any of the repealed enactments shall be construed as a reference to the corresponding provision of this Act;

(d) where an offence, being an offence for the continuance of which a penalty was provided, has been committed under any of the repealed enactments, court-martial or other proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(3) Any proceeding or other sentence pending or existing immediately before the commencement of this Act against an officer, a soldier, rating or an aircraftman may be continued or commenced, as the case may be, and a determination of a court-martial, civil court or other authority or person may be enforced against the officer, soldier, rating or aircraftman to the same extent that the proceeding or other action or determination could have been continued, commenced or enforced against that officer, soldier, rating or aircraftman.

(4) An officer who immediately before the commencement of this Act, was authorised to recruit or attest enlisted persons shall, without prejudice to any subsequent withdrawal of the authorisation, be deemed, without further authorisation, to be a recruiting officer for the purposes of this Act.

(5) A forfeiture of, or deduction from, pay having effect under any of the repealed enactments immediately before the commencement of this Act, shall continue to have effect notwithstanding the repeal of the enactments.

(6) A document made before the commencement of this Act which would have been admissible in evidence under the provisions of any

of the enactments, shall be admissible to the same extent and in the same proceedings notwithstanding that the repealed enactments have ceased to have effect.

- (7) Nothing in this Act shall invalidate an act or a thing done by any officer, person, authority or office that immediately before the commencement of this Act was authorised or charged with the doing of the acts or thing aforesaid by virtue of any of the repealed enactments or any other enactments relating thereto and the act or thing done shall be deemed to have been duly executed and shall continue to be in force as if the officer, person, authority or office was authorised and charged with the function by virtue of this Act or in accordance with the provisions of an instrument made thereunder.

291. (1) In this Act, unless the context otherwise requires

“Accountant-General” means the Accountant-General of the Federation;

“acting rank” means rank of any description in the Armed Forces by whatever called and being such that a commanding officer may, with or without preferring a charge under this Act, order the holder to revert to a lower rank or to his substantive rank, as the case may be and “acting warrant or chief petty officer” and “acting non-commissioned officer” shall be construed accordingly;

“aircraft” means a machine for flying, whether propelled by mechanical means or not, and includes a machine of the type known as a hovercraft as well as any description of balloon;

“Air Council” means the Nigerian Air Council established under section 15 of this Act;

“aircraft material” includes—

(a) part of and components of or accessories for, aircraft, whether for the time being in an aircraft or not;

(b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, an aircraft;

(c) any other gear, apparatus or instruments in, or for use in, an aircraft;

(d) an apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of an aircraft; and

(e) any fuel used for the propulsion of an aircraft and any material used as a lubricant for an aircraft or aircraft material;

“aircraft papers” includes books, documents, forms and writings of whatever description and whether or not relating to the flight of the aircraft when captured or to any flight, which are delivered up or found abroad the aircraft;

“Air Force” means the Nigerian Air Force raised under this Act;

“air signal” means any message, signal or indications given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

“allied forces” means military, naval or air forces of any country allied to, or associated with, the Federation and includes any Commonwealth force;

“appropriate Service Council or Board” means the Army Council, the Air Council or the Navy Board, as the case may be;

“appropriate superior authority” has the meaning assigned to it by subsections (1) and (2) of section 128 of this Act;

“Armed Forces” means the Nigerian Army, the Nigerian Navy and the Nigerian Air Force raised under section 1 of this Act;

“Army” means the Nigerian Army raised under section 1 of this Act;

“Army Council” means the Nigerian Army Council established under section 9 of this Act;

“arrest” includes open and close arrest and means physical restraint imposed on a person by order of a competent superior authority in accordance with the provisions of this Act depriving a person of freedom;

- “before the enemy” in relation to a person, means that the person is in action against the enemy or about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;
- “Board” means the Nigerian Navy Board established under section 12 of this Act;
- “Boards of Inquiry Rules” means rules made under section 180 (d) of this Act regulating the boards of inquiry;
- “civil court” means a court of competent criminal jurisdiction, but does not include a customary court by whatever name called;
- “civil offence” has the meaning assigned to it in subsection (2) of section 114 of this Act;
- “civil prison” means a prison in Nigeria in which a person sentenced by a civil court to imprisonment can for the time being be confined;
- “commander” means the Service Chief of the respective services of the Armed Forces appointed by the President to have the command, direction and general superintendence of the services raised under this Act;
- “commanding officer” in relation to a person, means the officer commanding the

unit to which the person belongs or is attached;

“constable” includes a person (whether within or outside the Federal Republic of Nigeria) having powers corresponding with those of a constable;

“corresponding civil offence” has the meaning assigned to it by subsection (2) of section 114 of this Act;

“corresponding rank” in relation to any rank of any other service of the Armed Forces or an allied force, means such rank in that force as is specified under the Third and Fourth Schedules to this Act to correspond with a rank under this Act;

“court-martial” means a court-martial constituted under this Act;

“Customary Court” includes an Alkali’s court, and any other court at any time before or after the commencement of this Act known as a native court;

“damage” and cognate expressions, include destruction;

“date of attestation” in relation to a person, means the date on which he is attested as having enlisted in any service of the Armed Forces;

“decoration” includes a medal, ribbon, clasp and good conduct badge;

- “desertion” shall be construed in accordance with subsection (3) of section 60 of this Act;
- “enemy” means all persons engaged in armed operations against Nigeria or allied forces, and includes armed mutineers, armed rebels, armed rioters and pirates;
- “executive officer” means the officer carrying out the executive duties of the ship or establishment;
- “Forces Council” means the Armed Forces Council established under section 4 of this Act;
- “Imprisonment Rules” means rules regulating imprisonment made by the President under section 180 (c) of this Act;
- “independent command” means a ship’s officers and men of which are appointed or drafted to it and borne on its books;
- “junior rating” means a rating enlisted in accordance with the provisions of section 29 of this Act;
- “member of the Armed Forces” means an officer, soldier, rating or aircraftman, as the case may be;
- “Minister” or “Minister of Defence” means the Minister charged with responsibility for matters relating to defence;

“oath” includes affirmation, and references to swearing shall be construed accordingly;

“officer” means, in relation to the Armed Forces, a person of or above the rank of cadet or any superior rank;

“on active service” in relation to a unit, means that the unit is engaged in operations against an enemy, and in relation to a person, means that the person is serving in or with the unit which is on active service and also includes normal or routine military duties;

“prescribed” means prescribed by rules of procedure;

“President” means the President;

“prison” includes a civil prison and any detention facility of any service of the Armed Forces;

“property” includes real property in any State of the Federation or outside the Federation of the nature of real property;

“provost officer” means a provost marshal or officer appointed to exercise the functions conferred by or under service law on a provost officer;

“public” when used adjectivally, means belonging to the Government

of the Federation or of a State or Local Government or to the Government of the country to which an allied force serving or operating in Nigeria belongs;

“recruiting officer” means a person authorised as such under section 27 of this Act;

“Reserve” means the Armed Forces Reserve established under section 2 of this Act comprised of those persons who are subject to reserve service or liability under this Act;

“service” when used adjectivally, means belonging to or connected with the Armed Forces;

“Service Chief” means the Chief of Army Staff, the Chief of Naval Staff or the Chief of Air Staff, as the case may be;

“service guardroom” means separate premises designated by the commander of any service of the Armed Forces for persons serving sentences of imprisonment;

“service law” means this Act and includes the Military, Naval or Air Forces law of any allied forces;

“service of the Armed Forces” means the Army, Navy or Air Force, as the case may be;

“service property” includes property belonging to any service of the Armed Forces;

“ship papers” includes books, documents, forms and writings of whatever description and whether or not relating to the voyage of the ship when captured or to any other voyage, which are delivered up or found abroad the ship;

“soldier, rating or aircraftman” means a member of the Armed Forces of or below the rank of chief petty officer or equivalent rank, and references in this Act to soldier, rating or aircraftman or to a soldier, rating or aircraftman of any particular rank includes references to a soldier, rating or aircraftman of rank corresponding with any of the services of the Armed Forces, as the case may be;

“stealing” has the meaning assigned to it in the Criminal and Penal Codes and references to “stolen goods” shall be construed as if contained in those Codes;

“stoppages” means, in relation to pay, the recovery by deduction from the pay of the offender of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“tender” means a ship or vessel the officers and men of which are appointed or drafted to and borne on

the books of another ship or vessel being a parent ship or vessel;

“unit” means an establishment, base or any other formation of the Armed Forces personnel which has been declared to be a unit by the Forces Council;

“warrant or petty officer” includes a chief petty officer or its equivalent and a warrant or petty officer, man and rating or equivalent status in all the services of the Armed Forces, except when used as title of soldier, rating or aircraftman.

(2) Where by this Act it is provided that a person subject to service law under this Act shall be liable on conviction by a court-martial to imprisonment and no term or maximum term is specified, the person so convicted shall be liable to imprisonment for a maximum term not exceeding that which is provided for in the provisions of this Act.

292. This Act may be cited as the Armed Forces Act and shall come into force on 6 July 1994.

Schedules

First Schedule

Alternative offences of which accused may be convicted by court-martial

Offences charged

1. An offence under subsection (1) of section 45
2. An offence under subsection (1) of section 46

3. Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority.
4. An offence under subsection (1) of section 52.
5. Striking his superior officer
6. Using violence to his superior officer otherwise than by striking him.
7. Using threatening language to his superior officer.
8. Disobeying in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.
9. Desertion.
10. Attempting to desert.
11. Stealing any property.
12. An offence under section 66 involving wilfulness.
13. An offence under subsection (1) of section 85.
14. An offence under section 86 involving striking.
15. An offence under section 86 involving the use of violence other than striking.

Alternative offences

1. An offence under subsection (2) of section 45
2. An offence under subsection (2) of section 46
3. Disclosing information without authority.

4. An offence under subsection (2) of section 52.
5. (a) Using violence to his superior officer other than by striking him.
(b) Offering violence to his superior officer.
6. Offering violence to his superior officer.
7. Using insubordinate language to his superior officer.
8. Disobeying a lawful command.
9. Absence without leave.
10. Absence without leave.
11. Fraudulently misapplying the property.
12. The corresponding offence involving negligence.
13. An offence under subsection (2) of section 85.
14. (a) The corresponding offence involving the use of violence other than striking.
(b) The corresponding offence involving the offering of violence.

15. The corresponding offence involving the offering of violence.

Second Schedule

Supplementary Provisions as to Payment for Requisitioned Vehicles

- 1 (1) Subject to the provisions of this Schedule, a payment under paragraphs (b) or (c) of subsection (1) of section 228 of this Act shall (without prejudice to any agreement as to payment on account) become due on the expiration of the period for which possession of the vehicle in question is retained.
- (2) Subject to the provisions of this Schedule, a payment under paragraph (a) of subsection (1) or under subsection (2) of section 228 of this Act shall become due on the furnishing of the vehicle.
2. (1) As soon as may be after the furnishing of a vehicle, there shall be given or sent to the person by whom it was furnished, by such person and in such form and manner as may be specified by instructions of the Forces Council, a receipt for the vehicle specifying what payment, at what rate or of what amount, is offered in respect of the furnishing thereof under paragraph (a) of subsection (1) or, as the case may be, under subsection (2) of section 228 of this Act.
- (2) As soon as may be after the end of the period for which possession of a vehicle is retained, there shall be given or sent to the person by whom the vehicle was furnished, by such person and in such form and manner as aforesaid, a notice—
- (a) stating whether any, and if so, what damage to the vehicle has occurred during the period for which possession of the vehicle was retained, other than damage which has been made good by a person acting on behalf of the Federal Government or that the total loss of the vehicle has occurred; and

- (b) specifying what payment is offered in respect of the damage or loss under paragraph (b) or (c) of subsection (1) of section 228 of this Act.
3. (1) A person to whom a receipt or notice under paragraph 2 of this Schedule has been given or sent (in this Schedule referred to as “the claimant”) shall be deemed to have accepted the offer contained therein unless, within 21 days from the time at which he received the receipt or notice, he gives notice to the person by whom the receipt or notice was given or sent that he claims some specified greater amount or rate.
- (2) Where a notice under paragraph 2 of this Schedule has been given or sent stating that no damage has occurred to a vehicle during the period for which possession of the vehicle is retained, the claimant shall be deemed to have agreed that no damage has so occurred unless, within 21 days from the time at which he received the notice, he gives notice to the person by whom the notice was given or sent claiming that damage has so occurred and stating what payment he claims under subsection (1) of section 228 of this Act in respect of the damage.
- (3) On the making of a claim under sub-paragraph (1) or (2) of this paragraph, the Forces Council may notify the claimant either that it does not propose to make any further offer or that it proposes to make a specified further offer.
4. (1) Subject to the provisions of paragraph 3 of this Schedule and to the following provisions of this paragraph, a magistrate’s court shall have jurisdiction to determine any dispute—
- (a) as to the amount of any payment due under subsection (1) or (2) of section 228 of this Act, or as to whether any payment is due under any provision of subsection (1) of that section; or
- (b) as to the amount of any payment due under paragraph (b) of subsection (3) of that section, irrespective of the amount in dispute.
- (2) An application to the magistrate’s court for the determination of a dispute under sub-paragraph (1) (a) of this paragraph shall not be

made before the expiration of 21 days from the making of the claim under sub-paragraph (1) or (2) of paragraph 3 of this Schedule unless a notification has been given to the applicant under sub-paragraph (3) of that paragraph; and where a notification contains a further offer by the Forces Council, the person to whom it is given shall be deemed to have accepted the offer unless he makes the application within 21 days from receipt of the notification.

5. The instructions of the Forces Council referred to in paragraph 2 of this Schedule shall secure that any receipt or notice given under that paragraph, or any notification under sub-paragraph (2) of paragraph 4 of this Schedule, contains a statement of the effect of paragraph 3 of this Schedule, or as the case may be, of sub-paragraph (2) of paragraph 4 of this Schedule.
6. In the foregoing provisions of this Schedule, “damage” does not include damage resulting in a total loss, or damage attributable to fair wear and tear.
7.
 - (1) Nothing in the foregoing provisions of this Schedule shall apply to a case falling within subsection (4) of section 228 or subsection (3) of section 232 of this Act, and a sum payable by virtue of that subsection shall become due on the making, by the person by whom the vehicle is required to be furnished, of a claim therefor to such authority as may have been specified in that behalf in the direction requiring the vehicle to be furnished or if no such authority was specified, to the Armed Forces Council.
 - (2) Before making a payment under sub-paragraph (1) of this paragraph, the authority or the Forces Council, as the case may be, may require reasonable particulars of the damage in question and of the circumstances in which it occurred and may require a reasonable opportunity to be afforded to a person authorised by them to inspect the vehicle in question.
8. A magistrate’s court shall have jurisdiction to deal with a claim arising under subsection (4) or (5) of section 228 of this Act, or under subsection (3) of section 232 of this Act, irrespective of the amount of the claim.

Third Schedule

Armed Forces Services' Corresponding Rank Structure (officers)

S/No	Army	Navy	Air Force
(a)	(b)	(c)	(d)
1.	Field Marshal	Admiral of the Fleet	Marshal of the Nigerian Air Force
2.	General	Admiral	Air Chief Marshal
3.	Lieutenant-General	Vice-Admiral	Air Marshal
4.	Major-General	Rear-Admiral	Air Vice-Marshal
5.	Brigadier	Commodore	Air Commodore
6.	Colonel	Captain	Group Captain
7.	Lieutenant-Colonel	Commander	Wing-Commander
8.	Major	Lieutenant-Commander	Squadron -Leader
9.	Captain	Lieutenant	Flight Lieutenant
10.	Lieutenant	Sub-Lieutenant	Flying Officer
11.	Second Lieutenant	Acting Sub-Lieutenant	Pilot Officer
12.	No equivalent	Mid-Shipman	No equivalent

Fourth Schedule

Armed Forces Services' Corresponding Rank Structure (soldiers, ratings and aircraftmen)

S/No	Army	Navy	Air Force
(a)	(b)	(c)	(d)
1.	No equivalent	Warrant Chief Petty Officer	Air Warrant officer
2.	Warrant officer Class I	Chief Petty Officer	.Master Warrant officer
3.	Warrant officer Class II	Petty Officer	Warrant officer
4.	Staff-Sergeant	Leading-Rating	Flight Sergeant
5.	Sergeant	As above	Sergeant
6.	Corporal	No Equivalent	Corporal
7.	Lance-corporal	Able-Rating	Lance-corporal
8.	Private	Ordinary Rating	Aircraftman
9.	Recruit	Trainee	Recruit